

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ASH GROVE CEMENT COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05-2339-JWL
	)	
EMPLOYERS INSURANCE OF WAUSAU,	)	
	)	
Defendant.	)	
	)	
	)	

**ORDER VACATING IN PART**  
**MEMORANDUM AND ORDER OF OCTOBER 3, 2007**

The Court's Memorandum and Order of October 3, 2007 (Doc. # 189), *Ash Grove Cement Co. v. Employers Insurance of Wausau*, 513 F. Supp. 2d 1200 (D. Kan. 2007), is hereby vacated in part. Specifically, the Court vacates that portion of the third paragraph of Part IV of the Memorandum and Order in which the Court discussed and applied the concurrent cause doctrine, *see id.*, slip. op. at 8-9, 513 F. Supp. 2d at 1205-06, in light of the Court's application of an efficient proximate cause standard in jury instructions in this case. The denial of Wausau's motion for summary judgment in Part IV of the Memorandum and Order remains unchanged.

IT IS SO ORDERED.

Dated this 15<sup>th</sup> day of January, 2008, in Kansas City, Kansas.

s/ John W. Lungstrum  
John W. Lungstrum  
United States District Judge