

Assignment of Benefits: The Who, the What and the How Much

Presented By:



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swift / currie

Imagine This

Assignment from insured



Contractor sets unreasonable price



Contractor sues carrier directly



Insured left in the dark!



Policy Language

7. **Assignment.** Assignment of this policy shall not be valid unless we give our written consent.

11. **Transfer Of Your Rights And Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

13. **Assignment of Claim.** Assignment to another party of any of ***your*** rights or duties under this policy regarding any claim, or any part of any claim, will be void and ***we*** will not recognize any such assignment, unless ***we*** give ***our*** written consent. However, once ***you*** have complied with all policy provisions, ***you*** may assign to another party, in writing, payment of claim proceeds otherwise payable to ***you***.

Assignment

Under Georgia law, an “assignment” is the “absolute, unconditional, and completed transfer of all right, title and interest in the property that is the subject of the assignment.”



Status of Georgia Law

Third-party claims:

Assignment of chose in action generally enforceable



Status of Georgia Law

- Official Code of Georgia Annotated permits assignment when it “involves, directly or indirectly, a right of property”
- O.C.G.A. § 44-12-24
- Personal torts, such as trespass, are not assignable!

Status of Georgia Law

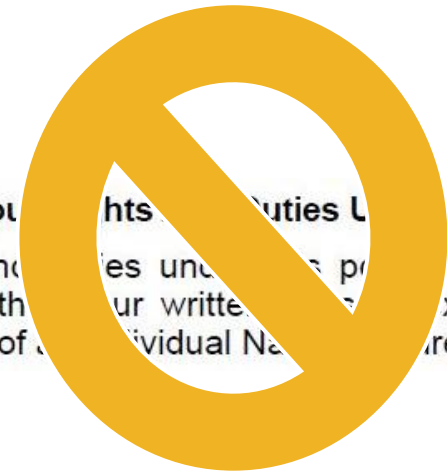
Third-party

Will generally enforce assignment EVEN IF policy contains anti-assignment language

7. Assignment of this Policy shall not be valid unless you give our consent.



11. Transfer Of Your Rights and Duties Under This Policy
Your rights and duties under this policy may not be transferred without our written consent, except in the case of death of the individual named insured.



Status of Georgia Law

- Status of Georgia law for **first-party property** claims less clear



Status of Georgia Law

First-party context – No “chose in action” at onset of claim!



NO BREACH OF CONTRACT



ASSIGNMENT LIMITS RIGHTS OF INSURER



DUTIES UNDER THE POLICY

Status of Georgia Law

Georgia courts are inconsistent!

Trial Courts

Assignment **NOT** Enforceable –

Emergency Services 24, Inc. a/a/o Charles Johnson, the Assignor v. Georgia Farm Bureau, Superior Court of Bibb County, Civ. Action No. 11-CV-55516 (April 9, 2013.)

Assignment Enforceable –

Affinity Roofing, LLC a/a/o Donald Vicchrilli v. Farmers Insurance Exchange, Superior Court of Gwinnett County, Ci. Action. No. 19-A-12120-3 (Jan. 14, 2020.)

Status of Georgia Law

Court of Appeals

Williams v. Mayflower,
238 Ga. App. 581 (1999)

V.

Santiago v. Safeway Ins. Co.,
196 Ga. App. 480 (1990)

Henning v. Continental Cas. Co.,
254 F.3d 1291 (11th Cir. 2001)

Status of Georgia Law

Georgia courts are inconsistent!

United States District Court

- 2005 – Held anti-assignment provision was not enforceable
 - *Sawtell Partners LLC v. Admiral Insurance Company*
- 2011 – Held anti-assignment provision was enforceable
 - *State Farm Fire and Casualty Co. v. King Sports*

Status of Georgia Law – Some Clarity

United States District Court for the Northern District of Georgia

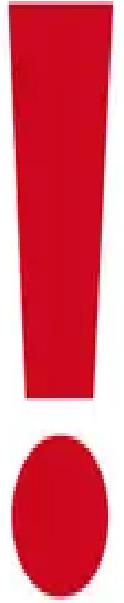
Affinity Roofing, LLC a/a/o Farzam Kadkhodaian v. The Cincinnati Ins. Co., 18-CV-01205-ELR (N.D. Ga. Jan. 9th, 2020.)

Affinity Roofing, LLC a/a/o Kriston Hall v. State Farm Fire & Cas. Co., 18-CV-4329-TCB (N.D. Ga. April 28th, 2020.)

Status of Georgia Law

Kadkhodaiian and Hall takeaways:

- (1) Anti-assignment provisions are not always enforceable
- (2) Anti-assignment provisions can be waived



Status of Georgia Law

(1) Anti-assignment provisions are not always enforceable

- Timing of the assignment
 - When was the assignment executed?
 - Is there a dispute over coverage or damages?

RULE: If there is a dispute over coverage, scope of loss or amount of damages, then the anti-assignment provision is likely enforceable and the assignment can be rejected

Status of Georgia Law

(2) Anti-assignment provisions can be waived through acts inconsistent with intent to enforce anti-assignment provision:

- Payment to assignee?
- Communications directly with assignee/contractor?
- Compliance with assignee/contractor's requests?

Public Policy Points: Point 1

Permitting assignment interferes with the policy requirement and statutory requirement for insurable interest

- Insurable interest: “Actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.”
O.C.G.A. § 33-24-4

Public Policy Points: Point 1

- Insurable interest is a policy requirement

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we shall not be liable:

- a. to the **insured** for an amount greater than the insured's interest; nor
- b. for more than the applicable limit of liability.

- Insurable interest is a statutory requirement – O.C.G.A. § 33-24-4

(b) No insurance contract on property or of any interest therein or arising therefrom shall be enforceable except for the benefit of persons having, at the time of the loss, an insurable interest in the things insured.

Public Policy Points: Point 1

No insurable interest simply by virtue of completing work

1. At time of loss work is not completed — no insurable interest at time of loss
2. Materialmans and mechanics lien protect contractor's right

Public Policy Points: Point 2

Permitting assignment of the claim to third parties prevents other entities with an interest in the claim from asserting their rights under the policy

Public Policy Points: Point 2

Permitting assignment of the claim to third parties prevents other entities with an interest in the claim from asserting their rights under the policy

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LOANS



“Any other collateral besides your heart of gold and million-dollar smile?”

Don't forget about the **mortgagee!**

- Standard mortgage clause
- Separate and distinct policy with the mortgagee

Public Policy Points: Point 2

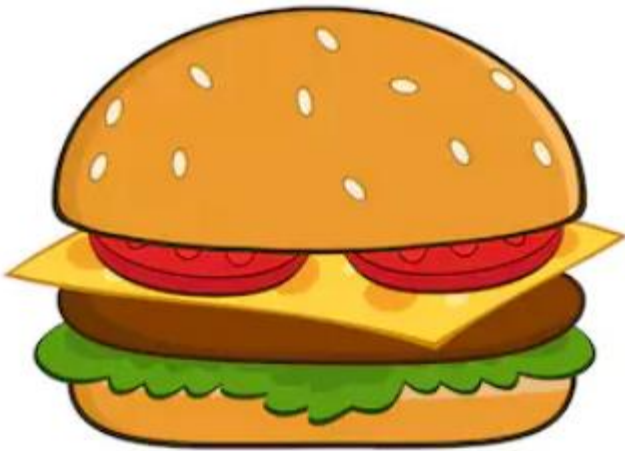
- Don't forget about additional insureds:
 - Family members
 - Other insureds



Public Policy Points: Point 3

Insured could inadvertently waive his right to pursue portions of the claim in which the contractor was not involved

- Multiple coverages:
 - Additional living expense
 - Personal property
 - Rental income



Public Policy Points: Point 3

ASSIGNMENT OF CLAIM FOR DAMAGES

This Assignment of a claim for Damages (the "Assignment") is made and effective 9/20/16.

BETWEEN: [REDACTED] (The "Assignor"),
the insured and existing under the laws of the State of Georgia, located at:
(300-400)
[REDACTED] Bldg-3-4

AND: Friedman Construction, Inc. (the "Assignee"), a corporation organized and existing under the laws of the State of Georgia, with its head office located at: 2555 Marietta Hwy STE 105, Canton GA 30114

FOR VALUE RECEIVED, the Assignor hereby sells and transfers to the Assignee and its successors, assigns and personal representatives, any and all claims, demands, and cause or causes of action of any kind whatsoever which the undersigned has or may have against [REDACTED], arising from the following type of claim:

Homeowner's claim # [REDACTED]

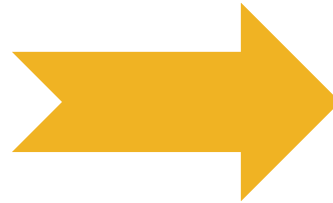
And the undersigned may in its own name and for its own benefit prosecute, collect, settle, compromise and grant releases on said claim as it in its sole discretion deems advisable.

IN WITNESS WHEREOF, the parties have executed this Assignment on the day and year first above written.

Signed, sealed and delivered in the presence of:

ASSIGNOR

ASSIGNEE



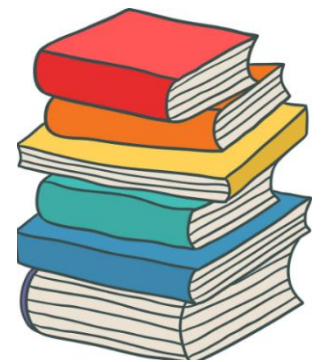
ANY AND ALL CLAIMS,
DEMANDS AND CAUSES
OF ACTION

s/c

Public Policy Points: Point 4

Insurer may not be able to assert the same policy defenses against the contractor as against the insured

- **Insured:** Duty to read the policy and abide by the terms of the policy
- **Contractor:** ????
- Generally, contractor does not have a copy of the policy at the time of the assignment



Handling Claims Involving Assignments

Step 1: Identify the assignment

FOR VALUE RECEIVED, the Assignor hereby sells and transfers to the Assignee and its successors, assigns and personal representatives, any and all claims, demands, and cause or causes of action of any kind whatsoever which the undersigned has or may have against [REDACTED] arising from the following type of claim:

ASSIGNMENT OF BENEFITS:

Client [REDACTED] hereby assigns any and all rights, benefits, proceeds, and any causes of action under any applicable insurance policies to Warrior Restoration and Environmental, LLC, for the services rendered or to be rendered by Contractor. By executing this agreement, Customer intends for all rights, benefits, and proceeds for Services rendered by Contractor to be assigned solely and exclusively to Warrior Restoration and Environmental, LLC. In this regard, Customer hereby waives its privacy rights.

Handling Claims Involving Assignments

Step 2: Is the assignment valid?

- What does the anti-assignment provision say?

13. **Assignment of Claim.** Assignment to another party of any of *your* rights or duties under this policy regarding any claim, or any part of any claim, will be void and *we* will not recognize any such assignment, unless *we* give *our* written consent. However, once *you* have complied with all policy provisions, *you* may assign to another party, in writing, payment of claim proceeds otherwise payable to *you*.

- Is there a dispute over coverage or the scope/amount of damages?

Handling Claims Involving Assignments

Step 3: Reject the assignment

- Letter to the insured AND alleged assignee



Handling Claims Involving Assignments

Step 4: Do not act inconsistent with rejection of assignment

- Do not communicate with the assignee.
- Do not issue any payment that includes the assignee as a payee.
- Do not comply with any requests made by the assignee (i.e. – providing a copy of the policy or other forms.)
- Include general reservation of rights and non-waiver language in all written correspondence!



THANK YOU!



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