IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT CAUSE NO. DA 20-0052

GARY AND CAROLYN KAUL,

Plaintiffs and Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant and Appellee.

An Appeal Arising From Rulings In The Fourth Judicial District Court, Missoula County, Cause No. DV-18-830
Honorable Shane A. Vannatta, District Court Judge

BRIEF OF *AMICUS CURIAE* MONTANA TRIAL LAWYERS ASSOCIATION

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I. Statement of the Case

MTLA Amicus adopts Plaintiffs'/Appellants' statement of the case.

II. Background

The relevant undisputed facts of this case are as follows:

- Plaintiff/Appellants the Kauls, own a recreational vehicle (RV) that they insured with Defendant/Appellee State Farm Automobile Insurance Company at all times relevant to this case. (Appellants' App. at 4, attach. 1).
- In March-April 2017, the Kauls drove the RV to Arizona. (Appellants' App. at 4, attach. 1).
- Sometime while in Arizona, the RV suffered a tear in its roof.
- The repair to the roof of the RV cost $5,474.79. (Appellants' App. at 6, attach. 1).
- The tear in the roof of the RV was covered under the following policy language:

> *We* will pay for *loss* to a *covered vehicle*. . .
> *Loss* means:
> 1. direct, sudden, and accidental damage to; or
> 2. total or partial theft of
> a covered vehicle.
>
> (Appellants' App. at 22, attach. 2).

- The tear in the roof of the trailer went undiscovered for some weeks, which caused water to infiltrate a wall of the RV. (Appellants' App. at 5, attach. 1).
- The water infiltration into the wall of the trailer would not have occurred but for the tear in the roof of the trailer. (Appellants' App. at 10-11, attach. 1).
- The repair of the wall of the trailer damaged by the water infiltration cost $10,669. (Appellants' App. at 6, attach. 1).
- The Kauls mitigated their damages once the tear was discovered. (Appellants' App. at 17, attach. 1).

The question before the Court is whether an insurance company may refuse to pay for damages that would not have occurred but for a covered loss by asserting that those damages are not covered under a policy. For nearly 100 years in Montana, the answer to this question has been no. Under the efficient proximate cause doctrine, an insurer must cover damages that are proximately caused by a covered peril, even if some damages would otherwise fall outside coverage or be excluded in a policy.

This case has enormous implications for Montana insureds. For example, every Montana insured that owns a home may experience hail damage to their roof at some point in their lives. It is quite foreseeable that undiscovered hail damage

to the shingles on a house may cause water seepage from subsequent rain. In fact, it is possible that hail damage to a roof may allow for water seepage during the same storm that causes the damage in the first place. As with the case at issue here, the water damage repair will frequently cost much more than the roof repair. Without confirmation of the continued validity of the efficient proximate cause doctrine, Montana insureds will be stuck having to pay for repairs that they rightly believed were covered by their policy. This would defeat the purpose of their insurance coverage and leave Montanans paying for millions of dollars of repairs out of their own pockets.

The Montana Trial Lawyers Association (MTLA), urges the Court to endorse the continued validity of the efficient proximate cause doctrine in Montana. MTLA further urges the Court to articulate the efficient proximate cause doctrine as explained in this brief. Application of the efficient proximate cause doctrine would require reversal of the district court's finding that the water damage to the wall was not covered and require judgment be entered in favor of Plaintiffs/Appellants that the damage to the wall was covered under the policy.

III. ARGUMENT

A. Montana Has Long Recognized That The Doctrine of Efficient Proximate Cause Requires Coverage for All Damages Caused by a Covered Peril.

In 1927, the Montana Supreme Court held that:

> In determining the cause of a loss for the purpose of fixing the insurance liability, when concurring causes of the damage appear, the proximate cause to which the loss is to be attributed is the dominant, the efficient one that sets the other causes in operation; and causes which are incidental are not proximate, though they may be nearer in time and place to the loss.

Park Saddle Horse Co. v. Royal Indem. Co., 81 Mont. 99, 261 P. 880, 884 (1927) (internal quotation and citations omitted). In *Park Saddle*, a guest on a horse riding tour was injured when the guide became lost and the riders dismounted and had to walk across a scree field. *Id.* at 881. One of the guests fell and injured her leg while walking across the steep, slippery slope. *Id.* The injured guest sued and settled her case with the tour company. *Id.*

The tour company submitted a claim during the lawsuit to its insurance company. The policy at issue provided coverage for "liability ... arising by reason of the maintenance and/or use of saddle and pack horses." *Id.* at 883. The insurance company refused coverage, asserting that because the negligence of the guide caused the fall after the guests had dismounted their horses, the policy did not apply. The Court rejected the insurance company's argument, stating that the

fall was "caused efficiently and proximately by the use of horses in the operation of the insured's business." *Id*. at 884.

The Court has not directly addressed the efficient proximate cause doctrine again after *Park Saddle*, but it has recently held "that a proximate cause analysis is appropriate in determining whether a loss is 'direct'" for the purposes of coverage under an insurance policy. *Frontline Processing Corp. v. Am. Econ. Ins. Co.*, 2006 MT 344, ¶ 30, 335 Mont. 192, 199, 149 P.3d 906, 911. In *Frontline*, an insured credit processing company sought coverage, under its employee dishonesty policy, for the costs of investigating and rectifying damage caused by one of its employee's fraudulent conduct. 2006 MT 344, ¶¶ 9-13.

The insurance company denied coverage for the majority of claims, asserting that the policy only covered damages that were a "direct loss or damage," and not consequential damages such as investigation or legal fees. 2006 MT 344, ¶ 16. Frontline asserted that damages proximately caused by the dishonesty, including investigation and legal fees, fell into the definition of "direct" damages under Montana law. 2006 MT 344, ¶ 17. The federal district court certified the question to the Montana Supreme Court.

The Court discussed longstanding Montana law and held that consequential

damages were covered under the term "direct loss." It reasoned:

> We are persuaded that a proximate cause analysis is appropriate in determining whether a loss is "direct" under a fidelity insurance policy. Such a position comports, as well, with our tradition of applying a causation standard to various types of losses claimed under insurance policies. *See, e.g., Green v. Milwaukee Mechanics Ins. Co.*, 77 Mont. 505, 252 P. 310 (1926) (Insurer of a fire insurance policy containing an "explosion" exemption, is liable for both the fire and explosion damage where the explosion is caused by a pre-existing fire "since the fire is the proximate cause of the whole loss and the explosion is a mere incident."); *Newman v. Kamp*, 140 Mont. 487, 493–94, 374 P.2d 100, 104 (1962) (For claimant to prevail in industrial accident claim, he must establish by a preponderance of evidence that such injury was the proximate cause of his present condition.); . . . .
>
> For the foregoing reasons, we answer the certified question by concluding that the term "direct loss" when used in the context of employee dishonesty coverage afforded under a business owner's liability policy, applies to consequential damages incurred by the insured that were proximately caused by the alleged dishonesty.

2006 MT 344, ¶¶30-31. After answering the certified question, the Court left the question of what damages qualified as "consequential" to the district court. 2006 MT 344, ¶ 31.

While not explicitly stating it in *Frontline*, the Court embraced the efficient proximate cause doctrine it had explained in *Park Saddle.* It specifically referenced its discussion in *Green*, 252 P. at 311 and noted an "[i]nsurer of a fire insurance policy containing an 'explosion' exemption, is liable for both the fire and explosion damage where the explosion is caused

by a pre-existing fire 'since the fire is the proximate cause of the whole loss and the explosion is a mere incident.'" *Frontline*, 2006 MT 344, ¶¶30-31.

In short, it is longstanding Montana law that all damages proximately caused by a covered loss are covered under an insurance policy. *Green*, 252 P. at 311; *Park Saddle*, 99, 261 P. at 884; *Frontline*, 2006 MT 344, ¶¶30-31.

This case is an appropriate one in which to confirm that the efficient proximate cause doctrine is the law of Montana. In this case it is undisputed that tear in the roof was a covered loss. It is undisputed that the water would not have penetrated the wall of the RV without the tear in the roof. While the water entering the wall may not have been sudden, the occurrence of the water entering the wall is "mere incident" to the undisputedly sudden and covered tear in the roof and would not have happened without that tear. Thus, coverage for the wall repair is mandated as consequential to or proximately caused by the tear in the roof. *See Green*, 252 P. at 311; *Park Saddle*, 99, 261 P. at 884; *Frontline*, 2006 MT 344, ¶¶30-31.

B. The Efficient Proximate Cause Doctrine Is Consistent With Montana Insurance Law and Public Policy.

Any ambiguity in an insurance policy must "be interpreted most strongly in favor of the insured and any doubts as to coverage are to be resolved in favor of extending coverage for the insured." *Park Place Apartments, L.L.C. v. Farmers*

Union Mut. Ins. Co., 2010 MT 270, ¶ 13, 358 Mont. 394, 399, 247 P.3d 236, 239. Given the fundamental protective purpose of insurance, exclusions are to be "narrowly and strictly construed." *Id.*

In addition, Montana recognizes the reasonable expectations doctrine as a matter of public policy. The reasonable expectations doctrine requires that "[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." *Meadow Brook, LLP v. First Am. Title Ins. Co.*, 2014 MT 190, ¶ 15, 375 Mont. 509, 513, 329 P.3d 608, 611. While expectations contrary to "clear exclusions" are not objectively reasonable, those exclusions need not rise to the level of ambiguous for the reasonable expectations doctrine to apply. *Id.*

Similar to Montana's law requiring the reasonable expectations of insureds to be met, the efficient proximate cause doctrine provides insureds with what a reasonable person would expect from an insurance policy: when a covered peril causes damages that may not be covered had they occurred independently or from a non-covered peril, then those damages are covered. An ordinary consumer would not expect to have coverage on such things as tree damage or hail damage and then have the consequential damage, such as the water infiltration at issue in this case, excluded from coverage. Repairing the consequential damage in water

infiltration cases frequently dwarfs the costs of repairing the initial "proximate" cause of the damage, just as it did in this case. Montanans do not expect to be stuck with the bill to repair damage caused by a covered loss, nor should they. Montana law and public policy favor the continued application of the efficient proximate cause doctrine in Montana.

In this case, the Kauls demonstrated that they reasonably expected the damage to be covered. The record contains a letter from the Kauls to their agent stating:

> Much to our surprise, only the roof was covered while the wall repair was denied. A claims person in Seattle who only had photos to go by, determined the water damage to be "caused by water intrusion over time"!!. There was NO leakage prior to the ROOF DAMAGE. The wall damage was caused by the leaking roof!

(Appellants' App. at 43-44, attach. 9).

As the Court can see, the Kauls reasonably expected that damage caused by a covered peril is covered. If the Court does not confirm the efficient proximate cause doctrine, thousands of Montanans are currently paying for insurance coverage without knowing that their coverage will only pay for a fraction of their damages when a covered peril occurs. As explained by the Washington Supreme Court:

> The 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 v. Ins. Co. of N.A., 883 P.2d 308, 312 (Wash. 1994).

Confirming that all damages proximately caused by a covered loss are, in fact, covered is consistent with Montana law and public policy and simply reaffirms a longstanding doctrine of Montana insurance law. The Court should re-endorse the efficient proximate cause doctrine and apply it to these facts, which would require reversal of the district court on this issue.

C. Montana Should Clarify the Efficient Proximate Cause Doctrine to Give Courts Effective Guidance.

The efficient proximate cause doctrine is the law in the majority of jurisdictions. *Villella v. Pub. Employees Mut. Ins. Co.*, 106 Wash. 2d 806, 815, 725 P.2d 957, 962 (1986).[1] The efficient proximate cause doctrine requires that

[1] *See also Koory v. Western Casualty and Surety Co.*, 737 P.2d 388 (Ariz. 1987); *Southall v. Farm Bureau Mutual Insurance Co.*, 632 S.W.2d 420 (Ark. 1982); *Koncilja v. Trinity Universal Insurance. Co.*, 528 P.2d 939 (Colo.App. 1974); *Frontis v. Milwaukee Insurance. Co.*, 242 A.2d 749 (Conn. 1968); *Cavalier Group v. Strescon Industries*, 782 F.Supp. 946 (D. Del. 1992); *Quadrangle Development Corp. v. Hartford Insurance Co.*, 645 A.2d 1074 (D.C.App. 1994); *Stephens v. Cotton States Mutual Insurance Co.*, 121 S.E.2d 838 (Ga.App. 1961); *Burgess Farms v. New Hampshire Insurance Group*, 702 P.2d 869 (Idaho App. 1985); *Denham v. LaSalle-Madison Hotel Co.*, 168 F.2d 576 (7th Cir. 1948); *Bettis v. Wayne County Mutual Insurance Ass'n*, 447 N.W.2d 569 (Iowa 1989); *Wright v. Louisville Store of Russellville*, 417 S.W.2d 242 (Ky. 1967); *McManus v. Travelers Insurance Co.*, 360 So.2d 207 (La.App. 1978); *Milton v. Main Mutual Insurance Co.*, 261 So.2d 723 (La.App. 1972); *Jussim v. Massachusetts Bay Insurance Co.*, 610 N.E.2d 954 (Mass. 1993); *Jiannetti v. National Fire Insurance Co.*, 178 N.E. 640 (Mass. 1931); *Kansas v. New York Life Insurance Co.*, 193 N.W. 867 (Mich. 1923); *Michigan Sugar Co. v. Employers Mutual Liability Insurance Co.*, 308 N.W.2dd 684 (Mich. 1981); *Grain Dealers Mutual Insurance Co. v. Belk*, 269 So.2d 637 (Miss. 1972); *Grace v. Lititz Mutual Insurance Co.*, 257 So.2d 217 (Miss. 1972); *Hahn v. M.F.A. Insurance Co.*, 616 S.W.2d 574 (Mo.App. 1981); *Boecker v. Aetna Casualty and Surety Co.*, 281 S.W.2d 561 (Mo.App. 1955); *Curtis O. Griess & Sons Inc. v. Farm Bureau Insurance Co.*, 528 N.W.2d 329 (Neb. 1995); *Pioneer Chlor Alkali Co. v. National Union Fire Insurance Co.*, 863 F.Supp. 1226 (D. Nev. 1994); *Terrien v. Pawtucket Mutual Fire Insurance Co.*, 71 A.2d 742 (N.H. 1950); *James v. Federal Insurance Co.*, 73 A.2d 720 (N.J. 1950); *Kosich v. Metropolitan Property and Casualty Insurance Co.*, 626 N.Y.S.2d 618 (App.Div. 4th Dep't 1995); *Holmes v. Employers' Liability Assurance Corp.*, 43 N.E.2d 746 (Ohio App. 1941); *Shirey v. Tri-State Insurance Co.*, 274 P.2d 386 (Okla. 1954); *Naumes Inc. v. Landmark Insurance Co.*, 849 P.2d 554 (Or.App. 1993); *Marks v. Lumbermen's Insurance Co.*, 49 A.2d 855 (Pa.Super. 1946); *King v. North River Insurance Co.*, 297 S.E.2d 637 (S.C. 1982); *Lunn*

"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." *Id.* (*citing* 5 J. Appleman, *Insurance* § 3083, at 311 (1970); 18 R. Anderson, *Couch on Insurance* § 74:711, at 1020–22 (2d ed. 1983).

In *Villella*, the Washington Supreme Court analyzed policy language that did not cover losses "contributed to or aggravated by" earth movement. *Id*. at 959. It held that the efficient proximate cause doctrine requires coverage for damages if the negligence of a contractor (a covered loss in this policy) causes settlement (potentially an excepted loss).

After *Villella*, the Washington Supreme Court again confirmed that an insurance company could not rely on the policy language that damage "resulting directly or indirectly" from landslides to deny a claim when the event setting the chain of events leading to damage is covered. *Safeco Ins. Co. of Am. v. Hirschmann*, 112 Wash. 2d 621, 628, 773 P.2d 413, 416 (1989). In *Hirschmann*, an insurance company attempted to deny a claim for a house destroyed by a landslide that was caused by a torrential rainstorm. *Id.* at 414. An engineer hired by Safeco opined that rain, a covered peril, was the cause of the landslide. *Id.*

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v. Indiana Lumbermens Mutual Insurance Co., 201 S.W.2d 978 (Tenn. 1947); *La Bris v. Western National Insurance Co.*, 59 S.E.2d 236 (W. Va. 1950).

The Washington Supreme Court again confirmed that because the initial event, torrential rain, setting the chain of causation in motion was covered, the insurance company could not rely on the word "indirectly" to deny the claim. It stated "[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." *Id.* at 416.

More recently, the Washington federal district court put the efficient proximate cause doctrine most succinctly: "where a peril specifically insured against sets other causes into motion which, in an unbroken sequence, produce the result for which recovery is sought, the loss is covered, even though other events within the chain of causation are excluded from coverage." *Hiller v. Allstate Prop. & Cas. Ins. Co.,* No. 11-CV-0291-TOR, 2012 WL 2325603, at *5 (E.D. Wash. June 19, 2012) (internal quotation and citation omitted). In *Hiller* a court again held that because water infiltration was caused by a covered peril, contractor negligence, the water infiltration was covered even though it could be argued that it was excluded damage under the policy. *Id*.

The Court should update the efficient proximate cause doctrine and specifically endorse the Washington line of cases discussing the doctrine. This would avoid the confusion recently illustrated by the Montana federal district court

in *Oltz v. Safeco Ins. Co. of Am.*, 306 F. Supp. 3d 1243 (D. Mont. 2018). There, an insurance company denied a claim for water infiltration under its seepage or leakage exclusion. *Id.* The insureds filed suit, asserting that repeated ice dams, which they believed were covered, caused the water infiltration. The *Oltz* court correctly noted that *Park Saddle* appears to be good law, and discussed the efficient proximate cause doctrine but then noted that the initial event causing damage was water infiltration. In so doing, it noted water infiltration was the "dominant cause." *Id.* at 1252. It did not cite or discuss *Green* or *Frontline*. The *Oltz* Court then stated the Park Saddle policy was for damages "arising from" the use of horses and "if the *Park Saddle* policy had excluded negligent acts from coverage, the comparison the Oltzes attempt to draw would be more compelling." *Id*.

This is an incorrect statement of the efficient proximate cause doctrine. *Green*, 252 P. at 311; *Park Saddle*, 99, 261 P. at 884; *Frontline*, 2006 MT 344, ¶¶30-31. *Oltz* failed to recognize the full extent or scope of Montana's efficient proximate cause doctrine when it asserted that negligent acts had to be excluded in *Park Saddle* in order for it to compare to the facts in that case. As this Court explains in *Green* and *Frontline*, superseding an exclusion is exactly the function of the efficient proximate cause doctrine. *Green*, 252 P. at 311; *Frontline*, 2006 MT 344, ¶¶30-31. The Court should take this opportunity to clarify that the

doctrine is broader than the *Oltz* Court found. In order to apply, the efficient proximate cause doctrine requires simply: 1) "a covered event;" which 2) "directly causes a non-covered loss;" 3) because initial covered event is covered, this "will result in the loss being covered." *See Hiller*, 2012 WL 2325603, at *5.

While it is possible that the damage in *Oltz* was not covered, the federal district court should have done more in depth analysis to determine if ice dams were a "a peril specifically insured against." If so, and if an ice dam "sets other causes into motion which, in an unbroken sequence, produce the result for which recovery is sought, the loss is covered, even though other events within the chain of causation are excluded from coverage." It is possible that repeatedly occurring ice dams were not covered under the policy. For example, ice dams can be due to the negligence of insureds or, if repeated, may be due to a failure to mitigate damages. But, if ice dams were a covered peril and caused damage to siding that resulted in water infiltration, the efficient proximate cause doctrine would require coverage. The efficient proximate cause doctrine requires the covered cause to be the initial, unbroken cause of a chain of events. *Green*, 252 P. at 311; *Park Saddle*, 99, 261 P. at 884; *Frontline*, 2006 MT 344, ¶¶30-31; *Villella*, 725 P.2d at 962; *Hirschmann*, 1773 P.2d at 416 (1989); *Hiller*, 2012 WL 2325603, at *5.

Defendant State Farm argues that application of the efficient proximate cause doctrine would read "the term 'sudden' out of the Policy altogether." (Def.'s

Resp. to Pl.s' Mtn. and Cross-Mtn. at 5). This is not an accurate statement of the efficient proximate cause doctrine. The efficient proximate cause doctrine will not nullify policy language, but will require damages caused by a covered peril to be covered, just as any insured would expect.

Damages caused by an uncovered peril will continue to not be covered under a policy. For example, the undersigned has helped numerous clients with RV claims. Insurance policies for RVs frequently do not cover poor workmanship or normal wear and tear. A frequent cause of water infiltration is the drying and cracking of sealant on the roof of an RV. Short of language to the contrary, most RV policies would cover neither the gradual cracking of the sealant, nor the water infiltration damage because neither is "sudden" under the policy. This is just one of numerous ways in which the term "sudden" will still have meaning under the policy, if Montana continues to follow the majority rule and apply the efficient proximate cause doctrine to require insurance companies to do what they promise: pay for damages caused by a covered peril.

Similarly, State Farm's argument that a Court should not "rewrite" a policy is a misdirection. (Def.'s Resp. to Pl.s' Mtn. and Cross-Mtn. at 2). The efficient proximate cause doctrine simply requires that if a covered peril causes damages, then the insurance company must pay for the damages caused by the covered peril as written in the policy. The initial cause of the loss must still be "sudden" in order

to trigger coverage, which gives the policy its intended meaning.

Finally, the efficient proximate cause doctrine is not limited to the question of only whether damages are "direct" as asserted by State Farm. (Def.'s Resp. to Pl.s' Mtn. and Cross-Mtn. at 14). Again, the doctrine requires that payment for damages "where a peril specifically insured against sets other causes into motion which, in an unbroken sequence, produce the result for which recovery is sought, the loss is covered, even though other events within the chain of causation are excluded from coverage." *Hiller*, 2012 WL 2325603, at *5. Neither *Park Saddle*, *Green* nor any of the Washington line of cases revolve solely around whether the loss is "direct." *Green*, 252 P. at 311; *Park Saddle*, 99, 261 P. at 884; *Villella*, 725 P.2d at 962; *Hirschmann*, 1773 P.2d at 416 (1989); *Hiller*, 2012 WL 2325603, at *5. Indeed, *Hirschmann* specifically rejected the argument that exclusions excepting damages "indirectly" caused by excluded perils apply to cut off damages that are initially caused by covered perils. *Hirschmann*, 1773 P.2d at 416 (1989).

Here, the entire loss would not have occurred but for the tear in the roof of the RV, which all Parties agree was a covered peril. Montana should confirm that it remains in the majority of states that apply the efficient proximate cause doctrine and should clarify the standard by which district courts apply the doctrine.

Specifically, MTLA urges the Court to clarify the definition of the efficient proximate cause standard as similar to that in *Villella*:

> The efficient proximate cause doctrine is the law of Montana and where an insured risk itself sets into operation a chain of causation in which one step may have been an excepted risk, the excepted risk will not defeat recovery for any losses proximately caused by the insured risk.

A proper articulation of the doctrine requires an analysis of the cause of a loss and whether an unbroken chain of causation produces the damages at issue in a claim. It is modified to remove the word "last" from the chain of events that cannot break a chain of causation, as that the uncovered event may be anywhere in the chain of causation but will not serve to break the chain unless it is a superseding cause actual requirement in Montana or Washington. This is consistent with *Green*, where an explosion may be in a chain of events caused by a fire even though it is not the last event. It also incorporates the holdings in *Green*, *Park Saddle*, *Frontline*, and the Washington line of cases by confirming that the question to be asked is whether the cause of loss is covered, which then requires coverage for the resulting damages. This is the law in the majority of states and should be re-endorsed in Montana. *See* Footnote 1, *supra.*

The statement above is the most simple and understandable formulation and will prevent the confusion discussed in *Oltz*, while confirming what has been the law in Montana for nearly 100 years. Without this confirmation and definition, Montana courts will continue to operate without clear guidance and will reach conflicting results.

IV. CONCLUSION

The Court should re-endorse and clarify the efficient proximate cause doctrine, which has been the law in Montana for nearly 100 years. The Court should clarify the doctrine as follows:

> The efficient proximate cause doctrine is the law of Montana and where an insured risk itself sets into operation a chain of causation in which one step may have been an excepted risk, the excepted risk will not defeat recovery for any losses proximately caused by the insured risk.

This definition is clear and gives sufficient guidance for lower courts to evaluate coverage under insurance policies.

RESPECTFULLY SUBMITTED this 6th day of May, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11, Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced (except footnotes and indented quoted material); and the word count calculated by Microsoft Word 2011, is not more than 5,000 words excluding title page, tables, certificate of service and certificate of compliance.

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