Florida Supreme Court Hands Policyholder Big Win

On December 1, 2016, the Supreme Court of Florida issued its highly-anticipated decision in *Sebo v. American Home Assurance Company, Inc.*, No. SC14-897 (Fla. Dec. 1, 2016), which addressed the appropriate theory of recovery to apply when two or more perils converge to cause a loss and at least one of the perils is excluded from coverage. The Court rejected application of the efficient proximate cause doctrine in such circumstances and, instead, held that that the concurrent cause doctrine should be applied.

The insured in the case, John R. Sebo, purchased a house in Naples, Florida in April 2005. Within two months of its purchase by the insured, the house exhibited signs of major design and construction defects. The insured reported major leaks throughout the house. In August 2005, paint along the windows fell off the house after a rainstorm. In October 2005, Hurricane Wilma further damaged the house.

In December 2005, the insured filed a claim with American Home Assurance Company ("AHAC"), which had issued to Mr. Sebo a manuscript form all-risk homeowner's policy. The policy excluded coverage for "any loss caused by faulty, inadequate or defective … [d]esign, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction." Unlike some other exclusions in the policy, the faulty workmanship exclusion did not contain anti-concurrent cause language.

On the basis of the faulty workmanship exclusion, AHAC largely denied the insured's claim. The insured subsequently filed a declaratory judgment action against AHAC, asserting that the policy provided coverage for the damage to his house. Following a jury trial, a verdict was entered in favor of the insured in excess of $8,000,000.

On appeal, the Second District Court of Appeal noted that it was undisputed that there was more than one cause of loss, including defective construction, rain, and wind. However, the court rejected application of the concurrent cause doctrine as articulated in *Wallach v. Rosenberg*, 527 So.2d 1386 (Fla. 3d DCA 1998). Instead, it determined that the efficient proximate cause doctrine should apply to determine whether coverage exists. The court reasoned that "to apply the concurrent causation analysis would effectively nullify all exclusions in an all-risk policy."

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The Florida Supreme Court disagreed with the appellate court and held that the concurrent cause doctrine as applied in *Wallach* is the appropriate doctrine to apply when independent perils converge to cause damage and no single cause can be considered the sole or proximate cause.

As noted by the Court, the efficient proximate cause doctrine "provides that where there is a concurrence of different perils, the efficient cause – the one that set the other in motion – is the cause to which the loss is attributable." Under the concurrent cause doctrine, on the other hand, "coverage may exist where an insured risk constitutes a concurrent cause of the loss even when it is not the prime or efficient cause." In *Wallach*, the Third District Court of Appeal explained that "[w]here weather perils combine with human negligence to cause a loss, it seems logical and reasonable to find the loss covered by an all-risk policy even if one of the causes is excluded from coverage."

In reviewing the facts of the case before it, the Court determined that "there [was] no reasonable way to distinguish the proximate cause of [the insured's] property loss – the rain and construction defects acted in concert to create the destruction of [the insured's] home. As such, it would not be feasible to apply the [efficient proximate cause] doctrine because no efficient cause can be determined."

The Court's decision represents a major victory for Mr. Sebo, but all is not lost for insurance companies. Notwithstanding the Court's application of the concurrent cause doctrine, it restricted its holding to cases where "no single cause can be considered the sole or proximate cause." Indeed, the concurrent cause doctrine and efficient proximate cause doctrine should not be considered mutually exclusive. As one Florida federal court judge explained:

> [T]hey apply to distinct factual situations. The concurrent cause doctrine applies when multiple causes are independent. The efficient proximate cause doctrine applies when the perils are dependent. Causes are independent when they are unrelated such as an earthquake and a lightning strike, or a windstorm and wood rot. Causes are dependent when one peril instigates or sets in motion the other, such as an earthquake which breaks a gas main that starts a fire.[1]

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Nonetheless, it remains to be seen whether Florida trial courts will perceive the *Sebo* decision as an invitation to wholly disregard the efficient proximate cause doctrine.

Finally, it is important to stress that the particular exclusion at issue in *Sebo* did not contain anti-concurrent cause language. The best way to avoid application of the concurrent cause doctrine is to ensure that exclusions contain such language.

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[1] *Paulucci v. Liberty Mut. Fire Ins. Co., 190 F.Supp.2d 1312 (M.D. Fla. 2002).*