

# WASHINGTON CASE UPDATE

case in point...

## Efficient Proximate Cause Rule Applies only to Losses with Two or More Causes

**From the Desk of Kyle D. Riley:** Under Washington's efficient proximate cause rule, a loss is covered if it is caused by two or more perils combining in sequence to cause a loss and a covered peril is the predominant cause of the loss. This is true even where the chain of events includes a source of loss expressly excluded by the policy. But where an insured's costs to repair are partly imposed by a city's building code, does the rule apply? Read on to find out.

**Claims Pointer:** In this case arising out of a house fire, the insured asserted that the efficient proximate cause rule mandated coverage where the alleged causes of loss were a fire and a city's building code. The Court of Appeals determined that the efficient proximate cause rule did not apply because non-compliance with a city's building code is not a peril under the meaning of the rule. The case provides insight into how courts approach the efficient proximate cause rule and is a helpful reminder that in evaluating losses, all perils must be considered, including perils excluded by the terms of the policy.

Lesure v. Farmers Ins. Co. of Washington, No. 48045-0-II, Washington Court of Appeals, Division 2 (December 21, 2016)

Loretta Lesure's ("Lesure") Port Angeles home was partially damaged by fire. The home was insured by Farmers Insurance Company of Washington ("Farmers"). The policy provided coverage for the cost to repair or replace the home up to the policy limit of \$112,000. However, the policy also excluded losses resulting from the "[e]nforcement of any ordinance or law regulating construction, repair, or demolition of a building or other structure, unless endorsed by this policy." Lesure purchased an optional endorsement for coverage of building code and ordinance upgrades with a liability limit of "10% of the total limit of insurance applying to the covered property." Accordingly, the policy limit for the optional coverage was 10% of \$112,000, or \$11,200.

Replacement costs for the damaged home totaled \$22,248.25, but because the home lacked a foundation, it did not comply with current building code requirements, and the city of Port Angeles required that the home be rebuilt to construction code. Lesure estimated costs to rebuild her home with the required

updates to be \$125,397.12. Farmers tendered \$21,748.25 (the cost to repair the home minus Lesure's \$500 deductible), plus the policy limit of \$11,200 for repairs related to code compliance.

Lesure rejected Farmers' offer and requested the full policy limit of \$112,000, plus an additional 10% under the optional building ordinance or law endorsement, for a total of \$123,200 to demolish and rebuild her home to current code. Farmers denied her request, and Lesure filed a complaint for declaratory relief and damages. Lesure argued that the efficient proximate cause ("EPC") rule required Farmers to pay the full policy limit. Farmers filed a motion for partial summary judgment, arguing that it fulfilled its obligations under the policy by offering payment for the property damage plus an extra 10 percent of her maximum policy limit under her optional endorsement. The trial court granted Farmers' motion, and Lesure appealed.

Lesure first argued that the trial court erred in failing to recognize and apply the EPC rule. In Washington, the EPC rule is applied to determine first-party insurance coverage when two or more perils combine in sequence to cause a loss and a covered peril is the

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predominant, or efficient, cause of the loss. Under those circumstances, the rule mandates coverage, even if an excluded event appears in the chain of causation that ultimately causes the loss. For example, in prior case law, the EPC rule mandated coverage where a house was destroyed by a landslide that was caused by heavy rainfall despite the fact that the policy expressly excluding coverage for losses caused by landslides. In that case, the court reasoned that because the landslide was caused by a covered peril—heavy rainfall—the loss was covered under the EPC.

Here, the Court of Appeals determined that the EPC rule did not apply because fire was the only cause of loss. As the court explained, non-compliance with a city's building code is not a peril, and there was no chain of events. Accordingly, the EPC rule did not trigger coverage beyond the limits of the building ordinance or law endorsement for the additional repair costs that arose due to building code violations.

Lesure also argued that the trial court erred in dismissing her action because the policy language for the building ordinance or law endorsement was ambiguous. According to Lesure, the term "Additional Coverages" in the endorsement could be interpreted as either meaning additional to the maximum policy limits (including code upgrade costs) or additional solely to repair costs (excluding code upgrade costs). The court disagreed, noting that a similar policy had already been interpreted at length in a prior case and determined to be clear and unambiguous. Accordingly, it was clear that Farmers' original obligation under the policy was to provide similar construction in rebuilding the partially damaged home, which did not include paying for required code upgrades. Instead, the policy provided for such code upgrades only through the optional endorsement. The endorsement was the sole source of Farmers' obligation to pay for bringing the remodeled home up to code.

Because the endorsement was limited to 10% of the primary coverage Lesure purchased, which Farmers' tendered, Farmers properly tendered its limits and was not required to pay policy limits plus an extra 10% as Lesure alleged. The trial court's granting of partial summary judgment in favor of Farmers was affirmed.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/D2%2048045-0-II%20Published%20Opinion.pdf>

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