Anti-Concurrent Causation Clauses in the Aftermath of Florence

UP's primary goal in the aftermath of a natural disaster is to help policyholders find a basis for coverage if possible. The purpose of this blog post is to alert homeowners affected by Hurricane Florence as to an important issue in the insurance claims process: Anti-Concurrent Causation Clauses.

Flood damage coverage for North and South Carolina policyholders depends on the insurance purchased, the language in the individual policy, and the laws of each state. For homeowners who have not purchased flood insurance specifically, the first step is to determine whether the damage to your property may be the result of a cause other than flooding. For example, was the property damage caused by wind either directly or indirectly—i.e. a tree or another item blown into the home?

If you can find damage from another source, such as wind, the next step is to inspect your insurance policy for an "ANTI-CONCURRENT CAUSATION" Clause. Put plainly, Anti-Concurrent Causation Causes prevent coverage where two events, like both wind and water damage, happen close together in time and only one of them is covered by the policy. Under an Anti-Concurrent Causation clause, the insurer does not have to pay for either source of damage and thus the homeowner may be left without a source for recovery.

Examples of standard anti-concurrent causation language:

- "Where an excluded peril contributes directly or indirectly to cause a loss, then coverage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss."
- "loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss."

Both North and South Carolina courts have generally recognized and enforced anti-concurrent causation

clauses. *See Ideaitalia Contemporary Furniture Corp. v. Selective Ins. Co. of Am.*, 2016 U.S. Dist. Lexis 172909 (W.D. NC. 2016); *see also S.C. Farm Bureau Mut. Ins. Co. v. Durham*, 671 S.E.2d 610 (2009).

However, anti-concurrent causation clauses can be ambiguous. Meaning, the terms included in the clause have more than one reasonable interpretation. It is important to read the anti-concurrent causation clause carefully to determine whether you think its terms could be reasonably interpreted multiple ways. When courts determine that polices have ambiguous terms, courts usually interpret the terms against the drafter—i.e. the insurance company—and in favor of the policyholder. For example, post Hurricane Katrina, the Supreme Court of Mississippi held there were two reasonable interpretations of "concurrent." The court recognized that concurrent could refer to causes (a) acting in coordination (together they acted in concert to cause the same damage) or (b) acting in sequence (one cause created the other cause that ultimately led to the damage). *Corban v. United Servs. Auto. Ass'n*, 20 So. 3d 601, 617 (2009). The court then narrowly interpreted concurrent to mean the former and held the anti-concurrent causation clause only applied "in the event that the perils act in conjunction, as an indivisible force, occurring at the same time, to cause direct physical damage resulting in loss." *Id.* at 615.