



**Lisa Miller & Associates**

Business Development, Government Consulting, Public Relations

**LMA NEWSLETTER**

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## **More Than Half of Florida Insurance Litigation in 2017 Involved AOBs** **New report chronicles growing Assignment of Benefits abuse in Florida**

A new report out by the Florida Justice Reform Institute provides the latest evidence that Florida's Assignment of Benefits (AOB) system is broken and pins the blame squarely on a system that incentivizes vendors and trial lawyers to strip rights away from policyholders in order to make a buck, which is inflating insurance premiums for Florida's consumers. Those AOB lawsuits filed last year represented more than half of all insurance litigation on the dockets – and it's growing.

[The Institute \(FJRI\) report](#) states that lawsuits against insurance companies involving an AOB increased 58% between 2015 and 2017 (from 82,263 to 129,781). And it's not just homeowners property claims suits. Automobile windshield claims suits have grown from 397 in 2006 to 19,513 in 2017, according to the state Department of Financial Services. The report blames aptly-named "no-risk proposition of attorney fees" as the culprit. Think about it. If you were a lawyer and knew you could get attorney fees awarded if you won just \$1 more than the insurance company's initial settlement offer, wouldn't you take the case? Various bills in the Florida Legislature to reform this abuse are stalled (see this edition's *Bill Watch*).

The report is very revealing in linking the 2012 reform of Florida's Personal Injury Protection (PIP) auto insurance with the not-so coincidental growth of AOB abuse. The FJRI writes that "...we know that many PIP lawyers took their business model and developed relationships with other vendors, such as water remediators and auto glass shops, then applied the PIP template—assignments that transfer the one-way attorney fee—to property and auto glass coverages."

FJRI found that about a dozen lawyers contribute to a quarter of all AOB litigation statewide. The report also provides insight into why insurers have been unsuccessful using the offer of judgment/proposal of settlement statute to control these rising litigation costs.

"Litigation reform is necessary to prevent policyholders from losing their rights to proper repair and to stop the double-digit premium increases that we will all pay for," said William Large, FJRI President.

Folks, there's one thing that's clear to me after reading the FJRI report. AOB in Florida, in its current form, has become a weapon harming consumers who pay for this insanity. In private conversations with lawyers, many agree that what is happening is wrong and if the problem is that insurance companies "just don't pay," then it just makes sense to use the Department of Financial Services FREE helpline and consumer assistance specialists to mediate the claim dispute to avoid the lawsuits and the lawyers who perpetrate them.

If you have been a victim of an AOB scam where a vendor took your policy rights and you feel helpless or feel like your insurance company did you wrong, please call me at 850-528-9229 and I can guide you to free help from insurance regulators.



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## **Senators Get Input But Little Consensus on AOB Reform**

The Florida Senate Banking and Insurance Committee last week re-convened its industry panel discussion on Assignment of Benefits (AOB) reform with its Chairman, Senator Anitere Flores stating the goal was not necessarily to come to agreement but maybe “not hating” (as much). At its first meeting two weeks prior, the panel agreed there is a need to establish basic contract standards and that includes agreements that are in writing. The second session this past week focused on one of the more contentious issues: one-way attorney fees.

Florida’s one-way attorney fee statute awards plaintiff attorney fees for any case where the verdict or settlement is higher than the initial claims offer, even if by an amount of one dollar. “If a carrier loses by one dollar, they are on the hook for attorney fees and it allows vendors and their attorneys to threaten to sue, so yes, carriers are settling,” said panelist Christine Ashburn of Citizens Property Insurance. “It’s not fair and I don’t know if this 1950’s statute was meant to be used by vendors like this.” She said that Citizens is 82% more likely to get sued if a claim has an AOB.

“The lies being fed to you folks just aren’t accurate,” attorney Lee Jacobson, who represents policyholders in disputes with insurance companies, told the committee. “Suits aren’t filed unless there’s denial or low-ball. And you need a trial or for the other party to give up and say we’re wrong before there are attorney fees awarded,” he said.

Not so, said panelist Jeffrey Scott, Chairman, CEO, and President of the holding company for Olympus Insurance Company, a Florida domestic P&C insurer. He called Jacobson’s assertion that insurance companies are low-balling claims presumably for their own profit and benefit “patently false,” and pointed to underwriting losses last year by a sizeable number of companies writing in Florida, four of which went out of business this year.

“If there’s a settlement purely for economic reasons – it doesn’t mean the denial or partial payment wasn’t valid – that’s considered a ‘confession of judgment’ as if you were adjudicated to have not paid your liability. A recent court case makes it clear it requires no wrongdoing,” Scott said. “All you need is a warm body, an insurance policy, a lawsuit, and a settlement and they’re entitled to legal fees.”

The interchange prompted Senator Braynon and Chair Flores to suggest that future testimony be taken under oath to help sort fact from fiction. “Maybe someone’s telling the truth and someone is not- or you both are and there are specifics being made into generalities,” Flores said. Later, when she learned there exists a list of insurance companies who’ve been sued that Insurance Advocate Sha’Ron James volunteered to provide, Flores said “maybe there are specific problems we (the committee) are making general here” instead.

The vendor on the panel told the committee that if there weren’t one-way attorney fees, he wouldn’t be able to afford to bring suit. “And without AOB, I would have to sue the homeowner. How fair is that?”

AOB enhances the homeowner's rights," said Don DeBlander of Pro Clean Restoration and Cleaning. He said the same disputes happen with the same insurance companies over again just as the same bad vendors keep profiting as well.

Panelists said there was room for compromise – all involving keeping one-way attorney fees. Scott suggested the committee require mediation, as the legislature did years ago in resolving sinkhole disputes. Jacobson said insurance adjusters should be licensed and certified under IICRC water mitigation standards, that company adjusters be required to inspect within three days of a claim, regulation of water remediation companies, and reduce the 90 day window for settlement proposals from insurers. DeBlander echoed the 90 day timeline suggestion.

Florida Insurance Commissioner David Altmaier made clear that he doesn't support eliminating one-way attorney fees, only limiting their availability to the policyholder – not to any assignee under an AOB. He said [HB 1421](#) which passed only the House last spring and put staggered parameters around attorney fees, made significant strides. Insurance Advocate Sha'Ron James echoed his support.

Chair Flores made clear that any potential legislation addressing AOB concerns would have to be tied to rate decreases and challenged Commissioner Altmaier for that answer. He said it's difficult to know how something is going to change marketplace behavior but that he believes water loss trends could be reversed. Citizens' Ashburn said if the insurer can get back to pre-2012 water damage claims frequency and averages, Citizens customers would see rates stabilize and many would see rate reductions.



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## **Bad Faith Impacting Florida Insurance Costs and Rates**

The Florida Legislature is once again trying to decide what to do with the state's 45 year-old No-Fault Automobile Insurance coverage law – more specifically, how to handle the persistent fraud that keeps increasing and with it, automobile insurance rates. But one component that's rarely talked about is the Bad Faith doctrine - and the third-party vendors some say who are manipulating it to win bigger legal settlements from insurance companies.

David Bronstein and JD Underwood - two noted South Florida insurance attorneys on opposite sides of the issue - argued the merits of Bad Faith as it relates to consumer rights and insurance company profits when they joined me last week on the latest episode of [The Florida Insurance Roundup podcast here](#). They reveal in this program how just the threat of a Bad Faith case and its related costs are driving up premiums for all Florida insurance consumers. They share their insider perspective on how those looking to make a bigger buck rather than a reasonable claims settlement are hurting the availability and affordability of automobile, as well as homeowners insurance in Florida.

As the legislature considers bills replacing No-Fault PIP (Personal Injury Protection) insurance with mandatory Bodily Injury insurance (BI) – where Bad Faith claims are more prevalent than PIP claims and can result in large verdicts beyond the policy coverage limits – insurance companies want added provisions to require mandatory civil remedy notice by third-party claimants to level the playing field.

### Links and Resources Mentioned in This Episode

- + David Bronstein, Managing Partner with Bronstein & Carmona in Ft. Lauderdale [www.bronstein-carmona.com](http://www.bronstein-carmona.com)
- + JD Underwood, Attorney with Florida Advocates in Dania Beach [www.FLadvocates.com](http://www.FLadvocates.com)
- + Florida Office of Insurance Regulation, Tallahassee. [www.floir.com](http://www.floir.com)
- + Florida Insurance Code Civil Remedy – [Florida Statute 624.155](#)
- + Making and Use of Rates for Automobile Insurance – [Florida Statute 627.0651](#) (see section 12)
- + Florida Office of Insurance Regulation - [Pinnacle Report on Review of Personal Injury Protection Legislation](#)

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