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Florida Statute § 627.70121 and Authorizations/Directions to Pay

Recently we were asked to evaluate the position of a Florida insurance company that wrote to a public adjuster in connection with the payment of a claim under a homeowner policy asserting that Section 627.70121, Florida Statutes, empowered it to ignore the authorization/direction to pay provision in the public adjuster's fee contract. The public adjuster's contract with the policyholder stated that "Claimant hereby authorizes the insurance carrier to include the name of {Name of PA Firm} on all checks in relation to this claim …." This article addresses the propriety of the insurer's position.

Fla. Stat. § 627.70121, states:

Payment of claims for dual interest property—

> For policies issued or renewed on or after October 1, 2006, a property insurer shall transmit claims payments directly to the primary policyholder by check or other allowable payment method, payable to the primary policyholder only, without requiring a dual endorsement from any mortgageholder or lienholder, for amounts payable under the policy for personal property and contents, additional living expenses, and other covered items that are not subject to a recorded security interest that is noted in the dual interest provision of the policy.

The purpose of the foregoing statute as reflected in the legislative history and the language of the statute is to clarify the responsibility of the carrier when preparing payment drafts. This statute makes it clear that coverages which do not involve lienholder interests—such as personal property and additional living expense reimbursements, as contrasted with typical Coverage A payments —are to be made directly to the policyholder(s), without the need to require an additional mortgage holder endorsement. 17 West's Fla. Prac., Insurance Law, Section 14:7 (2016-2017 ed.)

Any insurer that contends a direction or authorization to pay should not be honored due to Section 627.70121, Florida Statutes has failed to appreciate the underlying purpose of the statute as well as its plain language. The purpose was to protect a policyholder from having a lienholder as a payee on a settlement check wherein the lienholder had no interest. Hence, most insurers need not be reminded to refrain from putting the bank's name on a check settling the personal property portion of a loss. There is no Florida appellate court

decision that supports the insurance company's interpretation of the statute. Moreover, the insurer's position is specifically rejected by the authors of West's Florida Practice Series. West is widely recognized as one of the leading national sources of objective legal analysis and authority. Significantly, when commenting on the meaning and application of Section 627.70121, West's authors addressed this precise issue and clearly disagree the statute permits an insurer to ignore the interests of a public adjuster.

> Note, however, that other interests need to be considered, including assignees, **public adjusters**, policyholder attorneys, representatives of deceased, trustees, and related "interest" holders. This statute does not appear to permit the carrier to avoid inclusion of those types of interested parties on the settlement draft. Care should be made to ascertain all parties legally required to be placed on the check in such circumstances. 17 West's Fla. Prac., Insurance Law, Section 14:7 (2016-2017 ed.)

Please note that public adjusters are specifically recognized as a party whom the carrier is not permitted to avoid including on the settlement draft. It is also noted the authors state the insurer must exercise care to ascertain all of the parties legally required to be placed on the check. Thus, it would follow that the failure of an insurer to meet this standard of care would constitute a breach of its duties under the policy.

The insurer's letter to the public adjuster also cited policy language in support of its position stating that "our obligation and our policy is to pay only those persons named in the policy, unless we are presented with a legally binding obligation to pay someone else. A mere direction or authorization is not sufficient. We are not a party to nor bound by your contract with the insured(s):

> 10. Loss Payment
>
> We will adjust all losses with **you**.
>
> We will pay **you** unless some other person named in the policy is also legally entitled to receive payment."

The insurer's position is based in part on an unduly narrow and restrictive interpretation of the word "you" as it appears in the quoted section of the policy. Such interpretation disregards the statutorily recognized duties and function of a public adjuster.

Section 626.854, Florida Statutes defines a public adjuster as follows:

> (1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, **acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or**

> **damage covered by an insurance contract** or who advertises for employment **as an adjuster of such claims. The term also includes any person who**, for money, commission, or any other thing of value, solicits, investigates, or **adjusts such claims on behalf of a public adjuster.**

The statute clearly and unequivocally recognizes that a public adjuster is authorized to act on behalf of an insured and adjust their claim. If the word "you" in the policy were narrowly applied as the insurer asserts, it could similarly argue it is not even obligated to adjust the subject claim with a public adjuster, because the public adjuster is not "you," the named insured. Obviously, that would be nonsense. A contract, including an insurance policy, should be construed in a manner that avoids an absurd result as is being suggested by the insurance company. *James v. Gulf Life Ins. Co*., 66 So. 2d 62 (Fla. 1953). The word "you" must be interpreted to include persons or entities legally acting for and standing in the shoes of the insured. Moreover, to the extent there were any conflict between Section 627.70121 and the policy language, the statute would control and it does not permit the carrier to avoid inclusion of interested parties on the settlement draft.

In any event, the insurer misapplies well settled contract law. It stated "our obligation is to pay only those persons named in the policy, unless we are presented with a legally binding obligation to pay someone else." The insurer fails to appreciate that the insured's direction to pay contained in a public adjuster's contract absolutely constitutes "a legally binding obligation to pay someone else." It is clear under Florida law there is *no distinction* between a direction to pay and an assignment of benefits for purposes of standing. *See, e.g., Orion Ins. Co*. v. *Magnetic Imaging Systems I*, 696 So. 2d 475, 476 (Fla. 3d DCA 1997) (finding valid assignment where provider's customers authorized "direct payment of their insurance benefits" to provider); *Parkway v. Allstate Ins. Co.*, 393 So. 2d 1171, 1172 (Fla. 3dDCA 1981) (finding valid assignment where insured "authorized insurer to make direct payment to hospital of any benefits" arising from policy). The validity of an assignment of benefits in the property insurance context was recently affirmed in *Bioscience West, Inc. v. Gulfstream Property and Cas. Ins. Co.*, 185 So. 3d 638 (Fla. 2d DCA 2016). (Other issues involving assignments of benefits are beyond the scope of this article and not addressed herein.)

In summary, the insurer's position is flawed due to its misreading of the purpose and application of Section 627.70121, Florida Statutes, Florida case law governing contracts and its own policy language. Moreover, any insurer who contends that Section 627.70121 excuses them from including the public adjuster as a payee in the face of a valid authorization or direction to pay is in error. If one steps back and considers the broad application of such a position not only to public adjusters, but also policyholder attorneys, representatives of deceased, trustees, and related "interest" holders, it is apparent chaos would ensue.

While this article includes some factual context to frame the legal issues addressed above, it does not address all possible scenarios that might involve Section 627.70121 and readers should seek further advice and counsel if confronted with different facts. The author welcomes any further comments or questions on the subject.

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