IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2018-409-000320
[2019] NZHC 1549

BETWEEN	GRAEME JOHN MOORE Plaintiff
AND	IAG NEW ZEALAND LIMITED Defendant

Hearing: 27 May 2019

Appearances: P A Cowey and A Summerlee for Plaintiff
C Laband and S Swinerd for Defendant

Judgment: 3 July 2019

JUDGMENT OF DUNNINGHAM J

Introduction

[1] The plaintiff owns a substantial, architecturally-designed home on Scarborough Hill, above Sumner in Christchurch. The property suffered extensive damage in the earthquakes that occurred on 22 February 2011 and 13 June 2011.

[2] The plaintiff insured the house with IAG New Zealand Ltd (IAG) for accidental loss during the period of 13 November 2010 to 13 November 2011 when the two earthquakes occurred. The policy specified a maximum sum for the cost of repair or replacement of the house of $2,500,000 plus GST.[1]

[3] The estimated cost of repairing or replacing the property significantly exceeds the sum insured. However, the plaintiff says he is entitled to be paid up to this sum

[1] Although the policy also makes provision for payment of certain other costs, including professional fees, demolition costs and landscaping.

for each earthquake event. Taking into account the cost of rebuilding the property and of certain other payments to which the plaintiff says he is entitled, the plaintiff says IAG has failed or neglected to pay him approximately $1,700,000 under the policy.

[4] The key issue in dispute is whether a clause in the policy, known as an "aggregation clause", limits IAG's liability for damage caused by the two earthquakes to the sum insured of $2,500,000 plus GST because the earthquakes were "a series of events which have the same cause".

[5] The parties have agreed that the interpretation of the aggregation clause in the circumstances that have arisen is critical because, if resolved in IAG's favour, the plaintiff's claim fails as he will have already received his policy entitlement. They therefore seek the Court's ruling on the following preliminary question:

> On a proper interpretation of the aggregation clause in this policy, can it be said that the most IAG is required to pay for the loss on 22 February 2011 and the loss on 13 June 2011 is the sum insured?

The policy

[6] The plaintiff's home was insured against sudden accidental loss pursuant to the terms of IAG's NZI Supersurance House Policy. The question for resolution concerns the proper interpretation and application of clause C2 of the policy.

[7] Clause C2 of the policy provides:

> **C2: HOW MUCH WE PAY**
>
> **Maximum amount we pay.**
>
> The most **we** pay for any **loss** (or any series of **losses** caused by **one event**) is the sum insured shown in the **schedule**.
>
> Where a specific limit is shown in this policy, that is the most **we** pay.
>
> **We** deduct the excess from any amount payable.

[8] Relevantly, the term "**one event**" is defined in the policy as:

> Means a single event or a series of events which have the same cause.

Aggregation clauses

[9] The parties agree that clause C2 is an aggregation clause, requiring that in certain circumstances, losses arising from separate events are aggregated together for the purpose of applying the policy limit.

[10] In *Lloyds TSB General Insurance Holdings Ltd v Lloyds Bank Group Insurance Co Ltd*,[2] Lord Hoffmann adopted the explanation of the purpose of an aggregation clause given by Moore-Bick J at first instance, saying that they:[3]

> …enable two or more separate losses covered by the policy to be treated as a single loss for deductible or other purposes when they are linked by a unifying factor of some kind.

In other words, they are used as a mechanism to both limit liability and to provide for the number of deductibles or excesses that may be applicable to multiple losses. By way of example, the statutory insurance cover provided by the Earthquake Commission aggregates all losses by natural disaster (except fire) occurring within a 48 hour period and treats them as a single claim.[4]

[11] However, the effect of any particular aggregation clause will depend on its wording. Again, in *Lloyds TSB,* Lord Hoffmann observed:[5]

> The unifying factor is often a common origin in some act or event specified by the clause. But much will turn upon the precise nature of the act or event which, for the purposes of aggregation, the clause treats as a unifying factor. The more general the description of that act or event, the wider the scope of the clause.

[12] There was no dispute between the parties that aggregation clauses fall to be interpreted in accordance with the settled principles of contractual interpretation. The Court's role is to ascertain "the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have

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2 *Lloyds TSB General Insurance Holdings Ltd v Lloyds Bank Group Insurance Co Ltd* [2003] UKHL 48, [2003] 4 All ER 43.

3 At [14] citing *Lloyds TSB General Insurance Holdings Ltd v Lloyds Bank Group Insurance Co Ltd* [2001] 1 All ER (Comm) 13 (QB) at [24].

4 Earthquake Commission Act 1993, sch 3 cl 1.

5 *Lloyds TSB*, above n 2, at [15].

been available to the parties in the situation in which they were at the time of the contract".[6]

[13] It is also noted that aggregation clauses need to be read neutrally as they have the capacity to operate either in favour of the insurer, by capping the sum insured, or the insured, by capping the deductible.[7]

The parties' positions

[14] IAG's position is that the aggregation clause in the policy applies to the losses claimed and so the plaintiff is only entitled to claim up to one single sum of $2,875,000 in respect of damage caused by both earthquakes. This is because the February 2011 and June 2011 earthquakes were "a series of events which have the same cause", as they are both properly categorised as aftershocks of the 4 September 2010 earthquake.

[15] The plaintiff, on the other hand, argues the aggregation clause does not apply and he is entitled to claim up to the sum insured for the loss incurred in each earthquake. To apply, each limb of the clause must be satisfied, and, in the plaintiff's submission, they are not. He submits that the two losses suffered do not comprise a "series" simply because they have a common origin. Similarly, the circumstances do not satisfy the policy requirement that there be a "series of events". The plaintiff also argues, by analogy with the decision of the House of Lords in *Lloyds TSB*, that the series of events must have caused the series of losses (in other words both earthquakes caused both losses), which is not the case. Finally, he says that the February and June earthquakes cannot be said to have "the same cause".

The evidence

[16] The parties both filed evidence from seismological experts as to the relationship between the earthquakes and their underlying cause. Because the experts were essentially agreed on the scientific evaluation of the earthquakes, for the purposes of this hearing the parties agreed to have the evidence taken as read.

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6 *Investors' Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 (HL) at 912, per Lord Hoffmann.

7 *AIG Europe Ltd v Woodman* [2017] UKSC 18, [2018] 1 All ER 936 at [14].

[17] IAG noted, and the plaintiff did not dispute, that the following points were common ground between the experts:

(a) On 4 September 2010 a magnitude 7.1 earthquake occurred along the Greendale fault near Darfield.

(b) The 22 February 2011 and 13 June 2011 earthquakes are separate earthquakes.[8]

(c) The February and June earthquakes ruptured on distinct faults, at different times, and had different failure mechanisms. The February earthquake released energy primarily through a "dip-slip" movement on three fault lines under Christchurch, including the Port Hills fault, and the fault failure in the June earthquake was a "strike-slip" movement on two distinct faults located to the east of Christchurch.

(d) A sequence of aftershocks can occur following an earlier earthquake (main shock) that are proximate in time and space to the preceding earthquake. They occur because an earthquake produces shear and normal stress anomalies on surrounding rock. It may only require a very small stress perturbation to trigger an aftershock, especially if the fault is near failure.

(e) The February and June earthquakes are almost certainly aftershocks of the 4 September earthquake (noting that while Dr Quigley does not directly say this, he does not disagree with Professor Smith's analysis in this regard and has reached this conclusion in a separate paper he co-authored).[9]

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8 The evidence differed as to the magnitude of these two events, but that is immaterial to the issue in dispute.

9 R Shcherbakov, M Nguyen and M Quigley "Statistical analysis of the 2010 *Mw* 7.1 Darfield Earthquake aftershock sequence" (2012) 55(3) New Zealand Journal of Geology and Geophysics 305.

(f) Professor Smith's analysis of the relationship between the September earthquake and the February and June earthquakes uses standard and well accepted earthquake statistical techniques.

(g) It is statistically highly probable that the movement of the faults responsible for the September earthquake caused additional loading on the faults that ruptured in the February and June earthquakes, and contributed to them occurring when they did.

[18] IAG relies on the seismological evidence to say that the September earthquake was the "unifying cause" that resulted in the February and June earthquakes happening when they did, rather than at some other point in time. In saying this, IAG relies on Professor Smith's analysis which shows there is a 97 per cent or greater probability that the February and June earthquakes were aftershocks of the September earthquake. In other words, the probability that without the September earthquake, the February and June earthquakes would have occurred when and where they did, is only three per cent or less. This means that the September earthquake was "the determinative trigger" for the subsequent earthquake events or, in terms of the policy, "the same cause".

[19] Dr Quigley, however, does not consider this as being sufficient for the February and June earthquakes to be said to have been *caused* by the September earthquake. In his view, there are "more proximate and distinct causes for each of the February event and June event", saying:

> …movement on the faults responsible for the 4 September 2010 earthquake and their aftershocks caused additional loading on … [the faults that ruptured in February and June 2011, but these faults were] … already pre-stressed before the Darfield earthquake caused additional loading. The 4 September 2010 earthquake contributed to 'setting the stage' for the February 22 event. However, it was not even the straw that broke the camel's back, given the time delay between these events, and their occurrence on spatially distinct faults.

[20] IAG complains that Dr Quigley's evidence attempts to answer the ultimate question, which is "whether the earthquake events have the … same cause". I accept that Dr Quigley cannot proffer an opinion on whether the terms of the aggregation clause have been met in this case, but I do not consider he does this. The interpretation

of the clause is a question for this Court. However, he does give evidence as to what, in seismological terms, caused the February and June earthquakes. Professor Smith does not take issue with that evidence, but points out that it is the contribution of the September earthquake which almost certainly meant the February and June earthquakes occurred when they did.

[21] In light of this evidence I now turn to consider the arguments raised by the plaintiff to say the clause does not apply.

Does the parties' post-contract conduct assist with interpretation of the clause?

[22] As a preliminary submission, the plaintiff contends that the post-contract conduct of the parties confirms the plaintiff's view that neither party ever intended the aggregation clause to apply to these losses. The plaintiff points out that claims were made following each earthquake and, at the time they were made, IAG assigned them separate claim numbers. While IAG initially said that only one sum insured was payable, that was not in reliance on the aggregation clause. It was not until 22 November 2017 that IAG first raised aggregation as a reason for limiting its liability to payment of one sum, and it was shortly afterwards that it provided evidence from Dr Smith to support this contention.

[23] The plaintiff argues that the failure to raise the aggregation clause as a reason for limiting IAG's liability until six years after accepting the claims is post-contract conduct that sheds light on the interpretation of the contract. In that regard he says the conduct falls within the description of relevant post-contract conduct identified in *Wholesale Distributors Ltd v Gibbons Holdings Ltd*:[10]

> Post-contract evidence that logically indicates that at the time they contracted the parties attached a particular meaning to the words in dispute can be good evidence that a later attempt by one party to place a different meaning on those words is unpersuasive… the parties' shared conduct will be helpful in identifying what they themselves intended the words to mean.

[24] However, I do not accept that there is post-contract conduct in this case from which it can be inferred that the parties intended the clause would not apply. This is

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[10] *Wholesale Distributors Ltd v Gibbons Holdings Ltd* [2007] NZSC 37, [2008] 1 NZLR 277 at [62]-[63].

not a case where the parties were actively adopting one interpretation of the clause and then one party resiled from it when it proved disadvantageous to that party. Rather, it appears that no party adverted to the relevance of the clause until late in the piece when IAG raised it after considering seismological reports on the Canterbury earthquake sequence explaining the relationship between the 4 September earthquake and the subsequent earthquakes.

[25] In these circumstances, nothing in the parties' post-contract conduct sheds light on the interpretation of the clause in question. The application of the clause was only adverted to, or pursued, when information pointing to the potentially common causation emerged.

[26] Thus, for the purpose of answering the parties' question, I draw no assistance from their post-contract conduct.

Was there a "series of losses"?

[27] The plaintiff's first argument is that the aggregation clause requires that where there are multiple losses, they must comprise a "series". This requires a connection between each loss suffered, and there is insufficient connection between the losses in this case. In support of this, the plaintiff cites the decision in *AIG Europe*, where the English Court of Appeal held:[11]

> The word "series" itself usually implies some connection between the events or concepts which constitute the series. It is, after all, derived from the Latin "serere" which means to connect.

[28] The plaintiff says it is not enough that the losses simply follow one another, citing *Distillers Co Bio-Chemical (Australia) Pty Ltd v Ajax Insurance Co Ltd*, where the High Court of Australia held:[12]

> The meaning of "series" in the proviso is, I think, that of a number of events of a sufficiently similar kind following one another in temporal succession… Since any number of distinct events will, unless by coincidence they occur simultaneously, necessarily occur in a temporal sequence, the only remaining

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[11] *AIG Europe Ltd v OC320301 LLP* [2016] EWCA Civ 367, [2017] 1 All ER 143 at [17].

[12] *Distillers Co Bio-Chemicals (Australia) Pty Ltd v Ajax Insurance Co Ltd* [1974] HCA 3, (1974) 130 CLR1 at 21.

> attribute of the concept of a "series" to be satisfied is that the events should be, in a sufficient degree, similar in nature.

[29] Thus, the plaintiff argues that losses do not become a series just by having a common origin. There must be a relationship of connectedness between them which could be established by there being:

(a) natural succession;

(b) temporal proximity;

(c) spatial proximity; and

(d) similarity in nature.

[30] In this case, the plaintiff says the only connection between the losses suffered on 22 February 2011 and 13 June 2011 is that they were both caused by earthquakes and happened to the same house. The losses were not in natural succession as nothing in the damage caused on 22 February 2011 caused the physical damage in June 2011. The losses were separated in time by a significant period, and the losses arose through different parts of the property being damaged. Because the losses lack a sufficient degree of connectedness, the plaintiff says they are not a "series" as required, and therefore cannot be aggregated under the clause.

[31] However, in my view, the plaintiff is reading too many requirements into the phrase "series of losses". None of the definitions referred to require all the factors that the plaintiff identifies to be present before there is a series. Indeed, in ordinary speech, one may speak of there being a series when more than one event of the same or similar type happens within a limited time period. There need be no greater connection between the events than that they are, in some way, similar. For example, one might say that they had suffered a "series of mishaps" if, within a matter of months of each other, a person had had two or more adverse events occur to them. The quality of adversity would be enough to connect them as a series.

[32] In my view, the fact the insured party has suffered more than one loss within a cover period would satisfy the requirement to have suffered a "series of losses" for the purposes of the clause. The fact that they are repeated experiences of loss is the connecting factor. No other factor is required on the plain meaning of the words. Any further degree of connection is created by the additional wording of the aggregation clause, which I go on to discuss.

Was there a "series of events"?

[33] The plaintiff's second argument is that, just as the losses must comprise a series to come within the clause, the events which gave rise to the losses must also be a series. Again, this requires a relationship or a connection between the events.

[34] The plaintiff says there was no suggestion that the June earthquake was "in succession" to the February earthquake and points to Dr Quigley's conclusion that:

> … there is no evidence to indicate that the occurrence of June event depended on February event, and it is perfectly reasonable to posit that one could have occurred before or after the other, either co-seismically in the same earthquake, or decades to centuries apart.

As the earthquakes were separated by more than 100 days, the plaintiff says they did not have sufficient proximity in time to constitute a series. Similarly, because they occurred along distinct fault lines, the plaintiff says they did not have sufficient spatial proximity. The only common factor between the two events is that they were both earthquakes (albeit of a different kind). Again, the plaintiff argues because there is insufficient connection between the earthquakes, they do not constitute a series and the aggregation clause cannot apply.

[35] However, again, for the reasons discussed in relation to the plaintiff's first argument, I consider the plaintiff is reading unnecessary requirements into the term "series of events". In my view, the only connection required between the events is that specified by the terms of the policy itself, that is, that they have "the same cause". If they do, there is sufficient connectedness between them to constitute a series of events. There is no need to imply any other requirement of connectedness on the events for them to constitute a series. Either the events sought to be aggregated under

the relevant clause have the "same cause", and so have a sufficient degree of connectedness or relationship, or they do not. This issue is discussed further below.

Is the "series of events" required to cause the "series of losses"?

[36] The third argument is that the "series of losses" must be caused by a "series of events". This means that the "series of events" (here, the two earthquakes) must, in combination, have caused the "series of losses". Put another way, the plaintiff says that the losses suffered in both February and in June must be caused by both of the earthquake events and not just by any one of them.

[37] To support this argument, the plaintiff relies on the House of Lords decision in *Lloyds TSB*. In that case, the aggregation clause that fell to be considered was worded as follows:[13]

> If a series of third party claims shall result from any single act or omission (or related series of acts or omissions) then, irrespective of the total number of claims, all such third party claims shall be considered to be a single third party claim for the purposes of the application of the Deductible.

[38] In *Lloyds TSB*, it was the insured party which was seeking to rely on the aggregation clause as it faced a large number of claims from clients for poor advice in selling personal pension schemes. It was only if the claims were aggregated that the insured obtained any benefit from its liability cover as the excess was much greater than any individual claim.

[39] The House of Lords held that the insurer could not aggregate losses where each loss was caused by a different act. Lord Hoffmann held:[14]

> … the unifying element is a common causal relationship… [The related series of acts or omissions] must have resulted in each of the claims. This obviously does not mean that it is enough that one act should have resulted in one claim and another act in another claim. That provides no common causal relationship. It can only mean that the acts or events form a related series if they together resulted in each of the claims.

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13 *Lloyds TSB*, above n 2, at [12].
14 At [27].

[40] Although the wording in the present clause differs from that in *Lloyds TSB*, the plaintiff argues that the same principle applies here before the aggregation clause can be invoked. The series of events (being the two earthquakes) must have, together, resulted in each of the claimed losses. Clearly, that is impossible and so the plaintiff argues that the clause cannot apply.

[41] However, I consider the plaintiff has sought to apply the finding in the *Lloyds TSB* case without having regard to the specific wording of the clause in that case. As was said in the *Lloyds TSB* case, the "[t]he choice of language by which the parties designate the unifying factor in an aggregation clause is thus of critical importance…".[15] The outcome in the *Lloyds TSB* case was driven by the particular wording of the clause. Specifically, Lord Hoffmann said:[16]

> The language of the aggregation clause, read with the definition of 'act or omission', shows that the insurers were not willing to accept as a unifying factor a common cause more remote than the act or omission which actually constituted the cause of action.

In that case, on a proper reading of the clause, it was the "related series of acts or omissions" which was the unifying factor. Therefore, it was the series of acts or omissions which had to, together, result in each of the claims and their Lordships held that the Court of Appeal was wrong to have sought "the unifying factor outside the clause, by implying a reference to a common underlying cause upstream of the acts or omissions in the parenthesis, or some similarity between them".[17]

[42] In the present case, however, the clause is worded differently. The unifying factor is not a "series of related events". Rather, the unifying factor is the cause of the events, which led to the losses. As long as the Court can be satisfied, on the evidence, that the series of events have the "same cause", it can aggregate the losses which flow from each of those events. That conclusion leads to the final, and in my view critical, argument.

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15 At [17].
16 At [23].
17 At [28].

Do the events have "the same cause"?

[43] The plaintiff's fourth point is that the February and June earthquakes do not have the same cause. The selection of the words "the same cause", as with any of the language chosen for the aggregation clause, must not be overlooked as they define the scope of the unifying or aggregating factor. The requirement for the events to have "the same cause" denotes the need for a much stronger connection than had words such as "in any way involving" been used, which hold the broader meaning of "indirectly caused by".[18]

[44] The plaintiff points out that while IAG's evidence is that there is at least a 97 per cent probability that the February and June earthquakes ruptured when they did because of the September earthquake, it does not go so far as to say the September earthquake was the direct cause of each of these earthquakes. That would ignore the evidence that the February and June earthquakes were also the result of millennia of stresses building up on these faults prior to 4 September 2010 and of the additional stresses that continued to build on these separate fault lines before the Port Hills fault ruptured in February 2011 and the relevant faults to the east of the Port Hills ruptured in June 2011.

[45] The plaintiff submits that to prove that the February and June earthquakes had the same cause required more than simply evidence the September earthquake was causally-linked to them in some unknown quantity. There needed to be evidence that the February and June earthquakes had the same proximate or direct cause. This was not established on the evidence. At best, the September earthquake was "causally-linked" to both earthquake cases, but it was simply one of many causative factors which led to the subsequent earthquakes occurring. The plaintiff said that evidence of causation is conspicuous by its absence and that, in practical terms, IAG is inviting the Court to rewrite the aggregation clause by replacing the words "have the same cause" with the words "are causally-linked".

[46] IAG, on the other hand, says that the language of the policy simply requires there to be a unifying cause of the series of events that happened. Furthermore, when

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[18] *ARC Capital Partners Ltd v Brit UW Ltd* [2016] EWHC 141, [2016] 4 WLR 18 at [39].

reading this clause, the words "event" and "cause" must be distinguished. The plaintiff's evidence has focused too closely on the earthquake events being distinct. However, the event is what happened to cause the loss, whereas cause should be interpreted as describing why the event happened. As Lord Mustill said in *Axa Reinsurance (UK) Plc v Field*:[19]

> In ordinary speech, an event is something which happens at a particular time, at a particular place, in a particular way… A cause is to my mind something altogether less constricted.

[47] IAG accepts that the earthquakes were different events occurring at different times and on different fault lines. To focus on the event is to conflate "event" with "cause". Indeed, IAG says that on the plaintiff's interpretation, it would be almost impossible to have a series of events that have the same cause under the policy because each of the events would have to occur at the same time, at the same place and in the same way, and there would be no need then to have an aggregation clause. From IAG's point of view the enquiry into the cause of the earthquakes needs to establish why they occurred when and where they did.

[48] By analogy, IAG refers to *Tokio Marine Europe Insurance Ltd v Novae Corporate Underwriting Ltd*.[20] Although that case involved a dispute between a reinsurer and a retrocessionaire, it arose out of a claim for damage caused to stores owned by a Tesco subsidiary in the 2011 floods in Thailand. The floods were caused by unusually heavy rainfall in March and April and exacerbated by poor management of the main dams in Thailand which led to overtopping and release of yet more water. The damage was suffered at different times in different locations and, in total, 165 of the insured's stores suffered loss.

[49] The insurer had aggregated the claims under a clause which used the term "occurrence" and defined it as "any one occurrence or any series of occurrences consequent upon or attributable to one source or original cause".[21] The insurer accepted the losses as aggregated and applied one excess even though different areas

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19 *Axa Reinsurance (UK) Plc v Field* [1996] 1 WLR 1026 (HL) at 1035.

20 *Tokio Marine Europe Insurance Ltd v Novae Corporate Underwriting Ltd* [2013] EWHC 3362 (QB).

21 At [51].

flooded at different times and did so as a result of more immediate causes, such as bursting of a specific river bank, mismanagement of a dam or bursting of a dam. Although the insurer's decision was not directly addressed in the judgment, IAG submits the insurer's approach was correct and that the same approach to determining the "cause" of the earthquakes should be applied in this case.

[50] IAG rejects the submission that the authorities relied on are not applicable because they refer to an "originating cause" or "original cause" as opposed to simply "cause". While it accepts that the inclusion of the words "originating" could in some circumstances imply a wider ambit for identifying the relevant unifying factor, in this case, the relationship between the September earthquake and the February and June earthquakes is easily direct enough to satisfy the causal requirement in the absence of the word "originating".

Discussion

[51] The answer to the preliminary question turns on:

(a) what degree of connection is required to satisfy the test of having "the same cause" in order to aggregate the events and, thus, the losses; and

(b) whether the evidence satisfies that requirement?

[52] I accept that the word "cause" must be interpreted in the usual way, as meaning a direct or proximate cause of the event. While the cases normally deal with causation of loss, rather than causation of an event causing loss (as here), I see no need to depart from the usual test for what constitutes a direct or proximate cause of an event. This does not require the cause to be the sole cause of the subsequent event as the test for causation is the same in insurance law as in general tort law.[22] What constitutes a proximate cause is a "question of fact to be determined by common-sense principles".[23] It is usually satisfied by the "but for" test. In other words, would the February and June earthquakes have happened but for the September earthquake?

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22 *Lloyds TSB*, above n 3, at [21].
23 *Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd* [1918] AC 350 (HL) at 362.

[53] In the present case, it does not strike me that there is a material difference between the parties on interpretation. They both accept, and I agree, that the September earthquake must be found to be a direct or proximate cause of the February and June earthquakes. The question is whether the evidence is sufficient to satisfy this requirement.

[54] What causes the difficulty here is that the relevant events are earthquakes, and these will inevitably occur at some point in time on any given fault line as a result of accumulated stresses. As Professor Smith says:

> In the absence of any other effect, the steady accumulation of strain at a fault caused by the steady day-to-day movement of plates will inevitably result in the fault strength being exceeded somewhere on the fault at some point in time.

[55] Thus, all fault lines will rupture at some point in time due to tectonic plate movement. This distinguishes an earthquake from an event such as a storm when it is easy to see the direct connection between that cause and the subsequent loss-causing events such as a tree falling through a house or flooding. Without the storm, the loss-causing events would not have happened. With it, they did.

[56] Fault line ruptures, however, will happen eventually, but what is being asked here is whether, but for the September earthquake, they would have happened in the timeframe they did? In other words, what caused the earthquakes to occur in February and June 2011, within the relevant period of insurance cover? While the plaintiff considers the timing of the earthquakes is not relevant, I disagree. It is because they happened within the one period of insurance cover that the question of whether the losses can be aggregated arises.

[57] On Professor Smith's undisputed calculations the probability of both events being an aftershock of the September earthquake, rather than occurring independently, was 97 per cent or greater. Clearly, without the September earthquake it is extremely unlikely these faults would have ruptured when they did. It is almost certainly the trigger, or the direct cause, of these subsequent earthquakes.

[58] In my view, this meets a common-sense test of the September earthquake being the direct or proximate cause of the February and June earthquakes and the consequent losses. Those two earthquakes therefore had "the same cause" for the purpose of the policy, both being triggered by the September earthquake.

Conclusion

[59] Accordingly, I answer the question posed by the parties in the affirmative. On a proper interpretation of the aggregation clause in this policy, the most that IAG is required to pay for the loss on 22 February 2011 and the loss on 13 June 2011 is the sum insured.

[60] Costs are reserved.

Solicitors:
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