Creative Noninsureds Seek New Ways to Recover Benefits: How One Court Addressed This Trend

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For years, creative noninsured entities and individuals have concocted innovative ways to recover payment under homeowners policies to which they are not a party. Many times, the noninsureds have relied on obtaining assignment of benefits (AOBs) from the insureds to then recover payment. But, as a recent case from the U.S. District Court for the Eastern District of Pennsylvania shows us, noninsureds may pursue other options if that avenue is closed to them.

The case, *Williams v. Nationwide Insurance*, 2023 WL 2632212 (E.D. Pa. Mar. 24, 2023), stems from a June 18, 2020, fire which destroyed the home of Mark and Elizabeth Ann Ruch, who purchased a homeowners policy with Nationwide Insurance. The Ruchs filed a claim with Nationwide, which ultimately denied their claim for, among other reasons, their failure to comply with the policy's duties after loss conditions.

Three days after the loss, Thomas P. Williams Sr., the owner of a contracting company, procured an AOB of the proceeds of the policy from the Ruchs. A few months later, Williams purchased the property from the Ruchs for $155,000. At the time, the home had a mortgage with PNC for approximately $135,000. The Ruchs satisfied the mortgage with the proceeds from the sale of the property to Williams.

Williams and the Ruchs revoked the AOB after Nationwide denied coverage for the claim, presumably because the denial would also foreclose Williams' ability to recover under the policy as he stood in the shoes of the Ruchs based on the AOB. Williams, therefore, attempted a different avenue to recover insurance proceeds from Nationwide, arguing he was a mortgagee entitled to payment under the policy's mortgagee clause.

The Nationwide policy contained a standard mortgagee clause, which stated: "if a mortgagee is named in the policy, any loss payable under the policy will be paid to the mortgagee and the named insured." The clause further stipulated, in part, that if the claim is denied, "the denial will not apply to a valid claim of the mortgagee," provided certain conditions are met.

Williams filed a declaratory judgment action against Nationwide Insurance seeking a declaration that the insurer was required to pay him the insurance proceeds for a loss to the insured property. Judge Edward G. Smith, however, granted summary judgment in favor of the insurer and denied Williams' artful attempt to secure insurance proceeds under the policy.

Williams argued that he was entitled to the policy benefits under the mortgagee clause on the basis that his payment to the Ruchs to purchase the home was directly used by the Ruchs to pay off the mortgage and, therefore, Williams maintained that he became a mortgagee by standing in the shoes of PNC. In opposition, Nationwide argued that Williams merely purchased the home, thereby stepping into the shoes of the insureds as homeowners, and Williams assumed the same rights as the Ruchs.

The court first analyzed whether Williams' interest in the home was as a purchaser/homeowner or a mortgagee. The court held that, although the "sale proceeds were used to pay the mortgage, this did not give the buyer (Williams) any legal standing with respect to the mortgage." The court noted that PNC did not assign the mortgage to Williams. Further, all the documentation, such as the settlement documents and the homeowners policy, did not identify Williams as a lender or mortgagee. The court held that Williams was a purchaser of the property and the simple fact that the sale proceeds were used to satisfy the mortgage did not transform Williams from a purchaser to a mortgagee.

The distinction was important in this case because the mortgagee clause contained in Nationwide's policy was a standard mortgagee clause. A standard mortgagee clause protects the mortgagee's interest, even in some circumstances when the insurer denies the insured's claim.

Although the answer to the first question was dispositive of the case, the court next analyzed whether Williams (assuming he was a mortgagee) would be entitled to payment under the mortgagee clause. The court noted that the standard mortgagee clause essentially creates two contracts with Nationwide: the first with the insureds to provide benefits for covered losses; and the second with the mortgagee to pay to protect the mortgagee's interest. The court noted that mortgagee clauses only allow the mortgagee to recover the amount of any outstanding mortgage and "no more," and, to allow otherwise, would result in unjust enrichment. The mortgage was fully satisfied by the Ruchs from the proceeds of the sale of the home. Accordingly, the court ruled that, even if Williams was a mortgagee, he could not seek further payment under the policy.

The *Williams* case shows that the AOB avenue is not the only option available to these noninsured individuals or entities. They may attempt to secure benefits through the mortgagee clause. However, insurers need to carefully analyze whether the noninsured person or entity seeking benefits is actually a mortgagee and whether the original mortgage has been satisfied post loss.

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