



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Fla. Appeals Court Reverses, OKs Insurance Assignments

By **Joe Van Acker**

Law360, Los Angeles (May 20, 2015, 2:48 PM ET) -- A Florida appellate court ruled Wednesday that the assignment of insurance proceeds to a third party isn't prohibited even if payment isn't due yet, reviving three contractors' cases accusing insurance companies of breaching their contracts by refusing to pay for restoration work.

A three-judge panel for the District Court of Appeal for Florida's Fourth District reversed a trial court's dismissal of One Call Property Services Inc.'s suit against Security First Insurance Co. on the grounds that payment doesn't necessarily have to be due for an insured to assign a post-loss claim to a third party, and promptly applied that reasoning to two other cases.

Ely R. Levy of Militzok & Levy PA represented contractor ASAP Restoration & Construction Inc. in one of the revived suits, and said in an interview that Wednesday's decisions "emphatically" established that Florida courts won't tolerate insurance companies' efforts to attack assignments.

"Insurance companies are trying desperately not to pay these contractors," Levy said. "It's so obvious that the case law in the state of Florida has confirmed time and time again the validity of these assignments."

According to the appellate court's opinion, One Call performed emergency water removal services for a Security First policyholder in 2012, and the insured assigned his right to insurance proceeds as payment.

The contractor sued after Security First refused to pay and a trial court granted the insurer's motion to dismiss, finding that One Call couldn't bring a lawsuit to determine the amount of the policyholder's loss or what was due under the policy.

On Wednesday, the appellate court said Security First had argued against "well-settled case law" by claiming that, at the time the assignment was executed, there wasn't anything to assign because no payment was due.

"The loss payment clause merely addresses the timing of the payment and expressly contemplates that a lawsuit could occur before payment is due," the court said. "We decline to interpret it as affecting the validity of a post-loss assignment."

In each of the three cases, attorneys from Groelle & Salmon PA represented the insurers, which included Security First, United Property & Casualty Insurance Co. and Tower Hill Signature Insurance Co.

According to Ely, that firm was sanctioned by a Miami trial court in 2013 for raising the

same argument it applied in these cases, which the trial court referred to as “totally specious.”

Ely also said that insurance companies have unsuccessfully lobbied the Florida legislature to prohibit the type of assignments at issue in these cases.

One bill with that aim died in committee in April after being introduced in February of this year.

Representatives for the insurance companies didn’t immediately respond to requests for comment on Wednesday.

One Call is represented by Susan W. Fox of Fox & Loquasto PA and Scott G. Millard of Cohen Battisti Attorneys at Law.

Security First is represented by Andrew A. Labbe and David J. Salmon of Groelle & Salmon PA.

ASAP Restoration is represented by Susan W. Fox of Fox & Loquasto PA, as well as Ely R. Levy and Venessa Valdes of Militzok & Levy PA.

Tower Hill is represented by Karen J. Jerome Smith of Groelle & Salmon PA and Kara Berard Rockenbach of Methe & Rockenbach PA.

Emergency Services is represented by Mitchell B. Haller of Katzman Garfinkel PA.

United Property is represented by Andrew A. Labbe of Groelle & Salmon PA and Sarah Lahlou-Amine of Buchanan Ingersoll & Rooney PC.

The cases are ASAP Restoration and Construction Inc. v. Tower Hill Signature Insurance Co., case no. 4D13-4174; Emergency Services 24 Inc. v. United Property & Casualty Ins. Co., case no. 4D14-576; One Call Property Services Inc. v. Security First Insurance Co., case no. 4D14-424, all in the District Court of Appeal for the State of Florida's Fourth District.

--Editing by Philip Shea.

All Content © 2003-2015, Portfolio Media, Inc.