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IN THE SUPREME COURT OF FLORIDA
CASE NO. SC 14-897
APP. CASE NO. 2D11-4063
L.T. CASE NO. 07-0054 CA

Consolidated with Case No. 07-1539 CA

JOHN ROBERT SEBO,

Petitioner/Appellant,

vs.

AMERICAN HOME ASSURANCE COMPANY, INC.,

Respondent/Appellee.

BRIEF OF AMICUS CURIAE, UNITED POLICYHOLDERS IN SUPPORT OF PETITIONER JOHN ROBERT SEBO

December 23, 2014

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TABLE OF CONTENTS

TABLE OF CITATIONS

FEDERAL CASES

STATE CASES

STATE STATUTES

STATE RULES

OTHER AUTHORITIES

INTEREST OF AMICUS CURIAE

Insurance policies provide financial security essential to the fabric of our economy and modern society. Adequate protection against the risk of financial loss is so important that our laws require individuals to purchase insurance coverage for many basic functions. From a policyholder's perspective, the integrity of their insurance safety net is paramount.

There is tension between consumer expectations and the business of insurance, which must be fundamentally concerned with profits and solvency. Insurers are able to elevate their interests by controlling the terms of coverage when drafting their policies – typically standardized forms filled with terms of art not readily understood by the consumer – and determining which claims get paid. The law responds to this dynamic by placing heightened obligations on insurers. The interpretation of insurance policies and related burdens of proof accordingly involve special judicial handling. United Policyholders ("UP") is in a unique position to assist this Court in fulfilling its important role.

UP is a non-profit organization founded in 1991 that serves as an information resource and a voice for insurance consumers in all 50 states. Donations, foundation grants and volunteer labor support the organization's work, which is divided into three program areas: Roadmap to Recovery (helping disaster victims navigate the insurance claim process), Roadmap to Preparedness

(promoting disaster preparedness and insurance literacy) and Advocacy and Action (advancing the interests of insurance consumers in courts of law, before regulators, legislators, and in the media).

UP has assisted Florida residents with insurance issues since Hurricane Andrew in 1992, and responds to inquiries from Florida policyholders on a regular basis. The organization works with Commissioner Kevin McCarty and the Office of Insurance Regulation, and is involved in projects related to property insurance availability, depopulating Citizens, promoting disaster preparedness and mitigation and educating and assisting consumers navigating the complicated insurance claims process. As advocate, UP has filed over 370 amicus briefs in state and federal courts nationwide, including many in Florida.

SUMMARY OF THE ARGUMENT

Insurance coverage in cases involving concurrent causation has been the subject of great debate, with courts settling on two principal rules of law – the concurrent cause and efficient proximate cause doctrines. For over a quarter-century since the Third District's decision in *Wallach v. Rosenberg*, Florida has followed a limited version of the concurrent cause doctrine that produces coverage in cases involving losses resulting from two or more causes, at least one of which is covered, where the causes are independent in origin. The specific holding of *Wallach* compels affirmance of the trial court in this case: "Where 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 Second District abandoned *Wallach* in favor of the efficient proximate cause doctrine without any compelling justification or even the benefit of the parties' arguments on the subject. Florida courts have demonstrated that *Wallach* can be applied consistently and effectively, in limited circumstances, as a default rule where insurers fail to address concurrent causation in their policy language. This default rule conforms to existing Florida rules of policy interpretation, and it benefits insurers and policyholders alike by allowing the market to define the scope of coverage. Insurers retain the ability to circumvent the common law rule

by clearly and unambiguously excluding coverage for concurrently caused losses, or providing such coverage at a stated premium. Policyholders, in turn, can feel secure in knowing that their all-risk coverage will respond to any cause of loss not expressly excluded from coverage.

The efficient proximate cause doctrine, in contrast, has resulted in uncertainty and inefficiencies in jurisdictions across the country. The doctrine requires a factfinder to determine the proximate cause of an insured's loss, which introduces nebulous tort concepts into an insurance contract contrary to this Court's long-standing precedent. Justice requires that policyholders receive consistent results under standard form all-risk property insurance coverage. Courts and juries applying efficient proximate cause doctrine produce wildly inconsistent results, generating uncertainty and the inefficiency of increased litigation. Twenty-five years of history proves that *Wallach* is an effective solution to a problem that continues to plague other states. This Court should adhere to *Wallach* and uphold the result of the trial court in this case.

ARGUMENT

I. THIS COURT SHOULD ADHERE TO THE CONCURRENT CAUSATION DOCTRINE AS APPLIED IN *WALLACH V. ROSENBERG*

When should an "all risk" property insurance policy respond to a loss that results from a combination of covered and excluded risks? Amidst great debate, courts have formulated two doctrines to answer this question. 7 Couch on Ins. (3d ed.) §101:55. The concurrent cause rule permits coverage "whenever two or more causes do appreciably contribute to the loss and at least one of the causes is a risk which is covered under the terms of the policy." *Id.* In contrast, the efficient proximate cause rule permits coverage only where "the covered risk was the efficient proximate cause of the loss." *Id.*

These two common law doctrines serve as default rules that apply when insurers fail to address concurrent causation in their policy language. In most jurisdictions, including Florida, carriers retain complete control over the scope of their coverage and can employ "anti-concurrent causation" exclusions to circumvent common law causation analysis and defeat coverage in all concurrent causation cases.

Florida has followed a limited version of the concurrent cause doctrine for more than twenty-five years since the Third District Court of Appeal's decision in *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA 1988), *rev. denied* 526 So.

2d 246 (Fla. 1998). The doctrine applies where covered and excluded perils of independent origin – such as human negligence and weather events, as with Rosenberg's sea wall and Sebo's residence – combine to cause property damage.

This limited application of the concurrent cause doctrine has broad support and should not be disturbed. It provides flexibility for insurers, who can contract around the rule as desired (or charge a higher premium, if not), and promotes fairness and certainty in outcomes while reducing litigation. In contrast, the efficient proximate cause doctrine has been thoroughly criticized and would produce negative consequences for Florida's insurers, policyholders and courts. The Second District offers no compelling reason, and AHAC never thought to advance one, for this Court to abandon the proven and effective rule of law set forth in *Wallach*. This Court should decline the Second District's unprompted invitation to do so.

A. Florida courts have consistently applied *Wallach*'s limited holding, subject to unambiguous policy language that alters this result.

In *Wallach v. Rosenberg*, the Third District Court of Appeal held: "Where 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." 527 So. 2d at 1388. Florida courts have consistently applied this limited rule of law, and it remains the logical and reasonable result

today.

The *Wallach* decision upheld a jury verdict finding that an all-risk property insurance policy covered the Rosenbergs' sea wall collapse caused by Wallach's negligent maintenance of the wall (a covered peril) combined with the force of storm-driven water or earth movement (excluded perils). The court correctly reasoned that the concurrent cause doctrine was the "better view" for analyzing causes of independent origin that combine to cause the same loss.[1] 527 So. 2d at 1388 (efficient proximate cause doctrine "offers little analytical support where it can be said that but for the joinder of two independent causes the loss would not have occurred"). The insurer, under an all-risk policy, was required to establish that the loss was caused by an excluded peril, and the policy did not contain "a provision which specifically excludes coverage where a covered and an excluded cause combine to produce a loss." *Id.*

The Second District failed to recognize a number of Florida decisions that have followed *Wallach* and exhibited no difficulty in limiting its application to

[1] Concurrent causes are considered to be "independent" when they have unrelated origins, not when they are independently sufficient to have caused the loss. It is helpful to also classify concurrent causes as necessary or unnecessary to the occurrence of the loss, and sufficient or insufficient to have caused it. In *Wallach*, both causes were independent, necessary, and insufficient. Evidence showed that neither Wallach's negligent maintenance nor the storm would have caused the collapse alone. 527 So. 2d at 1386 ("All the experts agreed that if the tie-rods had been in good condition Wallach's wall would not have collapsed and the damage to the Rosenbergs' property would not have occurred.").

cases involving independent causes. These courts have classified causes as dependent or independent in determining whether the concurrent cause rule should be applied. *Compare Guideone Elite Ins. Co. v. Old Cutler Presbyterian Church, Inc.*, 420 F.3d 1317 (11th Cir. 2005) (robbery, kidnapping and rape), *Paulucci v. Liberty Mut. Fire Ins. Co.*, 190 F. Supp. 2d 1312 (M.D. Fla. 2002) (rot and rain), *Westmoreland v. Lumbermens Mut. Cas. Co.*, 704 So. 2d 176 (Fla. 4th DCA 1997) (negligent design of home and subsequent negligent operation of car in garage), *and W. Am. Ins. Co. v. Chateau La Mer II Homeowners Ass'n*, 622 So. 2d 1105 (Fla. 1st DCA 1993) (negligent construction and termites), *with Allstate Ins. Co. v. Safer*, 317 F. Supp. 2d 1345, 1553-54 (M.D. Fla. 2004) (negligence in creating parking space led to parking truck in said space), *Hrynkiw v. Allstate Floridian Ins. Co.*, 844 So. 2d 739, 745 (Fla. 5th DCA 2003) (negligent supervision led to intentional shooting), *Am. Surety & Cas. Co. v. Lake Jackson Pizza*, 788 So. 2d 1096 (Fla. 1st DCA 2001) (negligent hiring and training led to auto accident), *and Transamerica Ins. Co. v. Snell*, 627 So. 2d 1275 (Fla. 1st DCA 1993) (all alleged negligence led to insolvency).

Florida courts do not reflexively apply the concurrent cause doctrine to find coverage, but instead examine the policy language in each case to determine the correct result. Insurers retain the ability to circumvent *Wallach*'s common law analysis by adopting "anti-concurrent causation" language in their policies.

Paulucci, 190 F. Supp. 2d at 1320 ("under Florida law, parties can contract around the concurrent cause doctrine through an express anti-concurrent cause provision"); *see also Empire Indem. Ins. Co. v. Winsett*, 325 F. App'x 849, 851-52 (11th Cir. 2009) (applying anti-concurrent causation language rather than efficient proximate cause rule where causes were dependent).

These decisions articulate concrete standards and well-defined boundaries that conform the causation analysis to existing principles of Florida insurance law. All-risk property insurance provides the broadest possible coverage, requiring an insured to show only that "the insured property suffered a loss while the policy was in effect." *Mejia v. Citizens Prop. Ins. Corp.*, No. 2D13-2248, 2014 WL 6675717, *1 (Fla. 2d DCA Nov. 26, 2014). The insurer then has the burden "to prove that the cause of the loss was excluded from coverage." *Id.* The concurrent cause doctrine best preserves this equilibrium. It is axiomatic that a loss cannot be both covered and excluded, and in the instance of truly concurrent and independent causes, an insurer can never satisfy its burden to show that the loss is completely excluded from coverage.

That this doctrine applies as a default in the absence of controlling policy language benefits policyholders and insurers alike. Policyholders are ensured that they receive the coverage they purchased as it is written. *Berkshire Life Ins. Co. v. Adelberg*, 698 So. 2d 828, 830 (Fla. 1997) ("[i]t has long been a tenet of Florida

insurance law that an insurer, as the writer of an insurance policy, is bound by the language of the policy . . . . [The insured] was entitled to a clear explanation of terms rather than a fine distinction which was never written into his contract for insurance coverage."). Insurers, in turn, retain control over the scope of their coverage and can avert the doctrine where desired, or charge higher premiums for broader coverage. By placing the burden on the insurer to incorporate unambiguous anti-concurrent causation provisions, the scope of coverage is more likely to be determined in the marketplace and not the courtroom.

Many carriers, like AHAC, choose not to exclude certain concurrently caused losses. Insurers generally underwrite and price their policies after careful study – here twenty-five years' worth – of loss data based on predictive results of policy language choice. More restrictive coverage is generally cheaper, lest there be no market for the product. Sebo's Policy and its mixture of provisions and exclusions, some containing anti-concurrent clauses and others not, was based on AHAC's drafting choice, and resulted in a premium reflecting that choice, which Sebo chose to pay. This Court has refused to impose default rules that will affect the risk accepted and the protection offered in this transaction. For example, when an insured sought by judicial fiat to allow for an unwritten extension of reporting loss under a claims-made policy, this court rejected alteration of the bargain struck:

> If a court were to allow an extension of reporting time after the end of the policy period, such is tantamount to an *extension of coverage* to

> the insured gratis, something for which the insurer has not bargained. This extension of coverage, by the court, so very different from a mere condition of the policy, in effect rewrites the contract between the two parties. This we cannot and will not do.

Gulf Ins. Co. v. Dolan, Fertig & Curtis, 433 So. 2d 512, 515-16 (Fla. 1983); *see also Pan Am. World Airways v. Aetna Cas. & Sur. Co.*, 505 F.2d 989, 1000-01 (2d Cir. 1974) (discussing "special relevance" of *contra proferentum* under all-risk policy where language available to exclude a known risk is not employed, and relevance of premium charged).

Florida's existing principles of policy interpretation are designed to avoid interference with insurance policies as they are written, and these principles have already guided our courts to the preferred rule of law in concurrent causation cases. *Wallach* should not be overruled.

B. Florida's limited application of the concurrent cause doctrine promotes fairness and certainty of outcome, which has reduced litigation.

The Second District misconstrued the relative dearth of Florida precedent addressing concurrent causation in the property insurance context as an opportunity to change course after twenty-five years. *Sebo v. Am. Home Assur. Co. v. Sebo*, 141 So. 3d 195, 201 (Fla. 2d DCA 2013) ("Against this sparse background of precedents, we disagree with the rule stated in Wallach . . . ."). But the absence of jurisprudence over this span of time – especially considering Florida's history of catastrophic losses that commonly generate such disputes – is

compelling evidence that *Wallach* and its progeny created a rule effective in predicting outcomes and reducing litigation. This conclusion is supported by the welter of lawsuits and disparate results generated in Louisiana and Mississippi following Hurricane Katrina, where courts and juries wrestled with the more nebulous concept of efficient proximate cause. *See, e.g.*, J. Lavitt, *The Doctrine of Efficient Proximate Cause, the Katrina Disaster, Prosser's Folly, and the Third Restatement of Torts: Cracking the Conundrum*, 54 Loyola L.R. 1, 17-32 (2008) (discussing the "dysfunctional results" of the efficient proximate cause doctrine in Hurricane Katrina litigation).

Equally convincing is the lack of action by the Florida legislature in response to *Wallach* and judicial application of the concurrent cause doctrine over the last quarter-century. Some state legislatures have imposed a concurrent causation analysis by statute. *See* Cal. Ins. Code §§530, 532; N.E. Cent. Code §26.1-32-01. The Florida legislature's decision not to intervene proves that *Wallach* has not precipitated unintended adverse effects on Florida's insurers or policyholders, and should accordingly be upheld.

There is no evidence to suggest Florida's limited application of the concurrent cause rule is ineffective, inefficient, confusing or otherwise in need of change. The Second District, which eschewed the benefit of the parties' arguments

on this subject before upending twenty-five years of Florida law,[2] failed to cite any present crisis in the property insurance market or disruption in the lower courts that could warrant using this case as a platform to reduce the scope of all existing Florida property insurance. This case squares perfectly with the limited holding in *Wallach*, which has stood the test of time and should not be abandoned.

C. The Second District has not identified any credible basis for rejecting the concurrent cause doctrine as applied in *Wallach* and none exists.

The Second District's sweeping decision to overturn *Wallach* and apply the efficient proximate cause doctrine in all first-party insurance cases was based upon the California Supreme Court's decision in *Garvey v. State Farm Fire & Casualty Ins. Co.*, 770 P.2d 704 (Cal. 1989). Neither the Second District nor *Garvey* decision, which interpreted a California statute on concurrent causation, provide any credible basis for rejecting the concurrent cause doctrine in this case or in the context of property insurance generally. The policy justifications offered in favor of the efficient proximate cause doctrine cannot withstand scrutiny, and the change in doctrine would produce negative consequences for Florida insurers, policyholders and courts alike.

[2] *See* Sebo Br. at 44-45.

1. No distinction between property insurance and third-party liability insurance supports rejection of the concurrent cause doctrine in property insurance disputes.

The Second District relied on *Garvey* to suggest that the concurrent cause doctrine may be appropriate for resolving third-party liability insurance disputes, but cannot be applied in the first-party property insurance context. Regarding the former, courts applying Florida law have had no difficulty in applying *Wallach* to first-party losses. Concerning the latter, the distinctions between the two types of coverage fail to justify disparate treatment under the law.

The Second District, undeterred by the fact that *Garvey* interpreted a California statute dictating the result, should have looked to this Court's precedent to recognize that "tort law principles do not control judicial construction of insurance contracts." *Prudential Prop. & Cas. Co. v. Swindal*, 622 So. 2d 467, 470 (Fla. 1993). While the concurrent cause doctrine requires only causation-in-fact – *i.e.*, that an independent covered peril is a "but for" cause of the loss – the efficient proximate cause doctrine injects the vague and imprecise tort concept of proximate cause into the insurance policy. Dissenting in *Garvey*, Justice Mosk recognized this Court's concern as expressed in *Swindal*: "Nor can I agree that [the efficient proximate cause] rule would be 'workable': to my mind, it is so totally devoid of standards as to allow – indeed, encourage – insureds always to claim coverage, insurers always to deny coverage, and juries always to decide between them

arbitrarily."[3] 770 P.2d at 427 (Mosk, J., dissenting).

Garvey is based upon a fundamental mischaracterization of the differences between liability coverage and property coverage. The court erroneously suggested that liability coverage covers "a broader spectrum of risks" than property insurance. *Id*. at 407. The Second District accepted this representation and embellished it further, reducing property coverage to "physical perils such as fire, rain and wind." *Sebo*, 141 So. 3d at 199. Both courts failed to appreciate the breadth of all-risk property insurance, which by definition, covers *all risks*.

Garvey erroneously assumed that the concurrent cause rule would convert the all-risk policy into an "all-loss" policy, speculating that, "[i]n most instances, the insured can point to some arguably covered contributing factor." 770 P.2d at 408. The Second District agreed, and despite twenty-five years of the doctrine's

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[3] Nearly forty years earlier, Justice Frankfurter similarly protested the use of tort concepts to trigger insurance coverage:

> Unlike obligations flowing from duties imposed upon people willy-nilly, an insurance policy is a voluntary undertaking by which obligations are voluntarily assumed. Therefore the subtleties and sophistries of tort liability for negligence are not to be applied in construing the covenants of a policy. It is one thing for the law to impose liability by its own notions of responsibility, and quite another to construe the scope of engagements brought and paid for . . . . The law does not play an unreal metaphysical game of trying to find a single isolatable factor as the sole responsibility to which is to be attributed a loss against which insurance has been bought.

Standard Oil Co. of N.J. v. United States, 340 U.S. 54, 66-67 (1950) (Frankfurter, J., dissenting).

successful application in Florida, remarkably claimed that "a covered peril can usually be found somewhere in the chain of causation, and to apply the concurrent causation analysis would effectively nullify all exclusions in an all-risk policy." *Sebo*, 141 So. 3d at 201. Experience and common sense inform us otherwise. The true instances where independent, necessary and insufficient causes combine to cause indivisible loss – such as those in *Wallach* and this case – are rare and should result in coverage; to the extent common, the insurance industry responded by restricting coverage with anti-concurrent cause language when desired.

The *Garvey* court also suggested it was relevant to consider that broader coverage under liability policies may be warranted due to "the potential burden on the public fisc in the absence of compensation." 770 P.2d at 414 (Kaufman, J., concurring). But what about the burden on public funds in the absence of compensation for catastrophic property loss? In the liability context, there is a negligent actor that may be held financially responsible. Property insurance, in contrast, is for most the sole method of protecting their most significant asset. The loss of a home has devastating financial consequences, and our governments are too often the first and last resort to deploy financial aid when a community is devastated by an act of God.

The protection offered by first-party property coverage is, at minimum, equally as broad and important as that provided by liability insurance. Neither the

Second District nor *Garvey* have explained any valid distinction between first-party and third-party insurance that warrant the abdication of a long-established and proven rule of law.

2. Overturning existing precedent in favor of the efficient proximate cause doctrine would have negative consequences for Florida's insurers, policyholders and courts alike.

The Second District's decision was partially motivated by the fact that efficient proximate cause has been adopted in a majority of other jurisdictions. *Sebo*, 141 So. 3d at 201 ("we note that the majority of states have adopted the efficient proximate cause theory for analyzing this issue"). The Second District failed to recognize that the inconsistent application of the efficient proximate cause doctrine in other jurisdictions has led to wide criticism and produced consequences that would adversely impact Florida insurers and policyholders, as well as our judicial system.

The undesirable consequences of the efficient proximate cause doctrine have been well documented and include confusion in judicial application, uncertainty and disparity in outcomes, and increased litigation. M. Bell, *A Concurrent Mess and a Call for Clarity in First-Party Property Insurance Coverage Analysis*, 18 Conn. Ins. L.J. 73 (2011); J. Young, *Efficient Proximate Cause: Is California Headed for a Katrina-Scale Disaster in the Same Leaky Boat?*, 62 Hastings L.J. 757 (2011); E. Knutsen, *Confusion About Causation in Insurance: Solutions for*

Catastrophic Losses, 61 Ala. L.R. 957 (2010); Lavitt, *Cracking the Conundrum*, 54 Loyola L.R. 1. The principal criticism is that there is no uniform application of the doctrine, which typically requires a factfinder to determine the "efficient" or "predominant" cause of a loss without any definite standard to apply. Different factfinders can produce different outcomes given identical facts. This may be an acceptable paradigm in tort cases, where the factfinder applies the standards of the community, but it is manifestly unjust in cases involving standard form insurance policies and the loss of a policyholder's primary financial asset. It is not only unfair, but costly; uncertainty breeds litigation, which results in administrative costs borne not only by insurers and policyholders, but our judicial system.

Commentators have generally recognized that the efficient proximate cause doctrine is inappropriate for independent cause cases like *Wallach* and *Sebo*, and noted that Florida's limited application of the concurrent causation doctrine produces greater certainty. M. Bell, *A Concurrent Mess*, 18 Conn. L.J. at 99 ("the efficient proximate cause analysis is inappropriate for independent cause cases, which helps to explain why courts have had such difficulty attempting to fit the efficient proximate cause framework into independent causation analyses"); J. Young, *Efficient Proximate Cause*, 62 Hastings L.J. at 786 (recognizing "the [efficient proximate cause] doctrine has been applied haphazardly and "the benefit of the Floridian concurrent causation model is that results are much easier to

anticipate in the average case"). Other courts have similarly recognized the inefficiencies in the efficient proximate cause doctrine and have continued to apply the concurrent causation doctrine, some more liberally than Florida. Sebo Br. at 29, n.1 (collecting cases). Florida should not supplant established and effective precedent with chaos and uncertainty that will undoubtedly bear negative consequences for the state and its insurers, businesses and residents.

II. ANY CHANGE TO THE EXISTING RULE OF LAW SET FORTH IN *WALLACH V. ROSENBERG* WILL NECESSARILY AFFECT EVERY FLORIDA PROPERTY INSURANCE POLICY PRESENTLY IN FORCE AND SHOULD THEREFORE BE APPLIED PROSPECTIVELY.

The coverage under nearly every property insurance policy in the state of Florida will be impacted by any decision of this Court altering the existing rule of law set forth in *Wallach*. This precedent is incorporated into all Florida property insurance policies currently in force. *Shelton v. Liberty Mut. Fire Ins. Co.*, 578 F. App'x 841, 845 (11th Cir. 2014) ("It is fundamental that the laws of Florida are a part of every Florida contract."); *Fla. Beverage Corp. v. Division of Alcoholic Beverages and Tobacco*, 503 So. 2d 396 (Fla. 1st DCA 1987) ("The laws in force at the time of the making of a contract enter into and form a part of the contract as if they were expressly incorporated into it."). Any change in the doctrine established in *Wallach* should only be applied prospectively to minimize the impact on policyholders, pending litigation and the insurance market generally.

This Court has previously recognized a need to address the timing and impact of a decision that significantly changes existing Florida law. *Linder v. Combustion Eng'g, Inc.*, 342 So. 2d 474 (Fla. 1977) (adopting strict liability); *Hoffman v. Jones*, 280 So. 2d 431, 440 (Fla. 1973) (abandoning contributory negligence). Both *Linder* and *Hoffman* held that newly-adopted tort law should only become effective in those cases that had not gone to trial or where the issue had been "properly and appropriately made a question of appellate review." This standard would not apply to Sebo, since AHAC reportedly did not raise the efficient proximate cause doctrine below.

The *Hoffman* template may prove useful in tort cases, but should be expanded in contract cases where existing law is incorporated into the policy at the time of purchase. Any change in existing law should permit the market to respond by changing policy language or premiums according to the desired scope of coverage. If this Court departs from *Wallach*, it should nonetheless uphold the trial court's ruling and protect the parties' existing rights and obligations under the policy. It should also provide that its decision applies only to insurance policies issued prospectively so that consumers can bargain for the terms of coverage that will suit their needs and carriers can adjust premiums accordingly.

CONCLUSION

All-risk property insurance is critical protection for the average Floridian in the event of loss or damage to their primary financial investment. By applying long-standing principles of policy interpretation, Florida courts have already devised and consistently followed a default rule of limited application – the concurrent cause doctrine as expressed in *Wallach* – that best protects insurers, policyholders, and our courts from the morass of litigation that would ensue from introducing the nebulous tort concept of proximate cause into our insurance coverage disputes. Over a quarter-century of experience in the wake of *Wallach* illustrates that the prevailing rule has proven efficient and effective in permitting insurers and policyholders to define the scope of coverage in the marketplace. This Court should uphold the trial court's ruling and affirm Florida's limited application of the concurrent cause doctrine.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies that this Brief is in the Times New Roman 14-point font and is therefore in compliance with Florida Rule of Appellate Procedure 9.210(2).

/s/ R. Hugh Lumpkin
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 2014, pursuant to Fla. R. Jud. Admin. 2.516, Administrative Order AOSC13-7, and AOSC 13-49, a true and correct copy hereof was electronically filed and will be served via email to:

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