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A VICTORY FOR FLORIDA POLICYHOLDERS: THE FLORIDA SUPREME COURT UPHOLDS THE CONCURRENT CAUSE DOCTRINE

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On Thursday December 1, 2016, the Supreme Court of Florida in Sebo v. American Home Assurance Co rejected the “efficient proximate cause doctrine” in favor of the “concurrent cause doctrine” in all first property insurance matters. This decision solidifies the Third District’s rationale in Wallach v. Rosenberg 527 So. 2d 1386 (Fla. 3d DCA 1988) and is a victory for all Florida policyholders—commercial and residential.

In Sebo, the Supreme Court of Florida was confronted with determining the appropriate theory of recovery to apply when two or more perils contribute to cause a loss and at least one of the perils is excluded from an insurance policy. Under the “efficient proximate cause theory,” when there are numerous perils that contribute to a loss, the efficient cause, the one that sets the other in motion, is the cause to which the loss is attributable. Under the pro-insurer “efficient proximate cause” theory, if the efficient cause is an excluded cause under the policy, the entire loss would be excluded.

So for example in Northern Florida, Georgia and the Carolinas where there was substantial damage to homes and businesses from Hurricane Matthew and the damage was a result of wind (covered under the property policy) and as a result of flood (excluded under the property policy), property insurance companies have already argued that the whole loss is excluded because the primary damage was a result of the flood. The Supreme Court’s decision in Sebo rejects that approach and requires a concurrent cause approach. Under the “concurrent cause doctrine” which has long been the standard in Florida, coverage exists where a covered cause is a concurrent cause of loss even when it is not the prime or efficient cause.

Should you have any questions or concerns about how this decision impacts your insurance coverage, please do not hesitate to contact Michael J. Higer of Berger Singerman's Insurance Team.

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