

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SECURITY FIRST INSURANCE
COMPANY,

CASE No.: 1D14-1864
L.T. No.: 2013-CA-3541

Appellant,

v.

FLORIDA OFFICE OF INSURANCE
REGULATION,

Appellee.

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF
OF FLORIDA PROPERTY & CASUALTY ASSOCIATION, FLORIDA
ASSOCIATION OF INSURANCE AGENTS, INC., AND PROPERTY
CASUALTY INSURERS ASSOCIATION OF AMERICA, INC.
IN SUPPORT OF APPELLANT SECURITY FIRST INSURANCE COMPANY'S
MOTIONS FOR REHEARING AND CERTIFICATION

Pursuant to Florida Rules of Appellate Procedure 9.370 and 9.300, the Florida Property and Casualty Association, the Property and Casualty Insurers Association of America, and the Florida Association of Insurance Agents respectfully seek leave to file an amicus curiae brief in support of Appellant's petition for rehearing en banc and/or for a certified question because this case is of exceptional importance to the amici and insurers and citizens that purchase property insurance in the State of Florida, and in support shows the following:

1. The Florida Property and Casualty Association is an industry trade group comprised of Florida-based insurance companies that collectively represents approximately 40% of all domestic homeowners insurance written in this state. The Property and Casualty Insurers Association of America is a non-profit, national trade association that speaks for approximately 40% of the property casualty insurance written nationwide. The Florida Association of Insurance Agents is a non-profit, statewide trade association of independent insurance agencies representing the over two thousand member insurance agencies and over twenty thousand licensed insurance agents, writing primarily property insurance.

2. The undersigned amici recognize that assignment of loss benefits is a significant and growing problem affecting insurers that will adversely affect millions of Florida policyholders by placing upward pressure on premium rates to the great profit of unscrupulous contractors and lawyers that promote these assignments as a means to inflate losses and generate litigation fees.

3. There is an expanding union of contractors and their privies that have turned into big business the process of acquiring an insured's ability to sue and collect legal fees via the assignment and using these acquired rights to force insurers to either pay grossly inflated remediation costs or face even higher litigation costs. The potential growth of this market seems limitless—prior to 2004,

lawsuits over assignments were almost nonexistent and lawsuits filed against Florida property insurers have skyrocketed to more than 92,500 in 2013-2014.

4. The Appellant attempted to address this problem by proposing the policy language at issue, which was rejected by the Florida Office of Insurance Regulation (“OIR”) as “misleading,” even though the language is undeniably plain, unambiguous, and consistent with the public policy of this state as established by the Florida Legislature. More importantly from the viewpoint of the amici, the decision will have sweeping, harmful effects on the insurance industry from the perspective of both insurers doing business in Florida and their policyholders.

5. The proposed brief submitted by the undersigned amici, will address how the panel’s decision interferes with the insurers’ ability to accurately underwrite risk because it deprives them of the ability to control who will ultimately seek to collect policy benefits. The risk changes when loss benefits are assigned to contractors financially incentivized and positioned to expand the scope and cost of losses in contrast to the policyholders who wish to minimize their loss and be restored to their pre-loss condition. The change of risk to the assignees’ profit-based motivations that differ from those of policyholders, leads directly to substantial increases in costs per claim and indirectly to artificially high premiums.

6. Additionally, the panel's decision creates a significant and unnecessary obstacle to the freedom to contract in Florida, precludes insurers from offering and policyholders from accepting, insurance contracts that restrict post-loss assignability of benefits in exchange for reduced premiums and or increased coverage. It is no exaggeration to say that the statutes at issue, which prescribe the OIR's duty to police insurance policy terms for the intuitive purpose of protecting consumers, have been construed by the OIR here in a manner that causes consumers measurable harm and deprives them of the very freedoms the OIR sought to preserve by disallowing the anti-assignment policy language.

7. Finally, the panel's decision expands the OIR's authority in a way that is irreconcilable with the relevant statute, by sanctioning the OIR's conclusion that a proposed provision "misleading" and unenforceable even though the provision was plain, unambiguous, and consistent with Florida statutes. Implementation of the panel's decision creates an additional, judge-made category of authority for the OIR to reject proposed provisions that is irreconcilable with the enabling statutes because it departs from their plain language and renders a subsection within the same statute superfluous and nugatory.

8. Since the panel's decision will have a series of significant, resoundingly adverse consequences for insurers, policyholders, and the insurance

market in the State, the undersigned amici have a substantial interest in this Court's consideration of the motions for rehearing of the panel decision and certification.

9. The undersigned amici are uniquely situated to assist this Court in understanding the far reaching effects the panel's decision will have on Florida insurers and citizens who purchase property insurance. Data clearly demonstrate that the number of claims assigned every year is rapidly increasing and that claims that have been assigned cost insurers significantly more. Moreover, the transfer of benefits dramatically increases the risk to insurers for the simple reason that assignees have different and less savory motivations than policyholders. The panel's decision is an unjustified burden on the freedom of contract—insurers will pass along the cost of negative experience to policyholders and policyholders are precluded from “opting out” of the negative experience caused by these assignments. Insurers must ultimately factor the negative loss cost experience into their rates, leading to upward pressure on those rates. Ultimately premiums reflect loss experience. The undersigned amici, therefore, believe that the Court will benefit from their amicus curiae brief.

10. The undersigned have conferred with counsel for the parties and are authorized to represent that the Appellant consents to the relief requested in this motion but that the OIR opposes the appearance of and any related brief from the

amici. Notwithstanding the OIR's opposition, the amici believe their contribution will be helpful to the Court; accordingly, and for the foregoing reasons, the undersigned respectfully request leave to submit the amicus curiae brief in accordance with Rule 9.370 of the Florida Rules of Appellate Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been served electronically to the following on this 6th day of August, 2015:

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