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 June 22, 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.

MAKAR, J.,

Security First Insurance Company appeals the decision of Florida's regulatory agency overseeing the insurance industry, the Office of Insurance Regulation ("OIR"), which denied its requests to amend a section of its

homeowner's policies that would restrict the ability of policyholders to assign post-loss rights without the company's consent. We affirm.

Security First is a property and casualty insurance company licensed to transact insurance in Florida. Before delivering or issuing its policy forms, Security First is required by statute to file all forms it intends to use in Florida with the OIR for its approval. It did so on June 24, 2013, filing three proposed forms that would amend the assignment language in its "Homeowner's, Tenant Homeowner's, and Dwelling Fire Insurance" policies. Security First's proposed language said: "Assignment of this policy or any benefit or post-loss right will not be valid unless we give our written consent."

On July 22, 2013, OIR issued notices of disapproval of the changes because they would "violate the intent and meaning of Sections 627.411(1)(a), 627.411(1)(b), and 627.411(1)(e), Florida Statutes[, and] contain[ed] language prohibiting the assignment of a post loss claim under the policy, which is contrary to Florida law." Security First requested an informal hearing, the legal issue being whether post-loss rights under an insurance policy are freely assignable without the consent of the insurer, and in turn, whether OIR erred in disapproving the new language, which required that Security First give written consent for an assignment of post-loss rights.

The hearing officer upheld OIR's decision, reasoning that it was not clearly erroneous because 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." Security First appeals from the final order adopting these findings and conclusions.

The gist of this dispute is whether policyholders might be misled by the proposed change to the policy language, believing that Security First's consent was required for assignment of their post-loss rights, when Florida law holds to the contrary. On this point we find an unbroken string of Florida cases over the past century holding that policyholders have the right to assign such claims without insurer consent. See, e.g., W. Fla. Grocery Co. v. Teutonia Fire Ins. Co., 77 So. 209, 210-11 (Fla. 1917) ("[I]t is a well-settled rule that the provision in a policy relative to the consent of the insurer to the transfer of an interest therein does not apply to an assignment after loss. It is true that the assignment in this case contains the words 'subject to the consent of the [insurance company]' but, as such consent was not necessary to its validity, the condition was superfluous."); see also Lexington Ins. Co. v. Simkins Indus., Inc., 704 So. 2d 1384, 1386 n.3 (Fla. 1998) (insurer conceded "that an insured may assign insurance proceeds to a third party after a loss, even without the consent of the insurer."); One Call Prop. Servs. Inc. v.

Sec. First Ins. Co., 40 Fla. L. Weekly D1196a (Fla. 4th DCA May 29, 2015) ("Even when an insurance policy contains a provision barring assignment of the policy, an insured may assign a post-loss claim.") (collecting cases); Citizens Prop. Ins. Corp. v. Ifergane, 114 So. 3d 190 (Fla. 3d DCA 2012) ("Post loss insurance claims are freely assignable without the consent of the insurer."); Better Constr., Inc. v. Nat'l Union Fire Ins., 651 So. 2d 141, 142 (Fla. 3d DCA 1995) ("[A] provision against assignment of an insurance policy does not bar an insured's assignment of an after-loss claim."). Under our standard of review, OIR did not interpret the law on this issue in error; it got it right. See Fla. Hosp. v. Agency for Health Care Admin., 823 So. 2d 844, 847 (Fla. 1st DCA 2002) ("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."). Affirmance of its order is required.

That said, we are not unmindful of the concerns that Security First expressed in support of its policy change, providing evidence that inflated or fraudulent post-loss claims filed by remediation companies exceeded by thirty percent comparable services; that policyholders may sign away their rights without understanding the implications; and that a "cottage industry" of "vendors, contractors, and attorneys" exists that use the "assignments of benefits and the threat of litigation" to "extract

higher payments from insurers." These concerns, however, are matters of policy that we are ill-suited to address. As the Fourth District recently wrote:

> Turning to the practical implications of this case, we note that this issue boils down to two competing public policy considerations. On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices. On the other side, contractors argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.
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> Our court is not in a position, however, to evaluate these public policy arguments. There is simply insufficient evidence in the record in this case—or in any of the related cases—to decide whether assignments of benefits are significantly increasing the risk to insurers. If studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform.

One Call Prop. Services, 40 Fla. L. Weekly D1196a. We agree with these sentiments, and reiterate that the policy arguments and evidentiary basis for them put forth by Security First are more properly addressed to the Legislature.

AFFIRMED.

RAY and BILBREY, JJ., CONCUR.