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## INSURANCE LAW UPDATE

## ‘Concurrent causation’ doctrine spreads

## PRACTICAL POLICYHOLDER ADVICE

Insurance policies often cover types of loss only if they resulted from particular cause while excluding losses resulting from other types of causes. For example, a homeowners insurance policy may cover damage to a house from rain, but exclude coverage for damage resulting from poor architectural design. Often, it is difficult or even impossible to disentangle the causal factors that result in a loss. In such cases, the loss may result from both covered causes and noncovered causes, and a determination will have to be made as to whether coverage is negated by the presence of noncovered causes.

By Daniel A. Johnson and Brian Scarbrough

In December, the Supreme Court of Florida clarified the state’s law regarding whether coverage is available when a loss results from a mix of causes — some triggering coverage and others triggering coverage exclusions. *Sebo v. Am. Home Assurance Co.*, SC14-897 (Fla. Dec. 1, 2016). Looking initially to California law for support, the court adopted the “concurrent causation” doctrine. Under that doctrine, when the loss would not have occurred unless both the covered and excluded causes occurred, the court will hold that coverage is triggered despite the presence of noncovered causes. In reaching this holding, the Florida Supreme Court weighed in on a topic that has divided courts over the years and will likely be faced by other high courts in the future.

At issue in the case was insurance for a home in Naples, Fla., that was owned by John Sebo, the plaintiff. Sebo purchased the home and obtained an insurance policy for the home from American Home Assurance Company (AHAC). The policy insured “all risks” to the house and other permanent structures for over \$8 million, and the policy provided additional coverage for loss of use of the home. Shortly after Sebo bought the residence, water began to intrude during rainstorms, and major leaks eventually became apparent, especially after a hurricane hit. It also became increasingly clear that the house suffered from major design and construction defects that were causing the leaks.

Sebo reported water intrusion and other damages to AHAC. AHAC investigated the claim and denied coverage for most of the claimed losses, in part because AHAC believed the house’s defects played a role in the water damage. The policy covered loss from leaks and flooding but excluded loss from defects in design and construction.

Eventually, the water damage became so severe that the home had to be demolished. Thereafter, Sebo filed suit against a number of defendants, including the sellers of the property, the architect and the construction company, and he eventually added a claim against AHAC as well. After settling with the other parties, Sebo continued to pursue his claim against AHAC.

Following a decision from a Florida appellate

court (*Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. Dist. Ct. App. 1988)), the trial court permitted the jury to apply the concurrent causation doctrine to determine coverage. The jurors found in favor of Sebo, and the trial court eventually entered judgment against AHAC. On appeal, however, the appellate court reversed and remanded, disagreeing with the *Wallach* court’s reliance on the concurrent causation doctrine, and instead held that the trial court should apply the “efficient proximate cause” doctrine. The efficient proximate cause doctrine is another rule courts have developed to address causation. Sebo appealed.

To resolve the split among its appellate courts, the Supreme Court of Florida heard Sebo’s appeal. In its opinion, the Supreme Court considered the two doctrines for resolving issues of causation in insurance cases — i.e., the concurrent cause doctrine and the efficient proximate cause doctrine.

According to 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.” In applying the doctrine, a court observes a chain of events and attempts to determine which event unsettled the stasis and set in motion a process of change. For example, the court discussed a Florida insurance case dealing with a fire and an explosion, and in applying the doctrine, the court attempted to determine which event caused the other event.

In contrast, the court said the concurrent cause doctrine “provides that coverage may exist where an insured risk constitutes a concurrent cause of the loss even when it is not the prime or efficient cause.” For example, the court noted a case dealing with a bump during a car ride that caused a gun to go off, resulting in a gunshot wound that could either be characterized as being caused by the car or caused by the gun, and only one of the causes was covered. “[B]ecause neither peril could have created the loss alone but instead combined to create the loss,” it was impossible to “identify the prime, moving, or efficient cause in order to determine coverage,” so that the concurrent causation doctrine resolved the dilemma in favor of coverage.

Addressing the facts of Sebo’s case, the Supreme Court held in favor of applying the con-

current causation doctrine, as neither parties disputed “that the [covered] rainwater and hurricane winds combined with [excluded] defective construction to cause the damage to Sebo’s property.” The court reasoned “it would not be feasible to apply the EPC [efficient proximate cause] doctrine because no efficient cause can be determined.” Reversing the lower appellate court, the Supreme Court disagreed with its statement that the concurrent causation doctrine “nullifies all exclusionary language”; in fact, AHAC wrote other sections of the policy to avoid applying the concurrent causation doctrine, and could have done the same with the exclusion for design and construction defects.

The decision of the Supreme Court of Florida is well-reasoned, and its approach avoids the quandaries that would result from trying to determine which of two causes is somehow more “primary” when they occurred simultaneously and had a comparable impact on the loss. Other courts would do well to follow the Supreme Court’s example, holding that the concurrent cause doctrine should be used to resolve causation dilemmas.

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