No. 93981-1

FILED
COURT OF APPEALS
DIVISION II
2016 FEB -8 PM 12: 55
STATE OF WASHINGTON
BY AP
DEPUTY

IN THE COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

NO. 48045-0-II

LORETTA LESURE, a single woman.

Plaintiff/Appellant

vs.

FARMERS INSURANCE COMPANY OF WASHINGTON.
A domestic corporation and a Washington State Stock Insurer,

Defendant/Respondent

BRIEF OF APPELLANT

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A. IDENTITY OF APPELLANT AND CLALLAM COUNTY SUPERIOR COURT'S DECISION

Appellant Loretta Lesure asks this Court to reverse the order granting Farmer's Insurance Co.'s Motion for Summary Judgment Re Coverage Obligations filed June 4, 2014. CP 09.

B. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING THERETO[1]

1. Assignment of Error

   The trial court erred in failing to recognize and apply the Efficient Proximate Cause Rule, extending coverage for Mrs. Lesure's fire loss to include further losses caused by municipal building code upgrades.

2. Assignment of Error

   The trial court erred in dismissing Mrs. Lesure's Complaint for Declaratory Judgment.

No. 1: Under an all-risk homeowners' insurance policy, if the predominant cause of a loss is a covered peril (in this case, fire), does the efficient proximate cause rule still apply to extend coverage even though another event in the chain of causation (in this case, a building ordinance or law enforcement) is excluded from coverage?

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[1] This brief is tailored for this present case, but is mainly the work product of attorney Douglas W Nicholson, WSBA #24854, of Cone Gilreath Law Offices, representing the Petitioners, in *Allemand v State Farm*, Supreme Court No. 289541, (2011), in the *Allemand's* Petition for Review before the Supreme Court of Division III's decision in *Allemand v. State Farm Insurance Co.*, 160 Wn. App. 365, 248 P 2d 111 (2011) The Supreme Court granted the Petition, but State Farm settled for Plaintiffs' demand on the eve of argument. This issue still must be decided in this State.

Sub-Issue: If so, does the insurance policy's offer of optional coverage for the building ordinance exclusion conflict with, or circumvent, the efficient proximate cause rule where the optional coverage, if purchased by the insured, operates to reduce the coverage that would have otherwise been available had the insured not purchased the optional coverage? (This is an issue not yet addressed by the Supreme Court.)

Sub-Issue: In light of the efficient proximate cause rule, does the insured's purchase of optional coverage for the exclusion render the policy illusory where the optional coverage operates to reduce the amount of coverage that would have otherwise been available to cover the loss had the insured not purchased the optional coverage?

Sub-Issue: Did the trial court err in not finding that Coverage A of the insurance policy recognizes the efficient proximate cause rule, and actually applies the rule to cover building code upgrades that are required when repairing a covered loss?

No. 2: Is the relevant policy language ambiguous; that is, is it subject to more than one reasonable interpretation?

Sub-Issue: If so, does a fair and reasonable interpretation of Lesure's all-risk homeowners' policy establish that the optional code enforcement coverage (Option s7981A) applies only to the costs of the

actual code upgrades themselves, and not as a second cap on the amount available under Coverage A to replace the dwelling?

C. STATEMENT OF THE CASE

Loretta Lesure owned a house in Port Angeles, Washington, that was severely damaged by an accidental fire on January 4, 2014. CP 32. Her house was insured under an all-risk homeowners' insurance policy issued by Farmers. CP 13, and Ex. 10, at CP 119-163. The house was originally built in 1940 without a foundation. CP 32. When the fire occurred, the Lesure house did not comply with current local building code requirements applicable to its foundation, crawl space, and electrical wiring among other things. CP 34-35. Due to those deficiencies, Mrs. Lesure could not obtain a building permit to simply repair the portions of her house that were damaged or destroyed by the fire; instead, she had to tear down the entire house, including the undamaged portions, and rebuild and replace it from scratch. CP 34, 106-112. The replacement cost of the house was $125,397.72. CP 32.

Mrs. Lesure's Farmer's homeowners' policy provided a maximum of $112,000 under Coverage A to repair or replace her home. CP 119. Under the loss settlement provisions applicable to Coverage A (dwelling), the policy excluded "loss from enforcement of any ordinance or law

regulating the construction, repair or demolition of a building or other structure, unless endorsed to this policy." CP 108. Optional Endorsement s7981A "provided" additional coverage for an additional sum, equal to 10% of the policy maximum, or $11,200, for costs resulting from building code enforcement. CP 109. Mrs. Lesure was induced to purchase the "additional coverage" provided by Option s7981A by a Farmer's agent, John Z. Miller. CP 144. Had Farmer's intended that the Optional Endorsement S7981A actually reduce her coverage by eliminating her rights under the Efficient Proximate Rule, such inducement would have been fraudulent.

Farmer's paid Mrs. Lesure the total amount of $17,384.47 for repairs estimates to pre-loss condition, plus $11,200 for building upgrade under Option s7981A. CP 144. This amount consisted of the estimated amount to repair only the damaged portion of Lesure's house under Coverage A (without considering the fact that the entire house, including the undamaged portion, had to be completely demolished and replaced to comply with current building code requirements), plus the $11,200 limit available for code upgrades, instead of covering the loss up to the policy limits pursuant to the efficient proximate cause rule under Coverage A.

Mrs. Lesure then filed an action in Clallam County Superior Court for declaratory judgment and damages, arguing that Farmers was required to pay the maximum under both Coverage A and Option s7981A. CP 199. The trial court disagreed with her interpretation of the policy, issuing an Order on Summary Judgment dismissing Lesure's complaint. CP 09.

In doing so, the trial court held that the homeowners' insurance policy is unambiguous (CP 12); that Farmer's obligation under Coverage A is limited to pay the actual cash value of the damage to the property (CP 12); and that the policy excludes coverage for required code upgrades; instead, holding that the policy provides for necessary upgrades under Option s7981A, which is "limited by the policy she purchased to 10% of the policy limits." CP 14.

By limiting her coverage for building code upgrades to 10% of the policy limits under Option s7981A, the trial court expressly ignored the efficient proximate cause rule, which would have enforced coverage, in the absence of the purchased Option, for the entire loss up to the policy limits. In short, the trial court held that she paid for an endorsement option which gutted her rights she otherwise would have had under the efficient proximate cause rule.

D. SUMMARY OF ARGUMENT

The efficient proximate cause of the damage to Mrs. Lesure's home was an accidental fire, a covered peril under Coverage A of their all-risk homeowners' policy. The policy's loss settlement provisions applicable to Coverage A exclude increased costs caused by the enforcement of any ordinance or law regulating the construction or repair of the house, unless the insured pays an additional premium to acquire such coverage under Option s7981A. If the policy simply contained a blanket exclusion for the increased costs caused by building ordinance or law enforcement, the efficient proximate cause rule would apply in this case to extend coverage for the entire fire loss. The same result would hold if Mrs. Lesure *had not* paid extra to make Option s7981A part of her policy. By doing so, Mrs. Lesure paid more for this ostensible "additional coverage," but in fact unwittingly penalized herself with less coverage for her additional payment. As such, the purported additional coverage extended under Option s7981A is illusory and circumvents the efficient proximate cause rule.

Furthermore, Mrs. Lesure's Farmer's policy is ambiguous. A fair and reasonable interpretation of the relevant provisions of the policy is that Option s7981A is a separate coverage provision, which provides

"additional insurance" to pay for legally required code upgrades. As such, Option s7981A's coverage limit operates only as a cap on the amount Farmer's will pay for the actual costs of the code upgrades themselves; it does not otherwise limit the coverage available for the dwelling under Coverage A of the policy, or circumvent the efficient proximate cause rule.[2] Any other interpretation means that Mrs. Lesure receives less coverage while paying more for, what Farmer's claims, is additional coverage.

E. ARGUMENT

This issue has not been addressed in the Supreme Court of Washington, which is a matter of substantial public interest. Farmer's all-risk homeowners' policy is a standard form, adhesion contract that covers accidental fire loss, but excludes increased costs caused by building code enforcement, unless the insured pays an additional premium for optional code enforcement coverage. The policy limit for this optional coverage, however, is only 10% of the coverage limit available for the dwelling under Coverage A. The entire loss would have been covered under the

[2] The Trial court incorrectly found that, "the necessary upgrades required more than 10% of the limit of Coverage A and Farmer's thus properly tendered its limits under that coverage." Nothing in the record supports this finding, as no evidence was presented as to what the actual code upgrades themselves cost. Moreover, irrespective of the code upgrades, Lesure's entire house, including the *undamaged portions*, had to be razed. Thus, under the trial court's ruling, Lesure was not compensated for the loss to the undamaged portion of her home, even though the fire was the efficient proximate cause of that loss.

efficient proximate cause rule had Mrs. Lesure declined to pay for the optional code upgrade coverage; thus, the optional coverage is illusory: Mrs. Lesure paid *more*, but in fact received *less* coverage under the trial court's construction of the policy. Furthermore, this outcome has the effect of circumventing the efficient proximate cause rule: it also defeats the purpose of the rule and the reason for purchasing an all-risk homeowners' policy.

The impact of this outcome is not limited to Mrs. Lesure; rather, it likewise affects all holders of Farmer's standard form all-risk homeowners' policy in this state, as well as the policy holders of similar insurance policies issued by other insurers in this state.

Moreover, the trial court's decision in this case is in conflict with the efficient proximate cause rule as articulated by the Supreme Court. The trial court's decision is also in conflict, or at least difficult to reconcile, with Division One's decision in *Starczewski v. Unigard* Insurance, 61 Wn. App. 267, 810 P.2d 58 (1991), *review denied*, 117 Wn.2d 1017 (1991). The case law is in conflict, no doubt, as seen in *Allemand v. State Farm Insurance Co.*, 160 Wn. App. 365, 248 P.2d 111 (2011), cited by the trial court. Indeed, the parties can each find some support for their position in existing case law."

This Court should take the opportunity to reaffirm its commitment to the efficient proximate cause rule and make clear that unambiguous policy exclusions or limitations on coverage, however worded, may not be permitted to override or undermine the rule, at least with respect to adhesion contracts in the all-risk homeowners' policy setting. In this context, absent extrinsic evidence of both the insured's and the insurer's intent, the efficient proximate cause rule should be applied predictably and uniformly.

2. The Efficient Proximate Cause Rule Applies to Extend Coverage if the Predominant Cause of the Loss is an Insured Peril, Even if Another Event in the Chain of Causation is a Specifically Excluded Peril.

The Supreme Court first adopted the efficient proximate cause rule in *Graham v. Pemco*, 98 Wn.2d 533, 656 P.2d 1077 (1983). Under the rule, "where an insured risk itself sets into operation a chain of causation in which the last step may have been an excepted risk, the excepted risk will not defeat recovery." *Villella v. Pemco*, 106 Wn.3d 806, 816, 725 P.2d 957 (1986). The Supreme Court has expressly reaffirmed its commitment to the efficient proximate cause rule in each decision since *Graham v. Villella*. *See Safeco Insurance v. Hirschmann*, 112 Wn.3d 621, 625-26, 773 P.2d 413 (1989); *McDonald v. Farmer's*, 119 Wn.2d 724, 731, 837 P.2d 1000 (1992); *Key Tronic Corporation v. Aetna*, 124 Wn.2d

618, 625-26, 881 P.2d 201 (1994); *Kish v. Insurance Co of N. Am.*, 125 Wn.2d 164, 169-170, 883 P.2d 308 (1994); *Findlay v. United Pacific Ins.*, 129 Wn.2d 368, 372-74, 917 P.2d 116 (1996); *Allstate Ins. Co. v Raynor*, 143 Wn.2d 469, 479-80, 21 P.3d 707 (2001).

The Supreme Court has also made clear that an insurer cannot defeat the application of the efficient proximate cause rule by drafting exclusionary language to circumvent it. *Hirschmann*, 112 Wn.2d at 627; *Key Tronic Corporation*, 124 Wn.2d at 626; *Findlay*, 129 Wn.2d at 375 ("insurer could not, by drafting a variation in exclusionary clause language, deny coverage when a *covered peril sets in motion a causal chain the last link of which is an excluded peril*") (citing *Hirschmann*, 112 Wn.2d at 626-27 (italics original)).

The efficient proximate cause rule, however, does not apply to extend coverage "[i]f the efficient proximate cause. . .is a specifically named, unambiguous excluded peril in the policy." *Findlay*, 129 Wn.2d at 380. "[I]n a chain of causation case, the efficient proximate cause rule is properly applied after (1) a determination of which single act or event is the efficient proximate cause of the loss, and (2) a determination that the efficient proximate cause of the loss is a covered peril." *Findlay*, 129 Wn.2d at 376 (citing *McDonald*, 119 Wn.2d at 732).

Where, as here, the efficient proximate cause of the loss is a covered peril, even a specific, unambiguous exclusion will not defeat coverage for the entire loss, even if the excluded event contributed to or aggravated the loss. *Villella*, 106 Wn.2d at 819. In *Villella*, the earth movement exclusion unambiguously applied to both landslide and mudflow. *Id.* at 809. Despite this unambiguous exclusion, this Court held that it would not defeat coverage if the alleged negligently constructed drainage system (a covered peril) was the efficient proximate cause of the loss: "If so, the earth movement exclusionary clause would *not* exclude coverage." *Id.* at 819 (italics original); *see also*, *Hirschmann*, 112 Wn.2d at 629.

Here, Mrs. Lesure's Farmer's policy specifically excludes costs caused by the enforcement of a building ordinance or law, unless the insured pays an additional premium for the optional building ordinance or law coverage extended under Option s7981A of the policy. Even if the relevant language of the policy is found to be unambiguous, it cannot defeat coverage for the entire loss in this case, since the efficient proximate cause of the loss was an accidental fire, a covered peril. Further support for this conclusion will be set forth in the following section.

3. Mrs. Lesure's Farmer's Homeowners' Policy Effectively Circumvents the Efficient Proximate Cause Rule Because the Entire

Fire Loss Would Have Been Covered Had she Not Paid Extra for the Optional Building Ordinance and Law Coverage.

Under the efficient proximate cause rule, "[i]f the initial event, the 'efficient proximate cause,' is a covered peril, then there is coverage under the policy regardless whether subsequent events within the chain, which may be causes-in-fact of the loss, are excluded by the policy." *Hirschmann*, 112 Wn.2d at 628. "[T]he purpose of the efficient proximate cause rule is to provide a 'workable rule of coverage that provides a fair result within the reasonable expectations of both the insured and the insurer'". *Kish*, 125 Wn.2d at 172 (quoting *Garvey v. Farmer's Fire & Cas. Co.*, 48 Cal.3d 395, 404, 770 P.2d 704, 257 Cal. Rptr. 292 (1989)); *Findlay*, 129 Wn 2d at 377.

Here, Farmer's, which is in the business of insurance and drafting insurance policies, can be reasonably expected to be aware of the efficient proximate cause rule and its application in insurance policy construction. Mrs. Lesure, however, cannot be reasonably expected to be aware of the rule and its application. Farmer's all-risk homeowners' policy defeats the purpose of the efficient proximate cause rule, because it provides an *unfair result*: Mrs. Lesure paid more for Option s7981A, ostensibly to provide "additional coverage" for losses caused by building code enforcement, an otherwise excluded peril. In doing so, however, under the trial court's

construction of the policy, Mrs. Lesure actually reduced the coverage available to her for the fire loss.

Under the efficient proximate cause rule, had Mrs. Lesure declined the optional coverage, the entire loss would have been covered. Since the fire was the efficient proximate cause that triggered the excluded risk (building code enforcement), the excluded risk would not have defeated coverage. *Villella*, 106 Wn.2d at 815. Simply put, Farmer's building ordinance or law exclusion circumvents the efficient proximate cause rule.

In *Allemand v. Farmer's*, 160 Wn. App., 365, 248 P.3d 111 (2011), the trial court observed that "Coverage A of the policy expressly indicates that it does cover building code upgrades caused by the same loss only under the Optional OL Coverage and to the extent provided in that coverage" [10% of the Coverage A limit]. *Allemand*, 160 Wn. App. at 372. The Court of Appeals did not address the Efficient Proximate Cause Rule, except at footnote 2, where the Court stated, "This provision recognizes the efficient proximate cause rule.... The policy actually applies the rule and covers building code upgrades that are required when repairing a covered loss." By failing to adequately address the Rule, the Court of Appeals Division III failed to grasp what the central issue was before it.

Mrs. Lesure disagrees with Division III's conclusion in *Allemand*, and urges this court to recognize and enforce of efficient proximate cause rule. The loss provisions applicable to Coverage A expressly excluded "increased costs resulting from [i.e., 'caused by'] enforcement of any ordinance or law," *unless* they paid an additional premium to purchase optional coverage for this exclusion. CP 23. There appears to be no case in this state addressing similar policy language, except for *Allemand*. Construing this language, which is in effect a *conditional exclusion*, in light of the efficient proximate cause rule is critical in deciding this case.

If Mrs. Lesure had declined to purchase the optional building code enforcement coverage under Option s7981A, then the building code enforcement exclusion would not apply at all to limit coverage for the fire loss. It would be trumped by the efficient proximate cause rule, since the fire, a clearly covered peril, was the predominant cause of the loss. Thus, rather than recognizing and applying the efficient proximate cause rule, Mrs. Lesure's policy cuts her off at the pass as the outlaw of the old West.

4. As Construed by the Trial Court, the Optional Building Code Enforcement Coverage is Illusory Since, in Light of the Efficient Proximate Cause Rule, Mrs. Lesure received No Benefit in Paying for This Additional Coverage; Thus, There Was No Consideration for Her Payment.

"[T]he court will not give effect to interpretations that would render contract obligations illusory." *Taylor v. Shigaki*, 84 Wn. App. 723, 730, 930 P.2d 340 (1997), *review denied*, 132 Wn.2d 1009 (1997). "An illusory contract is unenforceable because there is no consideration." *St. John Med. Ctr. V. Dep't of Soc. & Health Servs.*, 110 Wn. App. 51, 68, 38 P.3d 383 (2002), *review denied*, 146 Wn.2d 1023 (2002). Where possible, a contract is to be construed to avoid rendering it illusory. *Taylor*, 84 Wn. App. at 730.

Here, the trial court's construction of the relevant policy language renders it illusory. Mrs. Lesure paid extra to purchase the Option Building Code Enforcement Coverage, but received less coverage for her additional payment. Again, had she not paid for the purported "additional coverage" offered by Option s7981A, her entire fire loss would have been covered under the efficient proximate cause rule. The appropriate way to reconcile the policy language, so that it is not illusory, is to construe it so that the Optional Building Code Coverage applies only where the code upgrades themselves are the efficient proximate cause of the loss.

The relevant policy language states that Farmer's will "not cover direct or indirect loss from enforcement of any ordinance or law regulating construction, repair demolition of a building. . ." CP 108.

Essentially, the policy states that Farmer's is not liable for loss "caused by" enforcement of any ordinance regulating construction. CP 108. The *Graham* rule suggests that whenever the term 'cause' appears in an exclusionary clause it must be read as 'efficient proximate cause.' This interpretation is confirmed by *Villella. Hirschmann*, 112 Wn.2d at 629. Restated accordingly, Farmer's conditional building exclusionary clause should be read this way: "We will not pay for increased costs where the *efficient proximate cause* of the loss is the enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option s7981A." *Id.*

5. The Insurance Policy's Language is Ambiguous.

"It is Hornbook law that where a clause in an insurance policy is ambiguous, the meaning and construction most favorable to the insured must be applied, even though the insurer may have intended another meaning." *Dairyland Insurance Co. v. Ward*, 83 Wn.2d at 353, 358, 517 P.2d 966 (1974). "A clause is ambiguous when, on its face, it is fairly susceptible to two different interpretations, both of which are reasonable." *American Nat'l Fire v. B&L Trucking & Constr. Co.*, 134 Wn.2d 413, 428, 951 P.2d 250 (1998). Here, the policy informs the insured that building code enforcement costs are excluded from coverage, unless they purchase

the optional coverage available for such costs under Option s7981A, in which case "the exclusion is deleted." CP 109. The opening paragraph of Option s7981A informs the insured that this optional coverage will provide her with "*additional insurance*" for the dwelling. CP 109. The language of the loss settlement provisions applicable to Coverage A also expressly refers to Option s7981A as "Building Ordinance or Law Coverage Endorsement." CP 109. Taken together, such language can be reasonably interpreted as informing the insured that Option s7981A provides separate, additional coverage for costs caused by the enforcement of building codes.

As understood by the average purchaser of insurance, a fair and reasonable interpretation of the above policy language is that Farmer's will pay up to the Option s7981A policy limit for the costs of the actual code upgrades themselves, *as additional insurance coverage* for the dwelling under Coverage A. However, it does not otherwise preclude the insured from receiving the full coverage available under Coverage A for damages to the dwelling that do not involve actual code upgrades, if the predominant cause of the damages is a covered peril.

Read this way, Coverage A provides a limit of $112,000 for damages to the dwelling caused by a covered peril; whereas Option

s7981A provides an additional $11,200 of coverage to pay for the actual costs of the required code upgrades themselves. Option s7981A, however, does not otherwise limit or condition the insured's right to receive the full limit of Coverage A to rebuild or replace the dwelling when the loss is caused by a covered peril. This interpretation of the policy is consistent with the efficient proximate cause rule, as discussed in the previous section.

Under the trial court's interpretation of the policy, Option s7981A operates to reduce the amount of coverage otherwise available under Coverage A of the policy. The court's decision focused on Coverage A's language stating that Farmer's would "repair or replace" the home with "similar construction." The court found that code upgrades do not involve "similar construction;" therefore, "the Coverage A component of this policy does not include building code upgrades as the policy in *Starczewski* did." *See* Appendix A at 8. This interpretation overlooks the fact that Mrs. Lesure had to tear down both the damaged and undamaged portions of her house. Farmer's paid for only the estimated costs to repair the damaged portion of the house; it did not pay Mrs. Lesure anything for the undamaged portions that were razed, even though they could have been replaced with similar construction. The code upgrades included the

foundation and crawl space, and electrical wiring, *not the entire house*. CP 32.

The trial court's interpretation of the phrase "equivalent construction" actually supports Mrs. Lesure's interpretation of the policy. CP 108. Because code upgrades are in effect new improvements to the dwelling, they seldom involve" equivalent construction" to what existed prior to the dwelling sustaining damage or being destroyed, particularly with older dwellings like that of Mrs. Lesure's. This fact further supports interpreting Mrs. Lesure's Farmer's policy as limiting the increased costs caused by building code enforcement to the Option s7981A policy limit for the actual code upgrades themselves, not as a separate cap on the policy limit applicable to the dwelling under Coverage A of the policy.

Moreover, under Farmer's all-risk "repair or replace" homeowners' policy, Mrs. Lesure could reasonably expect that, for the total loss of her home, she would end up with a habitable dwelling, or at least the policy limit available for the dwelling under Coverage A. If Farmer's wanted the coverage limit of Option s7981A to apply to reduce the amount available under Coverage A, when code upgrades are necessary, it could have worded the coverage language differently. "The [insurance] industry knows how to protect itself and it knows how to write exclusions and

conditions." *Boeing v. Aetna Casualty & Surety Co.*, 113 Wn.2d 869, 887, 784 P.2d 507 (1990).

G. CONCLUSION

The efficient proximate cause of Mrs. Lesure's loss was an accidental fire, not the enforcement of any building ordinance or law. Had Mrs. Lesure not purchased the purported Optional Building Ordinance or Law Coverage Endorsement, her entire loss, up to the applicable policy limits, would have been covered as required by the efficient proximate cause rule. Unless the building ordinance or law exclusion applicable to Coverage A is construed to apply only when building code enforcement is the efficient proximate cause of the loss, the optional coverage under Option s7981A is illusory, since the insured pays an additional premium, but in fact receives less coverage under the circumstances as presented here. As construed by the trial court, the policy language also circumvents the efficient proximate cause rule. Accordingly, this Court should reverse the trial court's decision in favor of Mrs. Lesure.

In doing so, the Court should find that exclusions, however worded, should not apply to trump the efficient proximate cause rule where the efficient proximate cause of a loss is an expressly covered peril. To hold otherwise defeats the purpose of the rule in multiple causation

cases; it also leads to confusion and invites ongoing litigation as the lower courts struggle to construe insurance policy language in light of the rule. The purpose of the efficient proximate cause rule is to provide a workable rule of coverage that provides a fair result. If the efficient proximate cause of the loss is a covered peril, coverage should exist and the inquiry end at this point. Conversely, if the efficient proximate cause is an unambiguously excluded peril, coverage should not exist and the inquiry likewise ends. This clear-cut application of the rule provides a workable, fair result.

DATED this 4 day of February, 2016.

Respectfully submitted,

WOLFLEY LAW OFFICE, P.S.

By: _____

Lane J. Wolfley, WSBA 9609
Attorney for Plaintiff/Appellant

APPENDICES

SECTION I - PROPERTY

Coverages

Coverage A - Dwelling

We cover:

1. The dwelling, including attached structures, on the residence premises and used principally as a private residence
2. Material and supplies on or adjacent to the residence premises for use in construction, alteration or repair of the dwelling or other structures on the residence premises.

Wall-to-wall carpeting attached to the dwelling is part of the dwelling.

Coverage B - Separate Structures

We cover other structures on the residence premises separated from the dwelling, or connected to the dwelling by only a fence, utility line or similar connection.

We do *not* cover separate structures used in whole or in part for business purposes. We *do* cover separate structures used solely as a private garage and rented or held for rental to a non-tenant of the dwelling.

Wall-to-wall carpeting attached to a structure is part of the structure.

Coverage C - Personal Property

We cover personal property owned or used by an insured anywhere in the world. At your request after a loss we shall also cover personal property:

1. owned by others while the property is on the part of the residence premises occupied by an insured.
2. owned by a guest while the property is in any residence occupied by an insured.
3. owned by a residence employee while in the service of an insured anywhere in the world, and the property is in physical custody of the residence employee.

Special Limits On Certain Personal Property

These limits do not increase the Coverage C limit of insurance. The limit for each numbered group is the total limit for any one loss for all property in that group.

1. 10% of Coverage C limit or $1,000 (whichever is greater) on personal property usually located at an insured's residence, other than the residence premises.

   This limit does not apply to personal property in a newly-acquired principal residence for 45 days after moving begins.
2. $100 on money, bank notes, coins, medals, bullion, platinum, gold and silver other than goldware and silverware, and collections of all such property.
3. $500 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets and stamp collections.
4. $500 on watercraft, including their trailers, furnishings, equipment and outboard motors.
5. $500 on trailers not used with watercraft.
6. $500 on theft of jewelry, watches, precious and semi-precious stones and furs, including articles for which fur represents the principal value.
7. $2,500 on theft of silverware, goldware and pewterware, including articles for which such metal represents the principal value.
8. $1,000 on theft of guns.
9. $200 on business property, not including electronic data processing equipment or the recording or storage media used with such equipment.
10. $2,500 on theft of any one piece rug or carpet made outside of the United States even if such item is used as decoration or considered artwork.
11. $5,000 on electronic data processing equipment including recording or storage media used with such equipment primarily located on the residence premises.

b. protect the property from further damage. Make necessary and reasonable repairs to protect the property. Keep records of repair costs.

c. make a list of all damaged or destroyed personal property showing in detail the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related records that support your figures.

d. as often as we reasonably require:

(1) exhibit damaged property.

(2) provide us with records and documents, including banking and other financial records, if obtainable, and permit us to make copies.

(3) submit to examination under oath upon our request.

e. submit to us within 60 days after the loss, your signed sworn statement showing:

(1) time and cause of loss.

(2) interest of the insured and all others in the property involved.

(3) all legal claims against the property.

(4) other insurance which may cover the loss.

(5) changes in title or occupancy of the property during the term of the policy

(6) specifications and detailed repair estimates of any damaged building.

(7) a list of damaged or destroyed personal property described in 2c.

(8) receipts and records that support additional living expenses and loss of rents.

(9) evidence supporting a claim under Credit Card, Debit Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.

3. *Loss Settlement.*

a. Except as stated in item b, covered loss to buildings under Coverage A and B will be settled at replacement cost without deduction for depreciation, subject to the following:

(1) Settlement under replacement cost will not be more than the *smallest* of the following:

(a) the limit of insurance under this policy applying to the building.

(b) the replacement cost of that part of the building damaged for equivalent construction and use on the same premises.

(c) the amount actually and necessarily spent to repair or replace the building intended for the same occupancy and use.

(2) When the cost to repair or replace is *more* than $1,000 or *more* than 5% of the limit of insurance in this policy on the building, whichever is less, we shall pay no more than the actual cash value of the damage *until* repair or replacement is completed.

(3) At your option, you may make a claim under this policy on an actual cash value basis for loss or damage to buildings. Within 180 days after loss you may make a claim for any additional amount on a replacement cost basis if the property has been repaired or replaced.

b. Covered loss to the following types of property will be settled at actual cash value. Payments will not exceed the amount necessary to repair or replace the damaged property, or the limit of insurance applying to the property, whichever is less.

(1) personal property and structures that are not buildings.

(2) carpeting, including wall to wall carpeting, domestic appliances, awnings, outdoor equipment and antennas, all whether or not attached to buildings.

4. *Other Insurance.* If both this and other insurance apply to the same loss, we shall pay our share. Our share will be the amount that this insurance bears to the total limit of all insurance applying to the loss, collectible or not

5. *Deductible Clause.* We shall pay for loss to covered property less the deductible amount shown in the Declarations

6. *Loss to a Pair or Set.* We may elect to:

a repair or replace any part of the pair or set to restore it to its value before the loss, or

b pay the difference between actual cash value of the property before and after the loss.

Loss to a part does not mean a total loss of the pair or set.

BUILDING ORDINANCE OR LAW COVERAGE ENDORSEMENT

S7981
WASHINGTON
4th Edition

Under Section I - Property, Additional Coverages, the following coverage is added:

Building Ordinance or Law Coverage

1. Our limit of liability for this coverage will not be more than 10% of the total limit of insurance applying to the covered property under Coverage A - Dwelling or Coverage B - Separate Structures, shown in the declarations or premium notice, whichever is most recent at the time of loss. This endorsement applies to all coverages whether in the policy contract or subsequently added by endorsement.
   a. If there is a covered loss and you decide not to repair or replace the damaged building, we shall pay the actual cash value not to exceed the limits of insurance that apply to the damaged portion of the building. You have the option of making a claim within 180 days after the date of the loss for any additional payment on a repair cost basis if you repair or replace the damaged building.
   b. This coverage does not increase the limit of insurance applying to the covered property under Coverage A - Dwelling or Coverage B - Separate Structures.
2. We will pay for the costs you actually and necessarily incur up to the applicable Building Ordinance or Law Limit of Insurance in making any change to the undamaged portion of the building or separate structure when such change is required to comply with an ordinance or law which is in force at the time of the construction, demolition, renovation, repair or replacement of the damaged property caused by a covered accidental direct physical loss.
3. We will pay for the increased costs you incur due to the enforcement of any ordinance or law in force at the time which requires or regulates:
   a. The construction, demolition, remodeling, renovation, repair, or replacement of that part of a covered building or other structure damaged by a covered accidental direct physical loss.
   b. The demolition and reconstruction of the undamaged part of a covered building or other structure which must be totally demolished due to damage caused by a covered accidental direct physical loss to another part of the covered building or other structure.
   c. The remodeling, renovation, or replacement of the undamaged part of a covered building or other structure necessary to complete the remodeling, renovation, or replacement of that part of the covered building or other structure damaged by a covered accidental physical loss.
   d. The legally required modifications to any undamaged portion of the structure which are caused by the enforcement of any building ordinance or law, zoning or land use ordinance if the law enforcement is directly caused by a covered accidental physical loss.
4. We do not cover:
   a. the loss in value to any covered building or other structures due to the requirements of any ordinance;
   b. the cost to repair, replace, rebuild, stabilize or otherwise restore land; or
   c. the costs to comply with any ordinance or law which requires an insured or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of pollutants on any covered building or other structure.
5. This coverage is an exception to Section I - Exclusions, Applying to Coverage A, B and C, exclusion 1 "The enforcement, or any costs thereof, of any ordinance or law regulating construction, repair or demolition of a building or other structure."

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

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STATE OF WASHINGTON

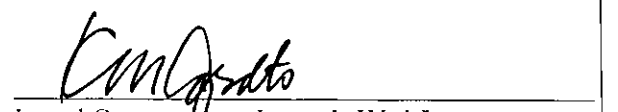
COURT OF APPEALS
STATE OF WASHINGTON

Loretta Lesure Appellant. vs. Farmers Insurance Company of WA, Respondent.	**NO. 48045-0-II** **DECLARATION OF MAILING**

KM GERDTS declares under penalty of perjury of the laws of the State of Washington, that on this day she deposited in the mails of the United States of America a properly stamped and addressed envelope containing an original and one copy of Brief of Appellant addressed to David C. Ponzoha, Court Clerk, WA State Court of Appeals II, 950 Broadway, Ste 300, Tacoma WA 98402-4454.

A copy of the Brief of Appellant and this Declaration of Mailing were mailed to Lether & Associates, PLLC, 1848 Westlake Ave N, Ste 100, Seattle WA 98109, attorneys for Farmers Insurance Company of Washington.

DATED at Port Angeles, Washington, this 5 day February, 2016.



Legal Secretary to Lane J. Wolfley,
Attorney for Appellant