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Coverage for the Uncovered Cause of Loss: Florida Supreme Court Holds That Concurrent Cause Doctrine Applies to Losses Caused by Multiple Perils

On December 1, 2016, the Florida Supreme Court held that the concurrent cause doctrine applies where multiple perils combined to create a loss even where one of those perils is excluded by the terms of the all-risk property insurance policy. In *Sebo v. American Home Assurance Co., Inc.*, the court considered whether Sebo's all-risk manuscript policy provided coverage for property loss due to the excluded perils of faulty workmanship and design when coupled with the covered peril of windstorm.

In considering whether coverage exists under Sebo's all-risk policy, the Florida Supreme Court first examined the competing causation theories: efficient proximate cause and concurrent cause. The court explained that under the efficient proximate cause theory, "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." Thus, where a covered peril sets into motion an uncovered peril that causes the loss, the all-risk policy will provide coverage. Where an uncovered peril sets into motion a covered peril, however, no coverage exists. In contrast, under the concurrent cause doctrine, where neither peril could create the loss alone but instead combined to create the loss, coverage will be afforded so long as at least one is an insured risk.

Factual Background

Upon purchasing his home in April 2005, Sebo purchased an "all-risk" manuscript policy through American Home Assurance Co., Inc.'s (AHAC) private client group — meaning that it was not a standard form homeowners policy, but instead was one drafted specifically for the Sebo residence. Although the policy unequivocally excluded loss caused by faulty, inadequate or defective planning, workmanship, design and construction, it covered wind and rain damage.

It became clear shortly after purchase that Sebo's new home suffered from major construction defects, as significant leaks were reported after rain. Then, in October 2005, Hurricane Wilma caused further damage to Sebo's home. After Sebo reported significant water intrusion and other damage to AHAC in December 2005, AHAC denied coverage for most of the damage except for $50,000 in mold coverage. The home was so damaged that it was eventually demolished.

Procedural History

In 2007, Sebo brought suit against the architect, the construction company that built the home and the sellers of the property, among others, alleging that the home was negligently designed and constructed. In 2009, Sebo added AHAC as a defendant and sought a declaration that the policy provided coverage for his damages. Before trial, Sebo settled with the majority of defendants, but did not settle his claim against AHAC. At trial on the declaratory action, the jurors found in favor of Sebo and judgment was entered against AHAC.

On appeal, Florida's Second District Court of Appeals reversed and remanded, holding that the efficient proximate cause theory should be applied to determine the causation of, and thus coverage for, Sebo's

damages. In doing so, the Second District rejected application of the concurrent cause doctrine, applied by Florida courts since the Third District Court of Appeal's holding in *Wallach v. Rosenberg*, 527 So.2d 1386 (Fla. 3d DCA 1988). The Second District found that applying the concurrent cause doctrine set forth in *Wallach* to first-party insurance policies would "effectively nullify all exclusions in an all-risk policy" as "a covered peril can usually be found somewhere in the chain of causation."

On appeal, the Florida Supreme Court found the opposite, explaining that the efficient proximate cause theory was unworkable where, as here, there was no reasonable way to distinguish the proximate cause of Sebo's loss between rain (a covered cause of loss) and construction defect (an uncovered cause of loss). The court held that because AHAC failed to explicitly avoid application of the concurrent cause doctrine, the doctrine should be applied and coverage afforded. In addition, the Florida Supreme Court found that the trial court had erred in prohibiting introduction of the amount of settlements Sebo had received from other parties in this case, including the architect and builder. The court explained that while evidence of settlement is inadmissible at trial on the issue of liability, the trial court may consider the amount of settlements as a post-judgment offset.

The *Sebo* decision has far-reaching implications for Florida policyholders as it solidifies the application of the concurrent cause doctrine where multiple perils combine to create the loss and supports the general rule that policies be interpreted in favor of finding coverage. The straightforward application of the concurrent cause doctrine also promotes predictability and judicial efficiency that other jurisdictions have not been as lucky to enjoy. For example, in the areas affected by Hurricane Katrina, cases vary considerably on whether wind or rain was the efficient proximate cause of hurricane damage.

While the decision is certainly a win for policyholders, they should take note that the court in *Sebo* was interpreting a manuscript policy that lacked anti-concurrent cause language, rather than a standard form homeowners insurance form. Thus, corporate and individual policyholders alike should take care to review their policies for anti-concurrent cause language that may result in application of the efficient proximate cause doctrine despite the court's ruling in *Sebo*.

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