Florida Insurance Alert: Fourth DCA's Holding Creates Road Blocks for AOB Claims

On September 5, 2018, the Fourth DCA in *Restoration 1 of Port St. Lucie a/a/o John and Liza Squitieri v. Ark Royal Insurance Company* (4D17-1113) upheld insurance policy language barring policyholders from signing assignment of benefits agreements without the approval of co-insureds, including financial institutions holding mortgages on the property. This holding is in direct conflict with a Fifth DCA case (*Security First Insurance Co. v. Florida Office of Insurance Regulation*, 232 So. 3d 1157 (Fla. 5th DCA 2017), and therefore the conflict was certified.

In this case, the governing policy contained a condition 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 this policy." Approximately four years later, the insureds' home suffered water damage. The homeowner wife, without the consent of her husband or the mortgagee, contracted with Restoration 1 to provide cleanup services and signed an AOB. Restoration 1 subsequently completed the clean-up work and submitted a claim to the carrier for $20,305.74. The carrier refused to pay the full amount of the claim, stating the assignment was invalid under the policy, which resulted in a lawsuit by Restoration 1. The trial court dismissed the case on the basis that "the Assignment of Benefits fails to comply with the subject policy's unambiguous condition that claims assignments be executed by all insureds and mortgagees."

Restoration 1's appeal followed. The narrow question presented on appeal was whether common law or public policy prohibits an assignment of benefits provision in an insurance contract that requires the consent of all the insureds and the mortgagee before any assignment. The Fifth DCA recently addressed the question and answered it in the affirmative, finding such a restriction invalid. The Fourth DCA disagreed with the Fifth DCA's reliance on a 1917 Florida Supreme Court case and distinguished the facts because the 1917 case prohibited an assignment provision that required the consent of the insurer; it did not hold that any restrictions was per se invalid. In upholding the policy language, the Fourth DCA held "The contract here does not prohibit assignment — it imposes a condition, requiring the approval of all insureds and the mortgagee. We cannot say that this restriction … creates 'some great prejudice to the dominant public interest.'"

For the full written opinion from the Fourth DCA, please follow the link below.

Restoration of Port St. Lucie v. Ark Royal Insurance Co. (4th DCA) (09830392xA8A8F)

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