

# Court Upholds Assignments of Benefits, But Legislative Door Still Open

Commentary by Ely R. Levy

An assignment of benefits, or AOB, is an agreement signed by a policyholder that gives a third party the right to recover for services rendered in connection with an insurance claim.

While AOBs are commonly used when policyholders assign benefits to health care providers, they have become increasingly prevalent in the context of property insurance claims.

Specifically, a home or business owner will assign benefits of their property insurance policies to a contractor or water restoration company that repairs the damaged property and seeks reimbursement from the insurer.

Not surprisingly, property and casualty insurers have expended considerable resources in regulatory filings in the state Office of Insurance Regulation, lobbying efforts before the state Legislature and in litigation in Florida trial and appellate courts, all in an attempt to invalidate or curtail AOBs.

In the past year, the Office of Insurance Regulation denied insurance company efforts to amend policy forms seeking to prohibit such assignments. In the last legislative session, the Legislature did not pass proposed legislation (HB 669 and SB 1064) seeking to limit post-loss assignments.

Most recently, the Fourth District Court of Appeal issued a trilogy of decisions last month, holding that assignments of in-

surance benefits are valid under Florida law. Those cases are *One Call Property Services v. Security First Insurance*, *ASAP Restoration and Construction v. Tower Hill Signature Insurance* and *Emergency Services 24 v. United Property & Casualty Insurance*.

## THIRD-PARTY RECOVERY

Of the three decisions, the One Call case addresses the issues in the most plenary manner. In *One Call*, a contractor that provided emergency water removal services to an insured pursuant to an assignment of benefits filed suit against Security First alleging that the insurer did not adequately pay the contractor for the services that the contractor rendered.

The insurer moved to dismiss the lawsuit arguing that the contractor lacked standing to sue under the insurance policy and that the assignment was invalid. Agreeing with the insurer, the trial court dismissed the contractor's complaint with prejudice and found that the policy precluded the contractor, as assignee, from bringing suit to determine what was due under the policy.

On appeal, the Fourth DCA reversed the lower court dismissal of the case and found that an assignment of insurance benefits is valid under Florida law, even when an insurance policy contains a provision barring assignment of the policy.

In doing so, the court rebuffed several insurer arguments that have been advanced by various insurers in the trial courts. The court found that payment does

not have to be due under the loss payment provision of a policy for an assignment to be valid.

The court also held that an assignment cannot be invalidated on the theory that it attempts to assign a contractual "duty to adjust" from the insured to a third party, namely the contractor.

Additionally, the court rejected the insurer's argument that a payment must be due under the policy before the right to the payment may be assigned and found that an assignable right to benefits under a policy accrues at the date of loss even though payment is not due at that time.

The court concluded, "As long as the insured complies with all policy conditions, a third-party assignee may recover benefits on a covered loss."

The Fourth DCA also issued opinions in *ASAP Restoration and Emergency Services 24*. These opinions remanded cases to the trial court finding that post-loss assignments are not barred for the reasons outlined in the One Call case.

## PUBLIC POLICY

Lawyers should not have been surprised by the Fourth DCA's rulings. Florida jurisprudence for almost 100 years has upheld assignments of insurance benefits.

What is of interest is the court's recognition of the two competing public policy considerations driving the AOB debate.

The battle cry of the insurance industry has been that contractors who procure assignments, in the words of the One Call court, "unilaterally set the value of a claim

and demand payment for fraudulent or inflated invoices."

Consumer and policyholder advocates counter that "assignment of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front."

The court stated, "If studies show that the assignments are inviting fraud and abuse, then the Legislature is in the best position to investigate and undertake comprehensive reform."

There are undeniable consumer benefits to AOBs. AOBs assist policyholders with their obligation to mitigate damages under their policies and prevent further damage. At the same time, AOBs may be susceptible to occasional abuse by a few bad apples.

Claims that AOBs have created a 'crisis' and that contractors are 'out of control' are hyperbolic. Based on the recent opinions from the Fourth DCA, AOBs are likely going to be upheld by the Florida appellate courts.

The One Call decision left the door open for the Legislature to undertake reform as necessary. If it does, the Legislature should judiciously proceed to address AOBs with a scalpel and not a hatchet.

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