



Florida's 2d District Court of Appeals Creates Conflict by Using Efficient Proximate Cause Doctrine

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The Florida Second District Court of Appeals recently held that in a first-party property case where the damage was caused by more than one peril, an efficient proximate cause theory should be applied to determine whether the damage is covered. [American Home Assurance Co., Inc. v. Sebo, No. 2D11-4063 \(Fla. 2nd DCA Sept. 18, 2013\)](#). This opinion stands in direct conflict with the Florida Third District Court of Appeals ruling in *Wallach v. Rosenberg*, 527 So. 2d. 1386 (Fla. 3rd DCA 1988), which applied a concurrent cause theory.

In *Sebo*, the damage to the property resulted from both defective construction — a peril excluded from coverage — and Hurricane Wilma, which qualified as a covered peril. Had the court applied the concurrent cause doctrine, the damage would have been covered. Under that doctrine, there is coverage whenever two or more causes appreciably contribute to the damage to the property, and at least one of the causes is a risk which is covered under the terms of the policy. Under the efficient proximate cause doctrine, however, the fact finder determines which peril is the most substantial or responsible cause of the damage. If the policy insures against that peril, there is coverage. If the policy excludes that peril, there is no coverage.

Because of the direct conflict between the two district courts of appeal, this will surely be appealed to the Florida Supreme Court. Attorneys and parties need to be aware of the substantive conflict in the districts until the Florida Supreme Court can resolve it.

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