American Educational Institute

CLAIMS LAW UPDATE

A SUPPLEMENT TO CLAIMS LAW COURSES IN CASUALTY, PROPERTY, WORKERS' COMPENSATION, FRAUD INVESTIGATION, AND AUTOMOBILE

*Winter, 2026*

# AEI CLAIMS LAW QUIZ

## WHEN ARE ENSUING LOSSES COVERED?

[*Homeowners Property Coverage Ref. Para. 3.01; Commercial Property Coverage Ref. Para. 2.08* ]

**FACTS:** Nabholz Construction hired Bob Robison Commercial Flooring (BRCF) to install a vinyl gym floor with painted volleyball and basketball lines at an Arkansas middle school. BRCF installed the floor, but subcontracted the painting to Robert Liles Parking Lot Services. The work performed by Robert Liles was faulty and included crooked lines, incorrect markings, and smudges. These defects could not be rectified and, as a result, BRCF was forced to remove and replace the flooring at a cost of $134,188.95.

BRCF was insured under a builders risk policy issued by RLI Insurance Company (RLI), and filed a claim under the policy's Installation Floater Coverage. The policy contained the following exclusion:

> ...We do not pay for loss or damage caused by or resulting from inherent defects, errors, or omissions in covered property (whether negligent or not) relating to:
>
> 1) design or specifications;
> 2) workmanship or construction; or
> 3) repair, renovation, or remodeling.

The policy also had an "ensuing loss clause" that could restore coverage if a covered peril caused damage after the excluded loss. That clause stated:

> But if a defect, error, or omission as described above results in a covered peril, "we" do cover the loss or damage caused by that covered peril.

RLI denied the claim finding that it was subject to the policy's exclusion for faulty workmanship or construction. BRCF filed a declaratory judgment and breach of contract action against RLI, arguing that the ensuing loss clause restored coverage. RLI, however, responded with a motion for summary judgment and asserted that coverage could not be restored because the ensuing loss clause required proof of damage caused by a separate "covered peril" and, in this case, there was no such covered peril. In other words, the subcontractor's misapplication of the paint, not a subsequent covered peril, caused all the damage. The district court agreed and dismissed BRCF's complaint. BRCF appealed.

**QUESTION:** Must a covered peril follow an excluded loss to trigger coverage under an ensuing loss clause?

**ANSWER:** Yes, according to the Eighth Circuit Court of Appeals in *Bob Robison Commercial Flooring, Inc. v. RLI Insurance, Co.,* 2025 U.S. App. LEXIS 6369 (8th Cir. 2025). The court found in favor of the insurer and held that the ensuing loss clause in this case didn't restore coverage because the defective paint job, itself excluded, didn't cause or lead to a second, non-excluded peril that damaged the gym floor as required by the RLI policy. The defective painting was the sole cause of the loss and it was excluded by the plain language of the policy.

BRCF began by arguing that the language defining a "covered peril" in the Installation Floater Coverage Part was ambiguous because it rendered the ensuing loss clause "nonsensical and its coverage illusory." The court disagreed and cited the origin of the ensuing loss clause itself, which was the 1906 San Francisco earthquake. Back in 1906, insurers argued that the damages caused by the earthquake were subject to the earth movement exclusion. Fire, however, erupted from broken gas pipes in the wake of the earthquake and destroyed most of the city. Damage caused by fire is normally a covered peril, but the insurers argued that it too stemmed from earth movement. As a result, the California legislature passed laws preventing insurers from denying coverage in situations like this, and insurers created ensuing loss clauses similar to the one in the RLI policy to restore coverage when additional damage is caused by an ensuing covered peril. With this history as its guide, the Eighth Circuit Court of Appeals recognized:

> The relevant Policy provisions are not conflicting. The covered perils section provides coverage for direct physical loss, unless an excluded peril causes that loss. The ensuing loss clause restores coverage if an excluded peril results in a loss caused by a covered peril. The district court concluded there is no coverage in this case because the sole cause of the damage was an excluded peril. This does not render the ensuing loss clause coverage illusory – it still applies to a second loss caused by a covered peril that the excluded peril may have set in motion, like the San Francisco fires that resulted from the 1906 earthquake. By contrast, BRCF's interpretation of the ensuing loss clause would require the insurer to cover losses caused directly and exclusively by the excluded peril, nullifying the faulty workmanship exclusion. The terms of an insurance contract are not to be rewritten under the rule of strict construction against the company issuing it so as to bind the insurer to a risk which is plainly excluded and for which it was not paid.

BRCF still argued that the loss should be covered, and lobbied the court to adopt a "broad view" of the ensuing loss clause, applied in a few jurisdictions, in which the covered event doesn't need to be "independent" from the excluded peril, but must only be a direct cause of the loss. In other words, according to BRCF, there didn't need to be a second, independent covered peril to trigger the ensuing loss clause as long as a covered peril contributed to the damage. The Eighth Circuit, however, rejected this approach for two reasons. First, the court noted that BRCF failed to identify a covered peril, something that both approaches would require. Second, the court rejected the "broad view" in favor of requiring proof of a separate, ensuing covered peril, which appears to be in line with the reasoning of most courts that have interpreted ensuing loss clauses, as well as the language of the RLI policy itself. The court explained:

> BRCF contends that the Supreme Court of Arkansas would likely adopt the "broad view" in interpreting ensuing loss clauses and that the ensuing loss clause covers the damage requiring replacement of the vinyl gym floor in this case under either approach. BRCF fails to respond to the district court's analysis. It does not identify a "covered peril," as the ensuing loss clause requires, to restore coverage excluded by the faulty workmanship exclusion. All BRCF argues is that the cost of repainting the gym floor and the cost of replacing the floor are separate "perils." But they are not separate "perils." They are different types of damage to the covered property. If both types of damage occur at the same time and are solely caused by an excluded peril, such as faulty workmanship, the ensuing loss clause does not "restore" all or any part of the excluded coverage. To paraphrase the Fifth Circuit, if Liles's faulty workmanship was the sole cause of damage

to the gym floor, the faulty painting did not result in a covered peril; the painting was itself the peril.

Finally, the Eighth Circuit emphasized that the plain language of the RLI insurance policy specifically required that a separate covered peril occur after the excluded event to trigger the ensuing loss clause and restore coverage. Ignoring the plain language of the policy would unfairly force RLI to pay for a loss caused solely by an excluded peril, namely faulty construction or workmanship.

**CONCLUSION:** In *Bob Robison Commercial Flooring, Inc. v. RLI Insurance, Co.,* the Eighth Circuit Court of Appeals resolved an ensuing loss dispute arising out of an Installation Floater Policy in the context of a construction project, but it's important to note that ensuing loss clauses can come into play in a variety of situations involving different types of insurance coverage, including homeowners and commercial property policies. Typically, ensuing loss clauses are found in all-risk policies but they can be included in named perils policies as well. The legal analysis and ultimate outcome, however, will be similar to the *Bob Robison* case. Even under a broad interpretation, an ensuing loss clause requires that the damage in question be caused by a covered peril that follows the excluded peril. If, as in this case, there was no covered peril, there would be no coverage under an ensuing loss clause. Otherwise, an insurer would be put in the untenable position of having to pay for damage that resulted from a peril that was excluded by the plain language of the policy.

# Congratulations SCLA's

The following individuals earned their SCLA's in the months of November, December, and January 2026:

**Stacy B. Ash**
**Erie Insurance**
**Fairmont, WV**

**Christopher Bertoli**
**GEICO**
**Medford, NJ**

**Ashley Bichel**
**California Casualty**
**Leawood, KS**

**Amy Bitterman**
**Auto-Owners**
**Holt, MI**

**Brit Boche**
**AFICS**
**Prior Lake, MN**

**Heather Bryant**
**Auto-Owners**
**Florence, SC**

**Nancy Cavitt**
**McCord & Associates**
**Omaha, NE**

**Angela Clark**
**Liberty Mutual**
**Waukee, IA**

**Christy L. Clevenger**
**Praxis Risk Services**
**Childress, TX**

**Ania Consuegra**
**Auto-Owners**
**Stuart, FL**

**Heath Crouse**
**TN Farmers Mutual Ins**
**Dresden, TN**

**Trevor K. Culp**
**American Contractors Ins**
**Melissa, TX**

**Sandra Diggs**
**USAA**
**Colorado Springs, CO**

**Katelyn Edwards**
**TN Farmers Mutual Ins**
**Dresden, TN**

**Mary-Fran Ferry**
**Auto-Owners**
**N Myrtle Beach, SC**

**Gabriel M. Franker**
**Delmar, IA**

**Elise Frey**
**Erie Insurance**
**Holland, PA**

**Rachel L. Gatto**
**Gallagher Bassett Services**
**Ephrata, PA**

**James E. Gilbow**
**USAA**
**Brandon, FL**

**John Andrew Gonzalez**
**GEICO**
**Woodbridge, VA**

**Karmen Koehmstedt**
**Sentry Insurance**
**Sarasota, FL**

**Arielle Brodsky Kopkin**
**State Farm Insurance**
**Allen, TX**

**Kyle Leathers**
**American Modern**
**Anderson, IN**

**Carina Leon**
**USAA**
**Port St Lucie, FL**

**Amy McDaniel**
**AFICS**
**Madison, WI**

**Ben McGuffin**
**Kentucky Farm Bureau**
**Campbellsville, KY**

**Michelle Mellott**
**Ohio Mutual Insurance**
**Bucyrus, OH**

**Krissy Mendoza**
**American Contractors Ins Gr**
**Rowlett, TX**

**Corey Alan Monette**
**State Farm Insurance**
**Phoenix, AZ**

**Justin Murnane**
**Nationwide Group**
**Sunbury, OH**

**Sara Nienhuser**
**Mountain West Farm Bur**
**Laramie, WY**

**Jeremy Carson Nunz**
**Oak Ridge, TN**

**Ryan Owens**
**Farm Bureau Financial Ser**
**Gilbert, AZ**

**Matthew Perkins**
**Kentucky Farm Bureau**
**Campbellsville, KY**

**Maria G. Pineda**
**GEICO**
**Baldwin City, KS**

**Eric L. Podoski**
**Sentry Insurance**
**Kronenwetter, WI**

**Shonna Poteete**
**TN Farmers Mutual Ins**
**Dresden, TN**

**Samantha Pryor**
**Central Insurance Co.**
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**Erik Reeter**
**Country Financial**
**Chatham, IL**

**Randy Riley**
**TN Farmers Mutual Ins**
**Jackson, TN**

**Justin Rosa**
**Auto-Owners**
**Chapin, SC**

**Laura Scott**
**American Modern**
**Bethel, OH**

**Saghi Shpun**
**Carolina Casualty Ins Co**
**Jacksonville, FL**

**Randi Smith**
**TN Farmers Mutual Ins**
**Dresden, TN**

**Jeff Spangler**
**TN Farmers Mutual Ins**
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**Brian Spear**
**Auto-Owners**
**Locust Grove, GA**

**Owen L. Statlander**
**Acuity**
**Lakeville, MN**

**Elizabeth Stein**
**Farm Bur Mu Ins of Michigan**
**Freeport, MI**

**Jesse Turner**
**Kentucky Farm Bureau**
**Jackson, KY**

**Tess M. Vancura**
**Markel Corporation**
**Delafield, WI**

**John Marcus Walters**
**American Modern**
**Troutman, NC**

**Debra Williams**
**Kentucky Farm Bureau**
**Morehead, KY**

**Heather Williams**
**Auto-Owners**
**Albany, GA**