

Court Upholds Concurrent Cause Doctrine in Win for Property Policyholders



Commentary by B. Michael Clark Jr., Daily Business Review

January 11, 2017

B. Michael Clark Jr. is a partner in the Coral Gables office of Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel.

The Florida Supreme Court of Florida decision in *Sebo v. American Home Assurance* rejecting the "efficient proximate cause doctrine" in favor of the "concurrent cause doctrine" for property insurance claims represents a significant win for residential and commercial policyholders.

The state's highest court has determined that the appropriate theory of recovery for claims in which two or more perils contribute to a loss but at least one of the perils is excluded from coverage is the concurrent cause doctrine. Under the rejected efficient proximate cause theory, when multiple perils cause a loss, it is the efficient cause — the one that sets the other in motion — to which the loss is attributed.

For the insurance industry, the efficient proximate cause doctrine has always been preferred. If the carriers are able to demonstrate that the efficient cause behind a loss is excluded from coverage under the policy, then the entire claim may be denied.

Sebo makes the concurrent cause doctrine the legal standard to be applied for property insurance claims in Florida. Now insurers must cover a loss even if the covered peril is the secondary cause of the loss, which was concurrent with but not the primary or efficient cause.

The ruling reversed a Second District Court of Appeal decision which required the trial court to identify the primary cause of the loss and uphold a denial of coverage if that primary cause was excluded. *Sebo's* claim arose in 2005 due to water damage. American Home Assurance Co., the insurer, denied coverage, claiming that the efficient cause was a design and construction defect. A few months after the water intrusion began, Hurricane Wilma also damaged the home. The insurer posited that because *Sebo's* all-risk policy specifically excluded damage caused by defective design and construction, the damage caused by a combination of the proximate cause, the defects as well as rain and wind was not covered. The Second DCA applied the efficient proximate cause doctrine in upholding the insurer's decision.

Insurance Milestone

The Florida Supreme Court disagreed: "There is no reasonable way to distinguish the proximate cause of Sebo's property loss — the rain and construction defects acted in concert to create the destruction of Sebo's home," wrote Florida Supreme Court Justice James Perry for the majority following the Third DCA's reasoning in its 1988 ruling of *Wallach v. Rosenberg*. "As such, it would not be feasible to apply the EPC doctrine because no efficient cause can be determined."

This decision represents a significant positive milestone for policyholders in Florida. Because of the nature of many property losses in the state, especially those coming as a result of hurricanes in which both wind and flood damage occur, concurrent causes are very common for property damage claims.

If the Second DCA's decision were allowed to stand, property claim litigation would have been greatly exacerbated by tests to determine the efficient proximate causes. Some insurers would simply use the doctrine to issue initial claim denials, making it incumbent upon their insureds to prove coverage.

The key question now is whether the carriers will respond to the ruling by including more or stronger anti-concurrent-cause language in their policies, which is often already present. In light of the ruling, policyholders should consult with qualified insurance professionals and attorneys to review their policies for clauses calling for the application of the efficient proximate cause doctrine over the concurrent cause doctrine. They should make their coverage decisions with a clear understanding of what their current policies provide.

B. Michael Clark Jr. is a partner in the Coral Gables office of Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel. He focuses on insurance and construction law. He is a Florida Bar board-certified construction law specialist. Contact him at mclark@srhl-law.com.

<http://www.dailybusinessreview.com/id=1202776577706?keywords=Siegfried>

Reprinted with permission from the January 11, 2017 edition of the "Daily Business Review"© ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382, reprints@alm.com or visit www.almreprints.com.