IN THE SUPREME COURT OF FLORIDA

JOHN ROBERT SEBO, individually and as Trustee under Revocable Trust Agreement of John Robert Sebo dated November 4, 2004, et al.,

Petitioner,

v.

AMERICAN HOME ASSURANCE COMPANY, INC.,

Respondent.
_____/

Case No.: SC14-897
App. Case No.: 2D11-4063
L.T. Case No.: 07-0054 CA
consolidated with 07-1539 CA

PETITIONER JOHN ROBERT SEBO'S REPLY BRIEF

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PREFACE

"APP"	Refers to the Appendix contained in Sebo's Initial Brief to the Supreme Court of Florida.
"Insurer"	Refers to Respondent American Home Assurance Company, Inc.
"Policy"	Refers to the subject "all-risk" homeowners insurance policy issued by Insurer and purchased by Sebo. [APP 1].
"R"	Refers to the Record on Appeal.
"Sebo"	Refers to Petitioner John Robert Sebo.
"T"	Refers to the Trial transcript pages.

ARGUMENT

I. INTRODUCTION: INSURER'S ANSWER BRIEF DOES NOT ADDRESS CRITICAL POINTS IN SEBO'S INITIAL BRIEF

Before replying to Insurer's arguments, Sebo wishes to emphasize that Insurer's Answer Brief does not deny or dispute certain critical points in his Initial Brief. First, Sebo noted, at page 3, that his "Policy was written on a manuscript form, which insurer controlled," and according to Insurer's own designated corporate representative, "[i]t's a policy that we created that reads the way we want it to read." [T22552:19-20]. In its Answer Brief, Insurer does not dispute these facts.

Second, Sebo emphasized in his Initial Brief, at pages 41 through 43, that if this Court were to affirm the Second District's opinion the result "would not be consistent" with the "well-established principles of insurance contract interpretation" applicable to "all risks" policies, as set forth by this Court in *Fayad v. Clarendon Nat'l Ins. Co.*, 899 So. 2d 1082 (Fla. 2005). In its Answer Brief, Insurer does not dispute the existence or validity of those "well-established" rules. Nor does Insurer explain how this Court could affirm the Second District's opinion without "retreating from *Fayad*."

Third, Sebo emphasized in his Initial Brief, at page 43, that there is no need for a "seismic shift in Florida law, especially when insurers can avoid the application of the Concurrent Cause Doctrine whenever they choose by merely adding 'anti-

concurrent cause' language to their exclusions." In its Answer Brief, Insurer does not dispute the absence of "anti-concurrent cause" language in the applicable exclusion in Sebo's Policy. Nor does Insurer deny that it could avoid the application of the Concurrent Cause Doctrine whenever it wishes to do so by adding such language to any exclusion in any policy.

Throughout the three-week jury trial in this case, the Trial Judge and the jury faithfully followed and applied "well-established" Florida law. There is no reason to retreat from that well-established law, and this Court should reinstate the Trial Court's Amended Final Declaratory Judgment.

II. CONTRARY TO INSURER'S POSITION IN ITS ANSWER BRIEF (WHICH IS THE OPPOSITE OF ITS POSITION IN THE TRIAL COURT), THE CONCURRENT CAUSE DOCTRINE IS THE LAW OF FLORIDA.

Insurer proclaims in its Answer Brief, at page 23, that: "The CCD Is Not the Law of Florida." However, in the Trial Court, Insurer stated just the opposite. Specifically, in "American Home Assurance Company's Amended Motion for Final Summary Judgment," Insurer stated:

> ***In Florida, the prevailing standard*** for determining coverage when a loss is caused by both a covered and an excluded peril in the absence of anti-concurrent cause language ***is the concurrent cause doctrine***. . . As explained by the *Paulucci* court, the concurrent cause doctrine applies when multiple causes are independent, whereas the efficient proximate cause doctrine applies when the perils are dependent.

[R 13039-13074 p.26 -28] (emphasis added).

Insurer's position in the Trial Court – rather than its position set forth in its Answer Brief – is the correct one. The Concurrent Cause Doctrine was set forth in *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA 1988), *rev. denied*, 536 So. 2d 246 (Fla.1988) more than twenty-five years ago. Prior to the Second District's opinion in *American Home Assurance Co. v. Sebo*, 141 So. 3d 195 (Fla. 2d DCA 2014), no court had ever criticized *Wallach*; to the contrary, other courts have followed and praised the decision and its doctrine. For example, when an insurer challenged the Concurrent Cause Doctrine in *Paulucci v. Liberty Mut. Fire Ins. Co.*, 190 F. Supp. 2d 1312 (M.D. Fla. 2002), Judge Kevin Duffy rejected the very argument adopted by the Second District in the present case, saying: "I adhere to the *sound reasoning* of Florida's Third District Court of Appeal in *Wallach*." (emphasis added). Similarly, Judge Peter Fay quoted *Wallach* with approval in *GuideOne Elite Ins. Co. v. Old Cutler Presbyterian Church, Inc.*, 420 F. 3d 1317, 1330 (11th Cir. 2005). And in *Fid. & Cas. Co. of New York v. Lodwick*, 126 F. Supp. 2d 1375 (S.D. Fla. 2000), Judge Daniel Hurley accepted "the concurrent causation approach as the *better reasoned analytical framework* for determining the exclusionary policy construction." (emphasis added).

Even after the Second District's opinion in *Sebo*, other Florida District Courts have recognized the continuing validity of *Wallach* and the Concurrent Cause Doctrine. In January of this year, the Third District, in *American Heritage Life Ins.*

Co. v. Morales, 2015 WL 249333 (Fla. 3d DCA Jan. 21, 2015), cited its prior decision in *Wallach*, and just two months ago, in *Liberty Mut. Fire Ins. Co. v. Martinez*, 2015 WL 585550, fn. 1 (Fla. 5th DCA Feb. 13, 2015), the Fifth District cited *Wallach* and explained:

> Absent an anti-concurrent cause provision, when independent covered and noncovered causes of loss combine to produce a loss, the loss is covered under the concurrent cause doctrine.

The Concurrent Cause Doctrine has been the prevailing law in Florida for many years, and it continues to be the prevailing law outside of the Second District.

III. THE CONCURRENT CAUSE DOCTRINE APPLIES WHEN THE "CONCURRING CAUSES" ARE "INDEPENDENT" RATHER THAN "DEPENDENT" EVEN IN THE "FIRST-PARTY INSURANCE CONTEXT"

In his Initial Brief, Sebo explained, at pages 26 through 28, that "*Wallach* and the Concurrent Cause Doctrine presently apply only to situations in which the 'concurring causes' are 'independent' rather than 'dependent'." Insurer now challenges this assertion (contrary to its position in the Trial Court, as quoted above) and contends, at pages 15 through 22 of its Answer Brief, that the doctrine only applies in "the Third-Party Liability Insurance Context" and not in "the First-Party Insurance Context."

Insurer's argument is, of course, contradicted by *Wallach* itself, which applied the Concurrent Cause Doctrine in "the First-Party Insurance Context." And

Insurer's argument, which is based largely on the law of states other than Florida, was specifically rejected by the court in *Paulucci*, which explained:

> ***I am not persuaded by the Supreme Court of California's decision*** in *Garvey*. (cite omitted), ***which limited Partridge's*** [*State Farm Mut. Auto. Ins. Co. v. Partridge*, 514 P.2d 123 (Cal. 1973)] ***concurrent causation analysis to third party liability actions***.

Paulucci, 190 F. Supp. 2d at 1319 (emphasis added). More recently, the Fifth District explained that the Concurrent Cause Doctrine applies, absent an anti-concurrent cause provision, when "independent" covered and uncovered losses combine to produce a loss. *Martinez*, 2015 WL 585550, fn. 1. While several authorities state that Florida's Concurrent Cause Doctrine applies when causes are "independent" (as Insurer admitted in the Trial Court), no Florida opinion, other than the Second District's in *Sebo*, states that the Concurrent Cause Doctrine applies only in the "Third Party Insurance Context" (as Insurer now contends).

IV. HISTORIC RAINS AND CONSTRUCTION DEFECTS ARE INDEPENDENT CAUSES

The Trial Court applied *Wallach's* Concurrent Cause Doctrine because Sebo's loss resulted from two causes with independent origins that interacted with one another to cause the loss. [R 18176-18185]. More specifically, the origin of the construction defects was "human negligence," and the origin of the wind and historic rain (the "weather perils") was nature. In the words of the Trial Court, "the defective

construction was neither directly 'caused by' nor the genesis of the rain." [R 18176-18185].

The Trial Court's analysis is perfectly consistent with *Wallach*, as *Wallach* cited and relied upon *Safeco Ins. Co. of Am. v. Guyton*, 692 F.2d 551, 555 (9th Cir. 1982), which explains:

> We believe Safeco misconceives what the *Partridge* court meant by "independent concurrent causes." As the Policyholder's note, the twin causes in *Partridge* ***were independent only in the sense that each cause had an independent origin, not that they did not interact with one another to cause the loss***. (emphasis added).

Moreover, the example used in *Wallach* to illustrate "independent" causes – "where weather perils combine with human negligence to cause a loss" – is "on all fours" with the present case. Thus, the Trial Court was correct in determining that the concurrent causes were "independent."

The cases cited by Insurer to support its argument that the "concurrent causes" in *Sebo* were dependent, rather than independent, are dramatically distinguishable from *Wallach* and *Sebo*. The Insurer cites the unpublished opinion in *N.H. Ins. Co. v. Krilich*, 387 F. App'x 940 (11th Cir. July 20, 2010), which involved a maritime policy with an "arising out of" exclusion[1] rather than an "all-risk" policy with a

[1] The four cases briefly mentioned by Insurer following *Krilich*, like *Krilich*, have the same "arising out of" exclusionary language, which "are words of much broader significance" then (sic) 'caused by'." *Ohio Cas. Ins. Co. v. Continental Cas. Co.*, 279 F. Supp. 2d 1281, 1284 (S.D. Fla. 2003).

"caused by" exclusion as in Sebo. The trial court in *Krilich* did not even consider the Concurrent Cause Doctrine in deciding the case. The Eleventh Circuit affirmed the trial court's reasoning and decision, and also noted, in *dicta*, that the result would have been the same if the trial court had considered the Concurrent Cause Doctrine. *Id*.

Most critically, however, the trier of fact in *Krilich* determined that the alleged covered cause (a fracture in the keel) "did not cause the vessel to sink"; rather, the trier of fact concluded that "the failure to properly maintain" (an excluded cause) was "the proximate, efficient cause of the vessel's submersion." *Id*. In sharp contrast, the jury in *Sebo* found that water intrusion from historic rains (a covered cause) resulted in millions of dollars of damage to Sebo's home. [R 18641-18642].[2]

[2] The jury was instructed that "Plaintiff must prove that a covered loss caused the constructive total loss in order to receive the policy limits. *The Plaintiff cannot combine uncovered or excluded perils with the covered perils to trigger a constructive total loss*…you will only utilize those damages proven to you to be covered under the insurance contract ... to determine if the constructive total loss has occurred." [R 18617-18629] (emphasis added). Sebo's residence was "deemed a constructive total loss," and he was awarded "$6,600,000 based upon the constructive total loss of the house." [R 18641-18642]. Thus, Sebo was awarded $6,600,000 in damages resulting *solely from covered causes*, which shows that he easily satisfied any "but for" test, any "efficient proximate cause" test or Florida's "substantial factor" test which is typically used in contract cases involving multiple causes. *Stensby v. Effjohn Oy Ab*, 806 So. 2d 542 (Fla. 3d DCA 2001) ("It is of course established that a breach-of-contract-plaintiff must show the defendants' breach was a 'substantial factor' in causing damage.").

Insurer also relies upon *Friedberg v. Chubb & Son, Inc.*, 832 F. Supp. 2d 1049 (D. Minn. 2011), in which the relevant policy provision excluded damages "caused by" construction defects; however, in that case "caused by" was broadly defined to mean "any loss that is contributed to, made worse by, or in any way results from the peril." That broad definition of "caused by" in the *Friedberg* policy is the functional equivalent of an "anti-concurrent cause" provision. Sebo's Policy has no comparable language. As the Second District noted, Insurer's "defective work exclusion" in Sebo's Policy "simply did not exclude losses arising from concurrent causes." *Sebo*, 141 So. 2d at 202. Thus, *Friedberg* is dramatically and conclusively distinguishable from the present case. [3]

The case cited by Insurer at the conclusion of its argument about whether the causes of Sebo's loss were dependent or independent, *TMW Ent., Inc. v. Federal Ins. Co.*, 619 F. 3d 574 (6th Cir. 2010), contains no discussion of the issue. That case was decided under Michigan law, and the Michigan Supreme Court has "expressly declined" to adopt the Concurrent Cause Doctrine. Rather, "the default rule under Michigan law is that a loss is not covered when it is concurrently caused by the

[3] Curiously, Insurer cites only the lower court's opinion in *Friedberg* and does not cite the appellate court's opinion in *Friedberg v. Chubb & Son, Inc.*, 691 F. 3d 948, 951 (8th Cir. 2012), which focused on the definition of "caused by," noting: "Even though the policy defines 'caused by' as 'any loss that is ***contributed to***, made worse by, or in any way results from that peril,' ***and it is indisputable that faulty construction at least 'contributed to' the loss***, the Friedbergs contend that the concurrent causation doctrines supersedes the policy language." (emphasis added).

combination of a covered cause and an excluded cause." Thus, *TMW* has no relevance in determining whether causes are dependent or independent.

The difference between dependent and independent causes is clearly illustrated by the two cases Insurer cites at page 23 in support of its argument to this Court (contrary to its argument in the Trial Court) that "The CDD Is Not the Law of Florida." In support of that argument (which Sebo has already addressed), Insurer cites *Fire Ass'n of Philadelphia v. Evansville Brewing Ass'n*, 75 So. 196 (Fla. 1917) and *Hartford Accident and Indemnity Co. v. Phelps*, 294 So. 2d 362 (Fla. 1st DCA 1974), both of which involved "dependent" causes to which Florida has always applied the Efficient Proximate Cause theory.

In *Fire Association*, a fire (covered) caused an explosion (not covered), which destroyed a building. *Fire Ass'n*, 75 So. 196. The "origin" of the explosion was the fire, so the causes were dependent rather than independent, and this Court properly utilized an Efficient Proximate Cause type of analysis to establish coverage. *Id*.

Similarly, *Phelps* involved an "all-risks" homeowner's policy that covered damage caused by water leaking from a plumbing system but excluded damage caused by settlement. *Phelps*, 294 So. 2d 362. Leaking water caused settlement, which resulted in damage to the home. The court, using an Efficient Proximate Cause analysis, found coverage, and properly so because the covered cause (leaking

water) was the origin of the noncovered cause (settling). Thus, the causes were dependent rather than independent.

Insurer claims, at page 24, that "the Third DCA departed from these cases in *Wallach* by applying the CCD." But *Wallach* did not "depart" from *Fire Association* and *Phelps*. Those cases involved ***dependent*** causes, and *Wallach* specifically explained that "efficient cause language ... offers little analytical support where it can be said that but for the joinder of two ***independent*** causes the loss would not have occurred." *Wallach,* 527 So. 2d at 1388, (emphasis added). The Court in *Wallach* went on to explain:

> 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.

Id. That has been the law of Florida since 1988. It is not inconsistent with prior cases involving "dependent" causes, and it fully supports the jury's verdict and the Amended Final Declaratory Judgment in the present case.

V. SEBO'S LOSS IS COVERED BY THE LANGUAGE IN THE POLICY

Relying upon the lower court's opinion in *Friedberg*, Insurer argues, at pages 30 through 32, that the mere use of the word "any" in Sebo's Defective Construction Exclusion ("we do not cover any loss caused by faulty ... construction") establishes a lack of coverage. Notably, Insurer made this same argument (on page 25 of its Answer Brief and on pages 5 through 7 of its Reply Brief) to the Second District,

which rejected it by stating that the Policy's "defective work exclusion simply did not exclude losses arising from concurrent causes." *Sebo,* 141 So. 2d at 202.

In *Friedberg*, as explained above, the word "any" was used in connection with a broad definition of "caused by" that created the equivalent of an anti-concurrent cause provision. *Friedberg*, 832 F. Supp. 2d 1049. The mere use of the word "any" was not dispositive in the lower court's opinion in *Friedberg,* and the appellate court's opinion in that case focused on the definition of "caused by" (as quoted in footnote 2 in this Reply Brief) without even discussing the use of the word "any." *Friedberg*, 691 F.3d 948.

The fact that "any" was never intended by Insurer to be a substitute for anti-concurrent cause language in Sebo's Policy is demonstrated by the Pollution Exclusion in his Policy. It excludes coverage for "any" loss *but also includes anti-concurrent cause language*. [APP 1.12]. If the adjective "any" could, all by itself, override and supersede the Concurrent Cause Doctrine, no anti-concurrent cause language would have been needed in the Pollution Exclusion. Insurer's decision to add such language to Sebo's Pollution Exclusion establishes that the use of the word "any," by itself, was not intended to be a substitute for anti-concurrent cause language.

In further response to Insurer's argument, Sebo relies on *Buscher v. Economy Premier Assur. Co.*, 2006 WL 268781 (D. Minn. Feb. 1, 2006) and *McGrath v. Am. Family Mut. Ins. Co*., 2008 WL 4531373 (N.D. Ill. 2008), which are discussed at pages 36 through 40 of his Initial Brief.[4] At a minimum, *Buscher* and *McGrath* establish ambiguity in Sebo's defective construction exclusion, as those cases, at least, establish one reasonable construction of ambiguous language. *See U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 882 (Fla. 2007) and *Security Ins. Co. of Hartford v. Investors Diversified Ltd., Inc.*, 407 So. 2d 314, 316 (Fla. 4th DCA 1981) (the fact that courts have arrived at opposite conclusions on essentially the same language is "proof of [the] pudding" of ambiguity).

Sebo's Policy, even without any consideration of the Concurrent Cause Doctrine, does not "clearly" exclude losses resulting from construction defects and a covered concurrent cause. Therefore, such losses are covered according to *Fayad*. *Fayad*, 899 So. 2d at 1086 ("[T]he insurer is held responsible for clearly setting forth what damages are excluded from coverage under the terms of the policy.").

[4] At page 39 of Sebo's Initial Brief, we incorrectly stated that "[n]either of the jurisdictions at issue in *Buscher* or *McGrath* have explicitly adopted the Concurrent Cause Doctrine." While *Buscher* and *McGrath* do not rely upon or even mention the concurrent cause doctrine and while those cases fully support our argument (*i.e*., that traditional rules of construction applicable to all-risk insurance policies support the conclusion that damages resulting from concurrent causes of construction defects and water intrusion are covered), we nevertheless acknowledge that some cases in Illinois and Minnesota have applied the Concurrent Cause Doctrine. We informed Insurer's counsel of our error in a letter that was emailed on February 6, 2015.

VI. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY FOLLOWING *SALEEBY A*ND EXCLUDING SETTLEMENT AGREEMENTS WITH OTHER DEFENDANTS

In its final argument, Insurer contends, at page 32, that the Trial Court "abused its discretion by excluding evidence of Sebo's settlements" with other defendants. That argument flies in the face of this Court's decision in *Saleeby v. Rocky Elson Constr., Inc.*, 3 So. 3d 1078, 1085 (Fla. 2009), which held that "the plain language of sections 768.041(3) and 90.408 ***expressly prohibits the admission at trial of evidence of settlement*** and that a defendant has been dismissed from the suit." (emphasis added).

Insurer attempts to circumvent *Saleeby's* clear and unambiguous holding with the following interpretation: "*Saleeby* addressed only whether section 768.041, Florida Statutes, prohibited evidence of a settlement ***for impeachment purposes***." (emphasis added). But *Saleeby* is not so limited. According to Ehrhardt, Charles W., 1 Fla. Prac., Evidence § 408.1 (2014 ed.), "there is nothing in the rational (sic) or language in the opinion to support that interpretation."

Contrary to Insurer's interpretation, the holding in *Saleeby* is broad, clear and unambiguous: "***No evidence of settlement is admissible at trial on the issue of liability***." *Saleeby*, 3 So. 3d at 1083. And Insurer's argument, at page 36, that evidence of Sebo's settlements with other defendants should have been admitted because it "was highly relevant to whether some or all of Sebo's loss was caused by

an excluded peril"[5] is expressly contradicted by that holding.

Moreover, the primary case that Insurer relies upon to support its argument, *Citizens Prop. Ins. Corp. v. Ashe*, 50 So. 3d 645 (Fla. 1st DCA 2010), was decided one year after *Saleeby* but never cites *Saleeby*. Why? Because *Ashe* did not even involve a "settlement." *Id.* As the court specifically explained, "Ashe presented no evidence that his receipt of flood insurance proceeds was the result of a compromise or settlement negotiation, rather than simply a payment of insurance benefits." *Id*. at 655. Accordingly, *Ashe* has no applicability to this case, and Insurer's argument that Sebo's settlement agreements with other defendants should have been admissible as evidence has no merit whatsoever.

VII. THE ISSUE DECIDED BY THE SECOND DISTRICT WAS NOT PRESERVED FOR APPEAL

The Second District abolished the Concurrent Cause Doctrine at least for first party claims. Insurer, who says, at page 26, that "Sebo's preservation argument is simply not credible," never once argued for the abolition of the Concurrent Cause Doctrine in all first party claims. To the contrary, Insurer told the Trial Court that

[5] Insurer argues, on page 33, that evidence of the settlement is critical to whether, under Florida's value policy law ("VPL"), "Sebo's constructive total loss was entirely caused by a covered peril." However, as explained in *Fla. Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 819 (Fla. 2007), the VPL only has one purpose – to set the value of the property when there is a total loss. *Id. See also Ceballo v. Citizens*, 967 So. 2d 811 (Fla. 2007) (the purpose of the VPL is "to remove any uncertainty as to the amount an insured is entitled to recover for a total loss of the structure.").

the Concurrent Cause Doctrine was "the prevailing standard" in Florida [R 13039-13074 p.26-28], and Insurer did not even mention the possibility of abolishing the Concurrent Cause Doctrine before the Trial Court or the Second District. The first time Sebo and his counsel heard of that issue is when they read the Second District's opinion. Is that preservation of error? Is that Due Process? Is that fair? Even if this Court decides to change the law of Florida, as set forth in *Wallach*, that change should not apply, *ex post facto*, to Sebo.

The Second District has remanded for a new trial "in which the causation of Sebo's loss is [to be] examined under the efficient proximate cause theory." *Sebo*, 141 So. 3d at 201. However, Insurer did not request a jury instruction on "the efficient proximate cause theory" at trial,[6] which confirms the lack of issue preservation and the error of the Second District's decision. *See* Fla. R. Civ. P. 1.470(b) ("No party may assign as error…the failure to give any instruction unless that party requested the same.").

CONCLUSION

Sebo asks this Court to reinstate the Trial Court's Amended Final Declaratory Judgment and award the other relief requested in his Initial Brief.

[6] While Insurer may respond by saying, "Insurer did not request such an instruction because the Trial Court had already ruled that the causes were 'independent,' and therefore, the Concurrent Cause Doctrine applied," that ruling would not have prevented Insurer from asking for such an instruction based on the separate and distinct argument that the Concurrent Cause Doctrine should be abolished in all first party claims, as the Second District ruled.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Reply is in Times New Roman 14-point font and is therefore in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

By: */s/ Edward K. Cheffy*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of April 2015, 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 the Florida Courts E-Filing Portal to: RAOUL G. CANTERO, ESQUIRE, DAVID P. DRAIGH, ESQUIRE and RYAN A. ULLOA, ESQUIRE (Counsel for American Home), White & Case, LLP, 2000 South Biscayne Blvd., Suite 4900, Miami, FL 33131-2352, rcantero@whitecase.com, ldominguez@whitecase.com, ddraigh@whitecase.com, mgaulding@whitecase.com, rulloa@whitecase.com, and miamilitigationfileroom@whitecase.com; ANTHONY RUSSO, ESQUIRE and EZEQUIEL LUGO, ESQUIRE, (Counsel for American Home), Butler Pappas Weihmuller Katz Craig LLP, 777 S. Harbour Island Boulevard Suite 500, Tampa, FL 33602-5729, arusso@butlerpappas.com, eservice@butlerpappas.com, and elugo@butlerpappas.com; and JANET L. BROWN, ESQUIRE and SUSAN B. HARWOOD, ESQUIRE (Co-Counsel for American Home), Boehm Brown Harwood, P.A., 1060 Maitland Center Commons Boulevard, Suite 365, Maitland, FL 32751, jbrown@boehmbrown.com and sbharwood@boehmbrown.com.

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