Case Alert

Florida's Supreme Court Resolves Conflicting Appellate Court Decisions on Concurrent Causation

The Supreme Court of Florida kicked off December with an opinion that determined which theory of recovery applies when multiple perils combine to create a loss, and at least one of those perils is excluded by the terms of a policy. In *Sebo v. American Home Assurance Company, Inc.,*[1] the court resolved the conflict between the Florida Appellate Courts for the Second District and the Third District and declared the concurrent cause doctrine (CCD) as the more applicable theory of recovery over the efficient proximate cause doctrine (EPC).

The underlying dispute concerned damage to a home Sebo purchased in Naples, Florida in April 2005. The American Home Assurance Company (AHAC) insured the home under a manuscript policy specifically created for the property with limits of over eight million dollars. In May 2005, Sebo discovered major water leaks in the main foyer, master bathroom, exercise room, piano room, and living room of the home. In August, paint fell off the walls after it rained, and it became clear that the house suffered from major design and construction defects. When Hurricane Wilma struck in October, the house was further damaged by rain water and high winds, and was eventually demolished.

Sebo reported the loss to AHAC in December of 2005. AHAC investigated the claim and tendered $50,000 for mold damage but denied coverage for all other losses because the policy provided coverage for weather-related perils such as rain and wind, but excluded coverage for losses caused by defective construction. Sebo filed suit against AHAC seeking full coverage for his claim and won at the trial level. The trial court's decision was based on its application of another case, *Wallach v. Rosenberg*[2], where the Florida Appellate Court's Third District held that pursuant to the CCD, coverage may exist where an insured risk constitutes a concurrent clause of the loss, even when it is not the prime or efficient clause. It was undisputed that defective construction, rain, and wind caused Sebo's losses, and that weather-related perils were covered by the policy. Therefore, because the loss was caused at least in part by a covered peril, the trial court determined that AHAC should cover all losses pursuant to the CCD.

AHAC appealed the trial court's decision, and the Florida Appellate Court's Second District disagreed with the application of the Third District's determination in *Wallach*. The Second District stated that a covered peril can usually be found somewhere in the chain of causation, and to apply the concurrent causation analysis would effectively nullify all exclusions in an all-risk policy.

The Florida Supreme Court disagreed. First, the court explained that it was not feasible to apply the EPC in the Sebo case because the EPC provides that where there is a concurrence of different perils, the cause of the loss is the one that set the others in motion. Unlike the CCD, which comes into play when two independent causes join to create a loss, the EPC is applicable only when the efficient cause is clear. Since the efficient cause could not be determined in the Sebo case, the EPC could not be applied.

Second, the court noted that AHAC explicitly wrote other sections of Sebo's policy to avoid applying the CCD. Some of the policy's exclusions contained "anti-

concurrent causation" language, which prevented coverage for a loss even if other covered perils also contributed to the loss. But, since the defective construction exclusion did not contain an anti-concurrent causation clause, the plain language of the policy did not preclude recovery.

Both the majority decision and the dissent note that the issue of which causation doctrine to apply was not for the Second District to decide, because neither party raised the question at the trial or appellate level. Therefore, it should not have been a question submitted to the Supreme Court for review. Even so, the clarification provided by the court is beneficial to policyholders. The concurrent causation doctrine is generally more policyholder-friendly than the efficient proximate cause doctrine, which often requires costly expert evidence to determine which peril was the "most substantial cause" of the loss.

For more information about this case contact Afua Akoto at asa@sdvlaw.com or 203-287-2109.

1. No. SC14-897, 2016 WL 7013859 (Fla. Dec. 1, 2016).
2. 527 So. 2d 1386 (Fla. Dist. Ct. App. 1988).

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