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Traub Lieberman Partner Kathryn Keller and Associate Susan Deng Secure Final Summary Judgment in Favor of Homeowner's Insurance Company

Related Attorneys: Kathryn Keller, Susan Deng

Traub Lieberman Partner Kathryn Keller and Associate Susan Deng obtained summary judgment on behalf of a major homeowners' insurer in a breach of contract action in the Ninth Judicial Circuit in and for Orange County, Florida. The underlying claim involved damage to the insured property as a result of Hurricane Ian. Plaintiff obtained an assignment of benefits with the named insureds for services allegedly performed in relation to damages caused by the storm and submitted the assignment of benefits to the insurer. The Plaintiff's assignment of benefits was not compliant with Fla. Stat. § 627.7152, as all of the required elements outlined in the statute were not present in the contract. The insurer sent correspondence advising the Plaintiff of that fact and subsequently received a notice of intent to initiate litigation along with an excessive invoice for emergency mitigation services. A lawsuit was filed shortly thereafter.

Ms. Keller and Ms. Deng argued that Plaintiff's assignment of benefits did not comply with the requirements of Fla. Stat. § 627.7152 and thus Plaintiff lacked standing to maintain the action against the insurer. Here, Plaintiff's assignment of benefits lacked specific language required by § 627.7152(2)(a)(7) and also included language specifically prohibited by § 627.7152(2)(b), namely a check processing fee. The Court ruled in the insurer's favor, finding that the exclusion of statutorily required language, and inclusion of language violatory of the statute, rendered the assignment of benefits invalid and unenforceable pursuant to § 627.7152(2)(d). See § 627.7152(2)(d) ("An assignment agreement that does not comply with [subsection (2)] is invalid and unenforceable.").

The Court concluded that the language of Fla. Stat. § 627.7152 was plain and unambiguous in its requirements for the validity and enforceability of an assignment of benefits, and Plaintiff's assignment of benefits was clearly non-compliant in those regards. The Judge issued his Order Granting Defendant's Motion for Summary Judgment. Because a Proposal for Settlement was served upon the Plaintiff and was not accepted, the insurer is seeking its attorneys' fees and costs incurred in defending the litigation.