Jim's Perspective…

Post – Loss Assignment of Homeowner's Hail Claim

In the summer of 2014, nine homeowners in the Omaha area (specific to a subsequent Douglas County District Court case) sustained hail damage to their personal dwellings. These homes were all insured under an American Family homeowner's insurance policy. Eight of the nine policies provided replacement cost coverage. At some point, the homeowners assigned their right to benefits under the insurance policies to Valley Boys, which, as many of you know, is a roofing company located in Omaha. American Family's catastrophe adjusters inspected each of these homes and paid the ACV of the hail damage to the policyholders with replacement cost payment due upon completion of repairs and receipt of a final invoice.

Valley Boys sought to expand the scope of work originally figured by American Family adjusters. Valley Boys submitted a document for each house which was identified as a "Request for Acknowledgment of Coverage for Additional Damage (RAAD)." The RAAD listed descriptions of repair work Valley Boys recommended be done, but did not provide itemized prices or a total price for such additional work. American Family did not agree to pay for the additional repairs and Valley Boys did not complete all of the recommended additional work.

The assignment of these claims and the disputed amount of work needed to repair the homes damaged by hail all ended up in court as noted above. This case ended up before the Nebraska Supreme Court which recently issued an opinion in which the court reviewed the assignment process as it applies to a loss under an insurance contract.[1]

Valley Boys and the insureds signed a document titled, "Assignment of Insurance Claim." In addition to this document, the insureds signed a "Customer Service Agreement (CSA). The "Scope of Work" clause of the CSA provided that Valley Boys would provide the insureds with specific roofing and general contract services, including labor and materials, which would be set forth in Exhibit A and referred to as "Services." The evidence at the trial court level showed, however, that there was no Exhibit A attached or shown as a part of the CSA. Consequently, the Supreme Court found that under the assignment contracts, scope of work and price were left to be determined in the future, and no agreement ultimately was reached. Valley Boys never reached an agreement with American Family regarding scope of repairs and replacement and therefore did not reach an agreement with the policyholders regarding scope of work. Without an agreement on repairs and replacement there could be no Exhibit A. The Court concluded:

> Where the promisor (Valley Boys) retains an unlimited right to decide later the nature and extent of his or her performance, the promise is too indefinite for legal enforcement. As such, the assignments which incorporated a CSA failed to set forth a sufficient scope of work, permitting Valley Boys unlimited discretion as to what work to perform, and therefore [the assignments are] unenforceable as a matter of law.

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[1] Valley Boys v. American Family, 306 Neb. 928 (2020).

This case shows that it is very important for any assignment of an insurance claim to include exact details about what the person taking the assignment is required to do under the assignment. The lack of specifics in this Valley Boys assignment can be corrected in the future and this case does not prohibit the assignment process in insurance claims, but it does provide insureds some form of protection by requiring a detailed description of the obligations of the person taking the assignment.

This case involves Nebraska law as it existed prior to passage of the Public Adjusters Licensing Act, Section 44-9201 et seq., in 2018, and prior to 2018 amendments to The Insured Homeowners Protection Act, Section 44-8601 et seq. I read that earlier this year the Iowa Supreme Court held that an assignment of insurance contract benefits was void because the contractor was acting as an unlicensed public adjuster.[2] Perhaps Nebraska's public adjuster law will have a similar impact on contractors in Nebraska who are routinely taking assignment of roof hail claims. The Homeowners Protection Act amendments passed in 2018 require specific language to be included in an assignment involving residential real estate insurance coverage which will provide additional protection for insureds. Finally, personal lines insurers are adding language to policies that requires more specific steps to be taken in order to complete a valid assignment of benefits under a property and casualty policy. For example, many policies now provide that the mortgagee shown in the policy must also have give written consent to the assignment. If a client contacts you discuss problems that have arisen because the client has entered into an assignment, as you no doubt already know, it might be helpful to take a quick look at the assignment provision usually found in the general conditions section of the policy to see whether the assignment has complied with the policy requirements for a valid assignment.

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[2] 33 Carpenters Construction Inc. v. State Farm Life and Casualty Co., 2020 WL 739074 (Iowa Feb 14, 2020)