



**COUNCIL OF PROPERTY CLAIM PROFESSIONALS INC**

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### **Symposium Synopsis:**

**Potential solutions that limit the scope of an assignment of benefit for the protection of insurers and consumers with low cost of implementation:**

- **Cap amount of assignment of benefits of residential property insurance policies to service providers.**
- **Provide the consumer a statutory right of rescission to work performed in connection with a property insurance claim.**
- **Impose limitations on the scope and enforceability of an assignment of benefits.**
- **Require the cost of services and materials to be included in an assignment of insurance benefits.**

## **ASSIGNMENT OF PROPERTY INSURANCE CLAIM BENEFITS**

**Protecting the Consumer, the Insurer, and the Right to Assign Post-Loss Benefits of a Property Insurance Policy.**

### **Introduction**

On September 2, 2015, the Florida Symposium on Assignment of Property Insurance Claim Benefits was held in Orlando, Florida. The purpose of the symposium was to examine the assignment of insurance benefits in Florida; its impact on insurers, consumers, and service providers; and explore potential solutions.



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The one day symposium was hosted by the Council of Property Claim Professionals<sup>i</sup> and attended by insurers, legislators, insurance adjusters, contractors, insurance agents, government regulators, and representatives of the banking industry. Presentations by the distinguished panel outlined the growing concern over increasing costs associated with litigation by emergency service providers enforcing assignment of benefits.

Working sessions identified competing concerns addressing the use and abuse of the established right to assign the benefits of a property insurance policy. A number of solutions, both practical and conceptual, were discussed. The purpose of this paper is to address the concerns of the insurance industry faced with increased claim and litigation expense driven by abuse of the assignment of benefits. This paper will advance potential solutions.

## **Background**

Since 1917<sup>ii</sup>, Florida has recognized the policyholder's right to assign the benefits of a property insurance contract after a loss has occurred. On April 10, 2015<sup>iii</sup>, Florida's Fifth District Court of Appeal upheld the policyholder's right of post-loss assignment of benefits and the rights of the assignee of property insurance benefits to enforce the provisions of the property insurance policy as a third party beneficiary. On May 20, 2015<sup>iv</sup>, Florida's Fourth District Court of Appeal published its opinion in three cases leaving no question that the contractor receiving a post-loss assignment of property insurance benefits has the right to legally enforce the provisions of the insurance policy.

Each of the cases before the Fourth and Fifth District Courts of Appeal share a common theme. In each case the assignee is a contractor providing emergency cleanup and construction services shortly after the insured sustained a loss to insured property. In each case the contract for services signed by the insured contained a provision assigning benefits of the insurance policy to the contractor. Perhaps most notably, in each case the contractor filed suit directly against the insurer to enforce payment to the contractor as a third party beneficiary to the insurance contract.



Property insurers in Florida are facing increasing costs associated with claims of an emergency nature, particularly water losses. Citizens Property Insurance Corporation recently announced that water claims, mostly stemming from broken residential water pipes, accounted for more than half of every premium dollar paid by policyholders in the Miami area. According to Barry Gilway, President and CEO of Citizens, “One in eight Miami-Dade policyholders filed a water damage claim last year, compared with one in 12 two years before.”

In addition to the increase in losses of an emergency nature, especially water-loss claims, Citizens and other property insurers are facing an increase in the number of lawsuits originating from those claims. In a recent Florida Legislative committee workshop in Tallahassee, critics charged that plumbers who respond to household emergencies are given finder's fees for recommending homeowners contact water loss restoration companies. Those companies in turn require homeowners to sign over benefits of their insurance policies before commencing work, then file lawsuits against the property insurer for inflated claims.

### **The Problem**

The abuse of an assignment of insurance benefits to a dishonest or disreputable emergency services contractor is not the sole cause of the rise in claims and litigation for residential water losses. Other factors such as the practice of paying referral fees paid to plumbers, fraudulent losses, and inflated bills by emergency services providers are cited by the insurance industry. The right to assign the benefits of a property insurance policy is providing the dishonest or disreputable emergency services contractor unhindered access to the courts and the right to enforce its demand for payment.

How has this become a problem? Personal testimonials from an officer of a major property insurer and a prominent property insurance agent – each of whom experienced a sudden water loss in their home – explained the policyholders’ emotional vulnerability immediately following a property loss. Even for these two professionals, completely familiar with the terms of their insurance policy and their duties after a loss, the ability to calmly assess a reasonable course of action “flew out the window.” It is this vulnerability and the need for immediate action



to prevent further loss and damage that is exploited by dishonest and disreputable emergency services providers.

The abuse of the assignment of property insurance benefits by emergency service providers is based on several aspects of the transaction.

- The assignment of benefits is made without the knowledge of the insurer.
- The scope of work to be performed by the emergency services contractor, as set forth in the contract containing the assignment of benefits provision, is not specifically set forth in the agreement. The policyholder often agrees to an assignment of benefits without knowing the amount of benefits ultimately assigned.
- The scope of work to be performed by the emergency services contractor, as set forth in the contract containing the assignment of benefits provision, is agreed to by the policyholder without an understanding of the extent of coverage available from the insurance policy.
- The contract for emergency services is often vague or over-broad in the description of services to be performed, leaving the dishonest or unscrupulous emergency services contractor free to perform unnecessary services.
- The contract for emergency services is often vague as to pricing of services, equipment, and supplies, allowing the emergency services contractor to charge excessive amounts for services provided before an insurance adjuster has the opportunity to inspect the loss and evaluate necessary work.
- The policyholder is generally unaware of the policyholders' contractual responsibilities following a loss to property and may rely on inaccurate information provided by the emergency services contractor.
- The policyholder is generally unaware of the extent of coverage available following a loss to property, including additional coverage provided for debris removal and emergency services.
- The policyholder is often emotionally vulnerable immediately following a property loss requiring emergency help.



- Although the policyholder may promptly report the property loss to the insurer, an emergency services contractor will invariably communicate with the policyholder and physically inspect the loss before the insurance company adjuster.
- The contract for emergency services is often overbroad in the description of services to be provided. The policyholder, who is unfamiliar with contractual language and the effect of an assignment of benefits, is often emotionally vulnerable.

### **Solution: How Do We Fix It**

- Cap amount of assignment of benefits in some amount – limit the dollar amount of benefits assigned or limit the assignment to a percentage of coverage afforded by the insurance policy. The mitigation work to be performed will vary depending on the severity of the loss and the value of the damaged property. It can be safely presumed that the value of the insured property is reflected in the policy limits as insurers require the property to be insured to value. By expressing the limitation of the assignment of benefits as a percentage of policy limits rather than a fixed dollar amount, the work performed on high-value property is taken into consideration.
- Subject any work performed in connection with a property insurance claim to a statutory right of rescission.
- The recurring complaints associated with the assignment of benefits for work performed in connection with property insurance claims arise from emergency services – mitigation of property damage. The scope and cost of work to be performed must be clearly stated before the work is to be performed.
- The insurer must be involved in ongoing work; work that is performed beyond what is immediately necessary to mitigate property damage.
- Requirement for ratification after the insurer inspects before further work.

A bill recently introduced by Senator Hukill<sup>v</sup> addressed the elements of this paper. The bill recognizes the right to assign the benefits of a property insurance policy and while providing limitations on the scope of the assignment. The bill proposes to limit the amount of the benefits



assigned<sup>1</sup>. The service provider is authorized to be named as a payee on payment for services performed to mitigate or repair covered damage if:

- The assignment is provided to the insurer within three business days,
- An estimate for proposed services and materials is provided,
- The insured is allowed to cancel the agreement within three business days.

Senator Hukill's bill also provides important safeguards to the insured. Agreements purporting to assign benefits are void if certain fees are included, the final invoice exceeds the amount of the written estimate<sup>2</sup>, purports to assign the right to enforce payment of benefits, or attempts to transfer the right or authority to control the insurance claim<sup>3</sup>.

### Conclusion

- Assignment of benefits is beneficial to policyholder.
- Assignment of benefits is subject to abuse
- Assignment of benefits should be regulated.

Senate Bill 596 addresses the concerns identified in the Florida Symposium on Assignment of Property Insurance Claim Benefits in a measured and considered approach.

**Respectfully submitted by:**

**The Council of Property Claim Professionals**

### Works Cited

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<sup>i</sup> The Council of Property Claim Professionals is [need mission statement and details]

<sup>ii</sup> *West Florida Grocery Co., et al. v. Teutonia Fire Ins. Co.*, 74 Fla. 220 (1917)

<sup>iii</sup> *Accident Cleaners, Inc., A/A/O Joseph Gerena v. universal Ins. Co*

<sup>iv</sup> *One Call Prop. Servs. v. Sec. First Ins. Co.*, [No. 4D14-424 \(Fla. 4th DCA May 20, 2015\)](#); *ASAP Rest. & Const., Inc. v. Tower Hill Signature Ins. Co.*, 2015 WL 2393302 (Fla. 4th DCA May 20, 2015); *Emergency Services 24, Inc. v. United Property & Cas. Ins. Co.*, 2015 WL 2393357 (Fla. 4th DCA May 20, 2015).

<sup>v</sup> Senate Bill 596, "An act relating to assignment or transfer of property insurance rights; creating s. 627.70133..."

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<sup>1</sup> The bill limits the amount of assignment of benefits to \$2,500.

<sup>2</sup> Unless the insurer authorizes the increase in cost.

<sup>3</sup> "It purports to transfer or create any authority to adjust, negotiate, or settle any portion of a claim to a person or entity who is not authorized to adjust, negotiate, or settle a claim on behalf of the insured or claimant under part VI of chapter 626," The authority and responsibility of insurance adjusters acting on behalf of the insurer or the insured are protected.

