

## Settlement Exclusion Clauses

<b>Reported Case:</b>	Engle Estate v. Aviva Insurance Company of Canada
<b>Citation:</b>	2010 ABCA 18
<b>The Court:</b>	In the Court of Appeal of Alberta
<b>Judgment Rendered:</b>	January 18, 2010
<b>Issue:</b>	Does a “settlement” exclusion clause exclude coverage for damages or loss from settlement no matter the cause, or only damages or loss from settlement that occurred naturally?
<b>Factual Summary:</b>	The insured owned a commercial building. The building was leased to a number of tenants. The insured obtained an “all risk” insurance policy. In 2006, construction began on a condominium project located adjacent to the building. Upon excavation, the tenants of the building noticed cracks in the floors, walls, and ceilings. The damage was reported to the insurer. The claim was denied on the basis that the policy did not cover loss resulting from settlement.
<b>Disposition Lower Court:</b>	The exclusion clause did not apply because it was limited to damages arising from natural forces. Alternatively, the exclusion clause was ambiguous, and thus, <i>contra preferentem</i> dictated that it should be limited to naturally occurring events.
<b>Decision:</b>	<p>Decision upheld. In interpreting the settlement exclusion, the Court agreed with the trial judge that the word “settling” is commonly understood to mean a naturally occurring process. The Court noted that the specific terms listed in the exclusion supported this conclusion, namely “expansion, contraction, moving, shifting or cracking.” It was also noted that other exclusions specifically made reference to perils “whether natural or man-made,” but that the settlement exclusion made no such reference.</p> <p>In considering the reasonable intentions of the parties, the Court reasoned that it was sensible for the insurer to exclude natural settling, but that, as an “all risk” policy, it would be within the parties’ expectations that settlement caused by a fortuity would be covered. Further, the above analysis was in line with the principle of interpreting exclusion clauses narrowly. On this basis, it was determined that the insurer was obliged to indemnify the insured for the loss.</p> <p>In coming to this conclusion, the Court recognized that the BC decision of <i>The Owners, Strata Plan NW2580 v. Canadian Northern Shield Insurance Company</i>, 2006 BCSC 330, had reached the opposite conclusion on the same issue. The Alberta Court did not find that decision persuasive because of the BC Court’s failure to construe exclusion clauses narrowly. Thus, this decision marks a divergence in BC and Alberta insurance law, in the interpretation of “settlement” exclusionary clauses.</p>