

## RE: Florida case

Jes Alexander <Jes.A@IRMI.com>

Mon 12/19/2016 3:44 PM

To: Robert Medeiros <bob@lighthouseconsulting.us>;

Bob,

The faulty workmanship exclusionary language at issue in the *Sebo* case did **not** include the standard anti-concurrent language. Specifically, the relevant exclusion for faulty workmanship in the *Sebo* decision stated that coverage was precluded for "loss caused by faulty, inadequate or defective ... [d]esign, specification, [or] workmanship."

In fact, the *Sebo* Court pointed out that American Home had drafted other sections of the manuscript policy with anti-concurrent causation language. For whatever reason, American Home did not include the anti-concurrent causation language in the exclusionary section for faulty workmanship. "Because [American Home] did not explicitly avoid applying the [concurrent causation doctrine in the section excluding faulty workmanship], we find that the plain language of the policy does not preclude recovery in **this case**." *Sebo v. American Home Assurance Co.*, 2016 Fla. LEXIS 2596, at \*14-15 (2016) (emphasis added). Thus, the court in *Sebo* signaled that, had the faulty workmanship exclusion at issue there used the anti-concurrent causation language, the court would have enforced the language and found no coverage.

It is true that the standard ISO homeowners and commercial property forms contain anti-concurrent causation language, as did other sections of the policy at issue in *Sebo*. For example, the first group of exclusion in the standard ISO HO 00 03 form, section A, uses the anti-concurrent causation language.

However, the second group of exclusions in standard ISO homeowners policy, section B, does **not** contain anti-concurrent causation language. Instead, Section B has what are known as "resulting loss" or "ensuing loss" exceptions: "However, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy **is covered**." Under ensuing loss provisions, the damage by the excluded peril is excluded, but coverage for an ensuing loss exists if the peril is covered. For example, faulty workmanship relating to the installation of a pipe in a home would be excluded. However, if the faulty pipe causes water damage, which is a covered peril, the resulting or "ensuing" water damage would be covered.

Significantly, Section B using the "ensuing loss" language is the section containing the faulty workmanship exclusion. Therefore, the *Sebo* decision and the standard ISO homeowners policy do appear similar. Some groups of exclusions do include the anti-concurrent causation language. These exclusions would be unaffected by the *Sebo* decision. However, the other group of exclusions in the standard ISO homeowners form that does not include the anti-concurrent causation language may be impacted by the *Sebo* decision.

However, it is still an open question as to how the ruling in *Sebo* will impact the Section B "ensuing loss" type of exclusions. The exclusion at issue in *Sebo* had neither the ensuing loss language nor the anti-concurrent causation language. I expect that this remaining issue will be the subject of upcoming litigation in Florida, which I will continue to monitor. Thus, the case may have a meaningful impact in Florida, at least until this remaining issue is resolved.

Let me know if you have any further questions about the case. I am attempting to obtain a copy of the entire policy from contacts that I have in Florida. Happy Holidays.

# Jes

**Jes Alexander, JD**

**IRMI** | Research Analyst

12222 Merit Drive, Suite 1600

Dallas, TX 75251-2266

972.687.9374 | [Jes.A@IRMI.com](mailto:Jes.A@IRMI.com) | [IRMI.com](http://IRMI.com)

**SECURE Expertise • SECURE Credibility • SECURE Success**

Be **SECURE** with **IRMI**.

[Follow IRMI on Twitter](#)

---

**From:** Robert Medeiros [mailto:bob@lighthouseconsulting.us]

**Sent:** Friday, December 16, 2016 5:00 PM

**To:** Jes Alexander <Jes.A@IRMI.com>

**Subject:** Florida case

Hi Jess,

Thanks for returning my call.

I'd like to know if the policy that was issued for Sebo included the standard anti-concurrent causation wording found in standard ISO policies. I Googled the case and was able to find a transcript of the decision. They made reference to a manuscript policy for this \$8 million home, and provided some wording from the policy on the faulty, inadequate or defective design exclusion in the policy.

My thinking is that if there were no anti-concurrent causation wording on the policy then the finding of the court is probably not that big a deal, since 99% of the homeowner's policies in Florida already have that wording.

Thanks!

Bob

**Robert Medeiros CPCU, ARe, AMIM, ASLI**

Lighthouse Consulting, LLC

Charlotte, NC

(704) 502-4985

[www.lighthouseconsulting.us](http://www.lighthouseconsulting.us) | [bob@lighthouseconsulting.us](mailto:bob@lighthouseconsulting.us)