DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

CASE NO. 1D14-1864

Lower Case No. 149960-14

Security First Insurance Company,

Appellant,

v.

State of Florida, Office of Insurance Regulation,

Appellee.

_____/

APPELLANT'S INITIAL BRIEF

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INTRODUCTION

The Appellant, Security First Insurance Company, was the Petitioner below at the informal hearing held pursuant to section 120.57(2), Fla. Stat., before the Florida Office of Insurance Regulation. In this Brief, the parties will be referred to as "Security First" and "OIR", and alternatively, as "insurer" and "agency". The symbol "R." refers to the record on review, and "Tr." refers to the transcript from the hearing below, which is also part of the record on review.

STATEMENT OF THE CASE

This appeal arises from the disapproval by the Florida Office of Insurance Regulation of Security First's proposed policy language concerning the assignability of its policy, as follows:

> E. Assignment
>
> Assignment of this policy or any benefit or post-loss right will not be valid unless we give our written consent.

[R. 000018].

On June 24, 2013, Security First filed for approval a proposed endorsement form to its already approved policy form, which sought to modify Security First's general policy provision concerning the assignability of its policy. [R. 000123].

On July 22, 2013, OIR notified Security First that the proposed form endorsement was disapproved because it "violates the intent and meaning of Sections 627.411(1)(a), 627.411(1)(b), and 627.411(1)(e), Florida Statutes." OIR also asserted that the endorsement "contains language prohibiting the assignment of a post loss claim under the policy, which is contrary to Florida law." [R. 000123-4; 000161].

Pursuant to section 120.57(2), Fla. Stat., OIR determined there were no issues of disputed facts, and appointed a Hearing Officer from within the agency to preside over an informal proceeding, held on December 11-12, 2013. [R. 000119].

On March 6, 2014, the Hearing Officer issued a "Written Report and Recommendation", upholding OIR's disapproval of Security First's proposed form filings, since the language "would be misleading", pursuant to section 627.411(1)(b), Fla. Stat., because it "would be contrary to well-established case law . . . ." [R. 000130-1]. On April 15, 2014, a Final Order was entered adopting the Hearing Officer's Findings of Facts and Conclusions of Law. [R. 000114-000134]. This timely appeal followed.

STATEMENT OF THE FACTS

At the informal hearing, Security First presented undisputed testimony and evidence to support its reasons for the proposed endorsement in its policy, restricting an insured's ability to assign any benefit or post-loss right, without the written consent of Security First. This evidence clearly showed the increasing trend of fraud surrounding the use of an "assignment of benefits" by vendors who provide services to insureds after a property loss. [R. 000125]. The use of an "assignment of benefits" was fast becoming a significant cost driver for Security First, and for other Florida insurers. [Tr., pp. 32-3; 93].

The typical scenario surrounding the use of an "assignment of benefits" involved vendors and contractors, mostly water remediation companies, who were called by an insured immediately after a loss to perform emergency remediation services, such as water extraction. [Tr., p. 26]. The vendor came to the insured's

home and, before performing any work, required the insured sign an "assignment of benefits"—when the insured would be most vulnerable to fraud and price-gouging. [Tr., pp. 27; 43-434; 156-7]. Vendors advised the insured, "We'll take care of everything for you." [Tr., pp. 92-3; 130; 163]. The vendor submitted its bill to the insurer that was, on average, nearly 30% higher than comparative estimates from vendors without an assignment of benefits. [Tr., pp. 30; 94-5; 285]. Some vendors added to the invoice an additional 20% for "overhead and profit", even though a general contractor would not be required or hired to oversee the work. [Tr., p. 96]. Vendors used these inflated invoices to extract higher settlements from insurers. This, in turn, significantly increased litigation over the vendors' invoices. [Tr., pp. 29-31; 96-7].

Meanwhile, insureds, who may have suffered other property damages from the loss, did not realize that they irrevocably assigned to the vendor/assignee "all rights, damages, indemnity and/or any interest in any monies payable by my home-owner's insurance company. . . [and any rights] . . . to pursue any claims, demands, suits and any legal action" against the insurer. [Tr., pp. 37-8; 277; 282; R. 000349; *see also,* R. 000350-52].

Security First, and other insurers were, and are, being forced to adjust losses and litigate with new entities, with whom the insurers did not contract. [Tr., p. 104]. These new "assignees" have a completely different profit-driven motivation

than the insured's motive to promptly repair and restore damaged property. [Tr., p. 154]. Moreover, these new assignees "step in the shoes" of the insured, but have no obligation to comply with the contractual terms agreed to by the original parties—essentially creating a whole new playing field for the insurer—and materially affecting the risk the insurer assumed when it issued the policy. [Tr., pp. 61-2; 109; 155-6].

Robin Westcott, formerly the Florida Insurance Consumer Advocate, testified that abuses surrounding "assignment of benefits" has become an increasing trend (and recurring problem) for insurance consumers. [Tr., pp. 283-5]. Ms. Westcott acknowledged an abusive and exploitive "network", including attorneys, who conducted seminars for vendors and contractors and advocate how to obtain assignments of benefits to increase profit margins by 30 percent. [Tr., pp. 185; 285; *see also*, Tr., pp. 32-3]. Many insureds were not even aware that by signing an "assignment of benefits" to a third party, they would lose total control over their insurance claim, including the ability to promptly resolve their claim directly with their insurance company. [Tr., pp. 37; 98-9; 282; 287-8]. Some vendors even threatened to lien the insured's home if they refused to sign an assignment of benefits. [Tr., p. 286; R. 000354].

The undisputed testimony and evidence clearly showed the impact of this "cottage industry" of vendors, contractors and attorneys, using assignments of

benefits and the threat of litigation, in order to extract higher payments from insurers. [R. 000125]. All of this results in an increased risk to Security First (which was not part of the original contract with an insured), an increase in claims, administrative costs and litigation expenses, which in turn, results in increased insurance premiums for the consumer. [Tr., pp. 130-131].

OIR did not dispute any of the evidence presented by Security First.[1] OIR presented the testimony of Sandra Starnes, the Director of the Division of Property Casualty Product Review, and the OIR employee who disapproved Security First's proposed form endorsement. [Tr., pp. 297-8; 305]. Ms. Starnes acknowledged that "we've heard that there's a lot of fraud out there in regards to this issue." [Tr., p. 311]. However, Ms. Starnes stated that the issue of possible fraud did not authorize OIR to approve the proposed endorsement. [Tr., pp. 311-2]. Ms. Starnes further testified that she was advised by OIR's legal advisers that OIR could not approve the proposed endorsement because, in their opinion, it violated Florida case law. [Tr., p. 309]. Ms. Starnes was given three Florida cases as OIR's "grounds for disapproving" the proposed endorsement, which she then referenced in her correspondence to Security First. [Tr., pp. 303-4; 324; R. 000145; R. 000150]. She was unable to articulate any specific provision of the Florida statute,

[1] The Hearing Officer's Report and Recommendation, adopted in full by the Insurance Commissioner, found that "Security First presented compelling testimony that assignments of benefits are increasingly being used in the industry to perpetrate fraud, which [OIR] did not dispute." [R. 000127].

rule, or provision of the Insurance Code that was violated by the proposed endorsement. [Tr., pp. 323-4].

At the hearing, OIR's counsel admitted that the endorsement was disapproved because "we just simply think the Florida case law does not allow it." [Tr., pp. 19-20]. OIR presented no further evidence to support the basis for its denial of the proposed form endorsement.

SUMMARY OF THE ARGUMENT

OIR's rejection of Security First's proposed policy language infringes upon an insurer's statutory right to restrict the assignability of its policy (and the benefits thereunder), and its legitimate interest in minimizing future losses attributable to fraud. Section 627.422, Fla. Stat., expressly authorizes a carrier to restrict the assignability of its policy—"*as provided by its terms*." The policy language proposed by Security First is consistent with Florida law, does not violate any provision of the Florida Insurance Code, nor is it misleading.

OIR's disapproval of the proposed policy language is based on an erroneous interpretation of Florida decisional case law, concerning no-assignment clauses in an insurance policy. The policy provisions construed in the cases relied upon by OIR were clearly distinguished from the language proposed by Security First. Although OIR asserted such a provision is "contrary to Florida law", no Florida case has held an insurer is ***prohibited*** from including in its policy a provision restricting an insured's assignment of benefits or post-loss rights, without the insurer's consent. Nor is there any provision in the Florida Insurance Code that prohibits an insurer from including such language in its policy.

Additionally, OIR exceeded its statutory authority when it disapproved Security First's proposed policy endorsement based on Florida decisional case law, and not on a violation of any provision of the Florida Insurance Code, or an

administrative rule. In any event, OIR erroneously interpreted the cases relied upon to disapprove Security First's proposed policy language. A correct interpretation of the Florida law requires this court reverse OIR's Final Order and remand with directions to OIR to approve the proposed endorsement.

STANDARD OF REVIEW

OIR's disapproval of Security First's proposed policy endorsement is based on an erroneous interpretation and application of Florida case law. "The standard of review of an agency decision based upon an issue of law is whether the agency erroneously interpreted the law and, if so, whether a correct interpretation compels a particular action." *See Florida Hospital v. Agency for Health Care Administration*, 823 So. 2d 844, 847 (Fla. 1st DCA 2002). This court's review of OIR's conclusions of law is *de novo*. *See Wise v. Dept. of Mgmt. Servs., Division of Retirement*, 930 So. 2d 867 (Fla. 2d DCA 2006). Moreover, no deference is given to an agency's conclusions of law. *See M.H. v. Dep't. of Children & Family Servs.*, 977 So. 2d 755, 759 (Fla. 2d DCA 2008).

ARGUMENT

THE OIR ERRONEOUSLY REJECTED SECURITY FIRST'S PROPOSED POLICY LANGUAGE REQUIRING AN INSURER'S WRITTEN CONSENT TO AN INSURED'S "ASSIGNMENT OF THIS POLICY OR ANY BENEFIT OR POST-LOSS RIGHT".

A. Security First's proposed policy form is consistent with Florida law.

OIR erroneously disapproved Security First's proposed endorsement requiring the insurer's written consent to an insured's "assignment of this policy or any benefit or post-loss right". The restriction was intended to prevent an increase of risk and hazard of loss by a change of ownership of the policy, or any rights thereunder, without the consent of the insurer.

This restriction on assignability is consistent with Florida law, which has a strong public policy favoring freedom of contract. *See Green v. Life & Health of America*, 704 So. 2d 1386 (Fla. 1998), wherein the Florida Supreme Court held:

> Assuming compliance with a standard form and the absence of conflict with statutes, the parties to a contract of insurance are free to incorporate such provisions and conditions as they desire.

Id. at 1390-91 (*citation omitted*); *see also, Bituminous Cas. Co. v. Williams*, 154 Fla. 191 (1944) ("[I]t is a matter of great public concern that freedom of contract not be lightly interfered with.").

Florida statutory law expressly provides that the terms of an insurance policy determine its assignability. Section 627.422, Fla. Stat., enacted in 1956, provides:

> **Assignment of policies.—**A policy may be assignable, or not assignable, as provided by its terms.

The right to assign a policy (or the restriction against an assignment of a policy) necessarily encompasses the assignment of benefits and post-loss rights thereunder.[2] Thus, the plain language of the statute allows an insurer the option of restricting the assignability of its policy—with no qualification prohibiting a property and casualty insurer from restricting certain types of contractual rights or interests.

In 1959, the Legislature further codified Florida's policy favoring an insurer's freedom to contract when it enacted section 627.414, Fla. Stat., which provides:

> **Additional policy contents.**—A policy may contain additional provisions not inconsistent with this code and which are:
>
> * * *
>
> (3) Desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included therein.

---

[2] The Florida Supreme Court has defined an assignment as,

> 'a transfer or setting over of property, ***or of some right or interest therein***, from one person to another (internal citation omitted). Essentially, it is the 'voluntary act of ***transferring an interest***.' (*citations omitted*).

See Cont'l Cas. Co. v. Ryan Inc. E., 974 So. 2d 368, 376 (Fla. 2008) (*emphasis added*).

See Laws 1959, c. 59-205, §463.

In the leading case of *Lexington Ins. Co. v. Simkins Industries, Inc*., 704 So. 2d 1384 (Fla. 1998), the Florida Supreme Court upheld an insurer's right to contractually restrict the assignability of its policy, *and any rights and duties thereunder*. The court recognized "the purpose of a provision prohibiting assignment is simple—to protect an insurer against unbargained-for risks." *Id.* at 1386. The court did not address the specific issue of construing a policy provision that expressly restricted the assignment of benefits or post-loss rights, nor did the court express whether public policy prohibited the inclusion of such a provision. The court concluded, however, that the restriction was valid:

> [B]ased on the unambiguous language of [s. 627.422, Fla. Stat.] and the policy, we hold that *the policy's nonassignment clauses are dispositive* and [the insured's] purported assignment of the policy was ineffective.

Id. at 1386 (*emphasis added*). In so ruling, the Florida Supreme Court thus upheld *Classic Concepts, Inc. v. Poland*, 570 So. 2d. 311 (Fla. 4th DCA 1990), wherein the Fourth District held,

> *[A]ll contractual rights are assignable unless the contract prohibits the assignment*, the contract involves obligations of a personal nature, or public policy dictates against assignment. . . [*citations omitted*]. . . Section 627.422, Florida Statutes (1989) provides that an insurer has the option of requiring or not requiring its consent to an assignment.

Id. at 313 (*emphasis added*). Both *Lexington* and *Classic Concepts* support Florida's strong public policy favoring freedom of contract and, more particularly, an insurer's right to protect itself against unbargained-for risks. *See, e.g.*, *DeCespedes v. Prudence Mutual Cas. Co. of Chicago, Illinois*, 193 So. 2d 224 (Fla 3d DCA 1967) ("Assignments under certain circumstances are to be discouraged, in that they may encourage the presence of officious meddlers who are anxious to volunteer and stimulate litigation.").

Security First presented undisputed and "compelling" testimony and evidence of the "cottage industry" surrounding the fraudulent use of "assignment of benefits", which has resulted in an increased risk and hazard of loss for an insurer. Without such restriction, Security First is being required to defend two separate lawsuits seeking to recover the same insurance claim—one filed by the policyholder and one filed by the purported assignee of benefits—thus imposing additional costs and possibly leading to inconsistent results.

Security First has a legitimate interest in minimizing future losses attributable to potential fraud. Even with such a restriction, the insured still retains the full right to promptly negotiate his own claim, institute suit against the insurer, and may also direct the insurer to pay any determined settlement proceeds under the policy to a third party, without a general assignment of the policy and all benefits and post-loss rights under the policy.

The proposed endorsement is not in derogation of any expressed public policy of this state. No Florida statute expressly prohibits an insurer from issuing a policy that restricts an insured from assigning any benefits or post-loss rights thereunder, without the insurer's written consent. Nor has OIR promulgated any rule prohibiting an insurer from including such restrictions in its policy. Moreover, no Florida case has held that an insurer is prohibited from including language in its policy that restricts the assignment of any benefits or post-loss rights under a policy of insurance.

OIR relied primarily on its interpretation of three cases to support its reason for disapproving Security First's proposed endorsement. In the 1917 case of *West Florida Grocery Co. v. Teutonia Fire Ins. Co.*, 74 Fla. 220, 77 So. 209 (Fla. 1917), the court did not construe policy language restricting the assignment of benefits or post-loss rights. There, the insurer had already settled the claim and filed an interpleader action, depositing the insurance proceeds into court. A creditor raised the issue of non assignability, but the court held that the insurer had waived its right to object to the assignment, by interpleading. *Id.* at 225; 211. The court never construed any policy language and did not express any public policy *prohibiting* an insurer from restricting the assignment of benefits or post-loss rights by express terms in its policy. Moreover, *Teutonia* was decided before the

Legislature codified an insurer's right to restrict the assignment of its policy—*by its terms*.

Gisela Investments, v. Liberty Mutual Ins. Co., 452 So. 2d 1056 (Fla. 3d DCA 1984), also relied on by OIR, held that a provision in a policy which "prohibits assignment thereof" did not apply to prevent the assignment of "money then due, after loss." *Id.* at 1057. The case sets forth no facts, nor does the opinion reference the policy provision being construed. This case, therefore, is not instructive here and, like *Teutonia*, the court did not express any public policy *prohibiting* an insurer from restricting the assignment of benefits or post-loss rights by express terms in its policy.

And, in *Better Construction, Inc. v. National Union Fire Ins. Co. of Pittsburgh*, 651 So. 2d 141 (Fla. 3d DCA 1995), the Third District Court of Appeal cites to *Teutonia* and *Gisela*, but likewise does not reference any policy language, nor does the court express a public policy prohibiting restrictions on the assignment of post-loss rights or benefits. More importantly, the court in *Better Construction* held that the insurer may have waived its no-assignment clause when the insurer paid the assignee the settlement amount, without reserving its rights to assert the no-assignment provision. *Id.* at 141.

If there is a public policy under Florida law against the incorporation of provisions restricting the assignment of benefits or post-loss rights under an

insurance policy, the law must expressly state so. The public policy of this state, as expressed by the Legislature, is to allow an insurer the right to restrict the assignability of its policy, which necessarily includes any rights or benefits thereunder. None of the Florida cases relied on by OIR have asserted express language to support a "public policy" prohibiting an insurer from contractually restricting an insured's assignment of benefits and post-loss rights, absent its consent.

Florida appellate courts, in fact, have upheld contractual restrictions against the assignment of benefits, due under a contract, as valid and enforceable. *See, e.g., Rapid Settlements, Ltd. v. Dickerson*, 941 So. 2d 1275 (Fla. 4th DCA 2006) (holding that where the contract prohibits the assignment of the right to receive payments due, it will be enforced); *and also, Troup v. Meyer*, 116 So. 2d 467 (Fla. 3d DCA 1959) (upholding a restriction against the assignment of proceeds, due under the contract, since the contract by express language prohibited such assignment).

The Louisiana Supreme Court was recently confronted with this specific issue in *In Re: Katrina Canal Breaches Litig.*, 63 So. 3d 955 (La. 2011). Louisiana, like Florida, has statutory authority that codifies contracting parties' freedom to restrict the assignability of contract rights. The court held:

> There is no public policy in Louisiana which precludes an anti-assignment clause from applying to post-loss

> assignments. However, the language of the anti-assignment clause must clearly and unambiguously express that it applies to post-loss assignments.

Id. at 964. Although the Louisiana Supreme Court did not review the language in the policies before the court,[3] the court concluded that under Louisiana statutory law, an insurance policy <u>*could*</u> restrict such assignments—*by its express terms*—provided the language of the anti-assignment clause clearly and unambiguously expresses that it applies to post-loss assignments. *Id.* at 963.

Florida likewise holds that a court will enforce insurance policy provisions that clearly and unambiguously (1) preclude assignment, or (2) require the insurer's permission before an assignment is made. *See Kohl v. Blue Cross and Blue Shield of Florida, Inc*., 955 So. 2d 1140, 1143 (Fla. 4th DCA 2007) (*citing Classic Concepts, Inc*., 570 So. 2d at 311).

Insurers are entitled to limit their liability and to impose reasonable conditions upon the policy obligations, absent a conflict with statutory provisions or public policy. Security First's proposed endorsement is consistent with Florida law that expressly authorizes an insurance policy—or any benefits or post-loss rights due thereunder—may be assignable, or not assignable, as provided by its terms.

[3] The court left that task to the federal district court to evaluate the relevant assignment clauses on a policy-by-policy basis to determine whether the language was sufficient to prohibit post-loss assignments. *Id.* at 963-4.

B. The OIR exceeded its statutory authority when it disapproved Security First's proposed policy language for assignment of policies based on OIR's interpretation of Florida case law.

The OIR did not disapprove Security First's proposed endorsement based on a violation of any specific statute within the Florida Insurance Code, a violation of a promulgated administrative rule, or against public policy. Rather, the sole reason for disapproving Security First's proposed endorsement was based on the agency's interpretation of Florida decisional case law.[4] Notwithstanding, OIR cannot disapprove endorsement forms without authority to do so. *See e.g., State of Florida v. Board of Business Regulation*, 304 So. 2d 473 (Fla. 1st DCA 1974), holding that an administrative agency exceeded its statutory authority by suspending or revoking licenses or permits on grounds not specified in the statute as the reason for suspension.

Section 627.411(1), Fla. Stat., grants specific statutory authority to OIR to disapprove a proposed policy form *only* for certain enumerated reasons. The statute provides:

> **627.411 Grounds for disapproval.—**

[4] OIR initially disapproved Security First's proposed endorsement pursuant to section 627.411(1)(a), (b) and (e), and Florida case law. [R. 000150]. However, the only basis upheld by the Hearing Officer, and adopted and accepted by the Insurance Commissioner, for disapproving the proposed form was limited to only subsection (1)(b), Fla. Stat. [R. 000130-1 (¶¶ 20-22)]. OIR contends the language is "misleading" because it is purportedly contrary to Florida case law.

> (1) The office shall disapprove any form filed under s. 627.410, or withdraw any previous approval thereof, *only if the form*:
>
> (a) Is in any respect in violation of, or does not comply with, this code.
>
> (b) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
>
> (c) Has any title, heading, or other indication of its provisions which is misleading.
>
> (d) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.
>
> (e) Is for residential property insurance and contains provisions that are unfair or inequitable or encourage misrepresentation.

(*Emphasis supplied*). OIR attempts to disguise its disapproval of Security First's proposed endorsement based only on a "statutory interpretation" of 627.411(1)(b), which authorizes the agency to disapprove forms that contain "misleading clauses". OIR, however, did not interpret the meaning of (1)(b), nor did OIR assert how the endorsement, on its face, was misleading. The Hearing Officer stated the proposed endorsement was "misleading" because it "would be contrary to well-established case law " (R. 000130), and undertook a "review of the case law" (R. 000127, ¶13; ¶14):

> 20. *Thus, it appears* that restrictions such as the one contained in the Assignment Endorsement *would be contrary to well-established case law* that post-loss insurance claims are freely assignable without the consent of the insurer." *Ifergane*, 114 So. 3d at 195.
>
> 21. . . . [*T]his renders* the Assignment Endorsement misleading . . . .
>
> 22. . . . The incorporation of such a restriction on assignments of post-loss rights in an insurance policy would be misleading as it would lead the policyholder to believe that the validity of such assignment was contingent upon the written consent of the insurer, *contrary to Florida law*.

[*Emphasis supplied*].

No Florida case expressly prohibits an insurer from incorporating clear and unambiguous language in its policy restricting an insured from assigning "any benefit or post-loss right" without the insurer's consent. The cases relied on by OIR are inapplicable since not one case interpreted policy language that clearly and unambiguously restricted the assignment of "any benefit or post-loss right".

No Florida case has held that a policy provision, restricting the assignment of a policy or any benefits or post-loss rights, is inherently void. Nor has any Florida case construed a provision, such as the one proposed by Security First, nor held such provision to be contrary to public policy. Notably, the Florida Legislature expressly granted OIR the authority to disapprove a proposed form pertaining to *health insurance*, if the form contains provisions that are "contrary to

the public policy of this state". *See* § 627.411(1)(f), Fla. Stat. OIR, however, does not have such statutory authority to reject a proposed form to a *property and casualty insurance* policy based on "public policy" considerations. *See also, Vocelle v. Knight Bros. Paper Co*., 118 So. 2d 664 (Fla. 1st DCA 1960) (holding that administrative agencies do not have the power to modify the plain language employed in the statutes to bring about what may be conceived in the minds of the administrators to be a more practical or proper result).

OIR admitted in the proceedings below that its decision to disapprove the endorsement was based solely on OIR's interpretation of Florida case law. The Florida Legislature delegated OIR the statutory authority to reject property and casualty insurance policy forms that violate the Florida Insurance Code, but granted no such authority to OIR to reject a proposed policy form based on the agency's interpretation of Florida case law, or based on "public policy" considerations.[5] OIR's disapproval of Security First's proposed endorsement, therefore, is not justified.

[5] A determination of whether or not a provision in an insurance policy is void against public policy is within the purview of the Florida Legislature, when enacting law, or as mandated by the Florida courts, when confronted with construing such policy provisions. OIR, however, is confined to act only within the express grant of its statutory authority.

CONCLUSION

Security First's proposed form endorsement clearly and unambiguously restricts the assignment of "this policy or any benefit or post-loss right" without the insurer's consent, and does not violate any Florida law. No Florida statute, administrative rule, or court has expressed any public policy *prohibiting* an insurer from restricting the assignment of benefits and post-loss rights by express terms in its policy. The Florida Legislature did not empower OIR with authority to disapprove a proposed policy form based on the agency's interpretation of Florida case law—much less, how the agency *predicts* the Florida courts *might construe* such language. This court should quash OIR's Final Order disapproving Security First's proposed endorsements filed with OIR on June 24, 2013, and further direct OIR to enter a Final Order approving the endorsements.

CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

Undersigned counsel hereby respectfully certifies that the foregoing Initial Brief complies with Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14 Point.

By: */s/ Amy L. Koltnow*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic filing to: **GENERAL COUNSEL,** acting as the Agency Clerk**,** at 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333, **THE HONORABLE ALYSSA LATHROP**, Hearing Officer, Office of Insurance Regulation, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-4206, **PATRICK FLEMING, ESQ**., Office of Insurance Regulation, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399, **BRUCE CULPEPPER, ESQ**., Office of Insurance Regulation, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399, and, on this 4th day of August, 2014.

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