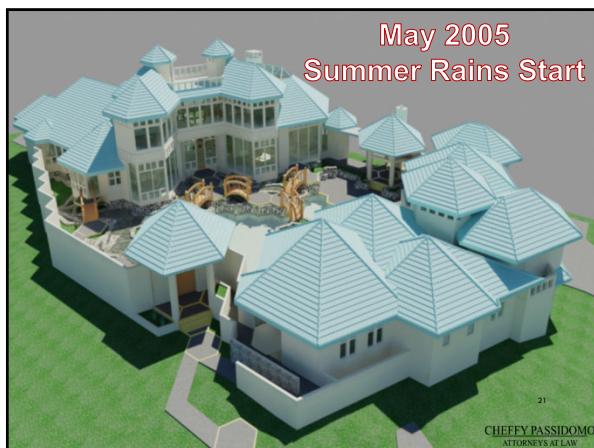


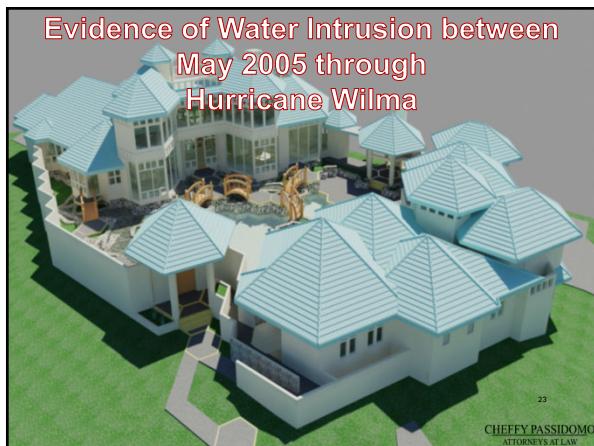
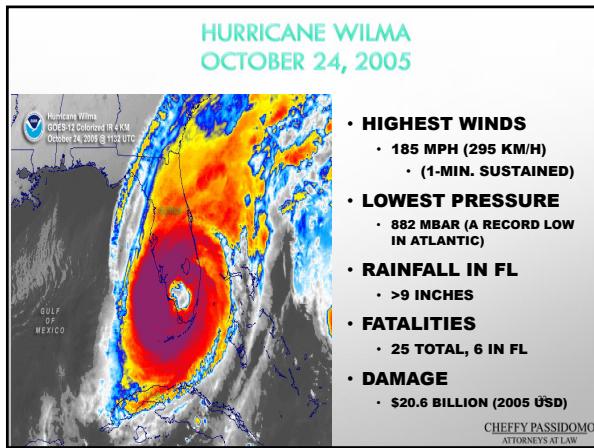


Relevant Property History

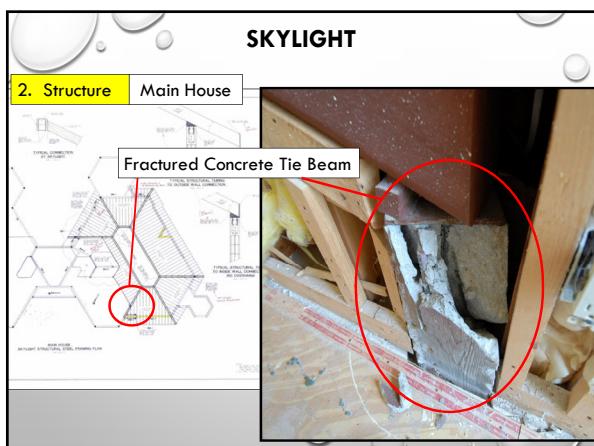
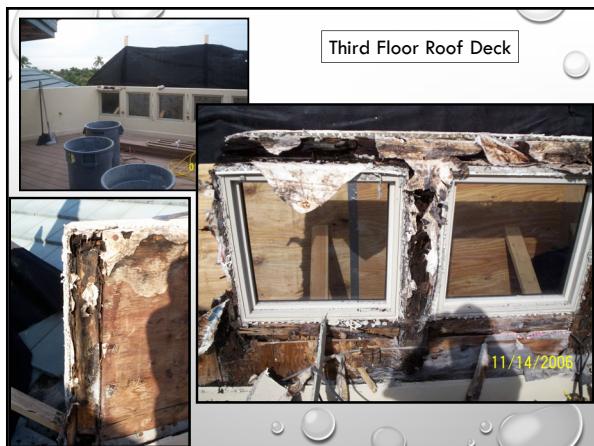
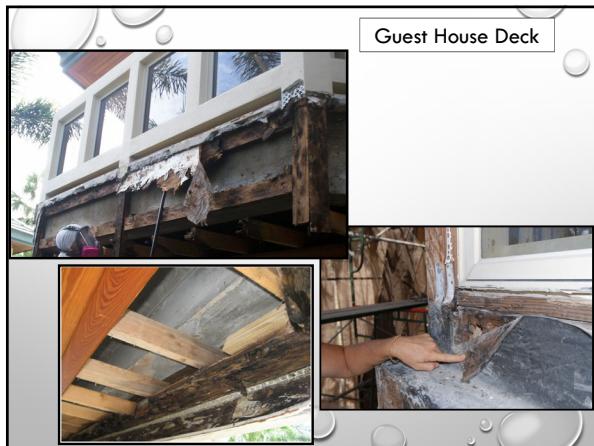
- 1/26/99 Building Permit Issued
- 9/21/01 Certificate of Occupancy (CO)
- 10/04 Seller lists home on the market
- 12/04-1/05 Sales Contract
- No disclosures by Sellers
 - (at closing or any time prior) of leaks &/or water damage
- Home Inspection ≠ reveal leaks or water damage
- 4/18/05 Closing
- Purchased Price \$11.2M
- 4/18/05-4/18/06 "All Risk" Homeowner's policy

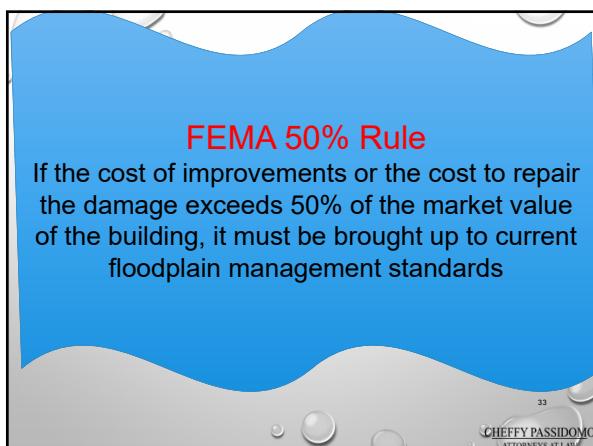
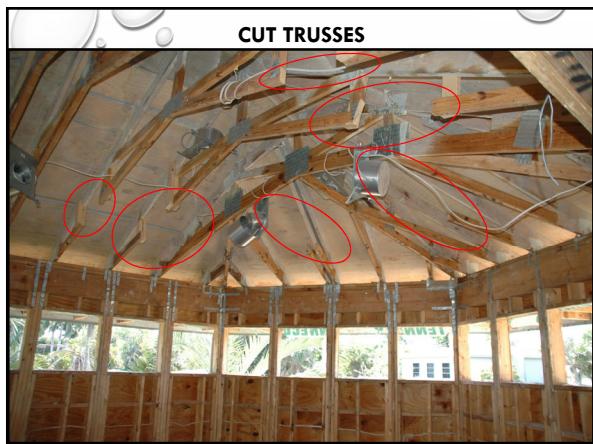
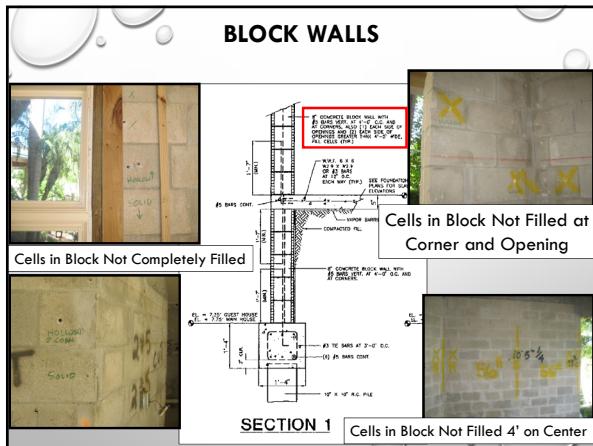
20
CHEFFY PASSIDOMO
ATTORNEYS AT LAW











Demolition

June 2008



The 2007 Action

- 1/8/07: Sebo Files Suit Against:
 - Sellers
 - GC
 - Subs
 - Eventually, Sebo Brings in his HO Carrier (AHAC)
- By January 2011, Sebo Had Settled w/ All Except:
 - Sellers (Sebo settled with Sellers in December 2014)
 - AHAC
- February 2011: Trial Court Grants SJ to Sebo
- Applying Concurrent Cause Doctrine
- April-Mar 2011: Jury Trial b/w Sebo & Only AHAC³⁵

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| <h1 style="margin: 0;">3/3/11 Jury Verdict</h1> | |
| VERDICT FORM | |
| <p>As to Plaintiff, JOHN ROBERT SEID, submit against Defendant, AMERICAN HOME INSURANCE COMPANY, INC., we, the jury, return the following verdict</p> | |
| <p>1. Did the Plaintiff, JOHN ROBERT SEID, establish a loss within the terms of all the risk homeowner's insurance policy?</p> | |
| YES | <input checked="" type="checkbox"/> |
| NO | <input type="checkbox"/> |
| <p>If your answer to question 1 is YES, please continue to question 2. If your answer to question 1 is NO, sign and date the following and return to AMERICAN HOME INSURANCE COMPANY, INC., and you should not proceed any further except to date and sign this verdict form and return it to the courthouse.</p> | |
| <p>2. Did the Plaintiff, JOHN ROBERT SEID, submit a claim to American Home related to the initial rain-based water damage property damage?</p> | |
| <p>3. Please identify the first period during which water infiltration property damage did Plaintiff, JOHN ROBERT SEID, in</p> | |
| <p>4. Specifically set forth how much AMERICAN HOME INSURANCE paid to the Plaintiff, JOHN ROBERT SEID, physical damage from water infiltration during the period referenced in your answer to Question Number 3.</p> | |
| <p>(a) Repair/Reconstruction of house (b) Repair/Reconstruction of other permanent structures (c) Repair/Replacement Content (d) Property removal for safe keeping (e) Safety equipment (f) Precautionary repairs (g) Relocating to code</p> | |
| <p style="font-size: 2em; font-weight: bold;">\$15,390,600.00</p> | |
| <p>TOTAL = \$ 15,390,600.00</p> | |
| <p>5. Did the Plaintiff, JOHN ROBERT SEID, submit a claim to Defendant, AMERICAN HOME INSURANCE COMPANY, INC., we, the jury, return the following verdict on October 24, 2007</p> | |
| YES | <input checked="" type="checkbox"/> |
| NO | <input type="checkbox"/> |
| <p>6. Specifically, AMERICAN HOME INSURANCE COMPANY, INC., must pay to the Plaintiff, JOHN ROBERT SEID, as a result of physical damage from any wind and/or water damage occurring during the period of Hurricane Wilma that occurred on October 24, 2007</p> | |
| <p>(a) Repair/Reconstruction of house (b) Repair/Reconstruction of other permanent structures (c) Repair/Replacement Content</p> | |
| <p>TOTAL = \$ 50,000.00</p> | |
| <p>Defendant, AMERICAN HOME INSURANCE COMPANY, INC., must as a result of Hurricane Wilma that occurred on October 24, 2007</p> | |
| <p>7. Was the dollar amount of the FEMA threshold that represented 50% of the value of the insured premises?</p> | |
| <p>8. Please sign and date the verdict form and return to the bailiff. 50 SAT we all this - 30 day of March, 2011</p> | |
| <p><i>[Signature]</i> FOREPERSON</p> | |

3/3/11 Jury Verdict

VICTORY FORM
As to Plaintiff JOHN ROBERT SEBO's suit against Defendant, AMERICAN HOME INSURANCE COMPANY, INC., we, the jury, return the following verdict.

1. Did the Plaintiff JOHN ROBERT SEBO establish a loss within the terms of the all risk homeowner's insurance policy?
YES NO

If your answer to question 1 is YES, please continue to question 2. If your answer to question 1 is NO, your verdict is for the Defendant, AMERICAN HOME INSURANCE COMPANY, INC., and you should not proceed any further, except to allow the Plaintiff to move for a new trial in the trial court.

2. Did the Plaintiff JOHN ROBERT SEBO, submit a claim to American Home related to the initial rain-based water intrusion property damage?
YES NO

3. Please identify the time period during which the initial rain-based water intrusion property damage took place at the Plaintiff JOHN ROBERT SEBO's residence.
April 19, 2005 - Oct 13, 2005

4. Specifically set forth those damages that the Defendant, AMERICAN HOME INSURANCE COMPANY, INC., must pay to the Plaintiff JOHN ROBERT SEBO, as a result of Plaintiff's claim for the initial rain-based water intrusion property damage that occurred during the time period referenced in your answer to Question Number 3.

(a) Repair/Reconstruction of house
(b) Repair/Replacement of permanent structures
(c) Repair/Replacement Contents
(d) Repair/Replacement for safe keeping
(e) Debris removal
(f) Prejudicial damage
(g) Relocation to note

TOTAL = **\$ 6,600,000**

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ATTORNEYS AT LAW

11/10/11 Amended Final Judgment

FINDINGS OF FACT

4. The Plaintiff Sebo residence is deemed a constructive total loss.

AMENDED FINAL JUDGMENT

IT IS therefore ordered, adjudged, and decreed that the Plaintiff Sebo shall recover from Defendant American Home in damages, the sum of \$8,070,000 on principal which consists of \$6,600,000, based upon the constructive total loss of the house and \$1,470,000 for loss of use which shall accrue interest at the statutory rate from March 3, 2011, for which let execution issue forthwith.

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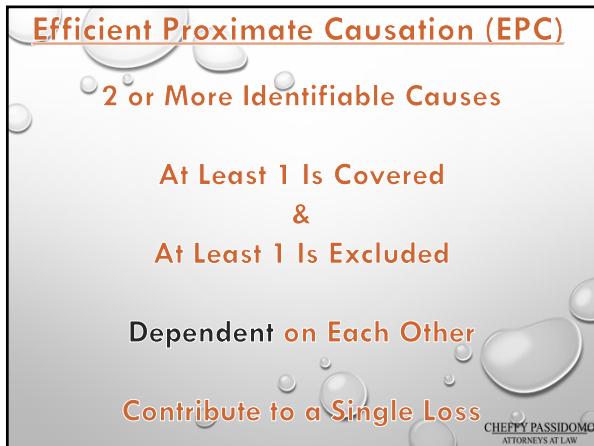
2d DCA Appeal

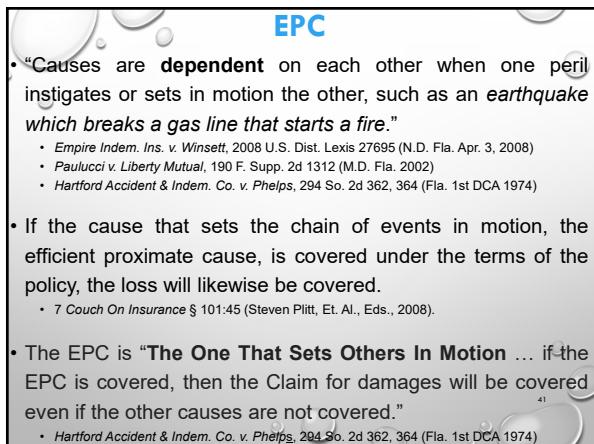
**Am. Home Assur. Co., Inc. v. Sebo,
141 So. 3d 195 (Fla. 2d DCA 2013)**

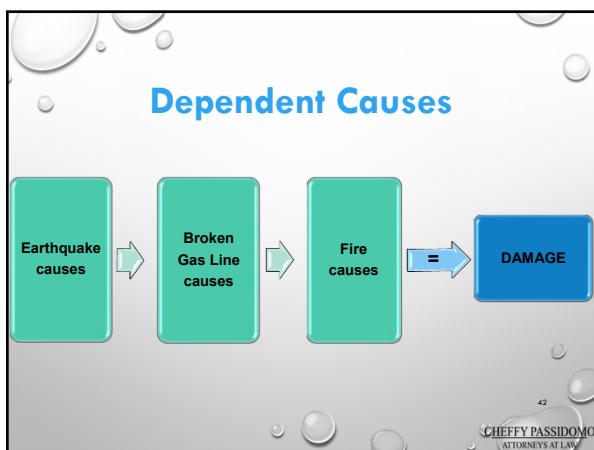
- 2d DCA Reverses Trial Court
- Follows CA Case Law
 - Based Upon CA Insurance Code §

**Adopts The
Efficient Proximate Cause Rule**

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FL SC Appeal

Sebo v. Am. Home Assur. Co., Inc., 208 So. 3d 694 (Fla. December 1, 2016)

- Quashes 2d DCA Opinion
- Follows *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA 1988)

Applies the Concurrent Causation Doctrine

- 2/6/17: Mandate issued - remanded to the 2d DCA
- 7/19/17: 2d DCA remanded to the Trial Court

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Concurrent Cause Doctrine (CCD)

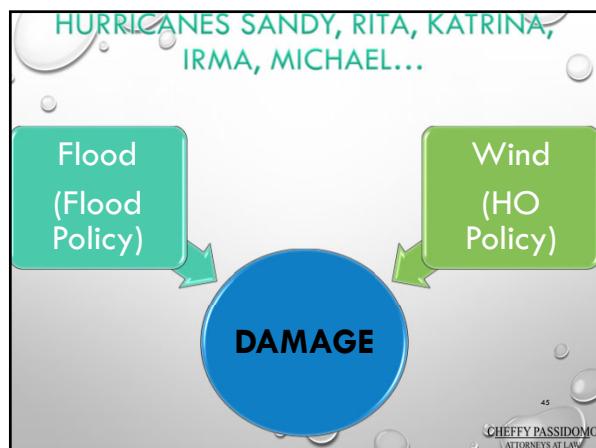
2 or More Identifiable Causes

At Least 1 Is Covered
&
At Least 1 Is Excluded

Independent of Each Other

Contribute to a Single Loss

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State Farm v. Rigsby,
137 S. Ct. 436 (Dec. 6, 2016)

- Hurricane Katrina
- Claims handlers filed suit against State Farm under False Claims Act.
- \$3.6M Jury verdict against State Farm, included treble damages award, plus fees.
- **Claims handlers allegedly instructed by State Farm to misclassify wind damage as flood damage in order to shift State Farm's liability onto the federal government – flood policies.**
- SCOTUS ruled district court did not abuse its discretion in not dismissing the action even though claimants violated the FCA by revealing the complaint against state farm to media while still under seal.

CCD in Florida

- ❖ “Causes are **independent** when they are unrelated such as an earthquake and a lighting strike or a windstorm and wood rot.”
- ❖ Where a policy expressly insures against direct loss and damage by one element, but excludes loss or damages caused by another element, coverage extends to the entire loss even though the excluded element is a contributory cause.

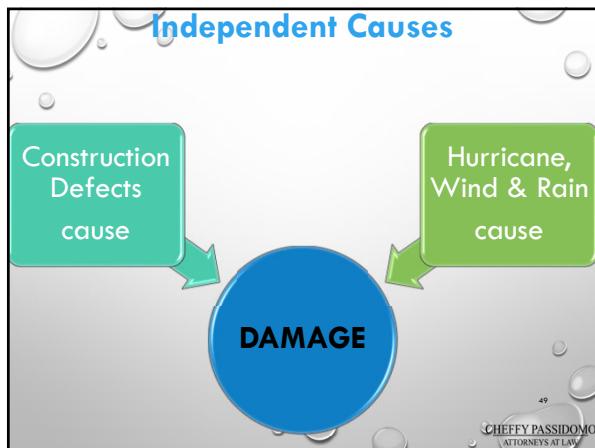
❖ *Paulucci v. Liberty*, 190 F. Supp. 2d 1312 (M.D. Fla. 2002)

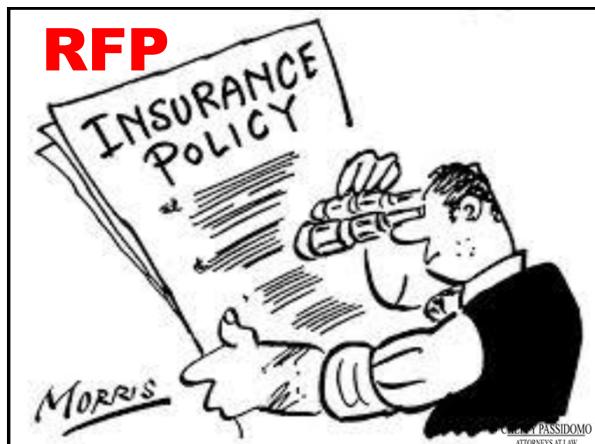
CCD in Florida

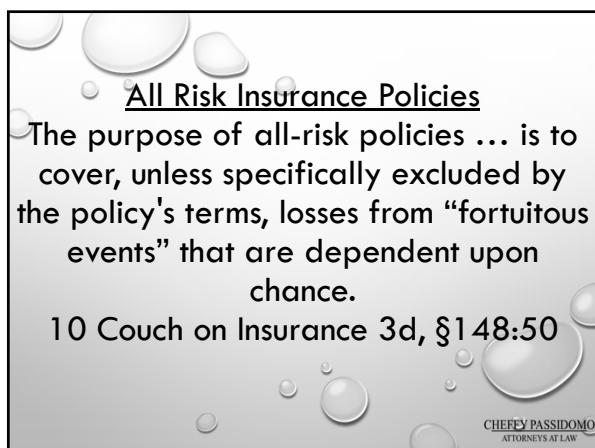
- ❖ FL's recognition of the CCD in all-risk first party policies was uninterrupted from the time of *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA 1988) decision in 1988, UNTIL *American Home Assur. Co., Inc. v. Sebo*, 141 So. 3d 195 (Fla. 2d DCA 2014)

❖ See *Empire Indem. Ins. Co. v. Winsett*, 325 Fed. Appx. 849 (11th Cir. 2009); *Swire Pac v. Zurich Ins. Co.*, 845 So. 2d 161 (Fla. 2003); *Fayed v. Clarendon Nat'l Ins. Co.*, 899 So. 2d 1082 (Fla. 2005); *Sun Ins. Office, Ltd. v. Clay*, 133 So. 2d 735 (Fla. 1961); *Hudson v. Prudential Prop. & Cas. Ins. Co.*, 450 So. 2d 565 (Fla. 2d DCA 1984); *General Am. Trans. Corp. v. Sun Ins. Office, Ltd.*, 239 F. Supp. 844 (E.D. Tenn. 1965); *Essex House v. St. Paul Fire & Marine Ins. Co.*, 404 F. Supp. 978 (S.D. Ohio 1975); *N-ren Corp. v. Am. Home Assur. Co.*, 619 F. 2d 784 (11th Cir. 1980); *Avis v. Hartford Fire Ins. Co.*, 195 S.E. 2d 545 (Tenn. 1973); *Kramer Bros.⁴⁸/Inc. v. U.S. Fire Ins. Co.*, 278 N.W. 2d 857 (Wis. 1979).

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INTERPRETATION OF ALL RISK POLICIES

State Farm v. Pridgen, 498 So. 2d 1245 (Fla. 1986);
Demshar v. Aaacon, 337 So. 2d 963 (Fla. 1976);
Fayad v. Clarendon, 899 So. 2d 1082 (Fla. 2005);
Sun v. Clay, 133 So. 2d 735 (Fla. 1961); *Phoenix v. Branch*, 234 So. 2d 396,398 (Fla. 4th DCA 1970);
Wallach v. Rosenberg, 527 So. 2d 1386; *Hudson v. Prudential*, 450 So. 2d 565 (Fla. 2d DCA 1984);
Stonewall v. Emerald, 388 So. 2d 1089 (Fla. 3d DCA 1980).

- ❖ Broad coverage grant provides "a special type of coverage extending to risks not usually covered under other insurance"
- ❖ Coverage is available for all fortuitous loss or damage not resulting from the insured's willful misconduct or fraud, unless the policy contains "a specific provision expressly excluding the loss from coverage."

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8. FIDP Exclusion

8. Faulty, Inadequate or Defective Planning

"We do not cover any loss caused by faulty, inadequate or defective ... design, specifications, workmanship, repair, construction, renovation, remodeling..."

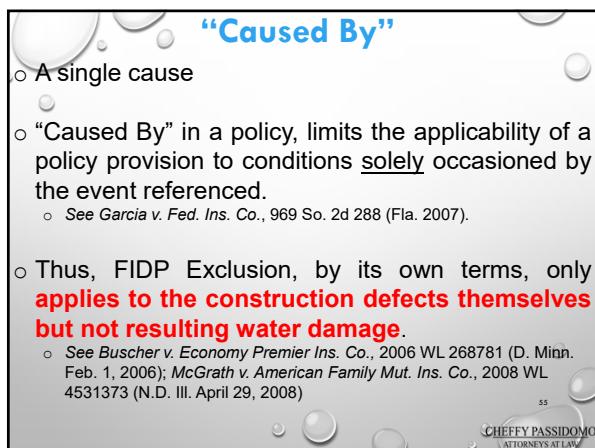
“Caused By” ≠ “Arising Out Of”

“ARISING OUT OF”

- ❖ Is broader in meaning than "caused by" or "resulted from"
- ❖ Means "originating from", "having its origin in", "growing out of", "flowing from", "incident to" or "having a connection with"
- ❖ Means causally connected with, not proximately caused by

Taurus Holdings, Inc. v. United States Fid. & Guar. Co., 913 So. 2d 528, 532-533 (Fla. 2005)

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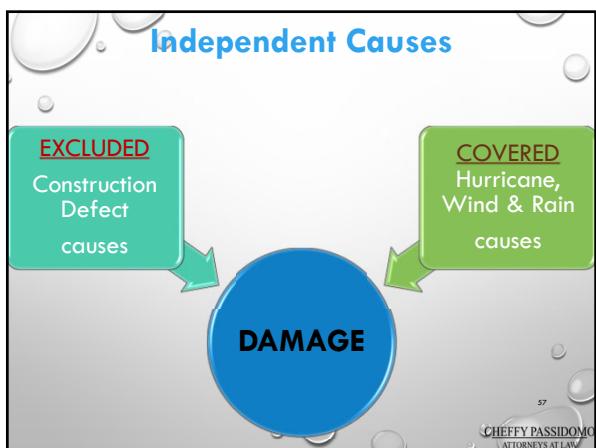


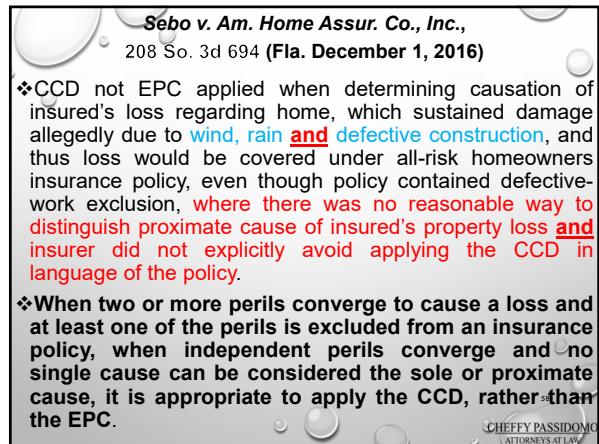
“Caused By”

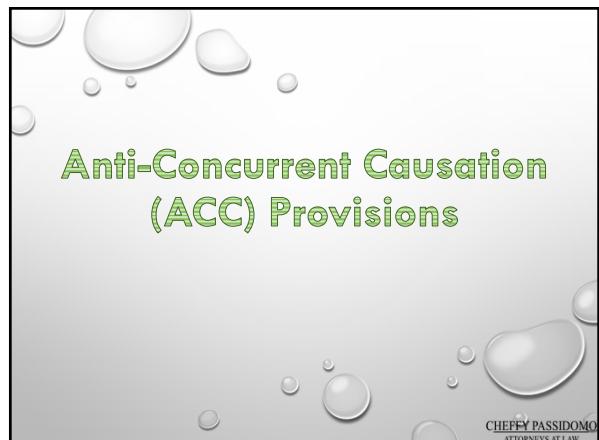
- A single cause
- “Caused By” in a policy, limits the applicability of a policy provision to conditions solely occasioned by the event referenced.
 - See *Garcia v. Fed. Ins. Co.*, 969 So. 2d 288 (Fla. 2007).
- Thus, FIDP Exclusion, by its own terms, only **applies to the construction defects themselves but not resulting water damage.**
 - See *Buscher v. Economy Premier Ins. Co.*, 2006 WL 268781 (D. Minn. Feb. 1, 2006); *McGrath v. American Family Mut. Ins. Co.*, 2008 WL 4531373 (N.D. Ill. April 29, 2008)

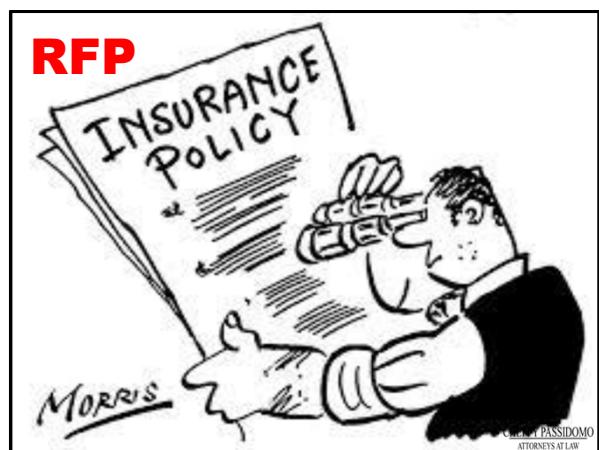
Wallach v. Rosenberg, 527 So. 2d 1386 (Fla. 3d 1988)

- ❖ Where concurrent causes join to produce a loss and one of the causes of risk is excluded under the policy, coverage was available even if “the insured risk [is] not ... the prime or efficient cause of the accident.”
- ❖ “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.” (citing *Safeco v. Guyton*, 692 F.2d 551 (9th Cir. 1982)(coverage was available where a covered risk, negligent maintenance of flood control structures, combined with an excluded risk, a flood, to cause a loss); *Mattis v. State Farm*, 454 N.E.2d 1156, 1160 (Ill. App. Ct. 1983)(“where a policy expressly insures against loss caused by one risk but excludes loss covered by another risk, coverage is extended to a loss caused by the insured risk even though the excluded risk is a contributory cause.”))⁶⁴









1. Pollution or Contamination
"We do not cover any loss directly or indirectly, and regardless of any cause or event contributing concurrently or in any sequences to the loss, caused by the discharge, of pollutants."

D. Exclusions
 The following exclusions apply to the Part II - PROPERTY section of your policy:
 1. Pollution or Contamination
 We do not cover any loss, directly or indirectly, and regardless of any cause or event contributing concurrently or in any sequence to the loss, caused by the discharge, dispersal, seepage, migration or release or escape of pollutants. Nor do we cover any loss caused by the presence of, or damage or threat to property from, any pollutant or waste. A "pollutant" is any solid, liquid, gaseous or thermal contaminant, including smoke, vapor, soot, fumes, odors, radon gas, bacteria, viruses, or any other noxious, foreign substance. "Waste" includes any pollutant, or any combination of pollutants, that is discarded or released.
 2. Loss by Rot or Decay
 We do not cover any loss caused by rot, decay, insects, vermin, fungi, mold, mildew, or any other organism that grows, spreads, disperses, migrates or releases the effects of pollutants or waste. This exclusion does not apply to:
 a. Coverage provided under PART I - PROPERTY, Additional Coverage, Earthquake, Flood, Wind or Dry Rot, or Bacteria or Fungi.
 b. Loss of covered loss unless another exclusion applies.
 3. Loss by Rodents, Insects, Birds or Vermin
 We do not cover any loss, directly or indirectly, and regardless of any cause or event contributing concurrently or in any sequence to the loss, caused by the presence of, or damage or threat to property from, any rodent, insect, bird or vermin. This exclusion does not apply to glass that is part of a building, screen or window. We do not cover any loss, directly or indirectly, and regardless of any cause or event contributing concurrently or in any sequence to the loss, caused by the presence of, or damage or threat to property from, any rodent, insect, bird or vermin that is part of, or attached to, glass that is part of a building, screen or window. We do not cover any loss, directly or indirectly, and regardless of any cause or event contributing concurrently or in any sequence to the loss, caused by the presence of, or damage or threat to property from, any rodent, insect, bird or vermin that is part of, or attached to, glass that is part of a building, screen or window. This exclusion does not apply to:
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 b. Loss of covered loss unless another exclusion applies.
 5. Loss by Fire or Sudden
 We do not cover any loss caused by fire, lightning, explosion, shelling or settling, including resultant cracking, fracturing, or separation of any part of a building, trees, roofs, walls, patios, pavements, foundations, septic systems, retaining walls, wharves, docks, piers, bridges or buildings.
 6. Structural Movement
 We do not cover any loss caused by building, expansion, shrinking or settling, including resultant cracking, fracturing, or separation of any part of a building, trees, roofs, walls, patios, pavements, foundations, septic systems, retaining walls, wharves, docks, piers, bridges or buildings.
 7. Surface and Ground Water Damage
 We do not cover any loss caused by:
 a. Flood, surface water, waves, tidal waves, overtopping of a body of water, or water from any other source, whether or not driven by wind or not.
 b. Water below the surface of the ground, including water which exerts pressure on, or seeps or boils through a building, side wall, driveway, foundation, swimming pool or other structures.
 This exclusion does not apply to:
 a. Coverage provided under PART I - PROPERTY, Additional Coverage, Earthquake, Flood, Wind or Dry Rot, or Bacteria or Fungi.
 b. Loss of covered loss unless another exclusion applies.
 8. Water or Ice Damage to Certain Other Permanent Structures
 We do not cover loss to certain other permanent structures caused by freezing, thawing, or the presence of water or ice, whether driven by wind or not. However, we do not cover loss to certain other permanent structures caused by freezing, thawing, or the presence of water or ice, whether driven by wind or not. The other permanent structures to which this exclusion applies are swimming pools, fountains, waterfalls, water gardens, fountains, foundations, septic systems, retaining walls, wharves, docks, piers, bridges or buildings.
 9. Faulty, Inadequate or Defective Planning
 We do not cover any loss caused by:
 a. Planning, zoning, development, surveying, siting.
 b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, excavation, or
 c. Materials used in repair, construction, renovation, remodeling or
 d. Maintenance.

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"We do not cover any loss caused by faulty, inadequate or defective ... design, specifications, workmanship, repair, construction, renovation, remodeling..."

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 We do not cover any loss caused by:
 a. Flood, surface water, waves, tidal waves, overtopping of a body of water, or water from any other source, whether or not driven by wind or not.
 b. Water below the surface of the ground, including water which exerts pressure on, or seeps or boils through a building, side wall, driveway, foundation, swimming pool or other structures.
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| 1. Pollution or Contamination | 8. Faulty, Inadequate or Defective Planning |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| We do not cover any loss, directly or indirectly, and regardless of any cause or event contributing concurrently or in any sequence to the loss, caused by the discharge, dispersal, seepage, migration or release or escape of pollutants. ... | We do not cover any loss caused by faulty, inadequate or defective: ... b. Design, specification, workmanship, repair, construction, renovation, remodeling, grading, compaction; 63 CHEFFY PASSIDOMO ATTORNEYS AT LAW |

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| <h1>HO 00 03 Very Common HO Form</h1> | <p style="text-align: right;">HOMEOWNERS SPECIAL FORM</p> <hr/> <p style="text-align: center;">AGREEMENT</p> <p>This will provide the insurance described in the policy in return for the premium and compliance with all applicable provisions of the policy.</p> <hr/> <p style="text-align: center;">DEFINITIONS</p> <p>In this policy, "you" and "your" refer to the "named insured" and any other person, including a spouse or relative of the same household. "We," "us" and "our" refer to the insurance company. "Home" means a single-family dwelling, or a group of related dwellings, certain words and phrases are defined as follows:</p> <ol style="list-style-type: none"> 1. "Dwelling" means body, house, structure or dwellinghouse, including any outbuildings, trees, shrubs and shrubbery. 2. "Employee" means trade, professor or manager. 3. "Insured" means you and residents of your household. 4. "Relative" means any person 18 years of age or older, or any person under the age of 18 and in the care of any person 18 years of age or older. 5. "Underwriting" means the process by which this policy applies, any person or organization highly qualified to evaluate the risk of insuring a dwelling which are owned by you or any person in your household, or which are being used by you or your organization using or having control of these premises, or which are being used by any person in your household, or without control of the name or risk of the person using the premises. 6. "With respect to any vehicle" to which this policy applies: <ol style="list-style-type: none"> (1) Persons while engaged in the use or use of any person included in 3.a. or 3.b. (2) Others using the vehicle on an occasional or temporary basis. 7. "Insured location" means: <ol style="list-style-type: none"> a. The "residence premises"; b. The "workplace" or any other structure and grounds used by you as a residence and (T) which is shown in the Declarations; or c. Any other location to which you are policy period for your use as a residence; <p style="text-align: right;">Copyright, Insurance Services Office, Inc., 1990</p> <p style="text-align: right;">Page 1 of 18</p> |
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| Section I – EXCLUSIONS | |
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| 1. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded <u>regardless of any other cause or event contributing concurrently or in any sequence to the loss.</u> | |
| a. | SECTION I - EXCLUSIONS |
| b. | 1. 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. a. Ordinance or Law , meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided under this policy. b. Earth Movement , meaning earthquake(s) including ground waves or tremors before, during or after a volcanic eruption; landslide; mine subsidence; mudslide; earth sinking, rising or shifting; unless direct loss by: (1) Fire; (2) Explosion; or |
| c. | (3) Breakage of glass or safety glazing material which is part of a building, storm door or storm window; ensues; and then we will pay only for the ensuing loss. This exclusion does not apply to loss by theft. |
| d. | c. Water Damage , meaning: (1) Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind; (2) Water which backs up through sewers or drains or which overflows from a sump; or |
| e. | 65 |
| f. | CHEFFY PASSIDOMO ATTORNEYS AT LAW |

Section I – EXCLUSIONS

2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

a. Weather Conditions

b. Acts of Decisions

c. Faulty, inadequate or Defective ...

2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

- a. **Weather conditions.** However, this exclusion only applies if weather conditions contribute in any way with a cause to events producing the loss.
- b. **Acts or decisions,** including the failure to act or decide, of any person, group, organization or governmental agency.
- c. **Faulty, inadequate or defective:**
 - (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance;

of part or all of any property whether on or off the "residence premises."

Do I have construction defects plus another cause that combined to cause the loss/property damage?

Were they independent causes that combined to cause the loss/property damage?

RFP!

Review the HO or Commercial Property Policy.
Is the other cause a covered cause/peril?
Are there applicable ACC provisions?

CHEFFY PASSIDOMO
ATTORNEYS AT LAW

Sebo v. Am. Home Assur. Co., Inc.,
208 So. 3d 694 (Fla. December 1, 2016)

2/6/17

Mandate issued - remanded to the 2d DCA

But what issues are left?

- Set Off
- Attys Fess & Costs

CHEFFY PASSIDOMO
ATTORNEYS AT LAW

Sebo v. Am. Home Assur. Co., Inc.,
208 So. 3d 694, 699 (Fla. 2016)

Set Off

- "Last, AHAC argues that the trial court erred by prohibiting the introduction of the amount of the settlements Sebo received in connection with this case.
- The trial court excluded evidence of the settlements based on this court's decision in *Saleeby v. Rocky Elson Constr., Inc.*, 3 So. 3d 1078 (Fla. 2009).
- The Second District did not rule on this issue because "it is not completely clear whether this is a valued policy law case." Sebo, 141 So. 3d at 203. The court therefore left this question to be resolved at retrial, noting that the 2005 version of the statute applied. *Id.* We disagree with the trial court's determination that *Saleeby* precluded AHAC from presenting the settlement amounts to offset the judgment.
- *Saleeby* held that §768.041, Florida statutes, which bars disclosure to the jury of settlement or dismissal of a joint tortfeasor, and §90.408, which bars the disclosure of evidence of an offer to compromise to prove liability, are clear and unambiguous. We held that "[n]o evidence of settlement is admissible at trial on the issue of liability." *Saleeby*, 3 So. 3d at 1083.
- **Nothing in our decision affects the ability of a trial court to consider the amount of settlements as a post-judgment offset. We remand for reconsideration of this issue."**

CHEFFY PASSIDOMO
ATTORNEYS AT LAW

7/19/17
2d DCA
remanded
to the
Trial Court

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| <p>IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA SECOND DISTRICT, POST OFFICE BOX 2327, LAKELAND, FL 33802-0327</p> <p style="text-align: center;">July 18, 2017</p> <p style="text-align: center;">CASE NO.: 2D11-4683</p> <p style="text-align: center;">L.T. No. 07-4054CA</p> | |
| <p>AMERICAN HOME INSURANCE COMPANY, INC. v. JOHN ROBERT SEBO, ET AL</p> | |
| <p>Appellant / Party(ies):</p> | <p>Appellee / Respondent(s):</p> |
| <p>BY ORDER OF THE COURT:</p> | |
| <p>WHEREAS the judgment of this court was entered on September 18, 2013, reversing the order of the Circuit Court for Collier County, Florida, bearing date of November 14, 2012;</p> | |
| <p>WHEREAS the judgment of this court was quashed by the Supreme Court of Florida on December 1, 2014, and the cause remained to this court with instructions;</p> | |
| <p>and</p> | |
| <p>WHEREAS the mandate of the Supreme Court of Florida has now been issued in this court, it is therefore</p> | |
| <p>ORDERED AND ADJUDGED that the opinion and judgment of the Supreme Court of Florida are hereby adopted and made the opinion and judgment of this court, and, in accordance therewith, the judgment of the circuit court is reversed and the cause is remanded to the circuit court for further proceedings consistent with the opinion of the Supreme Court of Florida. It is further</p> | |
| <p>ORDERED that the mandate of the court issued May 15, 2014, is hereby withdrawn and the same is hereby superseded.</p> | |
| <p>I HEREBY CERTIFY that the foregoing is a true copy of the original court order.</p> | |
| <p>Served:</p> | |
| <p>Mark A. Boyle, Esq. Michael W. Leonard, Esq. Scott J. Frank, Esq. John C. Moore, Esq. Alexander Brockmyer, Esq.</p> | <p>Edward J. Cheffy, Esq. Anthony J. Russo, Esq. Christopher M. MacNamee, Esq. Michael J. Morris, Esq. Dwight Brock, Clerk</p> |
| <p>David A. Sultan, Esq. Steven B. Harwood, Esq. Daniel C. Crotchet, Esq. Mary Cherie Crotchet, Esq.</p> | |
| <p><i>[Signature]</i> Mark A. Boyle, Esq. Michael W. Leonard, Esq. Scott J. Frank, Esq. John C. Moore, Esq. Alexander Brockmyer, Esq.</p> | |
| <p></p> | |
| <p style="text-align: right;">THE CHEFFY PASSIDOMO ATTORNEYS AT LAW</p> | |

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLlier COUNTY, FLORIDA
CIVIL ACTION

Set Off

- Carrier argued entitlement to set off from any new FJ – the amount Sebo recovered from prior owner and contractors.
- Sebo responded, Carrier:
 - Denied the claim,
 - Failed to plead Set Off or Subrogation as an affirmative defense,
 - Subro rights not triggered - Made Whole Doctrine, and
 - If Carrier does get some sort of set off, then Sebo 'set off' to the set off – for attorneys fees and costs that Sebo came of pocket for – to chase down the recoveries did was able to obtain

11/9/18 FINAL JUDGMENT ENTERED

- ❖ \$6,600,000 Constructive Total Loss of the Dwelling
- ❖ \$1,470,000 Loss of Use
- ❖ (\$50,000) Carrier paid previously per mold coverage
- ❖ \$3,058,866.10 Post-judgment Interest (jury verdict through 10/20/18)
- ❖ Prejudgment Interest – neither the 2d DCA nor the FLSC ruled on
- ❖ **Bad Faith Action pending... stay tuned!**

CHEFFY PASSIDOMO
ATTORNEYS AT LAW**BUT BEWARE...**

Addison Construction Corp. v. Vecellio,
240 So. 3d 757 (Fla 4th DCA March 21, 2018)

- Before trial, Buyers settled with ten of Subs = \$2.725M
- 10 week Jury Trial v. 2 remaining Subs and Swanson (principal of Addison Construction)
 - Jury - Special verdict = 2 Subs and Swanson did not violate FBC
 - Against Swanson on the fraud count, awarding Buyers \$78,984.60
- Bench trial vs. Sellers and GC
 - Trial Court = Sellers and GC did not violate FBC, FDUPTA, or Neg Failure to Disclose
 - Against Addison and Sellers on the fraud count, thus liable for Breach of K and Breach of Warranty, awarding Buyers \$3.5M (repairs and loss of use), but \$2.5M of that was against Addison for Breach of Warranty, \$3.3M under Addendum, \$2.3M against Sellers for Breach of K (damages overlapped).

BUT BEWARE...

Addison Construction Corp. v. Vecellio,
240 So. 3d 757 (Fla 4th DCA March 21, 2018)

- Post-trial, Swanson, Sellers and Addison moved for the court to apply the Sub Settlements as setoffs against each of the judgments.
- Looking at the scope of the sub settlement agreements in comparison to the damages requested and recovered by Buyers in their Breach of K claims against Addison and Sellers.
 - Trial Court = Buyers had not reduced their claims for damages at trial or removed claims for damages at trial related to the settled scopes of work.
 - As such, the trial court granted Addison and Sellers a setoff of the entire \$2.725M in Sub Settlements against the Breach of K awards.
- However, as to fraud, Trial Court = Setoff was not warranted bc "there were no allegations, evidence or arguments that Mr. Swanson, Addison, and Sellers could be liable [for] fraud based on the actions of the settled defendants."

BUT BEWARE...

Addison Construction Corp. v. Vecellio,
240 So. 3d 757 (Fla 4th DCA March 21, 2018)

- Addison, Swanson, and Buyers appealed Set Off.
- Addison and Swanson argued that the Trial Court should have extended the Sub Settlement setoff to the fraud judgments entered against them.
 - Rejected by 4th DCA rejected that argument.
- Buyers argued that the Trial Court erred in applying the entirety of the \$2.725M as a setoff bc none of the evidence of damage to the home presented at trial was encompassed by the Sub Settlements.
 - Rejected by the 4th DCA rejected that argument.
 - Held: **the law provides that if settlement proceeds are "not apportioned between (a) claims for which co-defendants are jointly and severally liable with the settling co-defendant, and (b) claims which were only asserted against the settling co-defendant, the entire amount of the undifferentiated recovery is allowable as a set-off."** citing *Escadote I Corp.*, 211 So. 3d at 1063. see also *Cornerstone Smr, Inc. v. Bank Of Am., N.A.*, 163 So. 3d 565 (Fla. 4th DCA 2015)

BUT BEWARE...

Addison Construction Corp. v. Vecellio,
240 So. 3d 757 (Fla 4th DCA March 21, 2018)

- Avoid duplicate payments/recovery for the same damages
- Settlement Agreements should allocate the settlement proceeds
 - By Claim/Count?
 - By Scope of Work?
 - By property damage that resulted from the specified Scope of Work?
 - By areas/location of damages?
 - For Attorneys' Fees/prevailing party Attorneys' Fees?
 - For Costs and Expenses?
 - However, the recipient wants??

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