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Same Policy Language and Insurer, Two Different Court Rulings Which District Court of Appeal is right on AOB?

As the Florida legislature continues to grapple with how best to reform well-documented abuses in the Assignment of Benefits (AOB) process in property insurance claims, the courts have weighed-in again against an insurance company. The 5th District Court of Appeal out of Daytona Beach has ruled against ASI Preferred Insurance, saying that its policy language requiring that all insureds approve an AOB is not legal. It's the same appellate court that ruled against Security First Insurance for the same reason in a similar case last December. But the 5th DCA's decision is contrary to one by the 2nd DCA in Lakeland last fall which affirmed ASI's very same policy language. Anyone up for a trip to the Florida Supreme Court?

The policy language in question from [Restoration 1 CFL, LLC v. ASI Preferred Insurance Corporation](#) has this provision: "No assignment of claim benefits, regardless of whether made before loss or after loss, shall be valid without the written consent of all 'insureds', all additional insureds and all mortgagee(s) named in this policy." The trial court had dismissed the breach of contract suit brought by the restoration firm against the insurer who refused to pay the claim, writing "It is not unlawful to require the mortgagee's consent to an assignment of benefits." But the 5th DCA, referencing its December ruling against Security First, wrote "Because here, as in that case, the clause improperly restricts the assignment of post-loss claim benefits, contrary to Florida law, we reverse the dismissal of appellant's (Restoration 1 CFL's) action and remand (to the lower court) for further proceedings."

The protective policy language dates back several years and was designed to provide necessary safeguards against what has since become uncontrolled AOB abuse by third party vendors and their attorneys in Florida. The problem is getting worse, especially in non-weather related water claims. In January 2018, the Florida Office of Insurance Regulation (OIR) released its [2017 Review of Assignment of Benefits \(AOB\) Data Call Report](#). The report states that since 2015, the frequency of water claims has risen 44% and severity of those claims has risen 18%. "The total combined impact of these changes reflect an average 42.1% annual increase in water losses, which is nearly triple the 14.2% average annual increase shown in the previous report," it said.

OIR's past actions resulted in at least six insurance companies being allowed to include the protective policy language in their policies – policies still in effect today. Yet, OIR has since rejected other insurance companies that sought to use the exact same language in their policies. We have been keeping our clients abreast of this matter; for further background please see [AOB Policy Language Limbo Continues](#). For now, we continue to have two separate but unequal regulatory schemes on this practice.