

Ernest Martin in Texas Lawbook: ‘Two Settlements Blocked SCOTX from Clarifying a Troublesome Insurance Doctrine’

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Haynes Boone Partner [Ernest Martin](#) was quoted in *The Texas Lawbook*. Below is an excerpt.

The Fifth Circuit has three burning questions for the Texas Supreme Court. Twice, last-minute settlements in insurance coverage disputes have blocked an answer from being announced.

Attorneys representing property owners are at a loss: How do you overcome a “chronological anomaly” to get courts to recognize that lawmakers already have clarified the issue in the face of muddled case law?

The questions ask who bears the burden of proof in certain insurance coverage disputes where damage is caused by a combination of covered and uncovered causes. It invokes the state’s “concurrent causation doctrine” and came to the Texas Supreme Court this time in a dispute between policyholder Harold Overstreet and Allstate.

And it seems insurance companies really don’t want the Texas Supreme Court to answer them.

A teed-up chance for clarity — oral arguments before the Texas Supreme Court scheduled for Sept. 21 — fell through when a settlement was announced Sept. 16. That settlement blocked the Texas Supreme Court from answering the certified questions for the second time in 10 months.

Ernest Martin Jr., the chair of Haynes Boone’s insurance recovery group and founder of the insurance section of the State Bar of Texas, said he thinks it should be “very troubling” to everyone that what the Legislature has mandated is out of sync with the common law on the application of the concurrent causation doctrine.

“This is a monumental issue, it really is,” Martin said. “If you think about it, at its core, it is about making sure that we properly frame whose burden it is between carrier and insured to demonstrate that there is a lack of coverage.”

Excerpted from *The Texas Lawbook*. To read the full article, click [here](#).