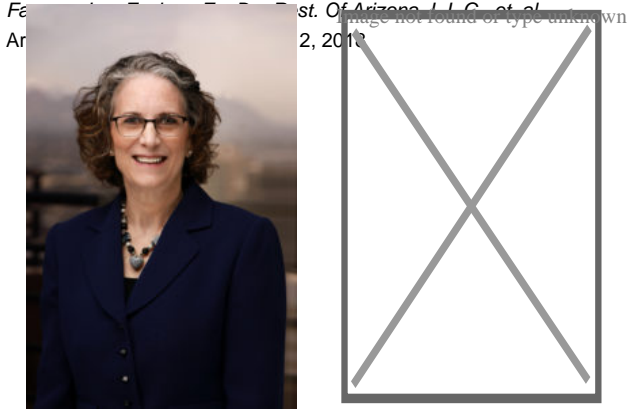


AN INSURED MAY ASSIGN RIGHTS TO POST-LOSS BENEFITS, NOTWITHSTANDING NON-ASSIGNMENT PROVISIONS IN AN INSURED'S POLICY

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Yesterday, the Arizona Court of Appeals held that a homeowner's contractor may sue the homeowner's insurance company for breach of contract to challenge the amount of benefits paid pursuant to an assignment of post-loss benefits.

Farmers issued a homeowner's policy to four homeowners who later required water damage mitigation and restoration services. Each policy contained an anti-assignment provision stating that the insured's "interest in this policy may not be transferred to another person without [Farmers'] written consent." The homeowners signed work orders authorizing EcoDry to perform emergency water mitigation services, which included an assignment of benefits clause. Though Farmers had not consented to any of the assignments, EcoDry submitted its invoices directly to Farmers. Farmers paid EcoDry an amount less than the invoices' total. EcoDry then sued Farmers, alleging the insureds had assigned to EcoDry their "post-loss rights" under the policies, and that Farmers breached the policies by "refus[ing] to pay the reasonable, usual, and customary charges to restore the insured property to pre-loss condition."

Farmers moved to dismiss EcoDry's complaint, arguing that EcoDry had no standing to sue for breach of contract because it did not have a contractual relationship with Farmers, and its valid assignment of the insureds' rights under the insurance policies was limited to a chose in action had Farmers not paid the benefits to the contractor. Because Farmers adjusted the claim and paid those benefits to the contractor, Farmers maintained no action could be filed by EcoDry.

The superior court denied the motion to dismiss, and Farmers sought special action review.

The court of appeals upheld the trial court's denial of Farmer's motion to dismiss. It determined that A.R.S. § 20-461(A)(7) prohibits a property or casualty insurer from failing to recognize a valid assignment of a claim. And here, the court said, the assignment was valid because the insureds did not assign their *policies* to EcoDry, but rather, assigned their post-loss *claims* under and right of action on the policies. EcoDry, as a recipient of a post-loss assignment of benefits, stood in the shoes of the insureds and had standing to enforce the policy against Farmers including the right to challenge the amount of benefits paid. Finally, of particular importance to the court was the fact that: (a) EcoDry only sought amounts payable under the policies and (b) acknowledged that it was seeking only the insureds' post-loss damages. Farmers can seek further review by the Supreme Court.

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