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The Applicability of Proxima Causa Rule in Insurance Contracts

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ABSTRACT

The Proxima Causa Rule is a key principle of insurance and is concerned with hoe the loss or damage actually occurred and whether it is indeed as a result of an insured peril. In a contract of insurance, the liability of the insurer is determined on the basis of this rule. The cause should be direct, dominant, operative & efficient. This is originated from a legal maxim "injure non remota causa sed proxima spectator" which means that "in measuring the damage, only the proximate cause is to be considered and not the remote cause". This implies that if the cause is covered by the policy, the insurer is liable for loss and the peril or cause is excepted (i.e, not included in policy), the insurer is not liable. The assured, should prove the proximate cause that resulted in loss. If there is any Warranty or express condition which is excepted, the insurer should prove it. No insurance claim can succeed unless the loss is proximately caused by a peril insured against. If the loss is brought about by only one event then there is no problem in settlement of liability. Since there is no statutory definition for this term, the author in this paper attempts to highlight the plethora of judicial pronouncements dealing with this rule. It also focuses on the concept of waiver and burden of proof within the contract of insurance.

Keywords: *Peril, Loss, Life Insurance, Marine Insurance.*

I. INTRODUCTION

Properties are exposed to various perils such as, fire, earthquake, explosion, perils of the sea, war, riot, and civil commotion and so on, and policies of insurance cover various combinations of such perils. Policies of insurance usually afford protection against some of these perils but, expressly exclude certain perils from the cover, and by implication those excluded perils are not covered. The insurer's liability under the policy arises only if the cause of the loss is a peril insured against but not an expressly excluded or other peril. Many events and circumstances combine to produce a particular result. So, confusion prevails when there are multiple events that lead to the loss. This is where the doctrine of proximate cause helps. Proximate cause, or

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the Latin *Causa Proxima*, relates to the cause of the loss in that the event of the peril insured against must be covered under the insurance contract (policy), and the dominant cause of the event must not be excluded.

No insurance claim can succeed unless the loss is proximately caused by a peril insured against. If the loss is brought about by only one event then there is no problem in settlement of liability. But more often than not the loss is a result of two or more causes acting together or in tandem i.e. one after another. In such cases it is necessary to choose the most important, most effective and the most powerful cause which has brought about the loss. This cause is termed the "proximate cause" and all other causes being considered as "remote".

II. CAUSA PROXIMA

Proximate cause has been defined as "The active efficient cause that sets in motion a train of events which bring about a result without the intervention of any force started and working actively from a new and independent source"[2].

The perils relevant to an insurance claim can be classified under three headings:

a) **Insured perils**: Insured perils are specifically mentioned and covered under the policy as the possible cause of the loss or damage to the subject matter of the insurance. For example, a policy can be taken to insure the subject matter from perils, such as fire, lightning, storm and theft.

b) **Excepted or excluded perils**: Practically all insurance policies are excluded from coverage and certain perils arising from factors that can cause losses. Normally, a separate section of the contract lists and describes all the excluded perils, e.g. riot, strike, earthquake or war.

c) **Uninsured or other perils**: Those perils are not mentioned in the policy at all. Smoke and water may not be excluded nor mentioned as insured in a fire policy.

The maxim **in jure non remota causa, sed proxima, spectatur** is to be regarded. The maxim means in law the immediate and not the remote cause is to be considered in measuring the damages.[3] This rule is applied in the law of insurance also. There cannot be an event without cause and effect.

In **Hamilton, Fraser and Co v Pandorf and Co**,[4] Lord Halsbury observed: Where there is a

[2] Pawsey & co. v. Scottish Union & National Insurance Co.,[1908] UKPC 60
[3] DR. S.R.MYNENI, LAW OF INSURANCE 95 (2d ed)
[4] Hamilton, Fraser and Co v Pandorf and Co, (1887)12 AC 518, 524

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succession of causes which must have existed in order to produce a particular result, the direct and proximate cause i.e., the last cause must be looked into and the other rejected although the result would not have been produced without their occurrence.

What is this proximate cause then? It has been well defined in the leading case of **Pawsey V. Scottish Union and National** (1907) as follows;

Proximate cause means the active, efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source. It is the immediate cause and not the remote cause. The maxim is, "Causa Proxima no remote spectator". Immediate or proximate means Proximate in efficiency and not necessarily in time.

In Leyland Shipping Co. V. Norwich Union Fire Insurance Society (1918), the maxim laid down was,

"The truly proximate cause is that which is proximate in efficiency. That efficiency may have been preserved although other causes may meantime have sprung up, which have yet not destroyed it or truly impaired it, and it may culminate in a result of which it remains the real efficient cause to which the event can be ascribed".

In **YORKSHIRE DALE S.S. Co. V. MINISTER OF WAR TRANSPORT** (1942), the statement made was,

"Choice of the real or efficient cause from out of the whole complex of the facts must be made by applying commonsense standards. Causation is to be understood as the man in the street, and not as either scientist or the metaphysician would understand it".

Therefore in any insurance cover knowing the causation7 of loss or damage is a primary step for the purpose of claiming the policy cover. Causation means the ability of one thing which results in the happening of the other thing.[5]

III. PROXIMATE CAUSE EXAMPLES

A man goes to a late - night cinema and whilst returning home from the show he is attacked by a group of vandals, stabbed and killed. The proximate cause of his death is stabbing and certainly not going to the cinema, although it may be wrongly argued that has he not had gone to cinema he would not have met the vandals and got killed in this way. Here, going to the cinema may be simply a remote cause without proximately causing his death.

[5] John Bird's, Bird's Modern Insurance Law 263 (8THed)

To take another example, a man riding a horse in a lonely hilly place falls from the horseback, gets an injury and remains unconscious the whole night under exposure to severe cold. The following morning he is discovered by some persons. In the meantime, due to the severe exposure, the contracts pneumonia and dies. Here the proximate cause of his death is accident or falling from the horseback, the reason being that injury leading to unconsciousness, exposure to severe cold and then pneumonia are all-natural events developing gradually one after another without really being intervened by a new or independent source (The example is based on a judgment given in **ETHERINGTON V. LANCASHIRE AND YORKSHIRE ACCIDENT INSURANCE CO., 1909**)

In **Pink v Fleming** there was insurance on a cargo of oranges and was warranted free from partial loss or damage unless such loss or damage was consequent on collision with any other ship. There was a collision during the voyage and the vessel had to be put into the port for repairs. In order to make repairs the cargo had to be discharged into lighters and subsequently reloaded. When the vessel arrived at her destination it was found that the fruit was considerably damaged partly due to its being handled in the course of unloading and reloading and partly from natural decay which as a consequence of its perishable nature arose, owing to the delay in the voyage. The question was whether or not this damage to the cargo was a consequence of or was caused by the collision within the meaning of the policy. The court held that the loss was not recoverable.

In **Ionides v Universal Marine Insurance Co**[6] it was observed that the maxim causa proxima is peculiarly applicable to the law of insurance.

In **Leyland Shipping Co v Norwich Union Fire Insurance Society Ltd**,[7] it was held that the maxim causa proxima has to be applied to all policies and the doctrine has to be applied for the purpose of ascertaining which of the successive causes is the cause to which the loss is to be attributed within the intention of the policy.

DIRECT CHAIN OF EVENT- Unbroken Sequence (Successive cause):

Where several events occur in unbroken sequence and no excluded peril is involved, the insurers are liable for all loss resulting from the insured peril.

IV. INTERRUPTED CHAIN OF EVENT-BROKEN SEQUENCE

If the chain of events is broken by the intervention of a new and independent cause, liability

[6] Ionides v Universal Marine Insurance Co, (1863) 14 C.B.(N.S.) 259
[7] Leyland Shipping Co v Norwich Union Fire Insurance Society Ltd, (1918) AC 350 HL

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will depend on whether the new cause is an insured peril or an excluded peril. It means that if the happening of an excluded peril is followed by the occurrence of an insured peril, as a new and independent cause, there is a valid claim for loss caused by the happening of an insured peril. If an insured peril is followed by the happening of an excluded peril, as a new and independent cause, the claim is payable but excluding loss or damage caused by the excluded peril.

Cases where the Peril Insured Proximately or Immediately Follows the Excepted Peril.

This may be illustrated by the following cases:

The assured, a person with normal sight and hearing, crossed a main line and waited for one train to pass and was crossing in front of an approaching second train which he ought to have seen, when he was run over and killed. Though the death is caused by accident, a peril insured against, it is attributable to his want of care and hence was held to fall within an exception of exposure of the insured to obvious risk of injury and so the insurer was held not liable. In another case, a person fell from the platform on the rails and then a passing train crushed him. The death was not caused by the fit but by the accident. The effect of the preceding cause was held to have been exhausted.

The policy contained a clause that complications arising from pre-existing disease will be considered part of that pre-existing of condition. The insured was having diabetes at the time of taking the policy and it may lead to cardiac disease. It was held that repudiation of the policy by the insurer on that ground that the insured was having preexisting disease which may lead to cardiac disease was not maintainable. Again where a shop was on fire due to which a disorderly mob was brought together on an adjacent premise which broke a shop window, the breakage of the window was held to be by the disorderly mob but not by fire. Similarly, where a person was injured by a shell and became crippled and was run over by a passing motor car because he could not move away from the cars line it was held that death was caused due to an accident but not due to the shell injury which is an excepted cause of the consequence of liabilities. In another case there was an air raid and it facilitated the commission of an isolated act of burglary. The loss was held to be caused by burglary but not by the excepted cause of the consequence of hostilities. The insureds fire policy covers loss due to riot, strike and malicious and terrorism damage and exception clause is theft. Due to cyclone the roof of premises had blown up ten persons by using force entered the premises and committed theft. It was held that the loss was covered by riot and maintainable.[8]

[8] KSN, Murthy and Dr KVS Sarma. Modern Law Of Insurance: Lexis Nexis, 2010

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Cases where the Excepted Peril Proximately or Immediately Follows an Excepted Cause:

The following illustrations may be noted under this category:

Hernia was caused by an accidental fall and due to that the assured died. There was an exception against hernia. But still death was held due to the fall and not due to hernia. The excepted cause was a sequel to the peril insured against. On the other hand, where a man was weakened by an accident and he is attacked by a disease wholly disconnected with the accident, an exception against disease would apply. The policy covers buildings, stocks and furniture/fixtures against flood and inundation. The policy also contains exclusion clauses and the loss is resulted due to earthquake, typhoon. The exclusion clause did not cover loss due to subsidence[7]. During the subsistence of the policy the insured property damaged due to floods. It was held that the insurer was liable and the court did not accept the insurers contention that the loss incurred due to structural defect caused by subsidence in view of the non inclusion of subsidence in the non exclusion clause. The insured insure the property against loss by fire. The policy also contained a clause that it would cover the loss caused on account of militant related violence including riot, strike and malicious damage. The insured lost the property due to theft by militants. It was held that the loss was not covered by the policy because loss caused must be because of outbreak of fire and as a result theft should occur. The insureds vehicle was taken away by some unknown persons in the guise of hiring it. It was held that it would be sufficient if factum of taking away the property of the insured and thereby depriving him from using the property permanently would entitle the insured to claim the loss from the insurer.

Cases where the Excepted Peril and the Insured Peril are Concurrent and Immediate Causes

In such cases the insurer will not be liable:

In **Wayne Tank and Pump Co v Employers Liability Assurance Corporation**, a firm of engineers by name Wayne Tank and Pump Company were installing new equipment into an old mill manufacturing plasticine at Bathampton in Somerset. They took a public liability policy with the defendants to indemnify them against liability they may incur as a result of accidents happening in the course of installation. The policy contained an exception excluding the insurers liability consequent upon damage caused by the nature or condition of the goods supplied by the insured.

The installation went up in flames on account of two causes namely, (a) use of unsuitable and dangerous plastic material by the insured and (b) servant of the insured switched on the installation and leaving it unattended when the installation had not been tested. The first cause came within the exception and the second was an insured peril.

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The court came to the conclusion that the effective, dominant and proximate cause of the loss was the defective goods supplied by the insured and so the insurer was not liable. It was also held that even assuming that both the causes were equally effective, the insurer was not liable, as one of the causes was an excluded peril.[9]

If the other concurrent cause is not an excepted peril the rule would be otherwise. In those cases also the above discussion equally applies i.e., whether the precedent cause is the effective cause and the subsequent cause is a mere reflection of the precedent cause or does it constitute a novus actus interveniens. In cases of simultaneous operation also the above rules apply. Further, the policy may modify or altogether exclude the operation of the doctrine of proximate cause.

V. APPLICATION OF RULE IN THE VARIOUS CLASSES OF INSURANCE

Life Insurance

In life insurance the insurer proceeds on the calculation of the average duration of human life. The insurance is against death due to natural causes. If the cause of death is other than natural e.g., if the assured voluntarily puts an end to his life the insurer is not liable. This is on the grounds of public policy and also by the application of the maxim causa proxima.[10]

Accident Insurance

In accident insurance the proper question is whether the result in respect of which the claim is made arose directly and proximately from the accident insured against. In **Isitt v Railway Passengers Assurance Co**,[11]a railway passenger was insured against death from the effect of an injury caused by an accident. He fell down from the train and his shoulder was dislocated. He was undergoing treatment in the hospital and had an attack of pneumonia and he died. Applying the maxim causa proxima it was held that death was the result of the accident and therefore the insurance company was liable. The insured suffered total loss of vision in the right eye due to accidental fall. The insurer repudiated the claim on the ground that the loss of eyesight was due to disease phthisis bulbi which was not covered under the policy. Medical Board constituted by the State Commission opined that the loss of vision could have been caused by fall while playing. It has also opined that phthisis bulbi can be caused due to the accident also. In the stated circumstances, it was held that the loss is covered by the policy. The accidental insurance policy should be taken by the insured before the accident.

[9] KSN, Murthy and Dr. KVS Sarma. Modern Law Of Insurance: Lexis Nexis, 2010
[10] F.Bacon, A Collection Of Some Principal Rules And Maximes Of The Common Laws Of England, In The Elements Of The Common Laws Of England(1630 and photo reprint 1978), Regula 1,at 97
[11] Isitt v Railway Passengers Assurance Co,(1889)22 QBD 504

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Fire Insurance

The maxim causa proxima is applied liberally in fire insurance. The question is whether the loss arose proximately from the fire. The loss may arise directly by fire or indirectly by the efforts to extinguish the fire. **In Stanley v Western Insurance Co**,[12] it was observed that any loss resulting from the fire and resulting from the necessary and bona fide efforts to put out the fire whether by spoiling of goods by water or throwing the articles out of window or pulling down a house for the purpose of preventing the spreading of the fire and flames is within the policy of fire insurance. In **Marsden v City and Country Fire Assurance Co**., during the course of a fire accident, a mob looted the goods and it was held that the insurance company was not liable because the proximate cause of the loss was not fire but the subsequent independent lawless acts of the mob.

Marine Insurance

According to Section 55 (i) Marine Insurance Act, "Subject to the provisions of the Act and unless the policy otherwise provides the insurer is liable for any loss proximately caused by a peril insured against, but subject to as aforesaid he is not liable for any loss which is not proximately caused by a peril insured against."

Section 55 (2) enumerates the losses which are not payable are misconduct of the assured, delay although the delay be caused by a peril insured against, ordinary wear and tear, ordinary leakage and breakage inherent vice or nature of the subject matter insured, or any loss proximately caused by rates or vermin or any injury to machinery not proximately caused by maritime perils.

1. The insurer is not liable for any loss attributable to the willful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against.

2. The insurer will not be liable for any loss caused by delay unless otherwise provided.

3. The insurer is not liable for ordinary wear and tear ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

The maxim is applicable to marine insurance but the application is very difficult due to the different kinds of maritime perils. To make a marine insurer liable the insured must prove three things namely,

[12] Stanley v Western Insurance Co, (1868) KR 3 Eych 71

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(i) that the loss is caused by the perils of the sea;

(ii) that the peril is one that is insured against in the policy; and

(iii) that the peril insured against is the proximate cause for the loss sustained.

In **Dugdeon v Pembroke**[13] a ship lying in her owner's yard was insured under a time policy. It was lost due to the violent action of the winds and waves. It was in evidence that the ship was unseaworthy at the time when she was sent to sea, but the owners did not know about it. The insurers argued that as the ship was unfit for the voyage they were not liable. It was held by the House of Lords applying the maxim causa proxima that the immediate cause of the loss was the violent action of the winds and waves and therefore the insurance company was liable even though the loss could not have happened but for the concurrent action of some other cause namely the unseen worthiness of the ship. In McCarthy v Abel the owner of a ship insured the ship and the freight separately. He abandoned the ship to the underwriters for some time due to restrictions in the port by the enemy government. Subsequently, the restrictions were removed. The ship owner filed a suit against the insurer for the loss of freight. It was held that the proximate cause for the loss of freight was his own act of abandonment and therefore the insurer was not liable.

In Ionides v Universal Marine Insurance Company,[14] there was a marine policy on goods from Rio to New York free from all consequences of hostilities. During the American civil war the confederates extinguished the lights on Cape Hatters. As the lighthouse was not working, the ship unable to find her way, ran on to the rocks and was grounded becoming a total wreck. A portion of the goods was seized by the enemy troops. The other portion was lost or damaged. Applying the maxim causa proxima the court held that the Insurance company was not liable for the loss caused by the enemy and for the other loss, the insurance company was liable because the loss was caused by the peril of the sea. The court rejected the argument that the loss was due to the non-working of the lighthouse which was due to enemy action and pointed out that it was a remote cause.

In **Leyland Shipping Company v Norwich Union Insurance Co**,[15] a ship was insured under a time policy free from all consequence of hostilities. On her voyage the ship was struck by an enemy torpedo and was badly damaged. She got into a nearby port for repair. She stayed afloat for two days. Subsequently there was a big gale and as a consequence of bad weather the ship

[13] Dugdeon v Pembroke**,** (1877)2 AC 284 (H.L)
[14] Ionides v Universal Marine Insurance Company, (1863) 14 C.B.(N.S.) 259
[15] Leyland Shipping Company v Norwich Union Insurance Co, (1918) AC 350 HL

stranded and was lost. Applying the maxim causa proxima it was held that the torpedo by the enemy ship was the proximate cause of the loss and therefore the insurance company was not liable.

In **Fenwick (Fr William) and Company v North of England Indemnity Association**, the ship owners of the ship SS Harwood, insured the ship against war risk and in the course of her voyage she ran upon a submerged wreck of another ship which had been sunk by an enemy submarine a few hours earlier. There was no negligence on the part of the owners. Applying the maxim causa proxima, it was held that the insurance company was not liable because the loss was not proximately caused by the perils insured against (i.e. war risk). Billache J dismissing the suit observed that his decision would have been different if the ship had been deliberately sunk at the particular spot with the object of damaging passing vessels.

VI. CONCLUSION

The insurer or the company is liable if one of the cause of loss is an insured peril and none of them is an excepted peril or the loss is caused by the insured and the excepted perils can be distinguished. Thus there must be insured peril and the relationship between the causation and the actual event must be ascertained. The principal of proximate cause identifies the nearest or direct cause which resulted in the damage, when there exist a chain of events. In this case the most influential cause is to be determined in order to settle the claim. Once the predominant cause is determined and it becomes clear that the causa proxima is covered under the 'insured peril', the insurer is liable to compensate and at that point the principle of Indemnity will take place. However, the insurer is not liable if the losses caused by the insured and the excepted perils cannot be separated or distinguished and also if it is caused by the negligent act of the insured. As an insurer must always take reasonable care to the insured property like how a rational or prudent man would do. In all the contract of insurance the principle of Loss Minimization is applicable and the insured must always try to reduce the risk and loss attached with the property. Keeping all this principles and exceptions the court decides what the proximate cause is in each case and the full discretion is with the court to interpret this doctrine; this is done by the mere application of the court's common sense.

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