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WLF Urges Florida High Court to Vindicate Freedom of Contract in Insurance Dispute

(*Restoration 1 of Port St. Lucie v. Ark Royal Insurance Co.*)

“The only ‘contract of adhesion’ here is the one the plaintiff and its counsel urge the court to impose, by dictating to the parties precisely what their contract must and must not say.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Earlier today, Washington Legal Foundation (WLF) asked the Florida Supreme Court to reject an effort by the plaintiffs’ bar to upend Florida contract law. In *Restoration 1 of Port St. Lucie v. Ark Royal Insurance Co.*, the Florida high court will decide whether homeowners insurance policies may condition a post-loss assignment on the consent of all insureds and mortgagees named in the policy.

The case arises from Ark Royal Insurance Company’s (Ark Royal) homeowners policy issued to John and Liza Squitieri. Under that policy, any assignment of claim benefits is invalid unless it contains the written consent of all insureds and mortgagees named in the policy. After a loss occurrence in 2016, Mrs. Squitieri contracted for clean-up services with Restoration 1 of Port St. Lucie (Restoration 1). At that time, Mrs. Squitieri unilaterally signed a blanket assignment-of-benefits agreement with Restoration 1. Yet PNC Bank, the mortgagee named in the policy, did not sign the agreement or otherwise consent in writing to the assignment. So when Restoration 1 (as Mrs. Squitieri’s purported assignee) sued Ark Royal for breach of contract, the trial court dismissed the suit for lack of standing. Florida’s Fourth District Court of Appeal affirmed.

On appeal, Restoration 1 asks the Florida Supreme Court effectively to rewrite the policy, by invalidating the condition on assignment. But as WLF argues in its *amicus curiae* brief, a judicially created rule barring *any* contractual condition on the post-loss assignment of insurance benefits would ultimately erode the freedom of contract for all Floridians. Under Florida law, the right of parties to define their duties to one another by contract has long been the rule, not the exception. Absent some great prejudice to the public interest, Florida courts will enforce the plain terms of a contract.

Not only is deviating from that settled rule unwise, WLF contends, but deciding major questions of public policy is a role reserved to the Legislature, not the Judiciary. Under the Florida Constitution, crafting public policy is not part of the judicial function. Only the Florida Legislature is able gather the relevant constituencies, to commence fact-finding, to develop and harness expertise, and to balance competing societal values. And the Legislature is the only branch of the State’s government invested with the democratic legitimacy that must underlie the crafting of public policy.

Celebrating its 42nd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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