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

SECURITY FIRST INSURANCE COMPANY,

Appellant,

v.

STATE OF FLORIDA, OFFICE OF INSURANCE REGULATION,

Appellee.

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NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D14-1864

Opinion filed October 26, 2015.

An appeal from the Florida Office of Insurance Regulation.
Kevin M. McCarty, Commissioner.

Maria Elena Abate, and Amy L. Koltnow of Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A., Fort Lauderdale, for Appellant.

Belinda Miller, General Counsel, Bruce Culpepper and Patrick Flemming, Assistant General Counsels, Florida Office of Insurance Regulation, Tallahassee, for Appellee.

ON MOTIONS FOR REHEARING AND CERTIFICATION

MAKAR, J.,

Security First Insurance Company asks that we rehear this matter and certify conflict with decisions of the Fourth District[1] on the issue of whether an insured

[1] One Call Prop. Servs., Inc. v. Sec. First Ins. Co., 165 So. 3d 749 (Fla. 4th DCA

may assign post-loss rights under a policy without the insurer's consent. Finding no basis for rehearing and no inconsistency, let alone conflict, with the Fourth District's cases, we deny both motions. See, e.g., One Call Prop. Servs. Inc. v. Sec. First Ins. Co., 165 So. 3d 749, 753 (Fla. 4th DCA 2015) ("Even when an insurance policy contains a provision barring assignment of the policy, an insured may assign a post-loss claim.").

Security First also asks that we certify as a question of great public importance, whether an insurance policy's prohibition of an insured's assignment of "any benefit or post-loss right" without the insurer's consent is "void as contrary to the Florida Statutes or to this state's 'public policy'"? As recounted in our merits opinion, a century of precedents from Florida's courts—including, most recently, the Fourth District in One Call—has said that an insured may assign post-loss rights without the insurer's consent. See, e.g., W. Fla. Grocery Co. v. Teutonia Fire Ins. Co., 74 Fla. 220, 77 So. 209, 210-11 (Fla. 1917). The original basis for this principle is a bit murky, the supreme court in Teutonia Fire simply saying it was a "well-settled rule" without much discussion. Id. at 210. But its vitality has persevered since that time. We recognize that "the failure to certify a question

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2015); Kohl v. Blue Cross & Blue Shield of Fla., Inc., 988 So. 2d 654 (Fla. 4th DCA 2008); Kohl v. Blue Cross & Blue Shield of Fla., Inc., 955 So. 2d 1140 (Fla. 4th DCA 2007); and Classic Concepts, Inc. v. Poland, 570 So. 2d 311 (Fla. 4th DCA 1990).

eliminates this potential basis for the Supreme Court of Florida's jurisdiction," Harry Lee Anstead et. al., The Operation and Jurisdiction of the Supreme Court of Florida, 29 Nova L. Rev. 431, 527 (2005), but we see little indication that supreme court review is warranted given the overall consistency in the precedents.

That said, we note one exception from this well-settled legal principle: health care insurance policies that prohibit insureds from using and assigning post-loss rights or benefits to health care providers outside an insurer's established network. As the Fourth District noted in upholding an anti-assignment provision in a health insurance policy: "[i]f a patient could obtain care from a non-participating [provider] and assign it the patient's right to be reimbursed under a group policy, in the teeth of an anti-assignment clause, this direct payment inducement to become a participating [provider] would be weakened or eliminated." Kohl, 955 So. 2d at 1145 (citation omitted). The court deemed it permissible because the anti-assignment clause had beneficial and important economic ramifications on the provision of health care services through lower-cost provider networks; it was good public policy as reflected in "Florida statutes [that] authorize prohibitions on assignment of both health insurance benefits and health insurance contracts." 955 So. 2d at 1143 (citing § 627.638(2), Fla. Stat. (2005)). The Fourth District recognized that "[p]ublic policy may limit the parties' freedom to incorporate an anti-assignment clause into a contract" but concluded that "public policy favors the

type of anti-assignment clause at issue in this case." Id. at 1144. Security First, like the insurer in Kohl, says that public policy favors the type of limitation it wants to impose on its insureds because the legal principle at issue has had negative consequences for the insurance industry and its insureds in recent years, mostly as to water remediation companies. Nevertheless, it cannot point to a statute, such as the health care ones cited in Kohl, that directly supports such a policy. We again conclude, therefore, that it is for the legislative branch to consider this public policy problem, not the courts, at this juncture. Legislative review provides a more detailed inquiry into the current situation in the industry and greater flexibility in achieving meaningful reforms, if deemed necessary. On the other hand, courts are ill-equipped to pass judgment on the merits of the policy debate at hand, and less likely to be able to formulate a remedy that is mutually beneficial to insureds and insurers. Security First's motions are thereby denied.

RAY and BILBREY, JJ., CONCUR.