IN THE COURT OF APPEAL FOR THE STATE OF FLORIDA
FOURTH DISTRICT COURT OF APPEAL

CERTIFIED PRIORITY RESTORATION,
a/a/o Albert Molina,

Appellant,

v.

STATE FARM FLORIDA INSURANCE COMPANY,

Appellee.
_____/

CASE NO: 4D15-2658

L.T. NO.: CACE15004202

BRIEF OF APPELLANT

ON APPEAL FROM THE SEVENTEENTH JUDICIAL CIRCUIT BROWARD COUNTY, FLORIDA, HON. CYNTHIA IMPERATO
NONFINAL ORDER COMPELLING APPRAISAL

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INTRODUCTION AND QUESTIONS PRESENTED

This case is a breach of contract suit by Certified Priority Restoration ("CPR"), who holds a post-loss assignment of benefits ("AOB") from the insured Albert Molina. CPR appeals a nonfinal order granting State Farm Florida Insurance Company's ("State Farm") motion to compel appraisal with the named insured and to stay the case until Albert Molina appraises the loss with State Farm.

This case presents the following questions:

1) Whether the trial court erred by concluding that the policy required the named insured to appraise a claim by an AOB-holder?

2) Whether jurisdiction existed in the trial court to grant a "motion to compel appraisal" against the non-party named insured?

STATEMENT OF THE CASE AND FACTS

On December 28, 2014, Albert Molina suffered a water loss at his residence in Plantation, Florida. (App. A, at 2).[1] In return for remediation services, Mr. Molina executed an "Assignment of Insurance Benefits. (App. A, Ex. A, at 7). On January 5, 2015, State Farm received an invoice for the work. (App. B, at 9-10). On February 9, 2015, State Farm sent a letter to Mr. Molina explaining that it would only pay $5,412.34 of Certified Priority Restoration's $22,104.79 invoice. (App. B, Ex. C, at 75). State Farm's letter recognized that Mr. Molina had entered a contract with Certified Priority Restoration ("CPR") that contained an assignment of benefits, but stated it did not consent to "the assignment of the policy." (*Id.*). The letter provided that if there were any further "disagreement on the amount of loss, State Farm demands that the amount of loss for covered damages be set by Appraisal." (*Id.*). The letter indicates that CPR was copied on the correspondence. (*Id.*).

This complaint was filed on March 6, 2015. (App. A, at 4). CPR alleged that it had provided water removal services for Mr. Molina in exchange for an assignment of the "property insurance rights, benefits, and proceeds" due under his policy with State Farm. (*Id.* at 2-3).

[1] Page numbers refer to the numbering of the Adobe PDF file.

On April 14, 2015, State Farm filed a "Motion to Compel Appraisal and Stay Proceedings Pending Appraisal with Named Insured." The first sentence of the body of the motion clarified that State Farm sought to "compel appraisal with the named insured."[2] (App. B, at 15). According to State Farm only the named insured could adjust the claim or participate in appraisal proceedings. State Farm relied on policy language in the appraisal clause:

> If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit the their differences to the umpire. Written agreement signed by any two of these three shall set the amount of loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.

[2] At the subsequent hearing on the motion, State Farm clearly asked the court to compel appraisal with the named insured. (App. D, at 98-100).

(App. B, at 12). It also relied on clauses providing that "No action shall be brought unless there has been compliance with the policy provisions" (*id*.) and "We will adjust all losses with you. We will pay you, unless some other entity is legally entitled to receive payment." (*Id*. at 13 (emphasis added in motion by Defendant/Appellee)).

State Farm accused CPR of filing a "lawsuit to avoid a pre-suit, fair and binding determination as to the amount of loss at issue through the appraisal process with the insured." (*Id.* at 11). It requested the court "stay and abate proceedings pending the Named Insured's compliance with the policy provision allowing the Named Insured to participate in appraisal pursuant to the policy." (*Id.*). It contended that appraisal to liquidate damages was part of the adjustment process spelled out in the loss-payment clause, which only the named insured could undertake: "[U]nder the Policy, the adjustment obligation remains with the Named Insured, while the right to receive payment as a result of the adjustment, including appraisal, remains with an assignee." *(Id.* at 13). According to State Farm, CPR could not "assume the Named Insured's contractual obligations under the Policy without State Farm's written consent." (*Id.* at 14).

On May 15, 2015, Certified Priority Restoration filed its opposition to the motion to compel appraisal. (App. C., at 82). CPR pointed out that

the insured did not own the claim for services rendered under the AOB; moreover, the "insured is not a party to this action and the Court has no jurisdiction to order the insured to do anything." (*Id.* at 83). CPR also argued that appraisal was improper because it did not take any of the insured's duties along with the appraisal, and because water remediation was not a "loss" subject to appraisal under the policy. (*Id.* at 84). Lack of consent was irrelevant because State Farm could not prohibit a post-loss AOB. *(Id.* at 85). Because CPR was not engaging in adjusting by demanding payment, the loss-payment clause was irrelevant. (*Id.* at 86).

On June 11, 2015, Judge Imperato conducted a hearing on the motion to compel appraisal. (App. D, 88). State Farm argued that the AOB only "assigns the right to get paid . . . . [I]n order for the insured to get paid, there are certain conditions that the insured must meet, and one of the conditions is that if State Farm asks for an appraisal, then an appraisal must take place." (*Id.* at 91). State Farm discussed recent authority from the district courts, contending that *Shaw* supported its position, as well as *One Call*. (*Id.* at 92-93). Counsel also pointed to a recent case from Osceola County holding that "the *Shaw* decision . . . unequivocally states that the insured is required to fulfill contractual obligations outlined in an insurance contract before the assignee can receive payment." (*Id.* at 93-94).

CPR contended that Mr. Molina no longer owned the portion of the claim for benefits attributable to CPR's remediation work; under State Farm's position appraisal could not be necessary "because only the insured can participate in appraisal, and the insured doesn't own that claim." (*Id.* at 94-95). A 17th Circuit case had held that "if the water mitigation bill was part of an appraisal with the insured and the insured was awarded money for it in the appraisal, the defendant would have a complete defense to payment of that part of the appraisal because that claim does not belong to the insured." (*Id.* at 95). CPR also explained that the standard policy provided appraisal of physical loss but the "water mitigation bill comes under a completely different part of the policy, which says, we will pay you for the reasonable and necessary repairs you make to protect the property. That is not a physical loss to property. It's not subject to the appraisal clause." (*Id.* at 96).

State Farm responded that regardless of the party who owned the claim, the Shaw case "specifically says that the assignment of a right of payment under a contract does not eliminate the duty of compliance with contract conditions." (*Id.* at 97). According to State Farm, water remediation was "payable under the insurance policy" and therefore "payable pursuant to the conditions." (*Id.*).

The judge granted the motion to compel appraisal. (*Id.*). Counsel for CPR inquired how the order could be "enforced if the order can only be against the party to the lawsuit and we have no duty to appraise, which Mr. Malavenda has already stated? . . . . The insured is not a party to suit, and as far as I know, State Farm has not filed any kind of action against the insured to compel an appraisal." (*Id.* at 98). The judge remarked that "I'm ordering the appraisal. You guys work it out." (*Id.* at 99). The Order on the motion merely notes that the motion was "granted." (Appx. E, at 102).

On July 1, 2015, CPR filed a motion for clarification to determine whether the Court had dismissed the case and how it should proceed. (App. F, at 103). The Court's order noted that the motion "is granted as to compelling appraisal. Denied as to dismissal of the Complaint." (App. G, at 106).

CPR appeals.

SUMMARY OF ARGUMENT

The circuit court erred by granting the motion to compel appraisal with the named insured. Appraisal is not a contractual duty or a condition precedent to payment, it is a remedial mechanism invoked in the event of a dispute. The appraisal obligation leaves the named insured when the assignment occurs, and State Farm's arguments to the contrary are simply another attempt to use the courts to legislate away AOBs. This Court's recent decisions clearly establish that the loss-payment clause on which State Farm relies does not impose any duty that the named insured "adjust" the claim directly with the insurance company through appraisal before the claim can be assigned. Moreover, CPR would not be bound by an appraisal award if it did not participate in the appraisal.

The lower court also exceeded its authority by granting a motion to compel a non-party to appraise the claim with State Farm. After an AOB, the named insured no longer owns the claim, and is not a real party in interest to a suit to enforce obligations under the AOB. State Farm did not attempt to make Mr. Molina a party to the suit, and he was not afforded notice and an opportunity to respond to the charge that he was still bound to appraise the claim he had transferred to CPR. The lower court exceeded its jurisdiction.

ARGUMENT

Standard of Review

This appeal presents pure issues of law that are reviewed de novo. *Scott v. Busch*, 907 So. 2d 662, 665 (Fla. 5th DCA 2005); *Regis Ins. Co. v. Miami Mgmt., Inc,* 902 So. 2d 966 (Fla. 4th DCA 2004). The Court also reviews the interpretation of a contract de novo. *Dows v. Nike, Inc.*, 846 So. 2d 595, 601 (Fla. 4th DCA 2003). This includes the issue of whether a party can be compelled to comply with contractual alternative dispute resolution clauses. *Citigroup, Inc. v. Boles*, 914 So. 2d 23, 25 (Fla. 4th DCA 2005)

I. After an AOB, the insured has no right or duty to attend appraisal, and the insurer cannot invoke the appraisal clause against the insured.

Over the past few years, insurance companies have mounted a campaign to eliminate post-loss AOBs in Florida. Previous efforts to effect change through the legislature have met with no success. *See* 2014 SB 708 (proposing amendments to Sections 627.422 and 627.715, Fla. Stat., requiring certain limitations in all emergency mitigation service agreements and assignments of post-loss benefits), omitted from Laws of Florida, Ch. 2014-86; 2013 HB 909 (second committee substitute) (amending Section 627.422 to permit insurers to bar post-loss assignments), died on third

reading May 3, 2013, omitted from companion bills, Laws of Florida, Ch. 2013-60; *see also* language at p. 10 of 21 of CS for SB 708 that would have amended section 627.422 by adding subsection (a)-(g) to require notice to insurer within 48 hours of an AOB and adopt other restrictions, all of which were eliminated from final bill). As legislative staff recognized, restrictions on post-loss AOBs would not be authorized until the Florida Statutes were amended. Staff Analysis, Committee Substitute to Committee Substitute to HB 909, at *2 (April 18, 2013).

This year, a proposed amendment to section 626.854(16), Florida Statutes that would have effectively abolished AOBs died in the Judiciary Committee. The proposed amendment provided that: "An assignment or agreement that transfers the authority to adjust, negotiate, or settle any portion of a claim to such contractor or subcontractor or that is otherwise in violation of this section is void." *See* Fla. S.B. 1064 (2015). A similar house bill, which sought to restrict assignment of post-loss insurance policy benefits through amendments to sections 626.854 (public adjusting), 627.405 (insurable interest), and 627.422 (assignment of policies) died in the Regulatory Affairs Committee in 2015. Fla. H.B. 0669 (2015).

Insurers have also sought to advance their anti-AOB agenda through the executive branch by adding a clause to their policies that would allow

them to restrict AOBs, in addition to assignments of the entire policy. The Office of Insurance Regulation decided that Florida law prohibited any such clause, and that decision has been affirmed on appeal, albeit in an order not final yet due to motions for rehearing. *Security First Insurance Company v. State of Florida Office of Insurance Regulation*, No. 1D14-1864 (Fla. 1st DCA June 22, 2015) (affirming OIR's decision that insurers may not require written consent before AOB).

Insurers have also attempted to use the courts to change Florida's well-settled rule against restrictions on AOBs, either directly or through new rules that would destroy an AOB's value. State Farm now argues that its insurance policy leaves the AOB subject to the appraisal by a nonparty with no economic in the subject matter. By conditioning an AOB-holder's right to recover on action by a party who has become a stranger to the dispute over the amount of loss, insurers can renders AOBs unenforceable and worthless, or at best too unpredictable an instrument to accept as payment. At the time State Farm sought to invoke the appraisal clause, it knew that Mr. Molina had no interest in the claim for benefits it wanted to appraise. Nevertheless, it contends that he must personally incur the costs and liabilities associated the "potentially expensive and time-consuming adversarial appraisal process." Fla. Stat. § 627.7015(1), Fla. Stat. (2013).

State Farm's position is contrary to the common law of remedies in assigned contracts; violative of the rule against restrictions on assignments of benefits; and, antithetical to the rules governing the construction of consumer insurance contracts. Additionally, any appraisal award would not be enforceable if CPR was not a party to the proceedings. Therefore, this Court should reverse the order compelling appraisal and staying the case, and remand for further proceedings.

A. Appraisal is not a duty of the insured that must be fulfilled before suit; it is a remedial mechanism that cannot be invoked against the insured after assignment.

Well-settled principles lead to the conclusion that after an AOB, the obligor cannot invoke remedial provisions against the insured homeowner.

"It is well-settled that an assignee of a contract stands in the shoes of the assignor and acquires the same rights and liabilities as if he had been an original party to the contract." *Stromberg Sheet Metal Works, Inc. v. Wash. Gas Energy Sys.*, 448 F. Supp. 2d 64, 69 (D.D.C. 2006) (citation omitted). After an AOB the "assignee possesses the same rights, benefits, and remedies as the assignor once possessed." *Robert Lamb Hart Planners and Architects v. Evergreen, Ltd.*, 787 F. Supp. 753, 757 (S.D. Ohio 1992) (citing John D. Calamari & Joseph Perillo, *The Law of Contracts* §18-3 at 633, 634 (2d ed. 1977)). The AOB-holder "stands in the shoes of the

assignor and is able to maintain suit in its own name as the real party in interest." *United Water Restoration Group, Inc. v. State Farm Fla. Ins. Co.*, No. 1D14-3797, slip op. at 4 (nonfinal; citing cases); *see also Cont'l Cas. Co. v. Ryan Inc. Eastern*, 974 So. 2d 368 (Fla. 2008). The assignor "has no right to make any claim on the contract once the assignment is complete, unless authorized to do so by the assignee." *Livingston v. State Farm Mut. Auto. Ins. Co.*, 774 So. 2d 716, 718 (Fla. 2d DCA 2000)).

After assignment, the assignor is not a party to the contract. Thus, an AOB "extinguishes the right [of the assignor] to compel arbitration." *Affymax, Inc. v. Johnson & Johnson*, 420 F. Supp. 2d 876, 879 (N.D. Ill. 2006). Similarly, the assignor cannot be compelled to arbitrate. *RRCI Constructors, LLC v. Charlie's/Diamond Ready Mix, Inc.*, 2009 U.S. Dist. LEXIS 23188, *15-18, 51 V.I. 645, 655-656 (D.V.I. 2009).

The Eleventh Circuit has concluded that under Florida law remedial provisions are transferrable and run with any assignment. *See Kong v. Allied Prof'l Ins. Co*., 750 F.3d 1295, 1302-03 (11th Cir. 2014) (surveying Florida law; concluding that arbitration is "a 'remedial mechanism' that is included in any assignment."). This is consistent with the common-law

rule that arbitration and appraisal rights[3] are transferable. *6060 Corp. v. Medmarc Cas. Ins. Grp. Co.,* 547 F. App'x 137, 140 (3d Cir. 2013) (discussing Pennsylvania law); *Martin v. Cavalry SPV I, LLC*, No. 13-cv-88, 2014 U.S. Dist. LEXIS 43293, 18-24 (E.D. Ky. Mar. 31, 2014) (holding that assignment of contract governed by UCC "includes the transfer of the underlying contractual terms, including arbitration provisions such as the one at issue here"); *Kennamer v. Ford Motor Credit Co. LLC*, 153 So. 3d 752, 761-63 (Ala. 2014) (finding assignor not bound by assignee's waiver of arbitration because "assignment extinguishes the right of the assignor and transfers it to the assignee"); *Variblend Dual Dispensing Sys. LLC v. Seidel GmbH & Co., KG*, 970 F. Supp. 2d 157, 168-69 (S.D.N.Y. 2013) (explaining that "Versadial could not assign to Variblend rights that it did not have. Variblend therefore is bound by the Agreement's remedial provision"); *GMAC Commer. Credit LLC v. Springs Indus.,* 171 F. Supp. 2d 209, 214 & n.3 (S.D.N.Y. 2001); *Delta Grp. v. DBI, Inc.*, 555 N.W.2d 162, 165 (Wis. Ct. App. 1996) (assignee stands in shoes of assignor for remedial provisions).

[3] While appraisal and arbitration are technically different processes, Florida courts have treated them as equivalent under the law. *E.g., Travelers of Florida v. Stormont*, 43 So. 3d 941, 945 (Fla. 3d DCA 2010) (attorney's fees); *Preferred Mut. Ins. Co. v. Martinez*, 643 So. 2d 1101, 1103 (Fla. 3d DCA 1994).

The policy in this case allows either party to demand appraisal. (App. B, at 58). CPR has stepped into Mr. Molina's shoes with respect to contractual rights and remedies related to this claim. To extend the metaphor, Mr. Molina no longer occupies those shoes, and is not "there" for State Farm to demand anything.

Below, State Farm relied heavily on *Shaw v. State Farm Fire & Casualty Company*, 37 So. 3d 329 (Fla. 5th DCA 2010). In *Shaw*, the Fifth District held that satisfaction of an examination under oath clause is a condition precedent to recovery of policy benefits, and that duty did not run with the assignment to the assignee. *Id.* at 331-32. Appraisal, however, is a remedial right that does run with an AOB, and cannot be invoked against the assignor insured. Because Mr. Molina has transferred the remedial procedure of appraisal along with the AOB, he is no longer a party against whom appraisal may be sought. And unlike an examination under oath, the assignee has most knowledge about the relevant issue – the value of services rendered.

B. State Farm's position is contrary to Florida's rule against restrictions on AOBs.

Florida's district courts have rebuffed every creative argument offered to justify repealing the well-settled maxim that an insurance company cannot restrict post-loss assignments of benefits. *Accident*

Cleaners, Inc. a/a/o Gerena v. Universal Ins. Co., Case No. 5D15-352, 40 Fla. L. Weekly D 862 (Fla. 5th DCA April 10, 2015) (holding that Florida's insurable interest statute did not invalidate AOB); *One Call Prop. Servs. v. Sec. First Ins. Co.,* 165 So. 3d 748 (Fla. 4th DCA May 20, 2015) (holding that AOB executed before amount due determined was valid); *Sec. First Ins. Co. v. State of Florida Office of Ins. Reg.*, No. 1D14-1864 (Fla. 1st DCA June 22, 2015) (affirming OIR's decision that insurers may not require written consent before AOB) (nonfinal); *United Water Restoration Group, Inc. v. State Farm Fla. Ins. Co.,* No. 1D14-3797, 2015 Fla. App. LEXIS 10403, 40 Fla. L. Weekly D 1569 (July 8, 2015) (quashing on second-tier certiorari; miscarriage of justice occurred when county court failed to apply "clearly established law" permitting AOB-holder "to seek recovery . . . and, if necessary, seek a coverage determination.").

In doing so, the Courts have reaffirmed in clear language that insurance companies cannot restrict the insured's right to assign the benefits of the policy after a covered loss. This Court has remarked on "the well-settled case law allowing post-loss assignments of insurance claims." *One Call,* 165 So. 3d at 753. The Court found that "[e]ven when an insurance policy contains a provision barring assignment of the policy, an insured may assign a post-loss claim." *Id.* (citing, *inter alia*, *Lexington Ins.*

Co. v. Simkins Indus., Inc., 704 So. 2d 1384, 1386 n.3 (Fla. 1998); *W. Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 77 So. 209, 210-11 (Fla. 1917)).

Here, the Court faces another attempt to functionally destroy AOBs. As in other cases, State Farm's arguments proceed on the faulty premise that only the insured can participate in determining the amount of loss. ("As no further payments are due under the policy and the Insured under the Policy is the only one who may adjust the loss." (App. B, at 10)). Thus, State Farm contends that the duty to "adjust" the claim remains with the named insured. This Court soundly rejected that proposition in *One Call*, holding that the standard loss-payment provision cannot "'render [a] suit premature; indeed, [it] expressly contemplate[s] that there might be a final judgment – presumably stemming from a lawsuit – before payment [becomes] due.'" 165 So. 3d at 754 (quoting *Curtis v. Tower Hill Prime Ins. Co.*, 154 So. 3d 1193 (Fla. 2d DCA 2015)). "The loss-payment merely addresses the timing of payment;" it does not "affect[] the validity of a post-loss assignment." *Id.*

State Farm now attempts to use the loss-payment clause in conjunction with the appraisal provision to make an AOB-holder's rights contingent on reaching a settlement in appraisal with the homeowner. The rule against restrictions on AOBs exists in part because after an insured risk

materializes, the claim is "worth what it is worth" regardless of who owns it. *In re Ambassador Ins. Co.*, 965 A.2d 486, 491-92 (Vt. 2008) (explaining no "legitimate interest" exists in restricting AOBs "once an event occurs that triggers an insurer's liability."). There is no dispute that an AOB does not materially increase the burden or risk to the insurer. *Peck v. Pub. Serv. Mut. Ins. Co.*, 114 F. Supp. 2d 51, 56 (D. Conn. 2000) (citing 3 Couch on Insurance §35:7 (3d ed. 1999) and holding that a post-loss assignment "in no way increased the insurer's risks or obligations."). This reasoning even applies when at the time of the AOB, the loss may not be covered. *Egger v. Gulf Ins. Co.*, 903 A.2d 1219, 1224-25 & 1229 (Pa. 2006) (holding anti-assignment clause invalid because loss had already occurred and subsequent assignment did not change risks insurer undertook to insure even where excess insurance coverage depended on jury verdict).

Mr. Molina has no interest in CPR's right to benefits under the policy and no real reason to act to help CPR enforce them. If he were compelled to attend appraisal, he would be responsible for the costs of his appraiser and half of the costs of the umpire and other costs. (App. B, Ex.A, at 59). State Farm has no interest in the identity of the AOB-holder because the claim is worth what it is worth regardless of who owns it. Indeed, State Farm has even less of an interest in the party on the other side

of an appraisal than AOBs generally, because all the other party can do is pick one appraiser.

The effects of allowing appraisal against the nonparty insured would extend beyond the inequities in individual cases. If the law requires that unsophisticated homeowners personally negotiate or otherwise settle claims on behalf of contractors, the value of an AOB will decrease. Homeowners, in turn, will no longer be able to obtain emergency services without providing advance payment. The insurance industry would thereby impair or even eliminate AOBs as a practical matter. The Court should not permit State Farm to evade the well-settled rule against restrictions on AOBs in this manner, especially when it would further no legitimate interest of the insurer.

C. The contract should not be interpreted to require the named insured to appraise a claim that has been assigned.

In Florida, insurance contracts are construed according to their plain meaning; when ambiguous, they are construed strictly against the insurer. *Wash. Nat'l Ins. Corp. v. Ruderman*, 117 So. 3d 943, 949-50. (Fla. 2013). In addition to violating the Florida law of assignments, State Farm's position (and the trial court's ruling) violates the maxim that insurance contracts "should receive a construction that is reasonable, practical, sensible, and just." *State Farm Mut. Auto. Ins. Co. v. Fischer*, 16 So. 3d

1028, 1031 (Fla. 2d DCA 2009) (*quoting Gen. Star Indem. Co. v. W. Fla. Vill. Inn, Inc.*, 874 So.2d 26, 29 (Fla. 2d DCA 2004). The contract should not be interpreted to require that the insured, who is no longer a real party in interest, spend time and money on the appraisal process. This is consistent with the Court's holding in *One Call* that the insured can assign the right to determine the amount due under the contract. 165 So. 3d at 754.

State Farm claims that fulfilling its obligations under the policy will be too burdensome unless the Court interprets the policy to require that the named insured adjust all claims with it personally. The specter of "twenty (20) different lawsuits from twenty (20) different vendors for the same covered loss" (App. B, at 11) does not apply here, but Florida law permits separate suits when necessary to deal with separate claims. State Farm has the resources and legal tools to address this known cost of doing business.

Florida recognizes that separate coverages give rise to separate causes of action. "A breach of each coverage provision gives rise to a separate cause of action and may be separately asserted." *Bryant v. Allstate Ins. Co.*, 584 So. 2d 194, 195 (Fla. 5th DCA 1991) (citing Couch on Insurance 2d (Rev. Ed.) § 74:825); *see also State Farm Mut. Auto. Ins. Co. v. Yenke*, 804 So. 2d 429 (5th DCA 2001) (court rejected insurer's argument for

application of rule against splitting causes and followed the *Bryant* rule). Florida law recognizes that the insurer has a duty to deal fairly in good faith with multiple claimants. *Farinas v. Florida Farm Bureau Gen. Ins. Co.*, 850 So. 2d 555 (Fla. 4th DCA 2003).

In addition, an insurer's handling of claims with regard to a particular claimant may give rise to a separate breach of contract, not applicable to other claimants. The insurance policy is a contract, and Florida law would permit separate suits for distinct breaches that are not based on a "single group of operative facts." *Tyson v. Viacom, Inc.*, 890 So. 2d 1205, 1212 (Fla. 4th DCA 2005) (holding that breach of contract, fraud, and whistleblower claims arising out of a single employment relationship could be split because they did not arise from "a single wrongful act"). Thus, failure to pay other claims does not generate a single, unified cause of action.

D. Requiring appraisal with the named insured would be pointless because as a nonparty Certified Priority Restoration would not be bound by any appraisal award.

Even if State Farm could appraise with Mr. Molina, the common-law rules is that appraisal would not bind CPR unless it were a party to the proceedings. *Queens Arthroscopy & Sports Med. v. Unitrin Direct Ins. Co*, 2013 NY Slip Op 52021(U), ¶ 2, 983 N.Y.S.2d 206, 206 (App. Div.); *Charles R. Allen, Inc. v. R.I. Ins. Co.*, 60 S.E.2d 609, 614 (S. Car. 1950).

A lower court in this Court's jurisdiction has had occasion to address the precise issue. In *Better Life Restoration v. State Farm Florida Insurance Co.*, 21 Fla. L. Weekly Supp. 780a, No. 13-004251 (Fla. 17th Cir. Ct. April 4, 2014), State Farm argued that it was entitled to summary judgment against an assignee because State Farm obtained an appraisal award in a proceeding conducted solely with the insured. The court disagreed because the demand for appraisal was made after the effective date of the AOB. "Under Florida law, it is well settled that 'an unqualified assignment transfers to the assignee all the interest of the assignor under the assigned contract, and that the assignor has no right to make any claim on the contract once the assignment is complete, unless authorized to do so by the assignee.'" *Id.* (citing *Livingston v. State Farm Mut. Auto. Ins. Co.*, 774 So. 2d 716, 718 (Fla. 2d DCA 2000)). When appraisal was demanded

"after the effective date of the Assignment, the court finds that any subsequent appraisal award is not binding on [the assignee who] was not a party to the appraisal proceedings." *Id.*; *see also State Farm Fla. Ins. Co. v. Restoration 1 of the Treasure Coast a/a/o Goodison*, No. 14-ap-3, Slip Op. at 3 (Fla. 19th Cir., Martin Co., App. Div., Oct. 15, 2014), cert denied Jan. 28, 2015 (No. 4D14-4735) (App. H) (holding that assignee was entitled to participate in appraisal process; affirming order requiring State Farm to undergo appraisal with Restoration 1); *United Reconstruction Group, Inc. a/a/o Stockman v. State Farm Fla. Ins. Co.*, No. 14-AP-44 (18th Cir. Seminole Aug. 17, 2015) (App. I).[4] This Court should not adopt a rule of law that entitles insurance companies to a remedy that is without purpose.

[4] Counsel is also aware of the following lower-court cases consistent with the approach CPR urges here: *Restoration 1 CFL, LLC v. State Farm Ins. Co.*, Case No. 2015-SC-000057-O (Orange County Judge Jeanette D. Bigney June 18, 2015); *United Water Restoration Group, Inc. v. State Farm Florida Ins. Co.*, Case No: 2014-SC-001906 (Seminole County Judge DeKleva June 10, 2015); *United Water Restoration Group Inc. v. State Farm Florida Ins. Co.*, Case No: 2014-CC-007854-O (Orange County Judge Steve Jewett March 6, 2015); *Spring Hill Builders, LLC a/a/o Kevin Gravitte v. State Farm Florida Ins. Co*., Case No: 2013-CC-013646 (Duval County Judge Gary P. Flower April 7, 2014); *United Water Restoration Group, Inc a/a/o Lewis Excel v. State Farm Ins. Co*., Case No: 2012-CC-813 (Duval County Judge Ronald B. Higbee July 24, 2012).

II. The lower court did not have jurisdiction to grant a motion seeking to compel the named insured to appraise the claim.

Compelling appraisal is in the nature of injunctive relief. *Maschino v. Val-Pak Direct Mktg. Sys.,* 902 So. 2d 196, 198 (Fla. 2d DCA 2005). It is well-established that "a trial court may not issue an injunction that interferes with the rights of those who are not parties to the action." *Trans Health Mgmt. v. Nunziata*, 159 So. 3d 850, 857-58 (Fla. 2d DCA 2014) (citing cases). Thus, "an injunction can lie only when its scope is limited in effect to the rights of parties before the court." *Two Islands Dev. Corp. v. Clarke*, 157 So. 3d 1081, 1083-84 (Fla. 3d DCA 2015) (quoting *Sheoah Highlands, Inc. v. Daugherty*, 837 So. 2d 579, 583 (Fla. 5th DCA 2003)).

Mr. Molina is not a party to this suit. Nevertheless, the trial court granted State Farm's motion seeking to compel appraisal with the named insured. At the very least, the lower court could not have ordered Mr. Molina to appraise without notice and an opportunity to be heard. *Trans Health Mgmt.*, 159 So. 3d at 858. The Court should correct this fundamental error that leaves the litigation at a dead end, and CPR without a remedy against the party obligated to perform under the policy.

CONCLUSION

Florida law does not allow State Farm to compel the named insured to appraise a claim transferred via an AOB. This is appropriate because the named insured has no legal interest in the claim, and State Farm has no legitimate interest in forcing the homeowner to undergo appraisal. Even if the law of AOBs did not preclude such a result, CPR would not be bound by the appraisal award. The Court would also lack jurisdiction to enjoin the homeowner to appraise the claim, at the very least until the homeowner was given notice and an opportunity to respond. Therefore, the Court should reverse the order compelling appraisal with Mr. Molina and remand for further proceedings.

Respectfully Submitted,

/s/ Gray Proctor

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2015, a true and correct copy of the foregoing has been furnished by email to:

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/s/ Gray Proctor

CERTIFICATE OF TYPEFACE COMPLIANCE

I certify that this Initial Brief of Appellant Certified Priority Restoration complies with the font requirements of Florida Rule of Appellate Procedure 9.100(l). The brief has been prepared using Times New Roman, 14-point font.

/s/ Gray Proctor