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Wisconsin Reins in Assignment of Benefits: What Property Insurers Need to Know Before December 1, 2026

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Posted By: Erik M. Gustafson

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On April 8, 2026, Governor Evers signed 2025 Senate Bill 531, creating 2025 Wis. Act 230, which enacts a new provision of Wisconsin's insurance statutes: § 632.11. Section 632.11 imposes new regulations on assignments of benefits obtained by contractors. While this new statute has provisions relevant to contractors, consumers, and insurers, the focus of this *Legal Update* is on the impact of this new statute on insurance companies.

But first, some context. An "assignment" is a contract where one party gives to a second party the first party's rights against a third party. In the insurance context, an "assignment of benefits" is when an insured assigns its rights under the policy to a third party, such as a contractor or medical provider. Most policies include "anti-assignment" provisions, but Wisconsin courts (consistent with many courts nationwide) hold that the anti-assignment provisions apply only to assigning rights under the policy before the loss. *Pepsi-Cola Metro. Bottling Co., Inc. v. Emps. Ins. Co. of Wausau*, 2022 WI App 45, ¶ 18, 404 Wis. 2d 337, 350, 979 N.W.2d 627, 633, *aff'd by an equally divided court*, 2023 WI 42, 407 Wis. 2d 384, 990 N.W.2d 267. The theory is that anti-assignment provisions make sense before a loss because the terms (and price) of a policy are often based on the risk presented by the particular insured. However, once a loss occurs, this breaks down; the loss is the loss, so the insurer is no worse off if the insured assigns its rights under the policy. *Id*.

In an assignment, the assignee (here, the contractor) essentially steps into the shoes of the assignor (here, the insured) as to the third party (here, the insurance company). Thus, for example, if a policy does not cover, or provides only limited coverage for, a loss, then the contractor is bound by the terms of the policy and cannot recover more than the insured could have. Similarly, the contractor is bound to all terms of the policy, such as appraisal and proof of loss.

Section 632.11 applies only to assignments of benefits in first-party property insurance policies, and even then, only to certain types of claims: earthquake, fire, flood, hailstorm, tornado, windstorm, or "any naturally occurring weather event for which the governor declares a state of emergency under § 323.10." § 632.11(1)(a), (b). While this covers many types of loss, noticeably absent from this list are water leaks from frozen or broken pipes and vehicles running into buildings.

While not the focus of this *Legal Update*, we briefly note some of the provisions that are aimed more at the contractor's relationship with the consumer:

- Paragraphs (2)(c), (3)(c), and (3)(d) require certain language be included in the written assignment contract between the insured and the contractor. These include a notice that the insured is giving up rights and a five-day cancellation period.
- Paragraph (2)(a) prohibits a contractor from waiving or reimbursing a deductible
- Paragraph (2)(b) prohibits a contractor from representing an insured or negotiating directly with an insurer.

As is relevant to insurers, certain provisions clarify how an insurer should address its insured after the insured assigns its rights under the policy to a contractor:

- Paragraph (3)(a) holds that an assignment merely requires the insurer to name the contractor as a co-payee with the named insured on any checks.
- Paragraph (3)(e) holds that an assignment does not impair a mortgagee's right.
- Paragraph (3)(f) holds that the insurer may still communicate with the insured notwithstanding the assignment.

What may be of greatest interest to insurers is how § 632.11 regulates an insurer's relationship with a contractor who obtains an assignment. A contractor that obtains an assignment of benefits may pursue *only* the insurance company until the contractor exhausts all legal rights against the insurer. § 632.11(6)(a). Thus, a contractor cannot threaten a lien against the insured as leverage against the insurer, so an insurer can safely assert all policy defenses without fear of a claim by the insured.

When a contractor obtains an assignment of benefits, then the insurer automatically gets an assignment of the insured's rights against the contractor. § 632.11(6)(b). This allows insurers to assert any defenses under the insured's contract with the contractor, such as violation of the Wisconsin Home Improvement Practices Rule contained in Wis. Admin. Code ch. SPS 110. Without this provision, the insurer would arguably need an assignment of the insured's rights against the contractor to raise these types of defenses. Further, an insurer might be able to affirmatively recover money from the contractor for violation of chapter SPS 110.

A contractor who obtains an assignment of benefits obtains an assignment of the insured's bad faith claim, but based only on the insurer's pre-assignment conduct. § 632.11(6)(c). This confirms that contractors are not insureds, so contractors cannot claim an independent bad faith claim based on the insurer's conduct towards the contractor. This appears consistent with existing common law, *Kranzush v. Badger State Mut. Cas. Co.*, 103 Wis. 2d 56, 73, 307 N.W.2d 256, 265 (1981) (refusing to recognize a cause of action for bad faith to non-insured third parties), but no Wisconsin case law had considered this issue.

Three sets of consequences await a contractor who violates this section. First, the contract is void. § 632.11(5)(a). Second, the Wisconsin Office of the Commissioner of Insurance ("OCI") may instigate forfeiture proceedings to seek forfeitures of up to $5,000 per violation. Third, OCI, the Attorney General, or any District Attorney may institute injunction proceedings.

Finally, this section does not take effect until "the first day of the 8th month beginning after publication." 2025 Wis. Act 230, § 2. The Act was published on April 9, 2026, so § 632.11 will take effect on December 1, 2026. Though this law will not be in effect for the summer 2026 storm season, insurers should consider how they will address assignments after this law takes effect.

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