

CLIENT ALERT

Florida Supreme Court To Rule on AOB Restrictions

January 7, 2019

On December 27, 2018, the Florida Supreme Court accepted review of a case presenting the question whether assignment of benefits (AOB) restrictions should be permitted in homeowner's policies in Florida. *Ark Royal Insurance Company v. Restoration 1 of Port St. Lucie, Etc.*, No. SC18-1623 and No. SC18-1624, on appeal from a decision from Florida's Fourth District Court of Appeal. *Restoration 1 of Port St. Lucie v. Ark Royal Ins. Co.*, 2018 Fla. App. LEXIS 12633 (Fla. Ct. App. Sept. 5, 2018). The Florida Supreme Court's decision will likely resolve conflicting rulings in the Florida lower courts concerning the use of AOBs, which allow assignees to "step into the shoes" of policyholders to sue insurance companies for benefits allegedly owed. AOBs, including fractional AOBs, are particularly common where homeowners authorize contractors to undertake repairs to their homes and assign to the contractors their rights to seek recovery from insurance companies for reimbursement of the cost of those repairs.

The *Restoration 1* case addresses whether a provision in a homeowner's policy "requiring the signatures of all insureds and mortgagees for an assignment of benefits violate[s] Florida law." The policy, issued by Ark Royal Insurance ("the insurer"), states that "[n]o assignment of claim benefits, regardless of whether made before a loss or after a loss, shall be valid without the written consent of all 'insureds,' all additional insureds, and all mortgagee(s) named in the policy."

When the policyholders' home suffered water damage, the wife contracted with Restoration 1 "to provide cleanup services and signed an assignment of benefits agreement assigning 'any and all insurance rights, benefits, proceeds and any cause of action under any applicable insurance policies' to Restoration 1," without the signatures of her husband or PNC Bank, which was named mortgagee by the policy. When Restoration 1 performed the work and submitted a claim to the insurer, the insurer refused payment because the assignment agreement did not comply with the policy's consent requirements. Restoration 1 then sued the insurer seeking recovery of the repair costs and a declaration that the assignment of benefits consent requirement "contravened Florida public policy." The trial court granted the insurer's motion to dismiss on the ground that the purported assignment of rights to Restoration 1 did not comply with the policy's "unambiguous condition."

The Fourth District Court of Appeal affirmed. That ruling, however, was in direct conflict with a recent Fifth District Court of Appeal decision, *Security First Insurance Co. v. Florida Office of Ins. Regulation*, 232 So. 3d 1157 (Fla. 5th DCA 2017), which interpreted Florida law and public policy to mean "that *any* restriction on an assignment of benefits [is] unenforceable, even those restrictions not limited to requiring insurer consent." The Fourth District disagreed. While acknowledging that Florida law does not permit assignment restrictions that require *insurer* consent, it distinguished *Security First* on the ground that there is no such prohibition under Florida law on clauses requiring the consent of other insureds or mortgagees. In doing so, the court reasoned that the provision in the Ark Royal policy at issue merely required consent by all insureds and mortgagees, but was not a general prohibition on assignment agreements. Citing the importance of the parties' freedom of contract, the Fourth District declined to find that such an insurance policy condition on assignment agreements violated Florida public policy.

This aspect of the AOB issue has received mixed treatment in the lower courts and is an ongoing topic of debate, particularly in Florida, where many homeowners have suffered damage to their homes due to hurricanes and other storms which necessitate hiring contractors to repair their homes. Many contractors expressly require homeowners to assign their insurance policy benefits before the contractor will begin work. AOBs are particularly controversial because some contractors are thought to operate fraudulently or deceptively, pressuring homeowners for an AOB and then seeking payment for unnecessary repairs or for work not done at all. This presents numerous problems for insurance companies, including fraudulent and/or inflated claim amounts.

Both parties supported review by the Florida Supreme Court. Restoration 1's brief on the merits is due by January 16, 2019, and the insurer's brief is due twenty days after service of Restoration 1's initial brief. The court has not yet set a date for oral argument.

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