TRAUB LIEBERMAN

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Florida's Supreme Court Rules in Favor of Concurrent Cause Doctrine; Reverses Second District's Application of Efficient Proximate Cause

In *John Robert Sebo, etc. v. American Home Assurance Company, Inc.*, Supreme Court case number SC14-897, the Florida Supreme Court reversed a Second District Court opinion which found the efficient proximate cause doctrine applicable to cases involving multiple perils and a first-party insurance policy.

In 2005, Mr. Sebo purchased a four-year-old home in Naples, Florida. He subsequently purchased a "manuscript" homeowner's insurance policy (not a standard form, but rather created specifically for the Sebo residence) through American Home Assurance Company ("AHAC"). This policy insured against "all risks" and provided $8,000,000.00 in coverage. Soon after purchasing the property, water began to intrude during rainstorms. After months of leaks – including storm damage from Hurricane Wilma – Sebo finally reported the water intrusion to AHAC on December 30, 2005. After investigating the claim, AHAC denied coverage for most of the damage (AHAC did tender its $50,000.00 mold limit). The majority of the claim was denied because, according to AHAC, the damage was caused by improper construction.

Mr. Sebo later filed suit against multiple defendants, including the sellers of the property, the architect who designed the residence, the construction company that built the residence, and AHAC. After Mr. Sebo settled out with the other defendants, trial proceeded against only AHAC. The jury ultimately found in favor of Sebo.

AHAC appealed the judgment, and the Second District reversed and remanded for a new trial. According to the Second District, when multiple perils – some covered, some excluded – combine to create one loss, causation should be examined under the efficient proximate cause theory, not the concurrent cause doctrine.

On secondary appeal, the Florida Supreme Court reversed, concluding that "when independent perils converge and no single cause can be considered the sole or proximate cause, it is appropriate to apply the concurring cause doctrine." The Court examined the two disparate theories, favoring the conclusion previously reached by the Third District in *Wallach v. Rosenberg* ("[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.").

According to the court, if AHAC wished to avoid the application of the concurrent cause doctrine, it could have done so within the policy, as it had done in other sections. Thus, since there was no dispute that the rainwater and hurricane winds combined with the defective construction to cause the damage to the Sebo property, and the policy did not preclude the application of the concurrent cause doctrine, the loss was covered.

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