The Fourth District Court of Appeal issued an opinion in the case, Jones v. Federated National Insurance Company, 235 So. 3d 936 (Fla. 4th DCA 2018). This opinion clarifies and limits the extent to which Sebo v. American Home Assurance Co., 208 So. 3d 694 (Fla. 2016) (“Sebo II”) should be applied.

The Plaintiff's bar is quick to turn to Sebo II, to argue that concurrent causation applies to virtually all questions of coverage when the homeowners insurer has denied a water loss claim. In Sebo II, the Court held that when multiple perils combine to cause a loss, some of which are covered, and some of which are excluded, concurrent causation applies to the loss. Under a concurrent causation analysis, when covered perils and non-covered perils combine to cause a loss, coverage exists for the loss.

With this analysis in mind, the insured is likely to prevail at trial because exclusionary provisions are essentially rendered meaningless unless the insurer can prove the exclusion was the sole cause of the loss—which is often difficult or near impossible—when the policy sued on does not contain any anti-concurrent causation language like in Sebo II. However, many policies contain anti-concurrent causation language. Jones clarifies that where anti-concurrent causation language falls in the policy is particularly important to analyzing the correct burden of proof for trial.

Standard Special Form policies typically contain anti-concurrent causation language under the "General Exclusions" portion of the policy such as the following language:

We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

In Sebo v. American Home Assurance Co, Inc., 141 So. 3d 195 (Fla. 2d DCA 2013) (Sebo I), (quashed by Sebo II), the Court analyzed situations where multiple perils combine to cover a loss, some covered and some excluded, using the efficient proximate causation doctrine. Under the efficient proximate causation doctrine, "where there is a concurrence of different perils, the efficient cause—the one that set the other in motion—is the cause to which the loss is attributable." This analysis is obviously more favorable to the insurer, because it allows the insurer to present arguments that wear and tear, an excluded cause under the policy, are really what set a loss into motion rather than an accidental peril which occurred on the reported date of loss.

In Jones, the Appellate Court considered a common All-Risk policy that does in fact contain anti-concurrent causation language (unlike the policy in Sebo II). The trial court gave the following jury
instruction:

Did the Plaintiffs prove by the greater weight of the evidence that they sustained a direct physical loss to their roof as a result of the hailstorm on April 20, 2012 which was the most substantial or responsible cause of the damage to the roof?

This instruction was an application of the efficient proximate causation doctrine as set forth in Sebo I. On Appeal, the Court found that the instruction was improper. It noted that the insured's only initial burden of proof under an All-Risk policy is to establish that a direct, physical loss occurred within the policy period.

The burden of proof then shifts to the insurer to prove an exclusion to coverage. Clearly, if the Defendant proves that an excluded cause of loss is the sole cause of loss, Defendant prevails at trial.

The more likely scenario is a situation where a sudden occurrence (a covered event) combines with damage that appears to be due to an excluded cause of loss such as wear and tear. In this scenario, where there is anti-concurrent causation language that applies to the exclusion that is relied upon by the insurer, Jones states that the insurer has the burden to prove that the excluded cause of loss is the efficient proximate cause of the loss. However, if the exclusion is not covered by anti-concurrent causation language, efficient proximate causation cannot be used and the insured prevails at trial.

The Jones case dealt with one of the most common first party property claims, a roof leak claim. Federated National denied the insured's roof leak claim based on a variety of exclusions including exclusions for "wear, tear, marring and deterioration"; "faulty inadequate or defective design"; "neglect"; "existing damage"; or "weather conditions." Where these exclusions fall in the policy are important to the analysis of which causation doctrine applies where there are multiple perils that cause a loss.

Close examination of the typical All-Risk policy reveals that the typical "wear, tear and deterioration" exclusion falls under the "Perils Insured Against" section of an All-Risk policy which starts out with the following language:

1. We insure against direct loss to property described in Coverages A and B only if that loss is a physical loss to property.

2. We do not insure, however, for loss:

b. Caused by:

This portion of the policy contains no anti-concurrent causation language. In Jones, the Court found that because only some of the exclusionary provisions the insurer relied upon fell under a portion of the policy that applies anti-concurrent causation language, and others did not (like wear, tear and deterioration), "the trial court erred by uniformly applying the efficient proximate cause doctrine in its jury instruction."
The *Jones* opinion, therefore, allows for the application of the efficient proximate causation doctrine when the exclusion relied upon by the insurer falls under anti-concurrent causation language in the policy, thereby limiting the application of the holding in *Sebo II*. 