Lisa Miller & Associates
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AOB Policy Language Limbo Continues

But could other language requiring prior appraisal and mediation help stem abuses?

Security First Insurance has lost its bid to have an appeals court re-examine a ruling denying the homeowners insurer use of assignment of benefit policy language currently used by at least six other insurers in the Florida marketplace. The company had sought a review of the decision by the full 5th District Court of Appeal after a three-judge panel ruled against the company, saying the language violated state statutes allowing policyholders to enter into AOB contracts without restrictions. Security First also sought certification of questions to the state Supreme Court "of public interest and importance" from the case, which was also denied in the appeal.

As we reported in the last edition of the LMA Newsletter (*OIR Poised to Eliminate AOB Language Protection*) Security First was denied the use of the language by the Florida Office of Insurance Regulation (OIR), which said it never formally approved the language, after letting it be submitted as an informational filing during OIR's 2013 year of backlogged reviews. The language requires any AOB signed by a policyholder also include signatures of mortgagees and others with an insurable interest. It was designed to provide necessary safeguards against what has since become uncontrolled AOB abuse by third party vendors and their attorneys. We'll watch for any updates on this or future action OIR might take with the existing companies that already have this language in their policies, after OIR's vague answer to the Insurance Journal that "When the Office receives the mandate from the 5th DCA, we will take the appropriate action with other companies."

Meanwhile, there is an interesting development on another court case involving policy language that is holding up in a court of law. Two Miami-Dade Circuit Court judges each tossed out a lawsuit filed by a policyholder against United Property & Casualty Insurance over two separate claims. The judges granted Summary Judgments in favor of the insurer because the policyholder and their law firm failed to participate in mediation or appraisal prior to bringing the lawsuits.

The court referenced that the insured failed to either invoke the mediation or appraisal provisions of the policy, despite a clear contractual post-loss condition in the insurance policy mandating that "[m]ediation or [a]ppraisal is required as a prerequisite before an Insured can file suit related to Section I of this policy regarding the amount of loss." At no time prior to the filing of the lawsuit did the insured participate in mediation or appraisal. Groelle & Salmon represented the company in these cases. It seems to us, here at Lisa Miller & Associates, that this language would help solve the AOB problem as long as OIR approved. If not, putting a requirement in the law would help as it did in Texas for its Texas Windstorm Insurance Association (TWIA). Food for thought friends!