Florida Ruling Against Insurer in Concurrent Loss Case 'Not a Surprise'

The Florida Supreme Court has ruled in favor of policyholders seeking coverage on claims where there is the possibility of multiple concurrent losses but at least one of the losses is covered under their policy.

Though the decision can have some far-reaching effects for the industry, attorneys that specialize in insurance law say the decision wasn't a surprise.

The 6-1 ruling, issued Dec. 1, came in the case of American Home Assurance Co. v. Sebo, 141 So. 3d 195 (Fla. 2d DCA 2013) where the homeowner, John Robert Sebo, was seeking review of the decision from the Second District Court of Appeals that found in favor of the insurer. The original case stems from a 2007 lawsuit by Sebo against his insurer, American Home Assurance Co., Inc., for denying coverage on his $8 million "all risks" homeowners policy.

Sebo said in the original suit that shortly after he purchased the home it began to incur major water leaks during rain storms and it was later discovered the home suffered from major design and construction defects. When Hurricane Wilma hit Florida in Oct. 2005, the home was further damaged and Sebo notified AHAC at the end of December of that year of the water intrusion and other damages. AHAC subsequently investigated and in April 2006 it denied coverage for most of the claimed losses saying "the balance of the damages to the house, including any window, door, and other repairs is not covered." Sebo was paid $50,000 by AHAC for mold damage.

Sebo continued pursuing the claim, which AHAC refused to pay, and after the home was determined to be beyond repair it was demolished. Sebo filed suit in Jan. 2007 against a number of defendants and amended the complaint in 2009 to include AHAC. He sought a declaration that the policy provided coverage for his damages and the case went to trial, for which the jury found in favor of Sebo.

AHAC appealed the case to the Second District, which sided with AHAC because it disagreed with the trial court's application of the case of Wallach v. Rosenberg, 527 So. 2d 1386 (Fla. 3d DCA 1988), that applies the concurrent causation doctrine in a case involving multiple perils and a first-party insurance policy.

The Appeals Court reversed and remanded for a new trial saying the causation of Sebo's loss must be examined under the "efficient proximate cause theory" (EPC). This theory finds 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 should be attributed.

The Florida Supreme Court disagreed with the application of this theory to this case, and wrote in its opinion, "We conclude 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 (CCD). Accordingly, we quash the decision…"

The Florida Supreme Court reasoned that the Second District Court erred in its application of the EPC, cited from a case by the Florida Supreme Court (Fire Ass'n of Phila. v. Evansville Brewing Ass'n, 75 So. 196, Fla. 1917) where the court looked at a chain of events where one peril directly led to a subsequent peril.

"In finding that coverage existed under the policy, we drew the distinction between a covered peril setting into motion an uncovered peril and an uncovered peril setting into motion a covered peril. Coverage exists for the former but not the latter," the court wrote.

Instead, the court said the CCD 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, as was the situation with the Wallach case and

a California case of State Farm Mut. Auto. Ins. Co. v. Partridge, 514 P.2d 123, 133 (Cal. 1973), which the court referenced in reaching its decision.

In that case, the California Supreme Court noted that exclusionary clauses are more strictly construed than coverage clauses, and reasoned that an insured risk combined with an excluded risk to produce the ultimate injury. The California Supreme Court determined "that coverage under a liability insurance policy is equally available to an insured whenever an insured risk constitutes simply a concurrent proximate cause of the injuries."

The Florida Supreme Court said a California court found that a "covered peril that convenes with an uncovered peril may still provide for coverage under a policy when the covered peril triggered the events that eventually led to the loss."

Florida has used that reasoning in its own courts since the 1988 Wallach case.

The Florida Supreme Court said it is undisputed that Sebo's all-risk policy included exclusions against faulty, inadequate or defective planning, including for design, materials, and maintenance, as well as the fact that the rainwater and hurricane winds combined with the defective construction to cause the damage to Sebo's property.

However, the court said 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. As such, it would not be feasible to apply the EPC doctrine because no efficient cause can be determined."

The court said that as stated in Wallach, "[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."

The court disagreed with the Second District's finding that the CCD nullifies all exclusionary language and noted that AHAC explicitly wrote other sections of Sebo's policy to avoid applying the CCD.

"Because AHAC did not explicitly avoid applying the CCD, we find that the plain language of the policy does not preclude recovery in this case," the opinion said.

Attorneys familiar with the case say the decision is not a surprise because the court simply followed past precedents that had been applied in these types of cases.

The decision does, however, create some additional headaches for the insurance industry, including the possibility of the reopening of many claims where coverage was denied.

"This decision will affect claims already in litigation or claims heading toward litigation," said Fort Lauderdale, Fla.-based Michael Packer, a shareholder with law firm Marshall Dennehey Warner Coleman & Goggin. "There will also be massive requests for reopening of claims. We expect tremendous amounts of attempts to amend complaints."

Packer said while these types of claims are not very common, he suspects that every claim where coverage was denied for an exclusion will now become significant. The number of homeowners claims could also increase in the event of a large windstorm or hurricane.

"The industry will have to be careful," Packer said. "If there is a significant windstorm in the future they could see a lot of claims…it could be a significant issue for insurance companies."

Kyle Brinkman, an attorney with Washington D.C. firm Blank Rome, which represents policyholders, said the decision means the insurance industry will have to take a closer look at whether they should continue to use concurrent causation language in homeowners policies. That will be tough to exclude all together, however, based on what rest of the market allows.

"There is a lesson to the insurance industry here – if an insurance company wants a more restrictive rule they will have to put it in the contract and see if the policyholder will still buy coverage," Brinkman said.

The other lesson, he said, is that when insurers have not selected more restrictive language on causation where there are multiple causes and one is covered, "they will have to pay the claim."