

## Insurance Law Hawaii

A commentary on insurance coverage issues in Hawaii

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### Reversing Itself, Court Finds Anti-Concurrent Causation Clause Valid

Although it had previously found a policy's anti-concurrent causation clause to be ambiguous, a Louisiana federal district court reversed itself in Cameron Parish School Bd. v. RSUI Indemn. Co., 2008 U.S. Dist. LEXIS 64902 (W.D. La. Aug. 25, 2008).

The insured school board had several schools damaged by Hurricane Rita. It sought coverage under its all-risk policy, but the insurer denied coverage based on the policy's anti-concurrent causation clause. The clause provided, "We will not pay for 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."

The court's prior decision finding this clause to be ambiguous was issued before the Fifth Circuit decided Leonard v. Nationwide Mut. Ins. Co., 449 F.3d 419 (5th Cir. 2007) and Tuepker v. State Farm Fire & Cas. Co., 507 F.3d 346 (5th Cir. 2007). In these cases, the Fifth Circuit upheld the anti-concurrent causation clause, determining the plain language supported its clarity and defined its meaning. The Fifth Circuit also held that insurers may supplant the default efficient proximate causation rule with an anti-concurrent causation clause.

Here, the school board argued that Leonard and Tuepker were decided under Mississippi law while this case was controlled by Louisiana law. The district court disagreed, finding itself bound by the conclusion of the Fifth Circuit that the anti-concurrent causation clause was not ambiguous. Further, under Louisiana law, insurance companies and their insureds could opt-out of the efficient proximate cause doctrine by contract. Finally, it appeared Louisiana was in accord with most jurisdictions which have held that anti-concurrent causation clauses comport with state public policy.

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