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Tenth Circuit Tacitly Approves No-Notice Insured Assignment of Post-Loss Policy Rights

February 6, 2014

On February 6, 2014, a panel of the United States Court of Appeals for the Tenth Circuit reversed and remanded an Order by the United States District Court, Colorado, that granted dismissal of a suit for benefits filed against an insurer by a third party to the insurance contract.

A bank obtained insurance on a commercial property mortgaged to it by a borrower. The policy prohibited an assignment “of this Policy” without the insurer’s consent. But after the property was damaged, the bank assigned its loss claim to the borrower. The borrower applied for policy benefits covering the loss, but the insurer refused to pay the borrower’s claim citing to the non-assignment provision. The borrower sued alleging bad faith breach of insurance contract, and the insurer filed a motion to dismiss claiming no benefits were owed due to the non-assignment clause. The district court granted dismissal in favor of the insurer.

On appeal, the Tenth Circuit held that a standard non-assignment provision does not apply to the assignment of a post-loss claim absent clear policy language to that effect. Because the non-assignment clause at issue did not specifically cite post-loss claims, and because the protection insurers seek with non-assignment deals with the quality of the risk it initially assumes in underwriting the policy, the Court felt there was no prejudice to the insurer in the insured simply assigning who gets paid on a loss. The Court specifically withheld judgment on whether or not such assignments are or should be void as a matter of public policy for another day.

The case is *City Center West v. American Modern Home Insurance*, Tenth Circuit Case No. 12-1343, Opinion dated February 6, 2014. A full copy of the opinion [can be found here](#).