

Tab 1	SB 122 by Broxson (CO-INTRODUCERS) Hooper; (Compare to H 00301) Attorney Fee Awards Under Insurance Policies and Contracts						
923034	D	S	WD	BI, Thurston	Delete everything after	02/12	07:26 AM
469254	SD	S	00	BI, Thurston	Delete everything after	02/12	07:26 AM
355342	SD	S	00	BI, Thurston	Delete everything after	02/12	07:26 AM
711030	SD	S	L 00	BI, Lee	Delete everything after	02/12	07:26 AM
724484	D	S	L WD	BI, Thurston	Delete everything after	02/12	07:26 AM
545092	SD	S	L 00	BI, Lee	Delete everything after	02/12	07:26 AM
487740	D	S	L WD	BI, Lee	Delete everything after	02/12	07:26 AM
672446	SD	S	L WD	BI, Thurston	Delete everything after	02/12	07:26 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Broxson, Chair
Senator Rouson, Vice Chair

MEETING DATE: Monday, February 11, 2019
TIME: 4:30—6:00 p.m.
PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 122 Broxson (Compare H 301)	Attorney Fee Awards Under Insurance Policies and Contracts; Revising certain attorney fee provisions in the Florida Insurance Code to specify that an insured or beneficiary entitled, under certain circumstances, to attorney fees under an insurance policy or contract must be a named insured or named beneficiary; providing that such right to attorney fees may not be assigned or extended by agreement, except to certain persons, etc. BI 01/22/2019 Workshop-Discussed BI 02/04/2019 Workshop-Discussed BI 02/11/2019 Temporarily Postponed JU RC	Temporarily Postponed

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 122

INTRODUCER: Senator Broxson

SUBJECT: Attorney Fee Awards Under Insurance Policies and Contracts

DATE: February 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 122 provides that the right to attorney fees under ss. 626.9373 and 627.428, F.S., may not be assigned or extended by contract or other agreement to any person other than a named insured, named beneficiary, or omnibus insured.

Sections 626.9373 and 627.428, F.S., allow a named insured, named beneficiary, or omnibus insured to recover attorney fees if it obtains a judgment against an insurer or prevails on appeal. In 1972, the Florida Supreme Court held that the right to recover attorney fees under the statutes extended to persons who have accepted an assignment of post-loss benefits, such as contractors.

This bill would limit the assignees of post-loss benefits that may recover attorney fees under 626.9373, F.S. or 627.428, F.S., to a named insured, named beneficiary, or omnibus insured.¹ Assignees of post-loss benefits such as contractors, motor vehicle repair shops, and medical providers would no longer be able to recover attorney fees under s. 626.9373, F.S., or s. 627.428, F.S.²

This bill takes effect on July 1, 2019.

II. Present Situation:

Attorney Fees in Insurance Litigation

In general, parties to a lawsuit each pay their own attorney fees unless statutes or contractual provisions provide otherwise. Section 627.428, F.S., provides, in part:

¹ The bill removes from omnibus insureds that prevail on appeal the right to obtain attorney fees under these statutes. See Section III of this analysis.

² Unless the assignee is a named insured, named beneficiary, or omnibus insured.

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.³

This statute allows an insured to recover his or her own attorney fees if the insured prosecutes a lawsuit to enforce an insurance policy. Some version of this statute has been the law in Florida since at least 1893.⁴

The Florida Supreme Court recently explained the purpose of the statute:

The need for fee and cost reimbursement in the realm of insurance litigation is deeply rooted in public policy. Namely, the Legislature recognized that it was essential to "level the playing field" between the economically-advantaged and sophisticated insurance companies and the individual citizen. Most assuredly, the average policyholder has neither the finances nor the expertise to single-handedly take on an insurance carrier. Without the funds necessary to compete with an insurance carrier, often a concerned policyholder's only means to take protective action is to hire that expertise in the form of legal counsel... For this reason, the Legislature recognized that an insured is not made whole when an insurer simply grants the previously denied benefits without fees. The reality is that once the benefits have been denied and the plaintiff retains counsel to dispute that denial, additional costs that require relief have been incurred. Section 627.428, F.S., takes these additional costs into consideration and levels the scales of justice for policyholders by providing that the insurer pay the attorney's fees resulting from incorrectly denied benefits.⁵

Florida courts have interpreted the statute broadly to allow recovery of fees when the insurer ultimately settles the case before trial.⁶ The court awards fees pursuant to the statute even if the insurer does not act in bad faith.⁷

³ Section 626.9373, F.S., contains substantially similar language but it applies to surplus lines insurers. Florida courts have interpreted the statutes to have the same meaning.

⁴ See *Tillis v. Liverpool & London & Globe Insurance Company*, 35 So. 171 (1903)(rejecting an insurance company argument that the 1893 law providing that an insured may recover attorney fees in actions against an insurance company to enforce a policy violates due process and equal protection).

⁵ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215-1216 (Fla. 2016)(internal citations omitted).

⁶ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215 (Fla. 2016)(noting that it is "well settled that the payment of a previously denied claim following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment").

⁷ *Insurance Co. of North America v. Lexow*, 602 So.2d 528, 531 (Fla. 1992)("We reject the argument that attorney's fees should not be assessed against INA because this dispute involved a type of claim which reasonably could be expected to be resolved by a court. INA's good faith in bringing this suit is irrelevant. If the dispute is within the scope of s. 627.428, F.S., and the insurer loses, the insurer is always obligated for attorney's fees").

There must be a dispute over the amount owed before attorney fees can be recovered pursuant to s. 627.428, F.S. In *Goldman v. United Services Automobile Association*,⁸ homeowners sustained water damage due to a plumbing leak. The homeowners reported the claim to their insurance company. The insurance company investigated and paid the claim. The homeowners filed a lawsuit without informing the insurance company that they disputed the amount of the claim. The insurance company demanded appraisal and paid the disputed amount after the appraisal award.⁹ The court held the homeowners were not entitled to attorney fees because the insurance company was not aware of a dispute over the amount of the claim until the filing of the lawsuit. The court said that attorney fees may only be recovered when the claims process breaks down and the parties are no longer working to resolve the claim.¹⁰

Assignments of Post-Loss Insurance Benefits

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.¹¹

The Florida Supreme Court Applies Section 627.428, F.S., to AOB Cases

Section 627.428, F.S., provides that “any named or omnibus insured or the named beneficiary under a policy” may be entitled to attorney fees. In 1961, the First District Court of Appeal held that an assignee of the proceeds of a life insurance policy could recover attorney fees when the assignee had to sue to enforce payment.¹²

In 1971, the Fourth District Court of Appeal considered whether the insured’s assignee of benefits from a property insurance policy was entitled to attorney fees and held the assignee was not entitled to fees because the assignee was not a named insured or beneficiary.¹³ The Fourth District’s opinion was appealed to the Florida Supreme Court and the Florida Supreme Court reversed. In 1972, the Florida Supreme Court held that an insured’s assignee is entitled to attorney fees under s. 627.0127, F.S., the predecessor statute to s. 627.428, F.S. The court said “an assignee of an insurance claim stands to all intents and purposes in the shoes of the insured and logically should be entitled to an attorney’s fee when he sues and recovers on the claim.”¹⁴ The court reaffirmed the holding in 2008:

⁸ 244 So.3d 310 (Fla. 4th DCA 2018).

⁹ *Goldman*, 244 So.3d at 311.

¹⁰ *Goldman*, 244 So.3d at 312. See also *Hill v. State Farm Florida Insurance Company*, 35 So.3d 956, 961 (Fla. 2^d DCA 2010)(stating that “fees should normally be limited to the work associated with filing the lawsuit after the insurance carrier has ceased to negotiate or has breached the contract and the additional legal work necessary and reasonable to resolve the breach of contract); *Lewis v. Universal Property and Casualty Insurance Co.*, 13 So.3d 1079 (Fla. 4th DCA 2009).

¹¹ *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So.2d 55, 57 (Fla. 2000)(“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

¹² *Travelers Insurance Company v. Tallahassee Bank and Trust Company*, 133 So.2d 463 (Fla. 1st DCA 1961).

¹³ *Southern American Fire Insurance Company v. All Ways Reliable Building Maintenance, Inc.*, 251 So.2d 11 (Fla. 4th DCA 1971), reversed, *All Ways Reliable Building Maintenance, Inc. v. Moore*, 261 So.2d 131 (Fla. 1972).

¹⁴ *All Ways Reliable Bldg. Maintenance, Inc. v. Moore*, 261 So.2d 131 (1972)

[S]ection 627.428 authorizes an award of attorney's fees only to “the named or omnibus insured or named beneficiary” under an insurance policy and to other third parties who obtain coverage based on an assignment from an insured.¹⁵

Anti-Assignment Provisions in Insurance Contracts Do Not Prevent AOB in Property Insurance or Motor Vehicle Insurance

Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. In *Lexington Insurance Company v. Simkins Industries*,¹⁶ the court held that a provision in an insurance contract prohibiting assignment of the policy was enforceable under the plain language of s. 627.422, F.S. The court explained that the purpose of a provision prohibiting assignment was to protect an insurer against unbargained-for risks.¹⁷

An assignment made after the loss is valid even if the contract states otherwise.¹⁸ In *Continental Casualty Company v. Ryan Incorporated Eastern*,¹⁹ the court noted that it is a “well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss.” A court explained that a rationale for post-loss assignments is that “assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer’s contractual relationship to a party with whom it never intended to contract, but an assignment after loss is simply the transfer of the right to a claim for money” and “has no effect upon the insurer’s duty under the policy.”²⁰

Assignments have been prohibited by contract in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.*,²¹ the court found anti-assignment language was sufficiently clear and upheld language prohibiting the assignment of a health insurance claim. The court explained that anti-assignment clauses “prohibiting an insured’s assignments to out-of-network medical providers are valuable tools in persuading health [care] providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action.”²²

AOB in Property Insurance Cases

In recent years, insurers have complained of abuse of the assignment of benefits process. An insurance company described the issue in a court filing:

The typical scenario surrounding the use of an “assignment of benefits” involved vendors and contractors, mostly water remediation companies, who were called by an insured immediately after a loss to perform emergency remediation services, such as water extraction. The vendor came to the insured’s home and,

¹⁵ *Continental Cas. Co. v. Ryan, Inc. Eastern*, 974 So.2d 368, 379 (Fla. 2008).

¹⁶ 704 So.2d 1384 (Fla. 1998).

¹⁷ *Id.* at 1386.

¹⁸ *West Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 74 Fla. 220, 77 So. 209 (1917); *Gisela Inv., N.V. v. Liberty Mut. Ins. Co.*, 452 So.2d 1056 (Fla. 3d DCA 1984).

¹⁹ 974 So.2d 368, 377 n. 7 (Fla. 2000).

²⁰ *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W.3d 680, 683 (Ky. 2012). The Florida courts’ interpretation of s. 627.422, F.S., appears to be the position of a majority of states that have considered the issue.

²¹ 955 So.2d 1140 (Fla. 4th DCA 2007).

²² *Id.* at 1144-1145.

before performing any work, required the insured to sign an “assignment of benefits” – when the insured would be most vulnerable to fraud and price gouging. Vendors advised the insured, “We’ll take care of everything for you.” The vendor then submitted its bill to the insurer that was, on average, nearly 30 percent higher than comparative estimates from vendors without an assignment of benefits. Some vendors added to the invoice an additional 20 percent for “overhead and profit,” even though a general contractor would not be required or hired to oversee the work. Vendors used these inflated invoices to extract higher settlements from insurers. This, in turn, significantly increases litigation over the vendors’ invoices.²³

In a court filing in a different case, a company that provides emergency repair and construction services explained the rationale behind assignments of insurance benefits:

As a practical matter, a homeowner often will not be able to afford or hire a contractor immediately following a loss unless the contractor accepts an assignment of benefits to ensure payment. A homeowner may be unable to comply with the ... provision requiring the homeowner to protect and repair the premises unless the remediation contractor accepts an assignment of benefits, however, contractors will become unwilling to accept payments by assignment if court decisions render the assignments unenforceable ...

Whether the repair invoice is routed through the insured or submitted by the service provider directly by assignment, the service provider’s repair invoice is submitted to the insurer for coverage and reviewed by an adjuster. The only difference an assignment makes is that, if an insurance company wishes to partially deny coverage or contest an invoice as unreasonable, the insured policyholder is not mired in litigation in which he or she has no stake.²⁴

There have been a number of cases in recent years where courts have held that post-loss benefits are assignable.²⁵

Automobile Insurance

Automobile insurance consists of different types of insurance coverages. Personal injury protection or “PIP” coverage is required in Florida to cover injuries to the driver regardless of which party is at fault in an accident. Bodily injury liability coverage pays for damage that the insured causes to other drivers and passengers in an accident. Property damage liability coverage covers damage that the insured causes to the property of another individual. Collision coverage

²³ *Security First Insurance Company v. State of Florida, Office of Insurance Regulation*, Case No. 1D14-1864 (Fla. 1st DCA), Appellant’s Initial Brief at pp. 3-4 (appellate record citations omitted).

²⁴ *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-0424 (Fla. 4th DCA), Appellant’s Initial Brief at 46-48.

²⁵ See, e.g., *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So.3d 627, rehearing denied (Fla. 1st DCA 2015); *Bioscience W., Inc. v. Gulfstream Prop. & Cas. Ins. Co.*, 185 So.2d 638 (Fla.2d DCA 2016); *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749 (Fla. 4th DCA 2015); *Accident Cleaners, Inc. v. Universal Ins. Co.*, 186 So.3d 1 (Fla. 5th DCA 2015).

pays for damages to the insured automobile caused by a collision with another automobile. Comprehensive coverage generally pays for damages to the insured automobile, including damage to the windshield, caused by events other than a collision.

The “deductible” is the amount the insured must pay before the insurance company pays any amount. Section 627.7288, F.S. states:

The deductible provisions of any policy of motor vehicle insurance, delivered or issued in this state by an authorized insurer, providing comprehensive coverage or combined additional coverage shall not be applicable to damage to the windshield of any motor vehicle covered under such policy.^{26, 27}

Consumers who purchase the minimum coverage required by law do not have first-party coverage for windshield repair or replacement. Consumers who purchase comprehensive coverage have first-party coverage if a windshield is damaged or broken. Lenders often require borrowers to purchase comprehensive coverage, so consumers who owe money on their vehicles will often qualify for windshield repair or replacement without a deductible.²⁸

Windshield Replacement and Repair

Florida law does not contain insurer claim handling requirements specific to windshield claims. The claims are handled through the insurance contract. Current law does not prohibit an insurer from including an inspection requirement in policy forms.

Many Florida insurance carriers set up a network of providers that will provide windshield repair or replacement services at negotiated rates. If the insured uses one of these “in-network” providers, an insured windshield is repaired or replaced at no cost to the insured. Some glass shops do not participate in the insurer’s provider network. To claim benefits from an insured’s automobile insurer, the “out-of-network” shop often obtains an assignment of benefits from the insured. Florida law allows an insured to assign the benefits of his or her insurance policy to a third party, in this case, the out-of-network glass shop. The assignee glass shop can negotiate with the insurer and file a lawsuit against the insurance company if the two sides do not agree on the claim amount.²⁹

Vehicle Safety Requirements

Section 316.2952, F.S., requires vehicles operated on highways to have a windshield. Section 316.610, F.S., prohibits driving a vehicle in such an unsafe condition that it endangers persons or property. A police officer is allowed to stop a vehicle if required equipment is not in

²⁶ Language similar to s. 627.7288, F.S., has been part of Florida law since 1979. *See* Ch. 79-241, Laws of Florida.

²⁷ At least seven other states have provisions prohibiting insurers from requiring a deductible for windshield claims or allowing insureds to purchase a policy with no deductible for windshield claims.

²⁸ Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited February 4, 2019).

²⁹ Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20).

proper repair.³⁰ Depending on the severity of the equipment damage, a police officer may order a vehicle removed from use until repairs are made or give the driver 48 hours to make the repairs.³¹

AOB Windshield Litigation

According to the Department of Financial Services,³² the number of AOB auto glass lawsuits has increased in recent years:

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Auto Glass	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	25,664	17,399

Some insurers argue that the increase in litigation is caused by the ability of some vendors to execute an assignment of benefits and recover attorney fees under s. 627.428, F.S. They allege that some vendors are obtaining an assignment of benefits from the insured and inflating the cost of the claim when they bill the insurance company.³³ Insurers also believe that many windshield claims brought by assignees are fraudulent.^{34, 35} In such cases, the insurer must determine whether to pay what it believes to be an inflated or fraudulent claim or pay its own attorneys to litigate the case and risk having to pay the other side’s attorney fees if it does not prevail.³⁶

Some auto glass vendors argue that litigation is necessary because insurers enter into agreements with preferred vendors and will not pay the “prevailing competitive price” for windshield repair or replacement. Instead, some vendors contend, insurers will only pay the price they pay to the preferred vendors and that litigation is necessary to force the insurers to pay the “prevailing competitive price” pursuant to the insurance policy language.³⁷

PIP AOB Litigation

Assignments of benefits are common in PIP claims. The insured may assign a claim to a medical provider such as a MRI facility. The assignment gives the assignee medical provider the ability to negotiate with the insurer and file a lawsuit to recover benefits. If the assignee prevails, it can recover attorney fees pursuant to s. 626.736, F.S.³⁸ According to the Insurance Information

³⁰ Section 316.610(1), F.S.

³¹ Section 316.610(2), F.S.

³² Data provided by the Department of Financial Services (on file with the Senate Committee on Banking and Insurance).

³³ One provider offers cash rebates and restaurant gift cards to customers “with qualifying insurance” for windshield repair or replacement. See <http://www.auto-glassamerica.com> (last accessed February 4, 2019).

³⁴ *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Florida March 29, 2017).

³⁵ In *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2018 WL 3649638 (M.D. Florida January 3, 2018), the court dismissed a class action lawsuit brought by an auto glass company because the court found the assignment of benefits was fraudulent. The court also awarded attorney fees to the insurance company.

³⁶ Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation* (2015)(on file with the Senate Committee on Banking and Insurance).

³⁷ See *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2017 WL 3712918 (M.D. Florida March 17, 2017) at p. 1. (discussing a class action lawsuit against Geico by VIP Auto Glass).

³⁸ Section 626.736(8), F.S., specifically gives assignees of PIP claims the right to attorney fees pursuant to s. 627.428, F.S.

Institute,³⁹ 71,076 PIP AOB lawsuits were filed in 2013. The number increased to 94,421 in 2018.⁴⁰

Data and Recommendations for Reform

According to the Department of Financial Services,⁴¹ the number of AOB lawsuits for water claims has increased in recent years:

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Water	8	35	87	184	483	989	1,603	2,083	2,786	5,328	8,488	10,937	16,890

This chart shows the percentage of lawsuits with an AOB for water claims or for windshield glass:

Year	Lawsuits	AOB	AOB Percentage
2018	278,739	34,289	12.3%
2017	229,188	36,601	16.0%
2016	192,598	28,183	14.6%
2015	161,062	18,145	11.3%
2014	148,003	11,804	8.0%
2013	141,320	6,414	4.5% ⁴²

In 2015, the Office of Insurance Regulation (OIR) did a data call to attempt to determine the effect of assignment of benefits in the insurance market.⁴³ The OIR found that water losses alone could require rate increases of 10 percent per year.⁴⁴ The Insurance Commissioner showed that the OIR has approved a greater percentage of rate increases in personal residential insurance in recent years:

Year	Percentage of Filings with a Rate Increase
2017	91.9%
2016	72.0%
2015	44.9%
2014	37.6% ⁴⁵

³⁹ The Insurance Information Institute is an insurance industry trade association. <https://www.iii.org/>

⁴⁰ Data presented to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴¹ Data presented to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴² The number of lawsuits was determined by entering a start date of January 1 and an end date of December 31 for each year as selection criteria into the Florida Department of Financial Services Service of Process reports site <https://apps.fldfs.com/LSOPReports/Reports/Report.aspx> (last visited February 5, 2019). The number of AOB lawsuits was provided the Florida Department of Financial Services.

⁴³ <http://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last accessed February 5, 2019).

⁴⁴ Office of Insurance Regulation, *2015 Report on Review of the 2015 Assignment of Benefits Data Call* (February 8, 2016) at p 8. The report can be accessed at <https://www.floir.com/siteDocuments/AssignmentBenefitsDataCallReport02082016.pdf> (last visited on February 5, 2019).

⁴⁵ Presentation by David Altmaier to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

In 2017, the OIR conducted another data call on AOB. The OIR found that water losses (a combination of the frequency of water claims and the severity of the claims) increased 14.2 percent per year from January 1, 2010, to September 30, 2015.⁴⁶ From January 1, 2015, to June 30, 2017, water losses increased by 42.1 percent per year.⁴⁷ In 2015, almost 13 percent of the water claims utilized an AOB. In 2017, that percentage was approximately 17 percent.⁴⁸

Citizens Property Insurance Company (Citizens) reports an increase in both litigation and litigation where the claimant has an AOB:⁴⁹

Year	Lawsuits	AOB	AOB Percentage
2018	13,363	3,631	27.2%
2017	7,624	2,718	35.6%
2016	10,061	3,242	32.2%
2015	7,653	1,250	16.3%
2014	9,525	1,062	11.1%
2013	9,146	860	9.4%

The current average actuarial rate indication for multiperil homeowners policies for policies issued by Citizens Property Insurance Company (Citizens) is 25.2 percent. Citizens anticipates an actuarial rate indication on the same policies of 10.1 percent if AOB reform is successful.⁵⁰ Citizens reports that 70 percent of its homeowners multiperil customers received rate decreases in 2015 while 97 percent of those customers will see rate increases in 2019.⁵¹

A restoration contractor testified that issues arise between assignees and insurers because insurers wrongly deny claims and adjusters are poorly trained.⁵² The contractor suggested the following solutions:

- Regulation of restoration contractors;
- Increased training for insurance company claims staff;
- Increased penalties for insurance fraud committed by contractors; and
- Penalties against insurers for underpayment and delayed claims.⁵³

⁴⁶ Office of Insurance Regulation, *Report of the 2017 Assignment of Benefits Data Call*, January 8, 2018, at page 1. The report can be accessed at <https://www.floir.com/siteDocuments/AssignmentBenefitsDataCallReport02082017.pdf> (last visited on February 5, 2019).

⁴⁷ *Id.*

⁴⁸ *Id.* at p. 3.

⁴⁹ Presentation by Barry Gilway to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁵⁰ Presentation by Barry Gilway to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁵¹ *Id.*

⁵² Presentation by Josh Reynolds to the Senate Committee on Banking and Insurance on February 4, 2019 (on file with the Senate Committee on Banking and Insurance).

⁵³ *Id.*

Nebraska AOB Reform

In *Mallard Gutter Company v. Farm Bureau Property and Casualty Insurance Company*,⁵⁴ the Nebraska Supreme Court held that assignment of post-loss benefits from an insured to a roofing contractor is allowed under Nebraska law. In 2018, the Nebraska Legislature adopted a statute to deal with perceived issues in Nebraska. The statute:

- Allows an assignment to authorize a contractor to be named as a copayee;
- Requires the assignment to be provided to the insurer within five business days after execution;
- Requires the following notice on an assignment:

YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. WITH AN ASSIGNMENT, THE RESIDENTIAL CONTRACTOR SHALL BE ENTITLED TO PURSUE ANY RIGHTS OR REMEDIES THAT YOU, THE INSURED HOMEOWNER, HAVE UNDER YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING;

- Provides that the assignment shall not impair the interest of a mortgagee; and
- Provides that the assignment shall not prevent or inhibit an insurer from communicating with the named insured or mortgagee.⁵⁵

Florida Courts Say if Policy Changes Are Needed, They Should be Made by the Legislature

The First District Court of Appeal recently noted:

[W]e are not unmindful of the concerns that Security First expressed in support of [limiting assignment of benefits], providing evidence that inflated or fraudulent post-loss claims filed by remediation companies exceeded by thirty percent comparable services; that policyholders may sign away their rights without understanding the implications; and that a "cottage industry" of "vendors, contractors, and attorneys" exists that use the "assignments of benefits and the threat of litigation" to "extract higher payments from insurers." These concerns, however, are matters of policy that we are ill-suited to address.⁵⁶

The Fourth District Court of Appeal explained the competing policy arguments raised by the assignment of benefits issue:

Turning to the practical implications of this case, we note that this issue boils down to two competing public policy considerations. On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or

⁵⁴ 889 N.W.2d 596 (Neb. 2016).

⁵⁵ Neb.Rev.St. s 44-8605.

⁵⁶ *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So.3d 627, 628, rehearing denied (Fla. 1st DCA 2015).

inflated invoices. On the other side, contractors argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.⁵⁷

The court noted that if “studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform.”⁵⁸

III. Effect of Proposed Changes:

The bill amends ss. 627.428 and 626.9373, F.S.,⁵⁹ to provide that the right to attorney fees under those sections may not be assigned or extended by contract or other agreement to any person other than another named insured, named beneficiary, or omnibus insured. Prohibiting assignees from recovering attorney fees would make assignment of post-loss benefits less valuable. The assignee would have to pay his or her own attorney fees to enforce the insurance contract.

The bill inserts the word “named” before insured or beneficiary at various places in the statute. This would appear to prevent an omnibus insured from recovering attorney fees on appeal if the omnibus insured prevailed on appeal.⁶⁰

The bill makes technical changes to subsection (2) of sections 627.428 and 626.9373, F.S.

The bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁵⁷ *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749, 755 (Fla. 4th DCA 2015).

⁵⁸ *Id.*

⁵⁹ Section 626.9373, F.S., contains substantially the same language as s. 627.428, F.S., except it applies to surplus lines insurers. Florida courts have interpreted the statutes to have the same meaning.

⁶⁰ An omnibus insured is someone covered by the policy who is not specifically named in the policy. For example, a person driving the car with permission of the insured is an omnibus insured.

E. Other Constitutional Issues:

Due Process

The Florida Supreme Court has explained that in order to determine whether a statute violates due process, it must determine whether the statute bears a reasonable relationship to a legitimate legislative objective and is not discriminatory, arbitrary, or oppressive.⁶¹ In *Nationwide Mutual Fire Insurance Company v. Pinnacle Medical Inc.*,⁶² the court considered a challenge to a provision in the Florida Motor Vehicle No-Fault law that created a prevailing party standard for awarding attorney fees to medical provider assignees, rather than the standard applied to insureds under s. 627.428, F.S. The court held that the prevailing party standard for awarding attorney fees to medical provider assignees violated the due process⁶³ rights of medical providers.

In 1998, the Motor Vehicle No-Fault Law required motor vehicle insurance policies to contain a provision requiring providers who accepted an assignment of personal injury protection benefits to provide medical services or supplies to resolve any dispute with the insurance company via binding arbitration. It provided the prevailing party could recover attorney fees but did not define prevailing party.⁶⁴ In 1998, the Legislature amended the No-Fault Law to create a prevailing party definition.⁶⁵ Under s. 626.736, F.S., providers who accepted assignments and had a dispute were not entitled to attorney fees under 627.428, F.S. Instead, they could only recover fees if they prevailed at arbitration under the statutory formula.

The court said that an objective of No-Fault Law was to provide persons injured in an accident with prompt payment of benefits and that the legislative objective of s. 627.428, F.S., was to discourage insurance companies from contesting valid claims and to reimburse successful insureds for their attorney fees when they are compelled to sue to enforce their insurance contracts. The court explained that the prevailing party attorney fee formula replaced s. 627.428, F.S., attorney fees with an award of attorney fees based on who was the prevailing party. Therefore, medical provider-assignees were subject to attorney fees while insureds suing to enforce the exact same contract could obtain one-way imposition of attorney fees against insurers. The court held that this distinction does nothing to further the prompt payment of benefits or to discourage insurers' denial of valid claims and that the effect of the attorney-fee provision was to delay insureds from receiving medical benefits by encouraging medical providers to require payment from insureds at the time the services are rendered. Therefore, the court said the prevailing

⁶¹ 753 So.2d 55, 59 (Fla. 2000).

⁶² 753 So.2d 55, 59 (Fla. 2000).

⁶³ Article 1, section 9 of the Florida Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.

⁶⁴ See Section 627.736(5), F.S. (Supp. 1998).

⁶⁵ See ch. 98-270, L.O.F. The definition provides that the claimant prevails if the PIP award at arbitration exceeds the sum of the insurer's offer at arbitration plus 50 percent of the difference between the insurer's demand at arbitration and the insurer's offer. The insurer prevails if the PIP award is less than the insurer's offer at arbitration plus 50 percent of the difference between the insurer's demand at arbitration and the insurer's offer. The formula can be expressed as PIP BENEFITS DETERMINED BY ARBITRATION < or > INSURER OFFER + .5(CLAIMANT DEMAND – INSURER OFFER)

party attorney-fee provision arbitrarily distinguished between medical providers and insureds and violated medical providers' due process rights.⁶⁶

Opponents may argue that the provisions of this bill that prohibit an assignee from using s. 627.428, F.S., to collect attorney fees when the assignee prevails in an action against an insurance company similarly violates the assignee's due process rights. They could argue that the assignee, like the medical providers in *Pinnacle*, are suing to enforce the same contract as a named insured and the distinction between assignees and named insureds is arbitrary and does nothing to encourage the prompt payment of valid claims.

Proponents could argue that this bill's distinction is not arbitrary. Proponents could argue that the distinction was drawn because: (1) there has been a large increase in AOB litigation in recent years; (2) claims with an AOB are often higher cost than claims without an AOB; (3) AOB claims are more likely to be inflated; and (4) the one-way attorney fee statute limits the insurers' ability to litigate smaller claims. Proponents could argue that the Legislature is drawing this distinction to prevent further increases in insurances rates because higher rates harm the state's economy.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Contractors and other vendors who use assignments of benefits may use them less often. They would be responsible for their own attorney fees if they had to prosecute a lawsuit against an insurance company.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill provides that the right to attorney fees under s. 627.428, F.S., may not be assigned to any person other than another named insured, named beneficiary, or omnibus insured.

Section 627.736, F.S., specifically provides that assignees of PIP benefits may recover attorney fees pursuant to s. 627.428, F.S. This inconsistency could lead to litigation over which provision applies.

VII. Related Issues:

None.

⁶⁶ *Id.*

VIII. Statutes Affected:

This bill substantially amends sections 626.9373 and 627.428 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



923034

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 627.7152, Florida Statutes, is created to read:

627.7152 Assignment of residential homeowner's property insurance post-loss benefits.—

(1) An agreement to assign post-loss benefits of a residential homeowner's property insurance policy is not valid



923034

11 unless the agreement:

12 (a) Is in writing;

13 (b) Is limited to claims for work performed or work to be
14 performed by the assignee to protect or repair property from
15 damage, including, but not limited to, work to stabilize,
16 protect, repair, or improve such property;

17 (c) Allows the insured to rescind the assignment within 3
18 days after the execution of the assignment without a penalty or
19 fee;

20 (d) Contains the following notice in 14-point bold type to
21 the consumer:

22
23 "WARNING: IF YOU HAVE RESIDENTIAL HOMEOWNERS PROPERTY
24 INSURANCE, YOU MAY BE AGREEING TO GIVE UP CERTAIN
25 RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD
26 PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE
27 SIGNING IT. WITH THE EXCEPTION OF PAYMENT FOR WORK
28 ALREADY PERFORMED BY A SERVICE PROVIDER TO PREVENT
29 ADDITIONAL DAMAGE FROM OCCURRING TO THE PROPERTY
30 RESULTING FROM EMERGENCY OR URGENT CIRCUMSTANCES, YOU
31 HAVE THE RIGHT TO RESIND THIS AGREEMENT WITHOUT
32 PENTALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS
33 AGREEMENT IS EXECUTED. IF THE ASSIGNMENT IS RESCINDED,
34 YOU ARE RESPONSIBLE TO PAY FOR THE WORK DONE UP TO THE
35 DATE OF THE RESCISSION AND YOU ARE NOT OTHERWISE
36 RESPONSIBLE TO PAY FOR THE WORK COVERED BY THE
37 ASSIGNMENT. IF WORK IS BEING PERFORMED AS A RESULT OF
38 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS
39 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR



923034

40 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
41 RESIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
42 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
43 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
44 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
45 PROPERTY FROM FURTHER DAMAGE.

46
47 (2) (a) The assignee shall provide a copy of the assignment
48 agreement to the insurer within 5 days after execution of the
49 agreement, or within 48 hours after beginning nonemergency work,
50 whichever is earlier, if the insurer has a facsimile number and
51 email address on its website designated for the delivery of such
52 documents. This assignment agreement must be accompanied by a
53 written estimate of the work to be done, with unit prices
54 indicated where appropriate, and the basis for calculating lump
55 sum fees if unit prices are inappropriate. The estimate must be
56 timely updated if conditions require a change in scope. The
57 failure to comply with this requirement constitutes a defense to
58 any payment obligation under the policy or the assignment, if
59 the insurer can establish prejudice resulting from the failure.

60 (3) Notwithstanding any other law, the acceptance by a
61 person of any assignment agreement constitutes a waiver by the
62 assignee or transferee, and any subcontractor of the assignee or
63 transferee, of any and all claims against all named insureds for
64 payment arising from the specified loss, except that all named
65 insureds remain responsible for the payment of any deductible
66 amount provided for by the terms of the insurance policy and for
67 the cost of any betterment ordered by all named insureds. This
68 waiver remains in effect notwithstanding any subsequent



923034

69 determination that the assignment agreement is invalid or
70 notwithstanding the rescission of the assignment agreement by
71 all named insureds, except that the assignee is entitled to
72 payment for the reasonable cost of any contracted work performed
73 before the assignor rescinded the assignment agreement.

74
75 ===== T I T L E A M E N D M E N T =====

76 And the title is amended as follows:

77 Delete everything before the enacting clause
78 and insert:

79 A bill to be entitled
80 An act relating to assignment of residential
81 homeowners property insurance post-loss benefits;
82 creating s. 627.7152, F.S.; providing that an
83 agreement to assign post-loss benefits of a
84 residential homeowner's property insurance policy is
85 not valid unless specified conditions are met;
86 requiring the assignee to provide a copy of the
87 assignment agreement and a specified written estimate
88 to the insurer within a specified timeframe; requiring
89 the estimate to be timely updated if conditions
90 require a change in scope; providing construction
91 relating to failure to comply with such requirement;
92 providing that a person's acceptance of an assignment
93 agreement constitutes a waiver by the assignee or
94 transferee, or any subcontractor of the assignee or
95 transferee, of certain claims against named insureds,
96 except under specified circumstances; providing
97 construction relating to such waiver; providing an



923034

98

effective date.



469254

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
02/12/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Thurston) recommended the following:

1 **Senate Substitute for Amendment (923034) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.—

10 (1) An agreement to assign post-loss benefits of a



469254

11 residential homeowner's property insurance policy is not valid
12 unless the agreement:

13 (a) Is in writing;

14 (b) Is limited to claims for work performed or work to be
15 performed by the assignee to protect or repair property from
16 damage, including, but not limited to, work to stabilize,
17 protect, repair, or improve such property;

18 (c) Allows the insured to rescind the assignment within 3
19 days after the execution of the assignment without a penalty or
20 fee;

21 (d) Contains the following notice in 14-point bold type to
22 the consumer:

23
24 "WARNING: IF YOU HAVE RESIDENTIAL HOMEOWNERS PROPERTY
25 INSURANCE, YOU MAY BE AGREEING TO GIVE UP CERTAIN
26 RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD
27 PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE
28 SIGNING IT. WITH THE EXCEPTION OF PAYMENT FOR WORK
29 ALREADY PERFORMED BY A SERVICE PROVIDER TO PREVENT
30 ADDITIONAL DAMAGE FROM OCCURRING TO THE PROPERTY
31 RESULTING FROM EMERGENCY OR URGENT CIRCUMSTANCES, YOU
32 HAVE THE RIGHT TO RESCIND THIS AGREEMENT WITHOUT
33 PENALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS
34 AGREEMENT IS EXECUTED. IF THE ASSIGNMENT IS RESCINDED,
35 YOU ARE RESPONSIBLE TO PAY FOR THE WORK DONE UP TO THE
36 DATE OF THE RESCISSION AND YOU ARE NOT OTHERWISE
37 RESPONSIBLE TO PAY FOR THE WORK COVERED BY THE
38 ASSIGNMENT. IF WORK IS BEING PERFORMED AS A RESULT OF
39 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS



469254

40 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR
41 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
42 RESCIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
43 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
44 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
45 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
46 PROPERTY FROM FURTHER DAMAGE.

47
48 (2) The assignee shall provide a copy of the assignment
49 agreement to the insurer within 5 days after execution of the
50 agreement, or within 48 hours after beginning nonemergency work,
51 whichever is earlier, if the insurer has a facsimile number and
52 email address on its website designated for the delivery of such
53 documents. This assignment agreement must be accompanied by a
54 written estimate of the work to be done, with unit prices
55 indicated where appropriate, and the basis for calculating lump
56 sum fees if unit prices are inappropriate. The estimate must be
57 timely updated if conditions require a change in scope. The
58 failure to comply with this requirement constitutes a defense to
59 any payment obligation under the policy or the assignment, if
60 the insurer can establish prejudice resulting from the failure.

61 (3) Before emergency work commences, the remediator,
62 contractor, or other service provider must inform the homeowner
63 in writing of the obvious conditions that require priority
64 repairs and mitigation, including, but not limited to, flooding
65 or standing water, exposed electrical wiring, a hole or breach
66 in the roof or an exterior wall, or significant foundation
67 cracks.

68 (4) The insurer may inspect the property at any time. If



469254

69 the insurer fails to attempt in good faith to do so within 5
70 days after receiving a copy of the assignment agreement
71 described in subsection (2) and to promptly deliver to the
72 assignee written notice of any perceived deficiency in the
73 assignee's notice or the work being performed, the failure may
74 be raised to estop the insurer from asserting that work done was
75 not reasonably necessary or that the notice was insufficient to
76 comply with this section.

77 (5) Notwithstanding any other law, the acceptance by a
78 person of any assignment agreement constitutes a waiver by the
79 assignee or transferee, and any subcontractor of the assignee or
80 transferee, of any and all claims against all named insureds for
81 payment arising from the specified loss, except that all named
82 insureds remain responsible for the payment of any deductible
83 amount provided for by the terms of the insurance policy and for
84 the cost of any betterment ordered by all named insureds. This
85 waiver remains in effect notwithstanding any subsequent
86 determination that the assignment agreement is invalid or
87 notwithstanding the rescission of the assignment agreement by
88 all named insureds, except that the assignee is entitled to
89 payment for the reasonable cost of any contracted work performed
90 before the assignor rescinded the assignment agreement.

91 Section 2. This act shall take effect July 1, 2019.

92
93 ===== T I T L E A M E N D M E N T =====

94 And the title is amended as follows:

95 Delete everything before the enacting clause
96 and insert:

97 A bill to be entitled



469254

98 An act relating to assignment of residential
99 homeowners property insurance post-loss benefits;
100 creating s. 627.7152, F.S.; providing that an
101 agreement to assign post-loss benefits of a
102 residential homeowner's property insurance policy is
103 not valid unless specified conditions are met;
104 requiring the assignee to provide a copy of the
105 assignment agreement and a specified written estimate
106 to the insurer within a specified timeframe; requiring
107 the estimate to be timely updated if conditions
108 require a change in scope; providing construction
109 relating to failure to comply with such requirement;
110 requiring service providers to inform homeowners of
111 certain conditions before commencing emergency work;
112 authorizing insurers to inspect the property at any
113 time; providing construction if an insurer fails to
114 attempt in good faith to inspect the property within a
115 certain timeframe; providing that a person's
116 acceptance of an assignment agreement constitutes a
117 waiver by the assignee or transferee, or any
118 subcontractor of the assignee or transferee, of
119 certain claims against named insureds, except under
120 specified circumstances; providing construction
121 relating to such waiver; providing an effective date.



355342

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
02/12/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Thurston) recommended the following:

1 **Senate Substitute for Amendment (923034) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.—

10 (1) An agreement to assign post-loss benefits of a



355342

11 residential homeowner's property insurance policy is not valid
12 unless the agreement:

13 (a) Is in writing;

14 (b) Is limited to claims for work performed or work to be
15 performed by the assignee to protect or repair property from
16 damage, including, but not limited to, work to stabilize,
17 protect, repair, or improve such property;

18 (c) Allows the insured to rescind the assignment within 3
19 days after the execution of the assignment without a penalty or
20 fee;

21 (d) Contains the following notice in 14-point bold type to
22 the consumer:

23
24 "WARNING: IF YOU HAVE RESIDENTIAL HOMEOWNERS PROPERTY
25 INSURANCE, YOU MAY BE AGREEING TO GIVE UP CERTAIN
26 RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD
27 PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE
28 SIGNING IT. WITH THE EXCEPTION OF PAYMENT FOR WORK
29 ALREADY PERFORMED BY A SERVICE PROVIDER TO PREVENT
30 ADDITIONAL DAMAGE FROM OCCURRING TO THE PROPERTY
31 RESULTING FROM EMERGENCY OR URGENT CIRCUMSTANCES, YOU
32 HAVE THE RIGHT TO RESIND THIS AGREEMENT WITHOUT
33 PENTALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS
34 AGREEMENT IS EXECUTED. IF THE ASSIGNMENT IS RESCINDED,
35 YOU ARE RESPONSIBLE TO PAY FOR THE WORK DONE UP TO THE
36 DATE OF THE RESCISSION AND YOU ARE NOT OTHERWISE
37 RESPONSIBLE TO PAY FOR THE WORK COVERED BY THE
38 ASSIGNMENT. IF WORK IS BEING PERFORMED AS A RESULT OF
39 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS



355342

40 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR
41 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
42 RESIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
43 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
44 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
45 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
46 PROPERTY FROM FURTHER DAMAGE.

47
48 (2) (a) The assignee shall provide a copy of the assignment
49 agreement to the insurer within 5 days after execution of the
50 agreement, or within 48 hours after beginning nonemergency work,
51 whichever is earlier, if the insurer has a facsimile number and
52 email address on its website designated for the delivery of such
53 documents. This assignment agreement must be accompanied by a
54 written estimate of the work to be done, with unit prices
55 indicated where appropriate, and the basis for calculating lump
56 sum fees if unit prices are inappropriate. The estimate must be
57 timely updated if conditions require a change in scope. The
58 failure to comply with this requirement constitutes a defense to
59 any payment obligation under the policy or the assignment, if
60 the insurer can establish prejudice resulting from the failure.

61 (3) Notwithstanding any other law, the acceptance by a
62 person of any assignment agreement constitutes a waiver by the
63 assignee or transferee, and any subcontractor of the assignee or
64 transferee, of any and all claims against all named insureds for
65 payment arising from the specified loss, except that all named
66 insureds remain responsible for the payment of any deductible
67 amount provided for by the terms of the insurance policy and for
68 the cost of any betterment ordered by all named insureds. This



355342

69 waiver remains in effect notwithstanding any subsequent
70 determination that the assignment agreement is invalid or
71 notwithstanding the rescission of the assignment agreement by
72 all named insureds, except that the assignee is entitled to
73 payment for the reasonable cost of any contracted work performed
74 before the assignor rescinded the assignment agreement.

75 Section 2. This act shall take effect July 1, 2019.

76
77
78 ===== T I T L E A M E N D M E N T =====

79 And the title is amended as follows:

80 Delete everything before the enacting clause
81 and insert:

82 A bill to be entitled
83 An act relating to assignment of residential
84 homeowners property insurance post-loss benefits;
85 creating s. 627.7152, F.S.; providing that an
86 agreement to assign post-loss benefits of a
87 residential homeowner's property insurance policy is
88 not valid unless specified conditions are met;
89 requiring the assignee to provide a copy of the
90 assignment agreement and a specified written estimate
91 to the insurer within a specified timeframe; requiring
92 the estimate to be timely updated if conditions
93 require a change in scope; providing construction
94 relating to failure to comply with such requirement;
95 providing that a person's acceptance of an assignment
96 agreement constitutes a waiver by the assignee or
97 transferee, or any subcontractor of the assignee or



355342

98 transferee, of certain claims against named insureds,
99 except under specified circumstances; providing
100 construction relating to such waiver; providing an
101 effective date.



724484

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (11) is added to section 627.062,
Florida Statutes, to read:

627.062 Rate standards.—

(11) Attorney fees and costs paid by a property insurer
pursuant to s. 627.428 may not be included in the property
insurer's rate base and may not be used to justify a rate



724484

11 increase or rate change.

12 Section 2. Subsection (1) of section 627.409, Florida
13 Statutes, is amended to read:

14 627.409 Representations in applications; warranties.—

15 (1) Any statement or description made by or on behalf of an
16 insured or annuitant in an application for an insurance policy
17 or annuity contract, or in negotiations for a policy or
18 contract, is a representation and not a warranty. Except as
19 provided in subsection (3), a misrepresentation, omission,
20 concealment of fact, or incorrect statement may prevent recovery
21 under the contract or policy only if the misrepresentation,
22 omission, concealment of fact, or incorrect statement directly
23 relates to the cause of the claim being made and any of the
24 following apply:

25 (a) The misrepresentation, omission, concealment, or
26 statement is fraudulent or is material to the acceptance of the
27 risk or to the hazard assumed by the insurer.

28 (b) If the true facts relative to the loss claimed had been
29 known to the insurer pursuant to a policy requirement or other
30 requirement, the insurer in good faith would not have:

31 1. Issued the policy or contract;~~it would not have~~

32 2. Issued the policy or contract at a the same premium
33 rate at least 20 percent higher than the rate actually charged;~~it~~
34 ~~would not have~~

35 3. Issued a policy or contract in as large an amount;~~it~~ or

36 4. would not have Provided coverage with respect to the
37 hazard resulting in the loss.

38 Section 3. Section 627.422, Florida Statutes, is amended to
39 read:



724484

40 627.422 Assignment of policies or post-loss benefits.-A
41 policy may be assignable, or not assignable, as provided by its
42 terms.

43 (1) LIFE OR HEALTH INSURANCE POLICIES.-Subject to its terms
44 relating to assignability, any life or health insurance policy
45 under the terms of which the beneficiary may be changed upon the
46 sole request of the policyowner may be assigned either by pledge
47 or transfer of title, by an assignment executed by the
48 policyowner alone and delivered to the insurer, whether or not
49 the pledgee or assignee is the insurer. Any such assignment
50 shall entitle the insurer to deal with the assignee as the owner
51 or pledgee of the policy in accordance with the terms of the
52 assignment, until the insurer has received at its home office
53 written notice of termination of the assignment or pledge or
54 written notice by or on behalf of some other person claiming
55 some interest in the policy in conflict with the assignment.

56 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
57 POLICIES.-A personal lines residential property insurance policy
58 or a commercial residential property insurance policy may not
59 restrict the assignment of post-loss benefits.

60 Section 4. Section 627.7152, Florida Statutes, is created
61 to read:

62 627.7152 Assignment of residential homeowner's property
63 insurance post-loss benefits; prelitigation invoice; offer of
64 settlement; annual reporting.-

65 (1) An agreement to assign post-loss benefits of a
66 residential homeowner's property insurance policy is not valid
67 unless the agreement:

68 (a) Is in writing;



724484

69 (b) Is limited to claims for work performed or work to be
70 performed by the assignee;

71 (c) Contains an accurate and up-to-date statement of the
72 scope of work to be performed;

73 (d) Allows the insured to rescind the assignment within 7
74 days after the execution of the assignment;

75 (e) Provides that the insured may be responsible for
76 payment for any work performed before the rescission of the
77 assignment; and

78 (f) Contains a provision, in 14-point boldfaced type, which
79 allows the insured to rescind the agreement within 7 days after
80 execution of the assignment, and with a notice that if the
81 assignment is rescinded, the homeowner is responsible to pay for
82 the work done up to the date of the rescission and that the
83 homeowner is not otherwise responsible to pay for the work
84 covered by the assignment.

85 (2) (a) The assignee shall provide a copy of the assignment
86 agreement to the insurer within 7 days after execution of the
87 agreement, or within 48 hours after beginning nonemergency work,
88 whichever is earlier, if the insurer has a facsimile number and
89 e-mail address on its website designated for the delivery of
90 such documents. This notice must be accompanied by a written
91 estimate of the work to be done, with unit prices indicated
92 where appropriate, and the basis for calculating lump sum fees
93 if unit prices are inappropriate. The estimate must be timely
94 updated if conditions require a change in scope. The failure to
95 comply with this requirement constitutes a defense to any
96 payment obligation under the policy or the assignment, if the
97 insurer can establish prejudice resulting from the failure.



724484

98 (b) The insurer may inspect the property at any time. If
99 the insurer fails to attempt in good faith to do so within 7
100 days after learning of the loss and promptly deliver to the
101 assignee written notice of any perceived deficiency in the
102 assignee's notice or the work being performed, the failure may
103 be raised to estop the insurer from asserting that work done was
104 not reasonably necessary or that the notice was insufficient to
105 comply with this section.

106 (3) Notwithstanding any other law, the acceptance by an
107 assignee of a valid assignment agreement constitutes a waiver by
108 the assignee or transferee, and any subcontractor of the
109 assignee or transferee, of any and all claims against named
110 insureds for payment arising from the specified loss, except
111 that all named insureds remain responsible for:

112 (a) The payment of any deductible amount provided for by
113 the terms of the insurance policy;

114 (b) The payment for work performed before the rescission of
115 the assignment agreement, if there is a rescission;

116 (c) The cost of any betterment specifically authorized by
117 the insured in a writing that identifies the work as betterment
118 for which the insured will be liable; and

119 (d) A misrepresentation of the existence of homeowner's
120 coverage by the homeowner.

121
122 The waiver in this subsection is valid even if the assignment
123 agreement is determined to be invalid.

124 (4) No later than 30 days before an assignee initiates
125 litigation against an insurer relating to a residential
126 homeowner's property insurance claim, the assignee must provide



724484

127 the insurer an invoice for all work that has been performed and
128 a current estimate of work remaining to be performed.

129 (5) In a civil action relating to a residential homeowner's
130 property insurance claim under a policy in which an assignment
131 agreement under this section was executed, an offer of
132 settlement under s. 768.79 by any party may be made no earlier
133 than 30 days after the civil action has commenced.

134 (6) The office shall require each insurer to report by
135 January 30, 2022, and each year thereafter, data on each
136 residential property insurance claim paid in the prior calendar
137 year pursuant to an assignment agreement. Such data must
138 include, but are not limited to, specific data about claims
139 adjustment and settlement timeframes and trends grouped by
140 whether litigated or not litigated, by loss adjustment expenses,
141 and by the amount and type of attorney fees incurred or paid.
142 The office may adopt rules to administer this subsection.

143 (7) This section does not apply to:

144 (a) An assignment, transfer, or conveyance granted to a
145 subsequent purchaser of the property with an insurable interest
146 in the property following a loss; or

147 (b) A power of attorney under chapter 709 which grants to a
148 management company, family member, guardian, or similarly
149 situated person of an insured the authority to act on behalf of
150 an insured as it relates to a property insurance claim.

151 Section 5. This act shall take effect July 1, 2019.

152

153 ===== T I T L E A M E N D M E N T =====

154 And the title is amended as follows:

155 Delete everything before the enacting clause



724484

156 and insert:

157 A bill to be entitled
158 An act relating to insurance; amending s. 627.062,
159 F.S.; providing that certain attorney fees and costs;
160 providing an effective paid by property insurers may
161 not be included in the property insurer's rate base
162 and may not be used to justify a rate increase or rate
163 change; amending s. 627.409, F.S.; adding and revising
164 conditions under which certain misrepresentations,
165 omissions, concealments of fact, or incorrect
166 statements may prevent recovery under an insurance
167 policy or annuity contract; amending s. 627.422, F.S.;
168 providing that personal lines residential and
169 commercial residential property insurance policies may
170 not restrict the assignment of post-loss benefits;
171 creating s. 627.7152, F.S.; providing that an
172 agreement to assign post-loss benefits of a
173 residential homeowner's property insurance is not
174 valid unless specified conditions are met; requiring
175 the assignee, under certain circumstances, to provide
176 a copy of the assignment agreement and a specified
177 written estimate to the insurer within a specified
178 timeframe; requiring the estimate to be timely updated
179 if conditions require a change in scope; providing
180 construction relating to failure to comply with such
181 requirement; authorizing an insurer to inspect the
182 property at any time; providing that an insurer's
183 failure to make a certain attempt to inspect the
184 property and deliver a certain notice, under certain



724484

185 circumstances, may estop certain assertions by the
186 insurer; providing that an assignee's acceptance of a
187 valid assignment agreement constitutes a waiver by the
188 assignee or transferee, or any subcontractor of the
189 assignee or transferee, of certain claims against
190 named insureds, except under specified circumstances;
191 providing construction relating to the validity of
192 such waiver; requiring an assignee, before initiating
193 certain litigation against an insurer, to provide a
194 certain invoice and estimate to the insurer within a
195 specified timeframe; providing that certain offers of
196 settlement in certain civil actions may not be made
197 until after a specified timeframe; requiring the
198 office to require each insurer to annually report
199 specified data relating to certain claims paid
200 pursuant to assignment agreements; authorizing the
201 office to adopt rules; providing applicability;
202 providing an effective date.



545092

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
02/12/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Lee) recommended the following:

1 **Senate Substitute for Amendment (724484) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.-

10 (1) Under an agreement to assign post-loss benefits, an



545092

11 assignee is bound by all post-loss obligations specified in the
12 residential homeowner's property insurance policy.

13 Notwithstanding any policy provision or law to the contrary,
14 however, the obligation to submit to an examination under oath
15 shall be limited to one examination under oath by the insurer or
16 the insurer's representative relating to an assignment agreement
17 and services provided by the assignee. The examination under
18 oath:

19 (a) Is limited to the person designated by the assignee as
20 the person with the most knowledge of the assignment agreement
21 and services provided pursuant to the assignment;

22 (b) Must occur in the county where the property for which
23 the loss was assigned and the work performed or in the county
24 where the assignee has offices or agents or in the county where
25 the person designated by the assignee as the person with the
26 most knowledge resides; and

27 (c) Must not last more than 3 hours.

28 (2) (a) If an assignee commences an action in any court of
29 this state based upon or including the same claim against the
30 same adverse party that the assignee has previously voluntarily
31 dismissed in a court of this state, the court may as it deems
32 proper, order the assignee to pay the costs of the adverse party
33 of the claim previously voluntarily dismissed. Upon the issuance
34 of such order, the court shall stay the proceedings in the
35 subsequent action until the assignee has complied with the
36 order.

37 (b) Upon a finding by the court that an assignee has not
38 complied with its post-loss obligations under the residential
39 homeowner's insurance policy pursuant to this section, the court



545092

40 may not award attorney fees to the assignee under s. 627.428
41 directly related to the assignee's noncompliance with post-loss
42 obligations.

43
44 Notwithstanding the execution of an assignment, a homeowner
45 remains bound by any duty under the policy to take reasonable
46 steps to prevent further damage to the property.

47 Section 2. This act shall apply to assignment agreements
48 executed on or after July 1, 2019.

49 Section 3. This act shall take effect July 1, 2019.

50
51 ===== T I T L E A M E N D M E N T =====

52 And the title is amended as follows:

53 Delete everything before the enacting clause
54 and insert:

55 A bill to be entitled
56 An act relating to assignment of residential
57 homeowner's property insurance post-loss benefits;
58 creating s. 627.7152, F.S.; providing that an assignee
59 is bound by all post-loss obligations specified in a
60 residential homeowner's insurance policy; providing
61 that the obligation of the assignee to submit to an
62 examination under oath is limited to one examination
63 of a person designated by the assignee; providing
64 criteria for the assignee to designate the person who
65 will be examined under oath; providing requirements as
66 to the location and length of time of the examination
67 under oath; providing that if an assignee brings an
68 action based upon or including the same claim as a



545092

69 previous action the assignee voluntarily dismissed,
70 the court may order an assignee to pay the costs of
71 the adverse party and shall stay the action until the
72 assignee has complied with the order; providing that
73 the court may not award the assignee an attorney fee
74 under s. 627.428, F.S., directly related to the
75 assignee's noncompliance with post loss obligations;
76 specifying that notwithstanding any assignment the
77 homeowner remains bound by any duty under the policy
78 to prevent further damage to the property; providing
79 applicability; providing an effective date.



487740

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 627.7152, Florida Statutes, is created
to read:

627.7152 Assignment of residential homeowner's property
insurance post-loss benefits.-

(1) Under an agreement to assign post-loss benefits, an
assignee is bound by all post-loss obligations specified in the



11 residential homeowner's property insurance policy.
12 Notwithstanding any policy provision or law to the contrary,
13 however, the obligation to submit to an examination under oath
14 shall be limited to one examination under oath by the insurer or
15 the insurer's representative relating to an assignment agreement
16 and services provided by the assignee. The examination under
17 oath:

18 (a) Is limited to the person designated by the assignee as
19 the person with the most knowledge of the assignment agreement
20 and services provided pursuant to the assignment;

21 (b) Must occur in the county where the property for which
22 the loss was assigned and the work performed or in the county
23 where the assignee has offices or agents or in the county where
24 the person designated by the assignee as the person with the
25 most knowledge resides; and

26 (c) Must not last more than 3 hours.

27 (2) (a) If an assignee commences an action in any court of
28 this state based upon or including the same claim against the
29 same adverse party that the assignee has previously voluntarily
30 dismissed in a court of this state, the court may as it deems
31 proper, order the assignee to pay the costs of the adverse party
32 of the claim previously voluntarily dismissed. Upon the issuance
33 of such order, the court shall stay the proceedings in the
34 subsequent action until the assignee has complied with the
35 order.

36 (b) Upon a finding by the court that an assignee has not
37 complied with its post-loss obligations under the residential
38 homeowner's insurance policy pursuant to this section, the court
39 may not award attorney fees to the assignee under s. 627.428



487740

40 directly related to the assignee's noncompliance with post-loss
41 obligations.

42
43 Notwithstanding the execution of an assignment, a homeowner
44 remains bound by any duty under the policy to take reasonable
45 steps to prevent further damage to the property.

46 Section 2. This act shall apply to assignment agreements
47 executed on or after July 1, 2019.

48 Section 3. This act shall take effect July 1, 2019.

49
50 ===== T I T L E A M E N D M E N T =====

51 And the title is amended as follows:

52 Delete everything before the enacting clause
53 and insert:

54 A bill to be entitled
55 An act relating to assignment of residential
56 homeowner's property insurance post-loss benefits;
57 creating s. 627.7152, F.S.; providing that an assignee
58 is bound by all post-loss obligations specified in a
59 residential homeowner's insurance policy; providing
60 that the obligation of the assignee to submit to an
61 examination under oath is limited to one examination
62 of a person designated by the assignee; providing
63 criteria for the assignee to designate the person who
64 will be examined under oath; providing requirements as
65 to the location and length of time of the examination
66 under oath; providing that if an assignee brings an
67 action based upon or including the same claim as a
68 previous action the assignee voluntarily dismissed,



487740

69 the court may order an assignee to pay the costs of
70 the adverse party and shall stay the action until the
71 assignee has complied with the order; providing that
72 the court may not award the assignee an attorney fee
73 under s. 627.428, F.S., directly related to the
74 assignee's noncompliance with post loss obligations;
75 specifying that notwithstanding any assignment the
76 homeowner remains bound by any duty under the policy
77 to prevent further damage to the property; providing
78 applicability; providing an effective date.



711030

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
02/12/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Lee) recommended the following:

1 **Senate Substitute for Amendment (923034) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.-

10 (1) Under an agreement to assign post-loss benefits, an



711030

11 assignee is bound by all post-loss obligations specified in the
12 residential homeowner's property insurance policy.

13 Notwithstanding any policy provision or law to the contrary,
14 however, the obligation to submit to an examination under oath
15 shall be limited to one examination under oath by the insurer or
16 the insurer's representative relating to an assignment agreement
17 and services provided by the assignee. The examination under
18 oath:

19 (a) Is limited to the person designated by the assignee as
20 the person with the most knowledge of the assignment agreement
21 and services provided pursuant to the assignment;

22 (b) Must occur in the county where the property for which
23 the loss was assigned and the work performed or in the county
24 where the assignee has offices or agents or in the county where
25 the person designated by the assignee as the person with the
26 most knowledge resides; and

27 (c) Must not last more than 3 hours.

28 (2) (a) If an assignee commences an action in any court of
29 this state based upon or including the same claim against the
30 same adverse party that the assignee has previously voluntarily
31 dismissed in a court of this state, the court may as it deems
32 proper, order the assignee to pay the costs of the adverse party
33 of the claim previously voluntarily dismissed. Upon the issuance
34 of such order, the court shall stay the proceedings in the
35 subsequent action until the assignee has complied with the
36 order.

37 (b) Upon a finding by the court that an assignee has not
38 complied with its post-loss obligations under the residential
39 homeowner's insurance policy pursuant to this section, the court



711030

40 may not award attorney fees to the assignee under s. 627.428
41 directly related to the assignee's noncompliance with post-loss
42 obligations.

43
44 Notwithstanding the execution of an assignment, a homeowner
45 remains bound by any duty under the policy to take reasonable
46 steps to prevent further damage to the property.

47 Section 2. This act shall apply to assignment agreements
48 executed on or after July 1, 2019.

49 Section 3. This act shall take effect July 1, 2019.

50
51 ===== T I T L E A M E N D M E N T =====

52 And the title is amended as follows:

53 Delete everything before the enacting clause
54 and insert:

55 A bill to be entitled
56 An act relating to assignment of residential
57 homeowner's property insurance post-loss benefits;
58 creating s. 627.7152, F.S.; providing that an assignee
59 is bound by all post-loss obligations specified in a
60 residential homeowner's insurance policy; providing
61 that the obligation of the assignee to submit to an
62 examination under oath is limited to one examination
63 of a person designated by the assignee; providing
64 criteria for the assignee to designate the person who
65 will be examined under oath; providing requirements as
66 to the location and length of time of the examination
67 under oath; providing that if an assignee brings an
68 action based upon or including the same claim as a



711030

69 previous action the assignee voluntarily dismissed,
70 the court may order an assignee to pay the costs of
71 the adverse party and shall stay the action until the
72 assignee has complied with the order; providing that
73 the court may not award the assignee an attorney fee
74 under s. 627.428, F.S., directly related to the
75 assignee's noncompliance with post loss obligations;
76 specifying that notwithstanding any assignment the
77 homeowner remains bound by any duty under the policy
78 to prevent further damage to the property; providing
79 applicability; providing an effective date.



672446

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Thurston) recommended the following:

1 **Senate Substitute for Amendment (487740) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.—

10 (1) An agreement to assign post-loss benefits of a



672446

11 residential homeowner's property insurance policy is not valid
12 unless the agreement:

13 (a) Is in writing;

14 (b) Is limited to claims for work performed or work to be
15 performed by the assignee to protect or repair property from
16 damage, including, but not limited to, work to stabilize,
17 protect, repair, or improve such property;

18 (c) Allows the insured to rescind the assignment within 3
19 days after the execution of the assignment without a penalty or
20 fee;

21 (d) Contains the following notice in 14-point bold type to
22 the consumer:

23
24 "WARNING: IF YOU HAVE RESIDENTIAL HOMEOWNERS PROPERTY
25 INSURANCE, YOU MAY BE AGREEING TO GIVE UP CERTAIN
26 RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD
27 PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE
28 SIGNING IT. WITH THE EXCEPTION OF PAYMENT FOR WORK
29 ALREADY PERFORMED BY A SERVICE PROVIDER TO PREVENT
30 ADDITIONAL DAMAGE FROM OCCURRING TO THE PROPERTY
31 RESULTING FROM EMERGENCY OR URGENT CIRCUMSTANCES, YOU
32 HAVE THE RIGHT TO RESCIND THIS AGREEMENT WITHOUT
33 PENALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS
34 AGREEMENT IS EXECUTED. IF THE ASSIGNMENT IS RESCINDED,
35 YOU ARE RESPONSIBLE TO PAY FOR THE WORK DONE UP TO THE
36 DATE OF THE RESCISSION AND YOU ARE NOT OTHERWISE
37 RESPONSIBLE TO PAY FOR THE WORK COVERED BY THE
38 ASSIGNMENT. IF WORK IS BEING PERFORMED AS A RESULT OF
39 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS



672446

40 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR
41 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
42 RESCIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
43 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
44 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
45 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
46 PROPERTY FROM FURTHER DAMAGE.

47
48 (2) The assignee shall provide a copy of the assignment
49 agreement to the insurer within 5 days after execution of the
50 agreement, or within 48 hours after beginning nonemergency work,
51 whichever is earlier, if the insurer has a facsimile number and
52 email address on its website designated for the delivery of such
53 documents. This assignment agreement must be accompanied by a
54 written estimate of the work to be done, with unit prices
55 indicated where appropriate, and the basis for calculating lump
56 sum fees if unit prices are inappropriate. The estimate must be
57 timely updated if conditions require a change in scope. The
58 failure to comply with this requirement constitutes a defense to
59 any payment obligation under the policy or the assignment, if
60 the insurer can establish prejudice resulting from the failure.

61 (3) Before emergency work commences, the remediator,
62 contractor, or other service provider must inform the homeowner
63 in writing of the obvious conditions that require priority
64 repairs and mitigation, including, but not limited to, flooding
65 or standing water, exposed electrical wiring, a hole or breach
66 in the roof or an exterior wall, or significant foundation
67 cracks.

68 (4) The insurer may inspect the property at any time. If



672446

69 the insurer fails to attempt in good faith to do so within 5
70 days after receiving a copy of the assignment agreement
71 described in subsection (2) and to promptly deliver to the
72 assignee written notice of any perceived deficiency in the
73 assignee's notice or the work being performed, the failure may
74 be raised to estop the insurer from asserting that work done was
75 not reasonably necessary or that the notice was insufficient to
76 comply with this section.

77 (5) Notwithstanding any other law, the acceptance by a
78 person of any assignment agreement constitutes a waiver by the
79 assignee or transferee, and any subcontractor of the assignee or
80 transferee, of any and all claims against all named insureds for
81 payment arising from the specified loss, except that all named
82 insureds remain responsible for the payment of any deductible
83 amount provided for by the terms of the insurance policy and for
84 the cost of any betterment ordered by all named insureds. This
85 waiver remains in effect notwithstanding any subsequent
86 determination that the assignment agreement is invalid or
87 notwithstanding the rescission of the assignment agreement by
88 all named insureds, except that the assignee is entitled to
89 payment for the reasonable cost of any contracted work performed
90 before the assignor rescinded the assignment agreement.

91 Section 2. This act shall take effect July 1, 2019.

92
93 ===== T I T L E A M E N D M E N T =====

94 And the title is amended as follows:

95 Delete everything before the enacting clause
96 and insert:

97 A bill to be entitled



672446

98 An act relating to assignment of residential
99 homeowners property insurance post-loss benefits;
100 creating s. 627.7152, F.S.; providing that an
101 agreement to assign post-loss benefits of a
102 residential homeowner's property insurance policy is
103 not valid unless specified conditions are met;
104 requiring the assignee to provide a copy of the
105 assignment agreement and a specified written estimate
106 to the insurer within a specified timeframe; requiring
107 the estimate to be timely updated if conditions
108 require a change in scope; providing construction
109 relating to failure to comply with such requirement;
110 requiring service providers to inform homeowners of
111 certain conditions before commencing emergency work;
112 authorizing insurers to inspect the property at any
113 time; providing construction if an insurer fails to
114 attempt in good faith to inspect the property within a
115 certain timeframe; providing that a person's
116 acceptance of an assignment agreement constitutes a
117 waiver by the assignee or transferee, or any
118 subcontractor of the assignee or transferee, of
119 certain claims against named insureds, except under
120 specified circumstances; providing construction
121 relating to such waiver; providing an effective date.

By Senator Broxson

1-00417-19

2019122__

1 A bill to be entitled
 2 An act relating to attorney fee awards under insurance
 3 policies and contracts; amending ss. 626.9373 and
 4 627.428, F.S.; revising certain attorney fee
 5 provisions in the Florida Insurance Code to specify
 6 that an insured or beneficiary entitled, under certain
 7 circumstances, to attorney fees under an insurance
 8 policy or contract must be a named insured or named
 9 beneficiary; providing that such right to attorney
 10 fees may not be assigned or extended by agreement,
 11 except to certain persons; making technical changes;
 12 providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 626.9373, Florida Statutes, is amended
 17 to read:

18 626.9373 Attorney ~~Attorney's~~ fees.—

19 (1) Upon the rendition of a judgment or decree by any court
 20 of this state against a surplus lines insurer in favor of any
 21 named or omnibus insured or the named beneficiary under a policy
 22 or contract executed by the insurer ~~on or after the effective~~
 23 ~~date of this act~~, the trial court or, if the named insured or
 24 named beneficiary prevails on appeal, the appellate court, shall
 25 adjudge or decree against the insurer in favor of the named
 26 insured or named beneficiary a reasonable sum as fees or
 27 compensation for the named insured's or named beneficiary's
 28 attorney prosecuting the lawsuit for which recovery is awarded.
 29 The right to attorney fees under this section may not be

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1-00417-19

2019122__

30 assigned or extended by contract or other agreement to any
 31 person other than another named insured, named beneficiary, or
 32 omnibus insured.

33 (2) If awarded, attorney ~~attorney's~~ fees or compensation
 34 ~~must shall~~ be included in the judgment or decree rendered in the
 35 case.

36 Section 2. Section 627.428, Florida Statutes, is amended to
 37 read:

38 627.428 Attorney fees ~~Attorney's fee~~.—

39 (1) Upon the rendition of a judgment or decree by any court
 40 ~~of the courts~~ of this state against an insurer and in favor of
 41 any named or omnibus insured or the named beneficiary under a
 42 policy or contract executed by the insurer, the trial court or,
 43 in the event of an appeal in which the named insured or named
 44 beneficiary prevails, the appellate court shall adjudge or
 45 decree against the insurer and in favor of the named insured or
 46 named beneficiary a reasonable sum as fees or compensation for
 47 the named insured's or named beneficiary's attorney prosecuting
 48 the suit in which the recovery is awarded ~~had~~. The right to
 49 attorney fees under this section may not be assigned or extended
 50 by contract or other agreement to any person other than another
 51 named insured, named beneficiary, or omnibus insured.

52 (2) As to suits based on claims arising under life
 53 insurance policies or annuity contracts, ~~no~~ such attorney fees
 54 ~~may not attorney's fee shall~~ be allowed if such suit was
 55 commenced prior to expiration of 60 days after proof of the
 56 claim was duly filed with the insurer.

57 (3) When so awarded, compensation or fees of the attorney
 58 ~~must shall~~ be included in the judgment or decree rendered in the

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1-00417-19

2019122__

59

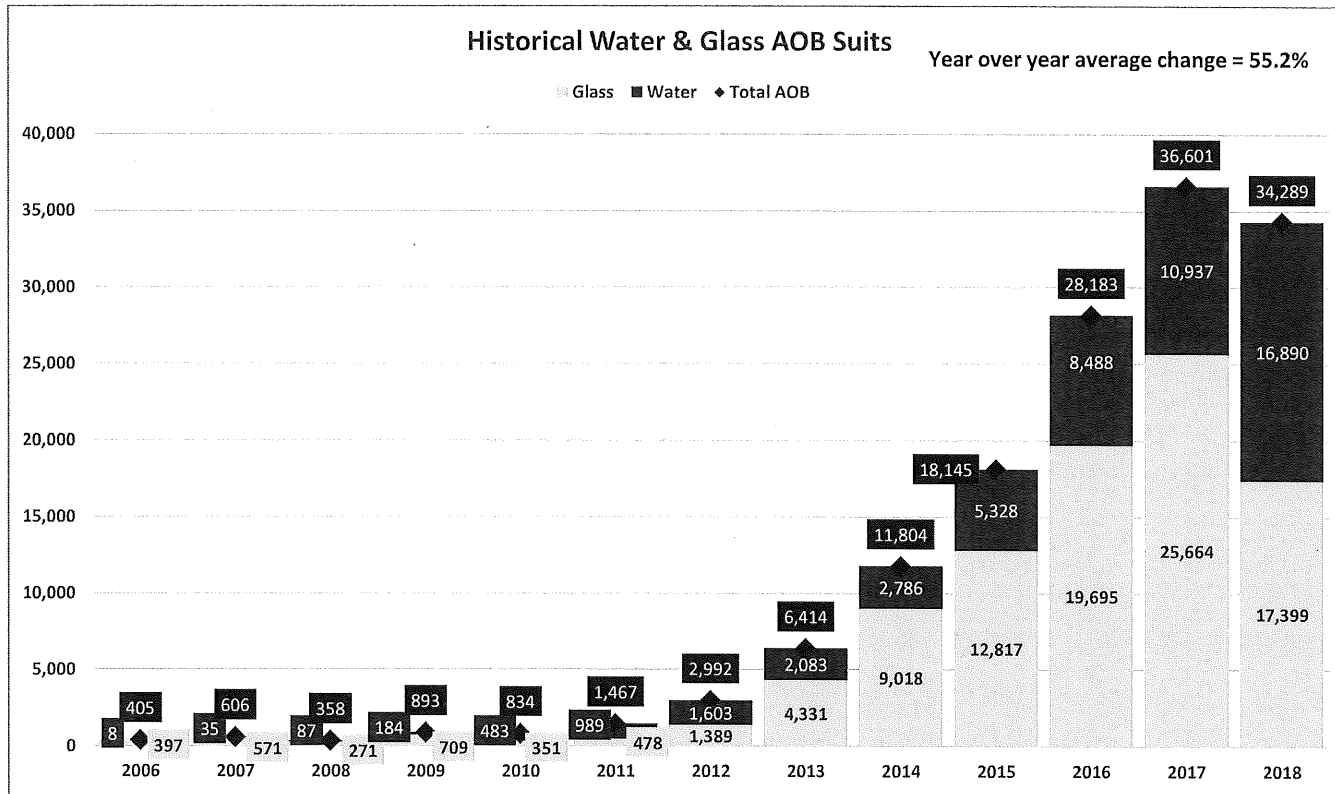
case.

60

Section 3. This act shall take effect July 1, 2019.

DEPARTMENT OF FINANCIAL SERVICES

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Glass	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	25,664	17,399
Water	8	35	87	184	483	989	1,603	2,083	2,786	5,328	8,488	10,937	16,890
Total AOB	405	606	358	893	834	1,467	2,992	6,414	11,804	18,145	28,183	36,601	34,289



CFO JIMMY PATRONIS

Restoring Balance in Insurance Litigation

*Curbing Abuses of Assignments of Benefits and
Reaffirming Insureds' Unique Right to Unilateral
Attorney's Fees*



Mark Delegal
Holland & Knight LLP
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32301
Phone: (850) 425-5685
E-mail: mark.delegal@hklaw.com

Ashley Kalifeh
Capital City Consulting, LLC
101 East College Avenue, Suite 502
Tallahassee, Florida 32301
Phone: (850) 222-9075
E-mail: akalifeh@capcityconsult.com

Contents

Executive Summary.....	1
I. The Primary Purpose of Florida’s One-Way Attorney Fee Statute is to Level the Playing Field.	2
II. Application of the Statute Beyond the “Narrow Statutory Class”	4
III. The Intersection Between Assignments of Benefits and the One-Way Attorney Fee Statute ...	5
<i>Assignments of Benefits</i>	6
<i>Recent Case Law Developments on AOBs</i>	7
<i>The One-Way Attorney Fee Statute Incentivizes AOB Litigation</i>	9
IV. Explosion of Assignments of Benefits to Service Providers	11
<i>AOB Cases Increasing at Staggering Rate</i>	13
<i>Attorney’s Fee Shifting Results in a Costly Power Shift to Unintended Parties</i>	14
<i>AOB Litigation Plagues Personal Lines Insurance in Florida</i>	16
<i>Case Study: Personal Injury Protection Claims</i>	16
<i>Case Study: Auto Glass Claims</i>	19
<i>Case Study: Property Insurance Claims</i>	24
V. Conclusions & Recommendations.....	29
VI. Survey Data.....	32

Executive Summary

Certain providers have partnered with attorneys to create a profitable litigation arrangement. In this arrangement, a service provider agrees to make a repair potentially covered by an insurance policy in exchange for the insurance policyholder’s right to sue his insurer via an assignment of insurance policy benefits. These service providers are typically associated with home and auto repairs. The service provider then often uses that acquired right to force the insurer to pay grossly inflated costs or risk even higher litigation costs. While policyholders simply seek to be made whole for losses, service providers and their attorneys are likely motivated to increase scope of work and to maximize profit and litigation fees.

What makes this arrangement particularly lucrative for attorneys are the “one-way” attorney’s fees awarded to the attorneys that represent prevailing service providers. Under Section 627.428, Florida Statutes, a prevailing party in a dispute with an insurer is entitled to his attorney’s fees and costs. The fees are “one way” because insurers that prevail are not entitled to fees under the statute.

Florida courts have consistently held that the legislature may not prohibit an assignment of insurance policy benefits when assignment is made after a loss. This is because of the strong common law tradition and public policy that favors the free assignment of contractual rights. However, the one-way attorney fee is in derogation of the common law and is a creature of

statute, which the legislature may regulate, change, or take away entirely. The one-way attorney fee statute's underlying purpose was to level the playing field between individual insureds and economically powerful insurers so that litigation for individual insureds is worthwhile. This report will show that the one-way attorney fee statute is no longer serving that purpose and is instead benefiting third parties to the underlying insurance contract.¹ Consequently, the one-way attorney fee statute should be amended to clarify that it was intended for the protection of named and omnibus insureds and named beneficiaries only, and that service providers holding assignments of benefits may not obtain attorney's fees pursuant to Section 627.428.

I. The Primary Purpose of Florida's One-Way Attorney Fee Statute is to Level the Playing Field

Under the well-established common law rule, neither prevailing plaintiffs nor prevailing defendants are entitled to recover attorney's fees unless authorized by contract or statute.² Section 627.428, Florida Statutes, is an exception to that common law rule. Called herein the one-way attorney fee statute, Section 627.428 authorizes an award of attorney's fees to certain prevailing parties in disputes with insurers.³ Under Section 627.428 "any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer" is entitled to an award of attorney's fees if it prevails in a dispute with an insurer.⁴

A number of purposes have been ascribed to the one-way attorney fee statute. Traditionally, one-way attorney fee statutes operate to "compensate the prevailing plaintiff, promote public interest litigation, punish or deter the losing party for misconduct, or prevent abuse of the judicial system."⁵ Attorney fee statutes that categorically shift fees to only one type of losing party are intended to avoid "grave injustices" that arise with "strict adherence to the [common law] rule [that each party bears its own attorney's fees], indiscriminate to the equities of particular cases."⁶ Exceptions have been built to the common law rule for certain defendants perceived to have

"It is clear to us that the purpose of this provision is to level the playing field so that the economic power of insurance companies is not so overwhelming that injustice may be encouraged because people will not have the necessary means to seek redress in the courts."

Justice R. Fred Lewis writing for the Florida Supreme Court in *Ivey v. Allstate Insurance Co.* (2000)

¹This report often refers to this service provider-initiated litigation as "third party litigation." To be clear, these particular third parties are initiating first-party litigation by stepping into the shoes of the policyholder and thus receiving the policyholder's unique benefits and rights, for which the policyholder has paid. This is distinct from the colloquial use of third party litigation, initiated by a party injured by a policyholder who, as a result of such injury, is seeking entitlement to the policyholder's coverage which extends to injuries inflicted on others.

²See *Rivera v. Deauville Hotel, Emps. Serv. Corp.*, 277 So. 2d 265, 266 (Fla. 1973); *Stone v. Jeffres*, 208 So. 2d 827, 828-29 (Fla. 1968).

³See *Stone*, 208 So. 2d at 828-29; see also § 627.428, Fla. Stat. (2015).

⁴§ 627.428(1), Fla. Stat.; see also, e.g., *Danis Indus. Corp. v. Ground Imp. Techniques, Inc.*, 645 So. 2d 420, 421 (Fla. 1994) (Section 627.428 "is a one-way street offering the potential for attorney's fees only to the insured or beneficiary.").

⁵John F. Vargo, *The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice*, 42 Am. U. L. Rev. 1567, 1588 (1993).

⁶Lawrence J. Hollander & Michael H. Cramer, *Attorney's Fees—Should They Be Taxed as Costs?*, 8 Miami L.Q. 573 (Summer 1954).

greater economic power, like railroads and, in this case, insurance companies.⁷

In *Feller v. Equitable Life Assurance Society of the United States*,⁸ the Florida Supreme Court described the purposes of the one-way attorney fee statute as follows: “to discourage the contesting of policies . . . and to reimburse successful plaintiffs reasonably for their outlays for attorney’s fees when a suit is brought against them, or they are compelled to sue, in Florida Courts to enforce their contracts.”⁹ According to the Court, reimbursing individual insureds and beneficiaries is necessary because “[i]t is an undue hardship upon beneficiaries of policies to be compelled to reduce the amount of their insurance by paying attorney’s fees when suits are necessary in order to collect that to which they are entitled.”¹⁰ Large insurance companies do not incur the same hardship. The one-way attorney fee statute “level[s] the playing field so that the economic power of insurance companies is not so overwhelming that injustice may be encouraged because people will not have the necessary means to seek redress in the courts.”¹¹ This economic power flows from not only the insurer’s oft-superior resources in defending litigation, but also by virtue of the fact that the insurer has the most control in writing the contract of insurance, to which the two parties—the insurer and the policyholder—are held.

The public policy underlying the statute is best served when the statute is used to award fees to the other party to the insurance contract, the policyholder, or any beneficiaries specifically designated by the policyholder at the time of contract formation. As Florida courts have emphasized, the purpose of the statute is to reimburse those for which the insurance policy was contracted to protect in the first place.¹² In order for the one-way attorney fee statute to apply, “[t]he paramount condition is the entry of a judgment against the insurer and in favor of the insured.”¹³

⁷*Id.* at 573 (citing § 356.04, Fla. Stat. (1953) (railroads); § 625.08, Fla. Stat. (1953) (insurance companies)); see also, e.g., John Leubsdorf, *Toward a History of the American Rule on Attorney Fee Recovery*, 47 Law & Contemp. Probs. 9, 25 (1984) (with the creation of one-way attorney fee statutes, legislatures “were beginning to look at realistic attorney fee awards less as bounties for greedy lawyers and more as aids to needy plaintiffs or sanctions against corporate defendants”).

⁸57 So. 2d 581 (Fla. 1952).

⁹*Id.* at 586; accord *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 831 (Fla. 1993); *Ins. Co. of N. Am. v. Lexow*, 602 So. 2d 528, 531 (Fla. 1992).

¹⁰*Feller*, 57 So. 2d at 586.

¹¹*Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 684 (Fla. 2000).

¹²See *Fewox v. McMerit Constr. Co.*, 556 So. 2d 419, 423 (Fla. 2d DCA 1989) (statute’s purpose is to “reimburse successful policyholders forced to sue to enforce their policies” (emphasis added) (quoting *Zac Smith & Co. v. Moonspinner Condo. Ass’n*, 534 So. 2d 739, 743 (Fla. 1st DCA 1988))); see also *Stone*, 208 So. 2d at 829 (“Section 627.0127, F.S.A., . . . authorizes attorneys’ fees where insureds are successful in maintaining suits on certain types of insurance policies . . .” (emphasis added)); *Fewox*, 556 So. 2d at 423 (“The legislative policy underlying Section 627.428 is served by requiring insurers to pay attorney’s fees to a prevailing insured or beneficiary . . .” (emphasis added)); *Zac Smith & Co.*, 534 So. 2d at 743 (explaining that the policy underlying the one-way attorney fee statute is to “discourage the contesting of coverage by insurers and to reimburse successful policy holders when they are compelled to sue to enforce their policies” (emphasis added)); Robert O. Stripling, Jr., *Recovery of Attorney’s Fees Under the Bussey Decision*, Fla. B.J., July 1970, at 386-87.

¹³*Lexow*, 937 F.2d at 573 (quoting *Travelers Indem. Co. v. Chisholm*, 384 So. 2d 1360, 361 (Fla. 1st DCA 1980)) (emphasis added).

II. Application of the Statute Beyond the “Narrow Statutory Class”

As a derogation of the common law rule that a party must bear its own attorney’s fees, the one-way attorney fee statute should be strictly construed.¹⁴ Yet the statute has at times been broadly construed to authorize fee awards to more than just the class of entities specifically identified in the statute. However, the Florida Supreme Court has recently suggested that the statute should be construed as limited to those designated by the legislature.

The Florida Supreme Court’s 1969 decision in *Shingleton v. Bussey*¹⁵ provided an early signal that the term “beneficiary” would be broadly interpreted, although the case did not involve application of the one-way attorney fee statute. In *Shingleton*, the Court held that a plaintiff injured by an insured vehicle could sue the automobile liability insurer directly because the injured was a third party beneficiary of the insurance contract. Florida district courts of appeal soon concluded that *Shingleton* applied with equal force to all types of liability insurance, not just automobile liability.¹⁶ Given this expansive view of the term “beneficiary,” and despite the one-way attorney fee statute’s clear omission of non-policyholders and unnamed beneficiaries, the *Shingleton* case had obvious implications for the category of entities entitled to fees under the one-way attorney fee statute.¹⁷

However, the Florida Supreme Court held that the one-way attorney fee statute should not be interpreted as broadly as suggested by *Shingleton*. In *Wilder v. Wright*,¹⁸ the Court decided that the one-way attorney fee statute did not permit a tort claimant like the plaintiff in *Shingleton* to recover attorney’s fees. This is because in such cases, the plaintiff is not making a claim in the name of the insured but is instead “seeking attorney’s fees in his own right.”¹⁹ According to the Court, it was clear that the one-way attorney fee statute “was intended to govern the relationship between the *contracting parties* to the insurance policy. While the injured party may become a third party beneficiary under the policy, as stated in *Shingleton*, that third party may not automatically invoke all the provisions of the contract or statutes governing the rights and responsibilities flowing between insurer and insured.”²⁰ The Court cautioned that *Shingleton* “cannot be read to allow the injured party to enforce any and every provision of law or of the insurance contract.”²¹ Four years later, the Florida Supreme Court reiterated in *Roberts v. Carter*²² that an award of attorney’s fees under the statute is available only to a “narrow statutory class”: “the contracting insured, the insured’s estate, specifically named policy beneficiaries, and third parties who claim policy coverage by assignment from the insured.”²³

¹⁴*Pepper’s Steel & Alloys, Inc. v. United States*, 850 So. 2d 462, 465 (Fla. 2003); see also, e.g., *Great Sw. Fire Ins. Co. v. DeWitt*, 458 So. 2d 398, 400 (Fla. 1st DCA 1984) (citing *Lumbermens Mut. Ins. Co. v. Am. Arbitration Ass’n*, 398 So. 2d 469, 461 (Fla. 4th DCA 1981)).

¹⁵223 So. 2d 713 (Fla. 1969).

¹⁶See *Liberty Mut. Ins. Co. v. Roberts*, 231 So. 2d 235 (Fla. 3d DCA 1970); *Beta Eta House Corp. v. Gregory*, 230 So. 2d 495 (Fla. 1st DCA 1970).

¹⁷See Stripling, *supra*, at 385-87 (describing the application of *Shingleton v. Bussey* to the one-way attorney fee statute as likely).

¹⁸278 So. 2d 1 (Fla. 1973).

¹⁹*Wilder*, 278 So. 2d at 2-3.

²⁰*Id.* at 3 (internal citation omitted) (emphasis added).

²¹*Id.*

²²350 So. 2d 78 (Fla. 1977).

²³*Id.* at 79.

Wilder and *Roberts* caused confusion in Florida's district courts of appeal, prompting some to conclude that only the contractual parties to an insurance policy were entitled to fees under the statute. In *Industrial Fire & Casualty Insurance Co. v. Prygrocki*,²⁴ the Florida Supreme Court addressed this confusion. The Court in *Prygrocki* held that an injured pedestrian may obtain attorney's fees under the one-way attorney fee statute because the pedestrian was an "insured" under the provisions of the personal injury protection ("PIP") coverage of an automobile policy.²⁵ The Court explained that the term "contracting insured" means "those persons insured under an insurance contract rather than the plaintiff third-party claimant discussed in *Roberts*."²⁶ The plaintiff in *Prygrocki* was not a third party claimant but was, instead, an omnibus insured under the policy's PIP protection.²⁷ The Florida Legislature had recently amended the one-way attorney fee statute to make this clear, adding an "omnibus insured" to the category of persons entitled to fees under the statute.²⁸

Despite the return to a more expansive interpretation of the statute, in the 2008 decision *Continental Casualty Co. v. Ryan Inc. Eastern*²⁹ the Florida Supreme Court reaffirmed that the one-way attorney fee statute authorizes fees "in a discrete set of circumstances."³⁰ The Court refused to extend the statute to a surety that paid money on behalf of the surety's principal, emphasizing the plain language of the statute, which states that "a *named* or *omnibus insured* or the *named beneficiary*" is entitled to attorney's fees.³¹ The Court acknowledged that the statute may have been interpreted too broadly in the past in contravention of the statute's plain language, observing that "[d]espite the express limitations in Section 627.428 as to the class of designated entities entitled to recover attorney's fees, this Court has previously approved an award of attorney's fees in situations where policy coverage was obtained through an assignment from the insured."³²

The Court also made clear that the persons and entities entitled to fees under the statute are a *legislative* decision. Addressing an argument that the statute should be construed to cover sureties, the Court said: "If there is an injustice that requires the expansion of the statutory class of entities entitled to recover attorney's fees under section 627.428, that argument is one best addressed by the Legislature."³³

III. The Intersection Between Assignments of Benefits and the One-Way Attorney Fee Statute

Despite the statute's plain language, assignees of insureds and beneficiaries have historically been permitted to recover attorney's fees under the statute. Allowing third parties to the insurance policy to benefit from the one-way attorney fee statute by virtue of an assignment has contributed to distortions in the insurance market. Such distortions are seen no more

²⁴422 So. 2d 314 (Fla. 1982).

²⁵*Id.* at 314.

²⁶*Id.* at 316.

²⁷*Id.*

²⁸*Id.* at 316 n.*.

²⁹974 So. 2d 368 (Fla. 2008).

³⁰*Id.* at 374.

³¹*Id.*

³²*Id.* at 375 (emphasis added).

³³*Id.* at 379.

frequently than in the context of post-loss assignments of insurance policies. Assigning an insurance policy after a loss is premised on the idea that accrued benefits may be assigned to a noninsured, who then “steps into the shoes” of the insured. Over time, case law has developed allowing insureds to assign all post-loss rights, including that of their legal standing, to a third party by virtue of an assignment of benefits (“AOB”). An AOB has been found to entitle a third party, who initiates first party litigation by virtue of the assignment, to the protections offered by the one-way attorney fee statute, likely altering the equilibrium that Section 627.428 was designed to achieve.

Assignments of Benefits

An assignment is a transfer of some right or interest in property from one person to another.³⁴ All contractual rights are assignable unless the contract prohibits assignment, the contract involves obligations of a personal nature, or public policy dictates against assignment.³⁵ So, for example, a chose in action—which is “the right to bring an action to recover a debt, money, or thing”³⁶—arising out of contract is assignable and “may be sued upon and recovered by the assignee in his own name and right.”³⁷ A claim arising under an insurance policy is a chose in action and is thus assignable.³⁸ Once an assignment is made, the assignor no longer has a right to enforce the interest assigned.³⁹

Florida law provides that an insurance policy “may be assignable, or not assignable, as provided by its terms.”⁴⁰ Where there is no policy provision prohibiting assignment of a policy, it is clear that a claim under an insurance policy “may be assigned as any other chose in action.”⁴¹ But, even where there is a policy provision that would bar assignment or render an assignment invalid, courts have refused to enforce such provisions in certain circumstances. Courts distinguish between pre-loss assignments and post-loss assignments to determine whether a provision that requires insurer consent or a provision prohibiting assignment—often called an “anti-assignment clause”—validly bars an assignment.

Pre-loss assignments are made before a claim arises; post-loss assignments are made after a loss. An anti-assignment clause or provision requiring insurer consent may validly prohibit *pre-loss* assignments. However, courts have held that an anti-assignment clause may not prohibit *post-loss* assignments.⁴² The idea is that “post-loss assignments merely transfer an accrued right to payment and do nothing to alter the risk originally assumed by the insurance company,” and thus the general right to assign contractual rights should control over the policy’s

³⁴*Id.* at 376.

³⁵*Kohl v. Blue Cross & Blue Shield of Fla., Inc.*, 988 So. 2d 654, 658 (Fla. 4th DCA 2008).

³⁶Black’s Law Dictionary (9th ed. 2009).

³⁷*Spears v. W. Coast Builders’ Supply Co.*, 133 So. 97, 98 (Fla. 1931).

³⁸*United Cos. Life Ins. Co. v. State Farm & Fire Cas. Co.*, 477 So. 2d 645, 646 (Fla. 1st DCA 1985).

³⁹*Cont’l Cas. Co.*, 974 So. 2d at 376.

⁴⁰§ 627.422, Fla. Stat. (2015). A provision requiring insurer consent prior to assignment is typically called a “consent to assignment clause” and is enforceable in Florida. See *Cordis Corp. v. Sonics Int’l*, 427 So. 2d 782, 783 (Fla. 3d DCA 1983).

⁴¹*Kohl*, 955 So. 2d at 1143.

⁴²See *W. Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 77 So. 209, 210-11 (Fla. 1917) (“The policy was assigned after loss, and it is a well-settled rule that the provision in a policy relative to the consent of the insurer to the transfer of an interest therein does not apply to an assignment after loss.”); see also, e.g., *Lexington Ins. Co. v. Simkins Indus.*, 704 So. 2d 1384, 1386 n.3 (Fla. 1998) (Insurer “concedes that an insured may assign insurance proceeds to a third party after a loss, even without the consent of the insurer.”); *Citizens Prop. Ins. Corp. v. Ifergane*, 114 So. 3d 190, 195 (Fla. 3d DCA 2012) (“Post-loss insurance claims are freely assignable without the consent of the insurer.”).

prohibition.⁴³ In contrast, a policy may validly prohibit pre-loss assignments to “protect an insurer against unbargained-for risks.”⁴⁴

The freedom to assign post-loss claims has long been the common law of Florida since *West Florida Grocery Co. v. Teutonia Fire Insurance Co.*⁴⁵ In *Teutonia*, the Court held that a post-loss assignment of the proceeds of a fire insurance policy was valid, even though the insurer’s consent was not obtained as required by the policy. The Court observed that “[i]t is a well-settled rule that the provision in a policy relative to the consent of the insurer to the transfer of an interest therein does not apply to an assignment *after loss*.”⁴⁶

Recent Case Law Developments on AOBs

A series of 2015 Florida state court cases illustrates the growing problems associated with AOBs, particularly their use by certain service providers, and that these problems are best addressed by the Florida Legislature.

In *Accident Cleaners, Inc. v. Universal Insurance Co.*,⁴⁷ the Fifth District Court of Appeal held that an assignee of a homeowner’s insurance policy could bring a breach of contract claim under Section 627.405, Florida Statutes, even though the assignee had no insurable interest in the home at the time of loss.⁴⁸ Section 627.405 provides that “[n]o contract of insurance of property . . . shall be enforceable . . . except for the benefit of persons having an insurable interest in the things insured as of the time of the loss.”⁴⁹ The court rejected the insurer’s argument that the assignee did not have an insurable interest at the time of the loss since the policy had been assigned only post loss. The court explained that the insurer’s “argument ignores that the right to recover is freely assignable after loss and that an assignee has a common-law right to sue on a breach of contract claim.”⁵⁰ Because Section 627.405 did not explicitly state that it was displacing the common law of free assignability of contractual rights or the inability for insurers to restrict post-loss assignments,⁵¹ the insurer consequently could “not overcome the presumption that the Legislature did not intend in Section 627.405 to alter common law.”⁵² Instead, so long as the policyholder had an insurable interest at the time of the loss, that interest was imputed to the post-loss assignee and could be enforced by the assignee.⁵³

⁴³*In re Katrina Canal Breaches Litig.*, 63 So. 2d 955, 959 (La. 2011) (discussing the issue’s treatment in the majority of jurisdictions); see also *id.* at 961 (“In differentiating between [pre-loss and post-loss assignments], courts reason that allowing an insured to assign the right to coverage (pre-loss) would force the insurer to protect an insured with whom it had not contracted—an insured who might present a greater level of risk than the policyholder. However, allowing an insured to assign its rights to the proceeds of an insurance policy (post-loss) does not modify the insurer’s risk. The insurer’s obligations are fixed at the time the loss occurs, and the insurer is obligated to cover the loss agreed to under the terms of the policy. This obligation is not altered when the claimant is not the party who was originally insured.”).

⁴⁴*Lexington Ins. Co.*, 704 So. 2d at 1386.

⁴⁵77 So. 209 (Fla. 1917).

⁴⁶*Teutonia*, 77 So. at 210-11.

⁴⁷--- So. 3d ---, No. 5D14-352, 2015 WL 1609973 (Fla. 5th DCA Apr. 10, 2015).

⁴⁸*Id.* at *1.

⁴⁹*Id.* at *2 (quoting § 627.405, Fla. Stat. (2014)).

⁵⁰*Id.*

⁵¹*Id.*

⁵²*Id.*

⁵³*Id.*

The Fourth District Court of Appeal in *One Call Property Services Inc. v. Security First Insurance Co.*⁵⁴ confronted the issue whether payment must be due under an insurance policy before an insured may assign a post-loss claim. The court held that an assignable right to policy benefits accrues on the date of the loss even though payment is not due under the policy’s loss payment clause, and the policy did not prohibit the assignment.⁵⁵ Thus, the assignee—which obtained the AOB after performing emergency water removal services for the insured following a water event—had standing to state a claim under the policy.

The Fourth District Court of Appeal acknowledged arguments that AOBs given to service providers like the plaintiff are spurring concerns of fraud and abuse. The Fourth District stated that the issue of service provider AOBs “boils down to two competing public policy considerations.”⁵⁶ On one side are insurers that “argue[] that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices.”⁵⁷ On the other side are contractors that “argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.”⁵⁸ While sympathetic to the insurers’ concerns, the court stated that it was not in a position to evaluate them. The court pointed out that “[i]f studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform.”⁵⁹

In *Security First Insurance Co. v. State of Florida, Office of Insurance Regulation*,⁶⁰ an insurer appealed the decision of Florida’s Office of Insurance Regulation (“OIR”) to deny its request to amend its homeowner’s policies to restrict the ability of policyholders to assign post-loss rights without consent.⁶¹ OIR had denied the amendment as misleading on the basis that Florida law does not allow enforcement of an anti-assignment provision with respect to post-loss rights. The First District Court of Appeal agreed with OIR, citing “an unbroken string of Florida cases over the past century holding that policyholders have the right to assign such claims without insurer consent.”⁶² Like the Fourth District in *One Call*, the First District was mindful of the serious concerns that have arisen as a result of a “cottage industry of vendors, contractors, and attorneys . . . that use the assignment of benefits and the threat of litigation to extract higher payments from insurers.”⁶³ But like its sister court, the First District Court of Appeal said the issue is one left to the legislature to resolve.⁶⁴

⁵⁴165 So. 3d 749 (Fla. 4th DCA 2015).

⁵⁵*Id.* at 754; see also *Emergency Servs. 24 v. United Prop. & Cas. Ins. Co.*, 165 So. 3d 756 (Fla. 4th DCA 2015) (same); *ASAP Restoration & Constr. v. Tower Hill Signature Ins. Co.*, 165 So. 3d 736 (Fla. 4th DCA 2015) (same).

⁵⁶*One Call Prop. Servs.*, 165 So. 3d at 755.

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰No. 1D14-1864, 2015 WL 3824166 (Fla. 1st DCA June 22, 2015).

⁶¹*Id.* at *1.

⁶²*Id.*

⁶³*Id.* at *2 (internal quotation marks omitted).

⁶⁴*Id.*

More recently, the First District Court of Appeal in *United Water Restoration Group v. State Farm Insurance Co.*⁶⁵ found that a court had improperly dismissed assignee United Water Restoration Group's complaint based on an argument raised by State Farm that United Water could not satisfy the conditions of coverage under the policy.

United Water provided remediation services in exchange for an AOB from the policyholder whose home was damaged by water. State Farm refused to pay the bill because it found that the damage arose from conditions that fell within a policy exclusion. United Water responded by filing a county court action pursuant to the assignment. State Farm moved to dismiss the complaint due to the coverage issue, contending that only the policyholder, not the remediation company, could satisfy the conditions for coverage. The county court dismissed the complaint, and the circuit court upheld the dismissal. The First District reversed, concluding that the dismissal violated established principles of Florida law that an assignee of an insurance policy may sue for breach. According to the court, “[c]learly established law permits United Water to bring suit to seek recovery under the State Farm policy, and if necessary, seek a coverage determination. The dismissal order had the harsh effect of barring United Water’s enforcement of its bargained-for right to pursue assigned benefits, which amounts to a miscarriage of justice.”⁶⁶

The One-Way Attorney Fee Statute Incentivizes AOB Litigation

As acknowledged by the Fourth District Court of Appeal in *One Call* and the First District Court of Appeal in *Security First Insurance*, there are many that argue service providers armed with AOBs are “unilaterally set[ting] the value of a claim and demand[ing] payment for fraudulent or inflated invoices”⁶⁷ from insurers and using “the threat of litigation to extract [these] higher payments.”⁶⁸ Service providers are incentivized to do this because, as an assignee of the insured or beneficiary, they are entitled to attorney’s fees under the one-way attorney fee statute, and in turn the exposure to attorney’s fees discourages insurers from fighting the assigned claim.

Florida courts have held that with an AOB comes an assignment of the insured’s or beneficiary’s right to recover fees under the one-way attorney fee statute.⁶⁹ The one-way attorney fee statute likely fuels AOB litigation because the statute offers distinct advantages over other attorney’s fee payment arrangements. For example, in a contingency fee arrangement, payment of the attorney’s fees by the client is contingent on the outcome of the case.⁷⁰ The

⁶⁵No. 1D14-3797, 2015 WL 4111662 (Fla. 1st DCA July 8, 2015).

⁶⁶*Id.* at *2.

⁶⁷See *One Call Prop. Servs.*, 165 So. 3d at 755.

⁶⁸See *Sec. First*, 2015 WL 3824166, at *2.

⁶⁹See, e.g., *Roberts*, 350 So. 2d at 79; *All Ways Reliable Bldg. Maint., Inc. v. Moore*, 261 So. 2d 131, 132 (Fla. 1972); *Magnetic Imaging Sys., I, Ltd., v. Prudential Prop. & Cas. Ins. Co.*, 847 So. 2d 987, 989-90 (Fla. 3d DCA 2003); *Superior Ins. Co. v. Liberty*, 776 So. 2d 360, 365 (Fla. 5th DCA 2001); *Travelers Ins. Co. v. Tallahassee Bank & Trust Co.*, 133 So. 2d 463, 467 (Fla. 1st DCA 1961) (assignee entitled to attorney’s fees under statute even though it was not a named beneficiary under the policy because it effectively became a beneficiary pursuant to the assignment); see also, e.g., *Liberty Mut. Ins. Co. v. Davis*, 412 F.2d 475, 486 (5th Cir. 1969) (applying Florida law) (assignee stands “in the shoes of the insured” with respect to the entire action, “including [the insured’s] right to attorneys’ fees” under the statute). “[A]n assignee of an insurance claim stands to all intents and purposes in the shoes of the insured and logically should be entitled to an attorney’s fee when he sues and recovers on the claim.” *All Ways Reliable*, 261 So. 2d at 132.

⁷⁰R. Regulating the Fla. Bar 4-1.5(f)(1)-(2); see also *Brickell Place Condo. Ass’n v. Joseph H. Ganguzza & Assocs., P.A.*, 31 So. 3d 287, 290 (Fla. 3d DCA 2010).

attorney agrees to accept a part of the money the client recovers in the case as the fee for services, generally fixed at a percentage of the client's recovery. Although attractive to clients because they do not have to pay unless they win, contingency fees are subject to strict requirements and may not be used in certain types of cases.⁷¹ And ultimately, the client reduces his recovery by the amount of the fee he must pay his attorney. The client will also likely be responsible for paying court filing fees and other costs, regardless of whether he prevails.

In contrast, under the one-way attorney fee statute, the prevailing party is awarded his attorney's fee and costs in addition to the damages he is awarded by the court.⁷² The prevailing party's attorney recovers his full fee, no matter what amount of damages is awarded to his client. In a contingency fee arrangement resulting in a low damages award by the court, neither the client nor the attorney fully recovers.

The one-way attorney fee statute also offers a greater recovery than that authorized under other attorney's fee statutes available to prevailing parties.⁷³ For example, the one-way attorney fee statute permits a greater recovery than the offer of judgment statute since the one-way attorney fee statute awards the prevailing insured *all* fees and costs and not just those incurred after an offer of judgment is made.⁷⁴ The one-way attorney fee statute is also more appealing than Section 57.105, Florida Statutes, because it guarantees recovery without any requirement that the plaintiff demonstrate the insurer presented a claim or defense that was essentially frivolous.⁷⁵

These advantages make AOB litigation all too enticing, and courts have acknowledged that the one-way attorney fee statute may spur litigation which the Florida Legislature did not contemplate.

In *Allstate Insurance Co. v. Regar*,⁷⁶ the Second District Court of Appeal held that the assignee of a bad faith claim was entitled to attorney's fees under the statute, although the assignee was not a named or omnibus insured or the named beneficiary, because the entire cause of action had been assigned to him. Standing in the shoes of the insured, the assignee was entitled to all remedies to which the insured would otherwise be entitled. However, the court was "not unsympathetic" to the defendant insurer's plight given the "exponential[] increas[e]" in the number of bad faith cases filed without any apparent link to the conduct of insurers. "Instead, plaintiff's attorneys are filing bad faith actions over issues that it seems could be simply resolved, like the wording of the release in this case."⁷⁷ The court observed that "[t]hese attorneys are

⁷¹ See, e.g., R. Regulating the Fla. Bar 4-1.5(f)(3)-(5).

⁷² Relatedly, the ability to obtain a contingency fee multiplier is not exclusive to contingency fee arrangements and may be obtained in a proper case under Section 627.428 as a contingency risk multiplier. See *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 834 (Fla. 1990) (use of multiplier under statute may be appropriate "when a risk of nonpayment is established"); see also *Allstate Ins. Co. v. Regar*, 942 So. 2d 969, 974-75 (Fla. 2d DCA 2006) (holding that trial court properly determined that it had discretion to award a multiplier to the attorney's fees awarded under Section 627.428).

⁷³ See *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1075 (Fla. 2006) (holding that existence of one-way attorney fee statute does not preclude the application of other attorney's fee provisions).

⁷⁴ Cf. § 765.79(1), Fla. Stat. (2015) (awarding attorney's fees incurred by a plaintiff after a demand for judgment is made in certain circumstances).

⁷⁵ Cf. § 57.105(1), Fla. Stat. (2015) (authorizing an award of attorney's fees to a prevailing party when the court finds that the losing party or losing party's attorney knew or should have known that a claim or defense presented to the court was unsupported by material facts or would not be supported by the application of then-existing law to material facts).

⁷⁶ 942 So. 2d 969.

⁷⁷ *Id.* at 973.

perhaps motivated by the promise of fees under Section 627.428 upon prevailing in this action. Certainly this case has mushroomed into over \$200,000 in attorney's fees plus an as-yet-undetermined amount of appellate attorney's fees from an initial offer of settlement for meager policy limits of \$25,000."⁷⁸ While expressing concern that it was "not certain that outcomes like today's were contemplated at the time of the statute's enactment," the Florida court acknowledged "that issue is for resolution by the legislature."⁷⁹

Although public policy favors the free assignment of contract rights, at least post-loss, such a policy does not apply to the one-way attorney fee statute, a legislatively-created right and indeed a derogation of the common law rule that parties bear their own attorney's fees. Turning to the data underlying the exponential increase in AOB cases filed in Florida, it is clear that it is time for the Florida Legislature to curb the abuse of AOBs and AOB litigation by restricting use of the tool that incentivizes it—the one-way attorney fee statute.

IV. Explosion of Assignments of Benefits to Service Providers

Enticed by the prospect of attorney's fees, a growing number of lawyers have partnered with various types of service providers to solicit AOBs from policyholders. The effects are most pronounced in three segments of the insurance industry discussed below.

The typical AOB relationship begins when a policyholder signs a contract assigning rights, benefits, proceeds, and causes of action arising under his insurance policy to a third party. This third party is often a service provider that agrees to make the repair or provide the service for which insurance coverage will be sought. Indeed, often the repair or service is conditioned upon the assignment. In many cases the AOB includes language which divests the policyholder of any benefits under the policy, privacy rights, and any direct payment of insurance proceeds.⁸⁰ Based on a survey conducted of various insurance trade associations, most assignments reviewed shared the following characteristics:

- Irrevocable in nature, meaning the policyholder, insured, or beneficiary had no ability to rescind the assignment (79.55%);
- Transferred all causes of action, divesting the policyholder of any legal recourse under the insurance policy (79.55%);
- Waived the policyholder's privacy rights (37.5%); and

⁷⁸*Id.* at 973-74.

⁷⁹*Id.* at 974.

⁸⁰*See, e.g., See, e.g.,* Harvey V. Cohen, PowerPoint Presentation: Insider Secrets: Legal Assignment of Insurance Benefits 18 (on file with authors) (providing example AOB: "Assignment of Insurance Benefits: I, hereby, assign any and all insurance rights, benefits, proceeds and any causes of action under *any* applicable insurance policies to [Insert Your Company Name], for services rendered or to be rendered by Company. In this regard, I waive my privacy rights. . . . I also hereby direct my insurance carrier(s) to release any and all information requested by Company, its representative, and/or its Attorney for the direct purpose of obtaining actual benefits to be paid by my insurance carrier(s) for services rendered or to be rendered. I believe the appropriate insurance carrier to be (Insert Property Owners Insurance Company)."); Erickson's Drying Systems, Inc., Contract for Services, Assignment of Benefits, <http://ericksonsdrying.com/contact-us/contract-for-services-assignment-of-benefits/> (last visited Aug. 13, 2015) (providing example AOB for drying repair company); ELR Restoration Inc., Certificate of Completion & Assignment of Benefits, http://elrrestoration.com/uploads/2/8/8/6/2886421/elr_repair_assignment_forms.pdf (last visited Aug. 13, 2015) (providing example AOB for home restoration services).

- Included a “hold harmless” provision for the benefit of the service provider (53.4%).⁸¹

Once executed, the newly assigned service provider performs work for which reimbursement is then sought directly from an insurer, usually in the form of a demand letter. Demand letters provide an insurer a certain number of days to pay and “avoid any potential legal action in this matter.”⁸² When the insurer fails to pay, the service provider brings a lawsuit against the insurer.

A telltale sign that an AOB is sought to be enforced through litigation is the use of “a/a/o” or “as assignee of” in the plaintiff’s name in the case caption or style. A case caption might indicate that it is being brought by “Auto Glass Company a/a/o John Smith,” which means Auto Glass Company is suing as an assignee of John Smith. However, searching “a/a/o” in the plaintiff name field may not capture all AOB litigation because an assignee may bring a lawsuit in its own name, without reference to the assignor in the case style.⁸³ A review of AOB complaints substantiates the claim that attorneys for assignees are asking for fees under Section 627.428 as a matter of course.⁸⁴

Using the “a/a/o” search criterion, a search was conducted through the Florida Department of Financial Services Service of Process website.⁸⁵ The Department has created an online searchable service of process (“SOP”) database in which lawsuits against insurers for which the Department has received service of process are logged.⁸⁶ However, just as the “a/a/o” search criterion is not the exclusive way to identify all lawsuits filed as the result of AOBs, the SOP database is not representative of all AOB claims, as some claims never make it to litigation. With those caveats, the data extracted from the SOP database is compelling.

⁸¹Insurance Trade Association Survey Responses, Sept. 2015 (on file with authors); see also *infra* Section VI. Out of 116 total surveys received, 88 surveys included a response to a question requesting the characteristics of the AOB.

⁸²Cohen, *supra* at 22.

⁸³Searching cases for the use of “a/a/o” in the plaintiff’s name field may not capture all AOB cases as the “a/a/o” designation may be a relatively recent phenomenon. The earliest use of this plaintiff-naming convention found in Westlaw is a 2003 case, *Prof'l Consulting Servs., Inc. a/a/o Susan Berlinghoff v. Hartford Life & Accident Ins. Co.*, 849 So. 2d 446 (Fla. 2d DCA 2003), which involved an assignment of PIP benefits. Many of the other early “a/a/o” cases also dealt with PIP assignments. *E.g.*, *Advanced Diagnostic Testing, Inc. a/a/o Will Turcios v. Allstate Ins. Co.*, No. 2002-4740-SP-05, 2003 WL 23868672 (Fla. Cir. Ct. Oct. 21, 2003); *Nationwide Gen. Ins. Co. v. Family Chiropractic Health Ctr. a/a/o Ruth Morningred*, No. 03-4825, 2003 WL 23148880 (Fla. Cir. Ct. Dec. 1, 2003); *Vincent DiCarlo, M.D. & Assocs. a/a/o Bonita Thurston v. Am. Home Assur. Co.*, No. 03-4949, 2004 WL 326746 (Fla. Cir. Ct. Jan. 20, 2004); *Nationwide Prop. & Cas. Ins. Co. v. Drs. Sheer, Ahearn & Assocs., P.A. a/a/o Sherry Holdaway*, No. 03-4596, 2004 WL 326751 (Fla. Cir. Ct. Jan. 21, 2004). A search of the Florida Department of Financial Services Service of Process database indicates that “a/a/o” cases were filed as early as 2000. But an assignee is not required to use “a/a/o” in the case name and may bring an AOB suit in his or her own name. See *Harris v. Smith*, 7 So. 2d 343, 346 (Fla. 1942) (“It is well settled that an assignee of a chose in action arising out of contract may sue in his own name and right.”). Consequently, while “a/a/o” serves as an easy indicator of an AOB case, and as shown through case searches, appears very frequently, it may still only display a subset of all AOB litigation.

⁸⁴See, *e.g.*, Complaint, *Express Auto Glass, LLC a/a/o Amber Tyer v. Allstate Fire & Ins.Co.*, Case No. 2013-SC-007075-0 (Fla. 9th Cir. Ct.) (filed Aug. 1, 2013). The complaint and attachments were accessed via the Orange County Clerk of Courts MyEClerk website, <https://myeclerk.myorangeclerk.com/>.

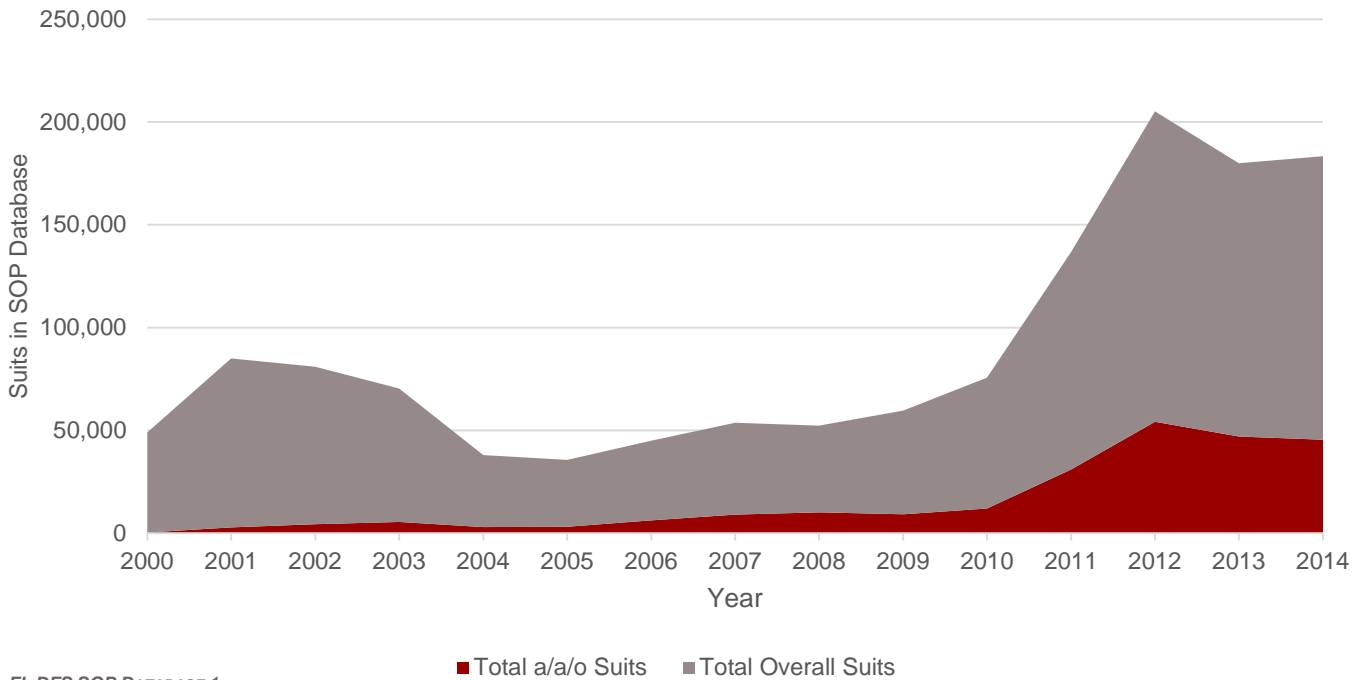
⁸⁵Licensed insurers must appoint the Chief Financial Officer, as head of the Department of Financial Services, to receive service of all legal process in any civil action filed against a licensed insurer in Florida. § 624.422, Fla. Stat. (2015).

⁸⁶See § 624.423, Fla. Stat. (2015).

AOB Cases Increasing at Staggering Rate

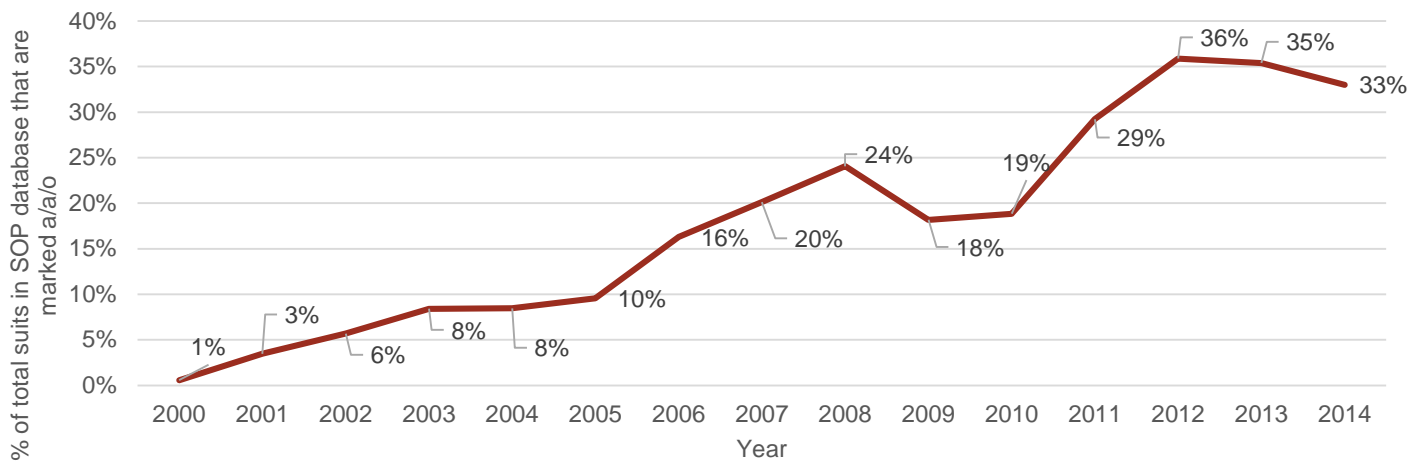
When searching just for cases that include “a/a/o” in the plaintiff’s name, the database reports a **16,000% increase** in such lawsuits since 2000. Only 281 “a/a/o” cases were served in 2000; 45,490 were served in 2014. Notably, the *total* amount of all service of process notices served only increased by 183% during this same timeframe. As a percentage of total lawsuits served, “a/a/o” cases comprised less than 1% in 2000 but comprised 33% of all lawsuits served in 2014. This means that about one in three lawsuits filed against an insurer is an “a/a/o” lawsuit.

All Lawsuits vs. a/a/o Lawsuits



FL DFS SOP DATABASE 1

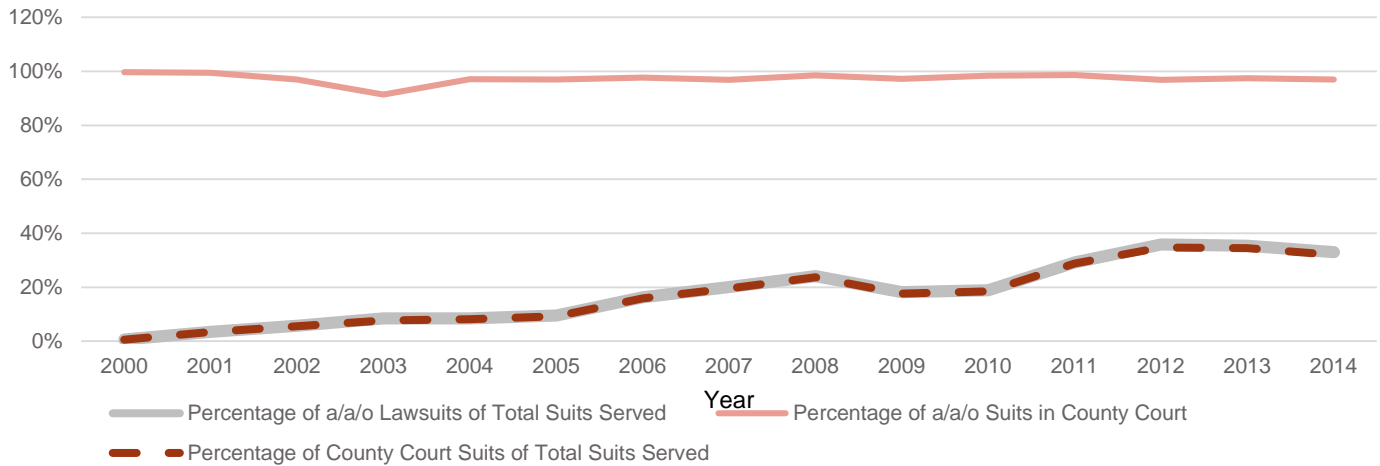
Closer Look: a/a/o Lawsuits as a Percentage of Total Lawsuits



FL DFS SOP DATABASE 2

Since 2000, roughly 97% of all “a/a/o” cases have been filed in county court. Florida county court jurisdiction lies in actions where the amount in controversy does not exceed \$15,000, exclusive of interest, costs, and attorney’s fees.⁸⁷ The fact that nearly all “a/a/o” cases are filed in county court indicates that these are lawsuits involving relatively low amounts in controversy.

a/a/o: A County Court Phenomenon



FL DFS SOP DATABASE 3

Given that most AOB cases are relatively small dollar cases, attorneys do not receive blockbuster damages verdicts from which they’ll take their fees. The difference? Attorneys do not need to obtain significant damages in order to make money in AOB cases. Rather, attorneys are able to bill for time spent on a case and receive their fees through the one-way attorney fee statute, which, when billed hourly, can be significant when paired with a high volume of claims. Contingency fee multipliers can be added to these awards, inflating them even further.⁸⁸

Attorney’s Fee Shifting Results in a Costly Power Shift to Unintended Parties

Aside from the data obtained from the SOP database, surveys were sent to two insurance trade associations with members that include property and casualty insurers that write a high volume of automobile and/or property insurance policies in Florida. The purpose of these surveys was to obtain a more qualitative view of insurers’ experiences with AOBs. Insurers (through their trade associations) were asked to identify claims and then to complete a survey for each identified claim. Each survey solicited information on numerous aspects of the AOB claim, including, among other things, whether an assignee was paid for the claim and what amount if any was paid to the assignee’s attorney in fees.⁸⁹

⁸⁷§ 34.01, Fla. Stat. (2015).

⁸⁸See *Quanstrom*, 555 So. 2d at 834; see also *Regar*, 942 So. 2d at 974-75.

⁸⁹A chart summarizing the information collected from these surveys is included as the final section of this report. See *infra* Section VI.

Out of the 116 surveys received, 60 claims were identified that provided both the final amount paid to the assignee on the claim and the amount paid in attorney's fees to the assignee's attorney. Of these 60 claims, attorney's fees represented an average of **274%**⁹⁰ of the total amount paid to the assignee on the insurance claim. Most interesting is that in 48 of these claims, the assignee originally demanded more than what was ultimately paid by the insurer.

Ninety-two of the surveys listed both an amount demanded for payment on an assigned claim and an amount of final payment, separate from any other fees or costs. For purposes of this particular analysis, the authors only reviewed those surveys where some amount was paid on the claim, not, for example, where a claim was denied. Of the claims reviewed, it was found that the final amounts paid, on average, represented a 28.62% savings to the insurer from the amount first demanded by the assignee.⁹¹ Most of these claims were resolved in settlement, showing that assignees are settling for less than they demand, and in the case of service provider-assignees that performed the work for which they are seeking reimbursement from the insurer pursuant to an AOB, they are settling for less than what they "billed" the insured for services.

Settling claims by assignees and even paying attorney's fees in settlement is likely incentivized by the one-way attorney fee statute. The insurer's damages exposure would be significant if the assignee were to take its claim to court and to recover even just \$1. As the issues involved in this type of litigation are largely jury questions, an insurer's winning on the merits is an uncertainty. And even a minor victory for the insured exposes the insurer to attorney's fees. As a result, this uncertainty and exposure likely results in a payment to the assignee's attorney in settlement to discourage further litigiousness.

The motivating factor behind the AOB industry appears to be the fee-shifting offered by the one-way attorney fee statute. Specifically, in materials coaching service providers on the availability of AOBs, one law firm assures service providers that the AOB is preferable to other payment mechanisms since it "[c]onveys legal standing," "[a]llows the assignor to stand in the shoes of the insured," and, citing Section 627.428, "[a]llows [the] law firm to obtain their fees and costs separately from any client funds" without "tak[ing] a penny of your money."⁹² Moreover, the law firm reminds service providers that "[b]ad faith becomes an option" with an AOB, unlike with a simple direction to pay the service provider.⁹³ The risk of a bad faith claim also significantly increases an insurer's damages exposure.

⁹⁰Insurance Trade Association Survey Responses, Sept. 2015 (on file with authors); see also *infra* Section VI. These 60 claims included 48 property insurance claims and 12 auto glass-related insurance claims. The median percentage of attorney's fees of final reimbursement amount was 127.44% and the mode was 250%.

⁹¹Insurance Trade Association Survey Responses, Sept. 2015 (on file with authors); see also *infra* Section VI. The claims reviewed include 54 property insurance related claims and 38 auto glass-related claims. The total amount requested for these property claims was \$516,979.67. The total amount paid for those same property claims was \$371,661.75. Of the auto glass-related claims reviewed, the total amount requested was \$19,961.11, and the total amount paid was \$15,851.87. The median savings to the insurer on all these claims was 36.58% of the amounts first demanded. The average savings was 28.62%.

⁹²Cohen, *supra* at 28, 34.

⁹³*Id.* at 27.

So are attorneys the only ones benefiting by this scheme? It is hard to tell, given that such an analysis requires an examination of invoices submitted by service provider-assignees and a comparison with pricing and other standards. However, the same law firm presentation also advertises to service providers that they can “charge more than Xactimate.”⁹⁴ The surveys reflected that, in nearly 60% of the cases reviewed, pricing deviations did exist. One of the most frequent deviations cited? In excess of Xactimate. Other frequent deviations include excessive scope, inappropriate use of overhead and profit, incomplete logs, and discrepancies with peer reviews.

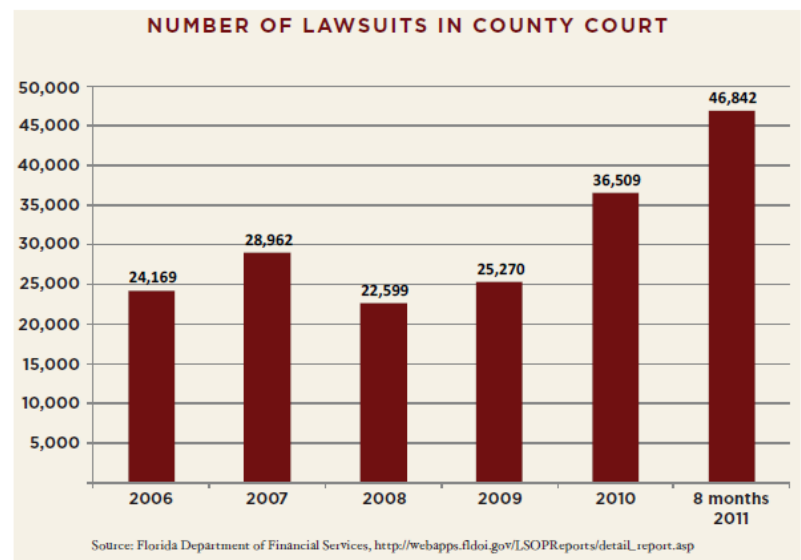
Unfortunately, Section 627.428’s intent—to shield policyholders from an insurer’s superior economic power—is being used as a sword by an altogether different set of persons.

AOB Litigation Plagues Personal Lines Insurance in Florida

The explosion of AOB litigation is no more pronounced than in personal lines insurance, particularly in three lines: motor vehicle personal injury protection insurance (“PIP”), motor vehicle physical damage coverage insurance (specifically, auto glass repair coverage), and property insurance.

Case Study: Personal Injury Protection Claims

Historically, AOBs have dominated litigation concerning PIP. In 2011, Florida’s Insurance Consumer Advocate assembled a working group to study the issues troubling the PIP industry and used the SOP database to study the rise in PIP litigation.⁹⁵ The workgroup’s report estimated that about 95% of the 36,509 cases filed against insurance companies in 2010 were related to PIP coverage.⁹⁶ The working group was primarily concerned with what therapies or modalities are driving this increase. It determined that the modalities of chiropractic care, physical therapy, and massage therapy were most frequently billed,⁹⁷ and that providers of these modalities were increasingly becoming the actual plaintiffs in PIP litigation.⁹⁸ One insurer reported to the working group that based on its litigation experience, 99.6% of PIP AOB litigation is



⁹⁴Cohen, *supra* at 42. Xactimate is a pricing software widely used by insurance industry stakeholders to estimate repair costs. See Xactimate website, <http://www.xactware.com/en-us/solutions/claims-estimating/xactimate/28/professional/>.

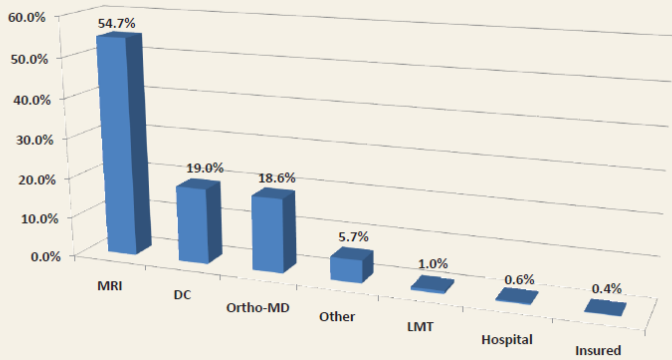
⁹⁵Florida Department of Financial Services, Office of the Insurance Consumer Advocate, *Report on Florida Motor Vehicle No-Fault Insurance (Personal Injury Protection)* (Dec. 2011), <http://www.myfloridacfo.com/ica/docs/PIP%20Working%20Group%20Report%2012.14.2011.pdf>.

⁹⁶*Id.* at 36.

⁹⁷*Id.* at 2.

⁹⁸*Id.* at 35.

PROVIDER TYPE IN LITIGATION

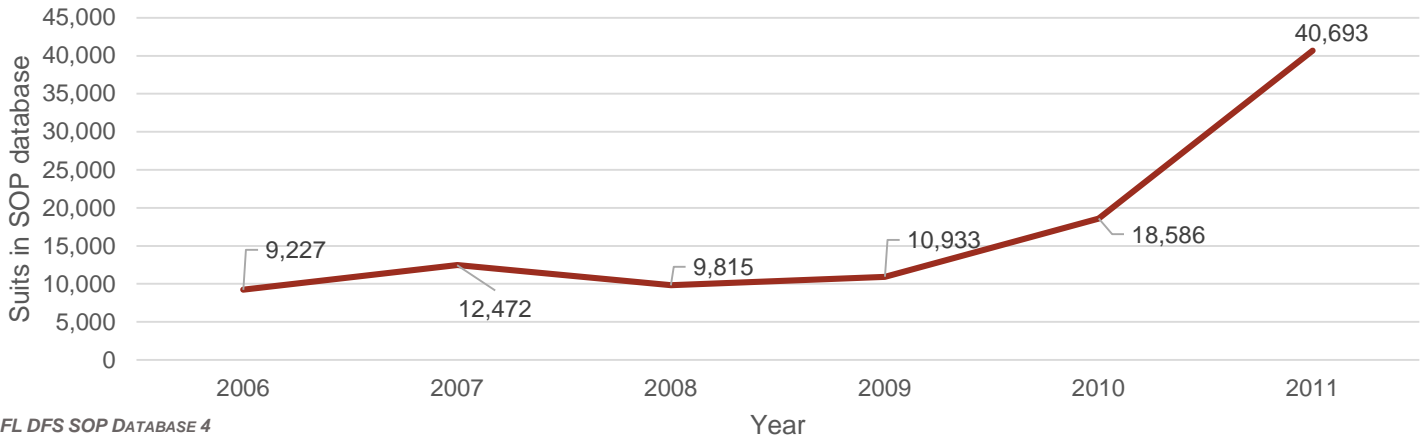


Source: Single insurer's litigation experience not independently verified.

driven by MRI providers, chiropractors, and similar service providers, while only 0.4% of PIP AOB litigation is generated by insureds.⁹⁹

In conducting our own search of the SOP database for the top providers of modalities most commonly attributed to PIP care (including chiropractors, MRI/imaging centers, and massage therapists), in 2011 these providers served 40,693 lawsuits on insurers.

Total Suits by Chiro/Medical/Imaging/Massage/MRI Providers

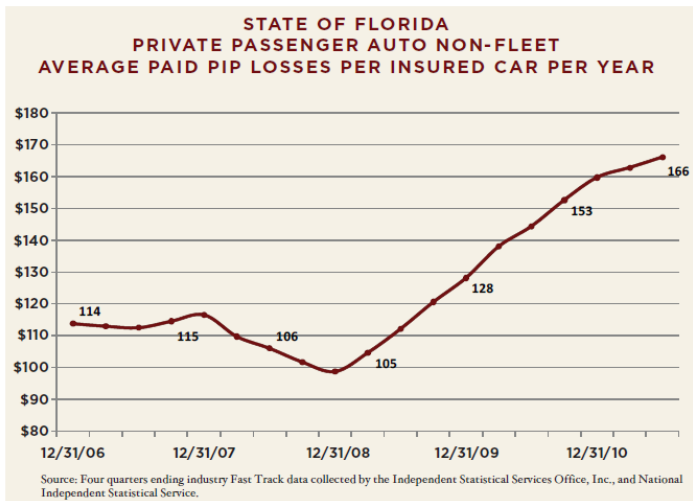


FL DFS SOP DATABASE 4

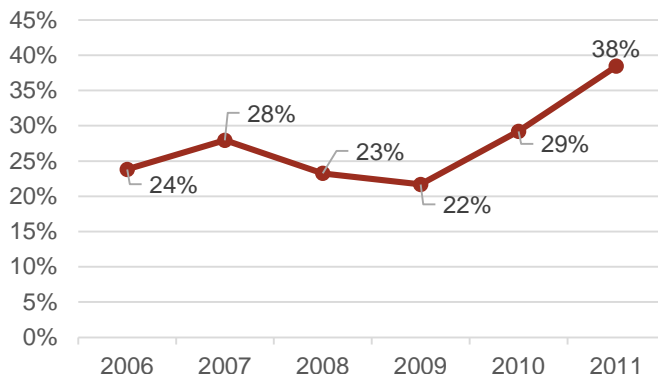
Interestingly, the line illustrating the number of lawsuits served by those providers catalogued by the SOP database parallels the line showing the average paid PIP losses per insured car, per year. The positive relationship between average paid PIP losses per car annually and lawsuits by service providers armed with AOBs is troubling and suggests that litigation is the main driver of the losses. As Florida Insurance Commissioner Kevin McCarty stated regarding PIP litigation more generally, “From 2008 to 2010, the amount Florida insurers paid for PIP benefits increased from \$1.45 billion to \$2.45 billion—a 70 percent increase. This increase is even more astounding when you consider the number of drivers was constant and the overall number of reported traffic accidents actually declined during the same period. Ironically, the number of lawsuits also doubled in the last two years, which undermines the entire premise of the ‘no-fault’ legal system.”¹⁰⁰

⁹⁹*Id.* at 35.

¹⁰⁰Kevin McCarty, *Getting Back to Basics: Fixing the PIP Problem*, Sunshine State News (Jan. 25, 2012), available at <http://www.sunshinestatenews.com/story/getting-back-basics-fixing-pip-problem>.



**Chiro/Med/Imaging/MRI/Massage
County of Total Suits**



FL DFS SOP DATABASE 5

In the 2012 regular session, the Florida Legislature passed PIP reform. The chief reforms included lowering the allowed claims payments for non-emergency conditions, excluding massage and acupuncture from covered medical benefits, strengthening the discovery mechanism requirements for insureds, and providing standards for reasonableness in attorney fee awards including elimination of the use of a contingent fee multiplier in some cases.¹⁰¹ The PIP reform bill was passed on May 9, 2012 with an effective date of January 1, 2013.¹⁰² In late 2012, certain chiropractors, acupuncturists, and massage therapists challenged the statute, prompting a series of stays and appeals that stretched into late 2013.¹⁰³ On October 23, 2013, the First DCA lifted the injunction placed on the implementation of the legislation based on the plaintiffs' lack of standing.¹⁰⁴ The plaintiffs' attempt to obtain review by the Florida Supreme Court was rejected on April 21, 2014.¹⁰⁵

¹⁰¹ Fla. CS for CS for HB 119 (2012) (Third Engrossed) (An Act Relating to Motor Vehicle Personal Injury Protection Insurance), available at <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h0119er.docx&DocumentType=Bill&BillNumber=01119&Session=2012>.

¹⁰² *Id.*

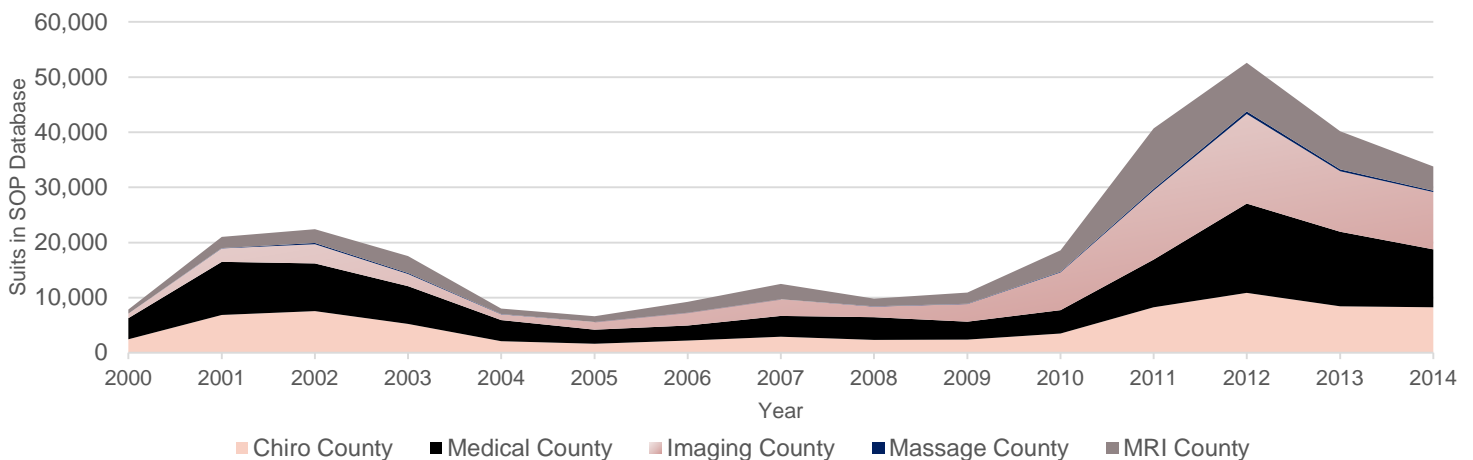
¹⁰³ See *McCarty v. Myers*, 125 So. 3d 333, 334-35 (Fla. 1st DCA 2013).

¹⁰⁴ *Id.* at 337.

¹⁰⁵ *Myers v. McCarty*, 143 So. 3d 921 (Fla. 2014).

With the implementation of reform, overall PIP lawsuit data from the top modalities reflects a decline that may correspond to these reforms.¹⁰⁶ This is not the first time this has occurred. As shown in the next chart, overall PIP litigation decreased in volume in 2002 and 2003, and decreased again in 2007. In 2001, enhanced fraud protections, including clinic licensure and limited third-party access to crash reports, were passed,¹⁰⁷ and in 2003, additional anti-fraud measures were added.¹⁰⁸ Another short decrease occurred in 2007, when the PIP law was repealed briefly as a result of a sunset provision in the law but was soon reenacted with additional reforms.¹⁰⁹

PIP County Court Litigation by Plaintiff Names



FL DFS SOP DATABASE 6

Some of the “dips” reflected in the overall number of AOB lawsuits filed may be attributable to the declines in PIP AOB litigation as the result of reform. However, despite reforms, PIP AOB litigation still represents a significant portion of all AOB litigation.

Case Study: Auto Glass Claims

Auto insurance policies often provide physical damage coverage, meaning coverage for loss to the vehicle that resulted from an occurrence other than a collision. Events covered by physical damage insurance include fire, theft, vandalism, falling objects, natural disasters, and the like.¹¹⁰ Windshields are excepted from an auto insurance policy’s deductible requirements by law.¹¹¹ Unfortunately, the prospect of a “no risk” or “free” windshield has fueled a very predictable moral hazard: manufactured windshield repair claims. Several auto glass repair

¹⁰⁶ See *infra* PIP County Court Litigation by Plaintiff Names Chart, Florida Department of Financial Services Service of Process Database.

¹⁰⁷ See Ch. 2001-271, Laws of Fla.; Ch. 2001-163, Laws of Fla.

¹⁰⁸ See Ch. 2003-411, Laws of Fla.

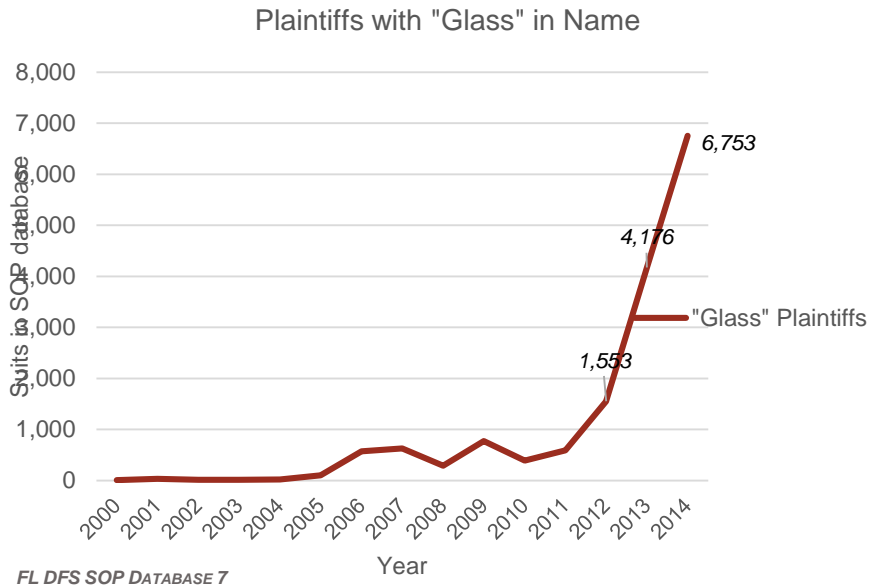
¹⁰⁹ Florida Office of Insurance Regulation, Cabinet Presentation—Personal Injury Protection 6 (Aug. 2011), <http://www.flair.com/siteDocuments/PIPPresentation08162011.pdf>.

¹¹⁰ Florida Department of Financial Services, *Automobile Insurance: A Toolkit for Consumers* 7, <http://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited Aug. 13, 2015).

¹¹¹ § 627.7288, Fla. Stat. (2015).

shops have developed a niche market of promising “free” windshields in exchange for an AOB and the right to sue an insurer.

In 2013, a Tampa news station completed a two-year undercover investigation into windshield repairs and replacements. The news station discovered windshield repair shops that offered gift cards, steaks, and cash in exchange for a car owner’s right to file an insurance claim for a “free” windshield replacement. Often undamaged windshields were targeted, but windshield repair shops alleged damage in order to seek insurer payment for replacement work.¹¹²



Unfortunately, a search of the SOP database suggests that this practice has boomed in Florida. From 2000 to 2005, only 92 services of process from plaintiffs with names containing the word “glass” were received. Over the next five years, 2,249 were received. From 2010 to 2014, **13,100** were filed. In 2014 alone, 6,722¹¹³—or almost 26 services of process per day—were logged into the SOP database.

Much of this litigation is being filed by the same small class of vendors. Express Auto Glass, which contributed about 600 lawsuits to the 2014 total, advertises a “FREE Gift Card with Windshield Replacement Insurance Claim!” on its website.¹¹⁴ As another example, Auto Glass America, which promises a \$100 restaurants.com gift card with the words “Have Any Auto Glass Service Done by Us and this Valuable Gift Card is Yours Absolutely Free!”¹¹⁵ on its website, filed 1,485 lawsuits in 2014. Mobile Auto Glass Repair, LLC—



Advertisements on the Auto Glass America Website, Aug. 15, 2015

¹¹²First Coast News, *Glass companies push unnecessary windshield replacements* (May 3, 2013), available at <http://www.firstcoastnews.com/story/news/local/florida/2014/01/17/4600895/>.

¹¹³The source for this data is the SOP database. Individuals who happen to have the word “glass” in their names but did not appear affiliated with auto glass repair were not removed from the results. However, such individuals likely represent a very small percentage of the results. For instance, examining cases filed in 2014, only about 0.046% of cases were filed by plaintiffs that appeared unrelated to the auto glass industry and happened to have the word “glass” in their name.

¹¹⁴Express Auto Glass, *Get your FREE Gift Card*, <http://www.expressautoglass.biz/windshield-replacement-gift-card.php> (last visited Aug. 13, 2015).

¹¹⁵Auto Glass America Homepage, <http://www.auto-glassamerica.com/free-windshield-clearwater.html> (last visited Aug. 13, 2015).

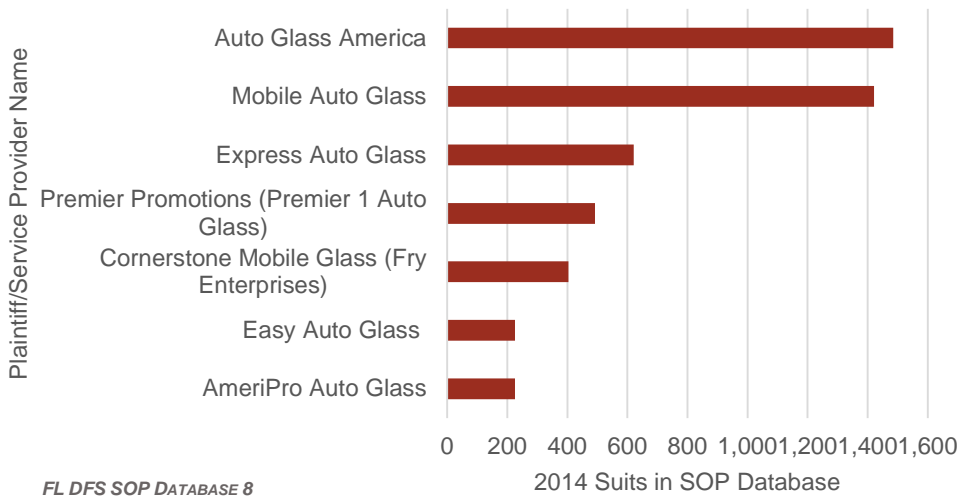
fronted by “Mr. Auto Glass”—filed 1,421 lawsuits in 2014, all by the same lawyer.¹¹⁶

Comprehensively, about 91% of the 6,722 likely auto glass AOB lawsuits filed in 2014 were brought by one of 16 attorneys—from 14 firms—in the state. One might presume that windshields are fixed soon after they are broken, and that the propensity for broken windshields is not associated in any significant way with a particular region, person, or entity. However, the auto glass AOB litigation phenomenon appears to defy such logic, given its concentration among a small group of plaintiffs and an even smaller group of attorneys. The chart below shows the

14 law firms most commonly responsible for likely auto glass AOB litigation as reflected in the SOP database.

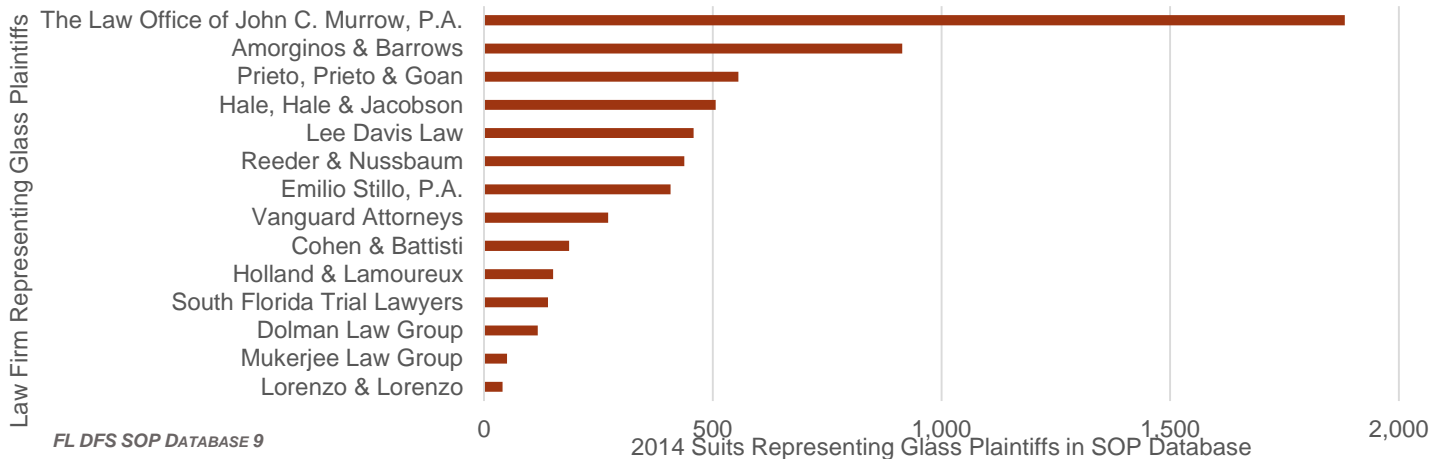
Again, these cases—predominantly filed in county court—are not high dollar cases. But these lawsuits are likely worthwhile because of the volume. For example, the Law Office of John C. Murrow filed 1,882 “glass”-affiliated plaintiff lawsuits in 2014. That amounts to a little more than **five lawsuits per day**.¹¹⁷

2014 Top Glass Lawsuit Plaintiffs



FL DFS SOP DATABASE 8

2014 Top Glass Plaintiff Attorneys



FL DFS SOP DATABASE 9

¹¹⁶Mr. Auto Glass, About Us, <http://www.fixmyquack.com/about-us.html> (last visited Aug. 13, 2015); John C. Murrow, The Law Office of John C. Murrow, P.A. (attorney filing suits on behalf of Mobile Auto Glass Repair, LLC determined by review of SOP database).

¹¹⁷Since services of process cannot be served on the Department of Financial Services on weekends, this calculation is based on the number of weekdays in a calendar year and does not exclude holidays when the Department may be closed and thus not accepting services of process.

In addition to being high volume, these cases are relatively simple. A review of the complaint filed in *Express Auto Glass, LLC a/a/o Amber Tyer v. Allstate Fire & Insurance Co.*,¹¹⁸ initiated by frequent auto glass plaintiff's firm Hale, Hale & Jacobson, P.A., is illustrative. The complaint alleges damages greater than \$750 but less than \$1,000, exclusive of interest and attorney's fees. The plaintiff Express Auto Glass asserts it has the right to sue defendant Allstate Fire & Insurance Company by virtue of an AOB, which is attached to the complaint. The AOB signed by the policyholder broadly assigns "any and all insurance rights, benefits and proceeds under any applicable insurance policies to Express Auto Glass LLC" and "direct[s] [the] insurance carrier to release any and all information requested by Express Auto Glass LLC." Very often—and this complaint is no different—the policyholder waives the right to a written estimate of the cost to repair the windshield at the time the AOB is signed. In the complaint Express Auto Glass alleges it has presented a "reasonably priced bill" to the insurer that has not been paid. As proof the complaint attaches an invoice. The invoice is identical to the AOB except it is not signed by the policyholder and it includes the actual estimate of cost. The invoice is also dated the same day as the AOB was signed by the policyholder. Finally, a staple of these complaints is an allegation that the plaintiff auto glass shop is entitled to attorney's fees pursuant to Section 627.428, Florida Statutes.

A review of the cases filed by plaintiffs like Express Auto Glass and Atlas Auto Glass demonstrate that attorneys can essentially copy and paste a new complaint from an old one, making it relatively easy to file five or more of these lawsuits in a single day. And the promise of attorney's fees and costs by virtue of the one-way attorney fee statute makes pursuit of these cases potentially lucrative.

The one-way attorney fee is also used as leverage to get higher amounts for work performed. Again, the prospect of awarding attorney's fees if a plaintiff wins just one cent more than was offered presents a Hobson's choice for insurers: pay what the service provider-assignee is asking for or try to negotiate a lower cost and get sued, creating exposure for attorney's fees.

Safelite® Solutions, an affiliate of Safelite® Auto Glass, the largest windshield repair company in the United States, provides claims management solutions for many of the country's largest property and casualty insurance companies. As part of this service, they review auto glass repair invoices submitted to their customer-insurers and compare them to related estimates to ensure equitable pricing. Given the spike in auto glass litigation from several service providers mentioned above, it is worth mentioning that the volume of auto glass claims reviewed by Safelite Solutions has remained relatively stable. From 2012 to 2013, Safelite Solutions reported a 4.74% increase and from 2013 to 2014, reported an 11.82% increase.¹¹⁹ This contrasts with the litigation statistics mentioned above, which reflect a 162.77% and 168.90%

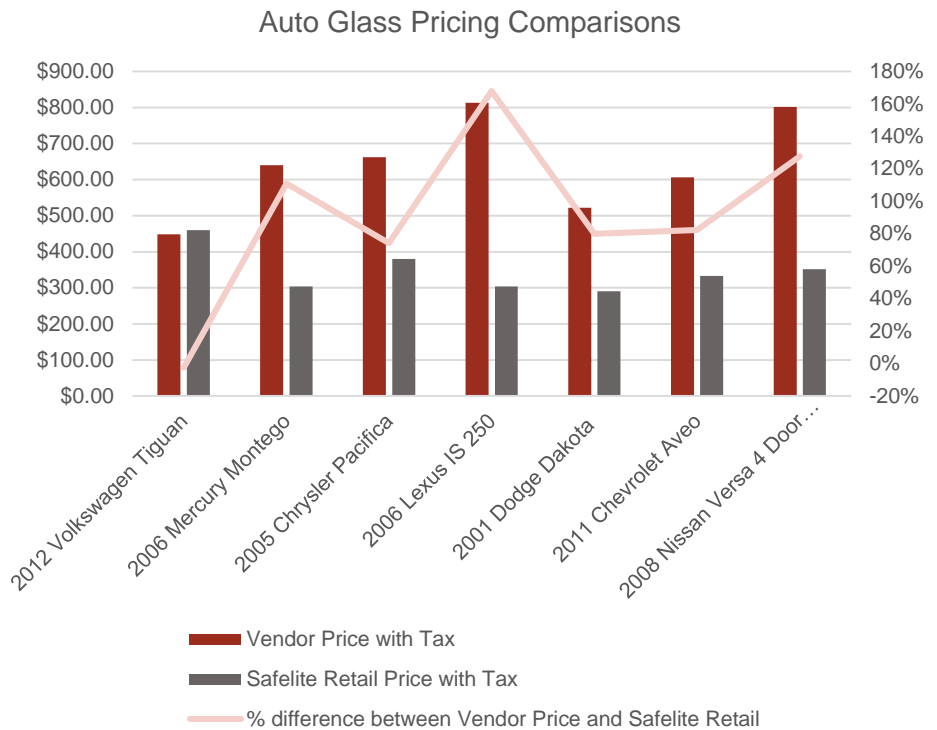
¹¹⁸Case No. 2013-SC-007075-0 (Fla. 9th Cir. Ct.) (filed Aug. 1, 2013). The complaint and attachments were accessed via the Orange County Clerk of Courts MyEClerk website, <https://myeclerk.myorangeclerk.com/>.

¹¹⁹Email to Authors from Safelite Solutions (on file with authors). Safelite Solutions reported the following: Total Claims, 2012: 227,931; 2013: 238,737; 2014: 266,967.

increase during those same time periods. The percentage of year over year growth between the two data sets, while both increasing, are doing so at drastically different growth rates.

Safelite Solutions was asked to review a small sample of invoices submitted by auto glass service providers as attachments to seven AOB lawsuits filed in Florida, illustrating the amount the service provider-assignee was claiming the defendant-insurer was refusing to pay on an assigned insurance claim.¹²⁰ Safelite Solutions compared these invoices to the retail price charged by Safelite Auto Glass for the same year and model vehicle. The Safelite retail prices reflect cash prices—not prices negotiated by insurer partners—for purposes of making a fair comparison. In all but one case, the markup by the service providers evidenced in the complaint invoices was at least 74% more than the Safelite retail price, including taxes and all fees.¹²¹

Given the Hobson’s choice presented insurers today, settling for a higher amount to avoid additional litigation costs is most likely the economically efficient option for cost containment. Even when such option is taken though, the power wielded by service providers who have stepped into a first party’s shoes and can assert first party protections to get above market reimbursements still results in additional costs for insurers and, eventually, policyholders.



SAFELITE/COUNTY COURT DOCUMENTS 1

¹²⁰The invoices reviewed were taken from the following, randomly-selected cases filed in Florida’s Ninth Judicial Circuit by Express Auto Glass, Auto Glass America, and Atlas Auto Glass from the Orange County Clerk’s website: *Express Auto Glass, LLC a/a/o Consilio v. Progressive Am. Ins. Co.*, Case No. 2013-SC-9744 (Fla. 9th Cir. Ct.) (filed Oct. 23, 2013) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2011 Chevrolet Aveo); *Express Auto Glass, LLC a/a/o Lopez v. Progressive*, Case No. 2013-SC-2544 (Fla. 9th Cir. Ct.) (filed March 13, 2013) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2008 Nissan Versa); *Auto Glass Am. LLC a/a/o Moore v. GEICO Cas. Co.*, Case No. 2015-SC-5814 (Fla. 9th Cir. Ct.) (filed May 15, 2015) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2005 Chrysler Pacifica); *Auto Glass Am. LLC a/a/o Colosky v. GEICO*, Case No. 2015-SC-5803 (Fla. 9th Cir. Ct.) (filed May 14, 2015) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2006 Lexus IS); *Auto Glass Am. LLC a/a/o Murtaugh v. Auto-Owners Ins. Co.*, Case No. 2015-SC-5379 (Fla. 9th Cir. Ct.) (filed May 13, 2014) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2001 Dodge Dakota); *Lusnia d/b/a Atlas Auto Glass a/a/o Costa v. Lib. Mut. Ins. Co.*, Case No. 2012-SC-6875 (Fla. 9th Cir. Ct.) (filed Aug. 10, 2012) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2006 Mercury Montego); *Lusnia d/b/a Atlas Auto Glass a/a/o Lotz v. Allstate Indem. Ins. Co.*, Case No. 2012-SC-6864 (Fla. 9th Cir. Ct.) (filed August 10, 2012) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2012 Volkswagen Tiguan).

¹²¹The one outlier—the Volkswagen Tiguan—is likely attributable to the newness of the model.

Case Study: Property Insurance Claims

Florida's geographic orientation as a peninsula, surrounded by two oceans, makes it more prone to windstorm risk than most other states.¹²² In 1992, South Florida was forever changed by Hurricane Andrew. In 2004 and 2005, a confluence of Hurricanes Charley, Frances, Ivan, Jeanne, Dennis, Katrina, Rita, and Wilma left a wake of bruised, battered, and destroyed structures. Tens of thousands of homes had to be repaired or rebuilt and, as a result, the composition of insurers willing to underwrite these losses changed dramatically. Legislative and regulatory actions were swift, with an eye to increased mitigation. But an unintentional side effect was the expansion of Florida's residual market.¹²³

Unfortunately, Florida's property insurance market has also been hit with other, albeit manmade, disasters. In 2011, Florida's "insurer of last resort," Citizens Property Insurance Corporation, was one of several insurers battered by a dramatic growth in sinkhole claims. The frequency of claiming activity was concentrated in three southwest Florida counties and contributed to loss ratios specific to those counties in the range of 300% to nearly 700%. This increase in claims and losses was unrelated to any geologic activity, and anecdotally was driven by the incentive for policyholders to file claims and pocket the cash proceeds instead of making repairs.¹²⁴ Public adjusters, attorneys, and other third parties in this system advertised the availability of sinkhole claims to policyholders, and received commissions and other payouts when their services were used.¹²⁵ In a presentation to the Senate Banking and Insurance Committee, Senate staff surmised that insurers were reluctant to litigate questionable sinkhole claims because of Section 627.428's one-way attorney fee, which put "insurers in a position in which the most cost effective method of dealing with sinkhole claims [was] to simply pay them, rather than risk a judgment for claimant attorneys' fees and bad faith damages after already incurring large costs associated with adjusting these claims."¹²⁶

Legislative action in the form of 2011 Senate Bill 408 stemmed the tide of sinkhole claims by reforming what qualified as covered sinkhole damage, requiring insurance proceeds to be devoted to repairs, and creating several risk management tools for insurers.¹²⁷

¹²²The Florida Catastrophic Storm Risk Management Center, *The State of Florida's Property Insurance Market 2nd Annual Report* 3 (Jan. 2013), <http://www.stormrisk.org/sites/default/files/sites/default/files/2nd%20Annual%20Insurance%20Market%20Rpt-FSU%20Storm%20Risk%20CenterRev.pdf>.

¹²³*Id.* at 12.

¹²⁴Fla. S. Banking & Ins. Comm., *Interim Report 2011-104 Issues Relating to Sinkhole Insurance 2* (Dec. 2010), <http://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-104bi.pdf>.

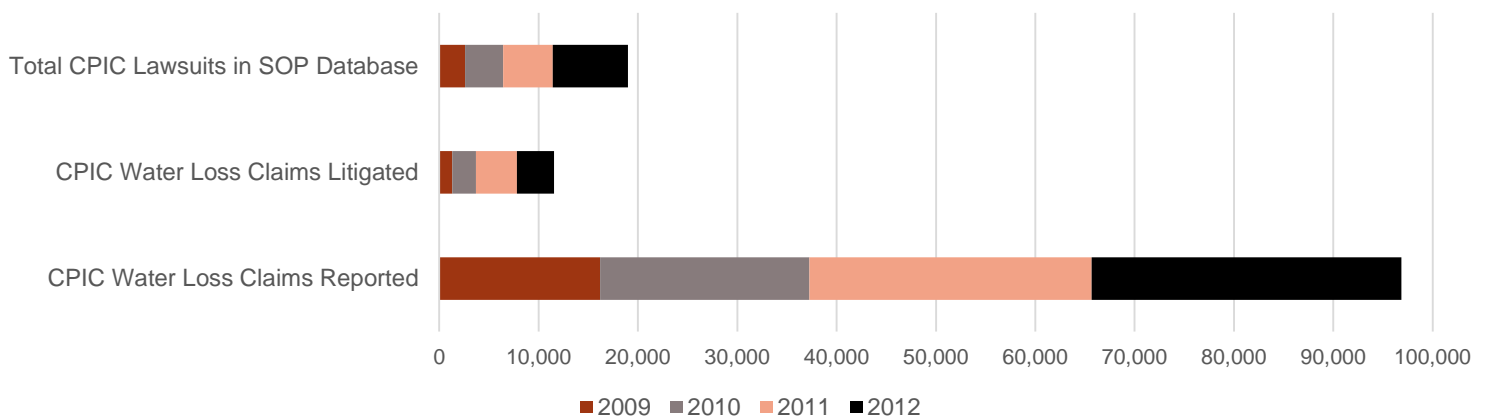
¹²⁵*Id.*

¹²⁶*Id.* at 10.

¹²⁷See Fla. S. Banking & Ins. Comm., House Message Summary on CS for CS for CS for SB 408 (2011) (2nd Engrossed), <http://flsenate.gov/Session/Bill/2011/0408/Analyses/2011s0408.hms.PDF>.

Despite the reforms, there has been a disproportionate increase in the percentage of claims that result in litigation as compared to the percentage of policies in force with reported claims.¹²⁸ This is because non-sinkhole related claims are increasing.¹²⁹ When property insurance became more resistant to abusive practices related to sinkhole claims, the litigation template was exported to other scenarios. Now, the leading cause of loss for all reported claims to Citizens is water, growing from 38% of all reported claims to over 50% in just four years, followed by roof damage caused by wind or other weather, fire, and dropped objects.¹³⁰ For litigated claims, water leads the pack growing from 46% to 75% over that same four-year period.¹³¹

Citizens Property Insurance Corporation (CPIC):
Water Claims, Water Lawsuits, and Total Lawsuits



FL DFS SOP & CPIC LITIGATION ANALYSIS 1

Citizens' data makes for an interesting case study in litigation trends for two reasons. First, Citizens only sells property insurance, so its data should reflect how natural and unnatural causes have affected litigation trends in that market. Second, Citizens' policy count has varied sometimes dramatically over time, despite a continuous increase in the number of lawsuits. As displayed in the next chart, lawsuits as a percentage of policies in force was more than one full percentage point lower in the hurricane-battered 2004 and 2005 calendar years than it was in 2014. Even stranger is that lawsuits continued to spike after the statute of limitations for filing lawsuits for 2004 and 2005 storm claims had expired.^{132, 133}

¹²⁸Citizens Property Insurance Corporation, *Litigation Analysis* 6 (Oct. 2013), https://www.citizensfla.com/shared/press/documents/LitigationAnalysis_10-2013.pdf.

¹²⁹See *id.* at 7.

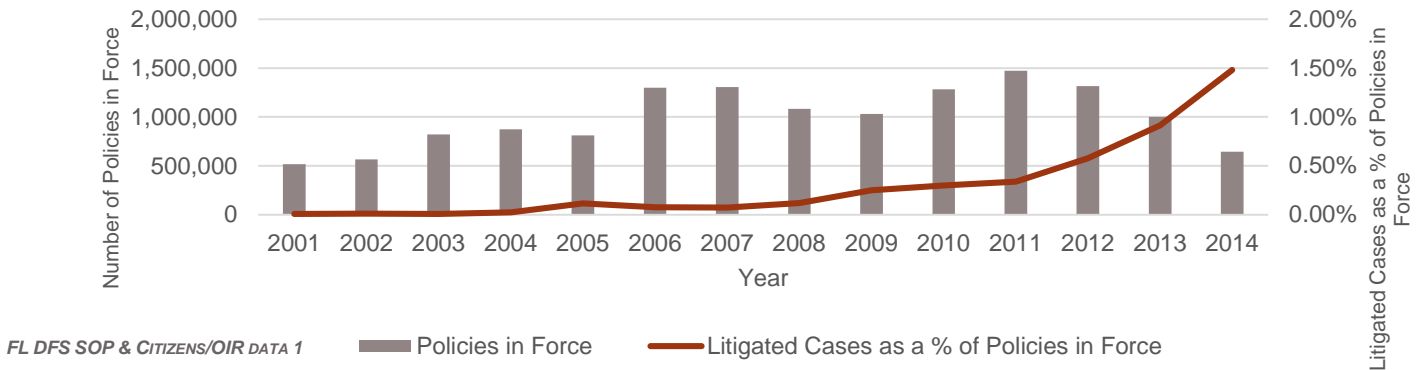
¹³⁰*Id.* at 10.

¹³¹*Id.* at 11.

¹³²See § 95.11, Fla. Stat. (2015) (providing a five-year statute of limitations for breach of contract claims). In 2011, section 627.70132, Florida Statutes, was enacted, requiring insurers to be notified about windstorm and hurricane claims within three years of the storm's landfall, but was not made retroactive.

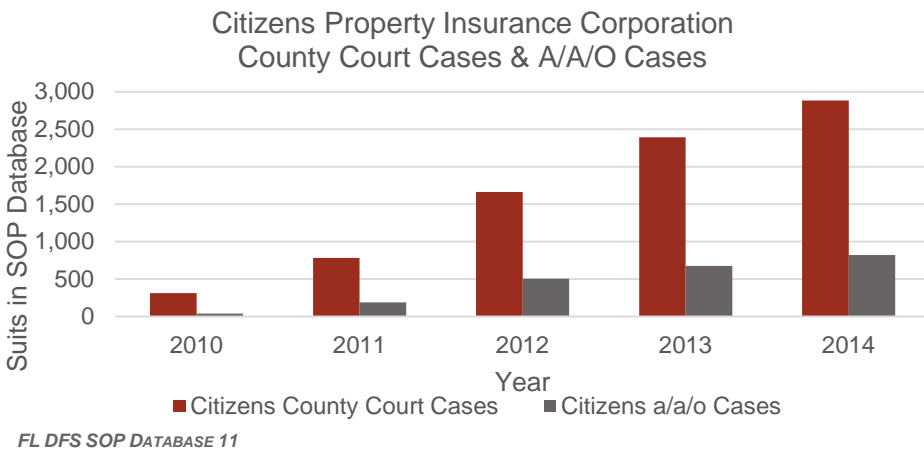
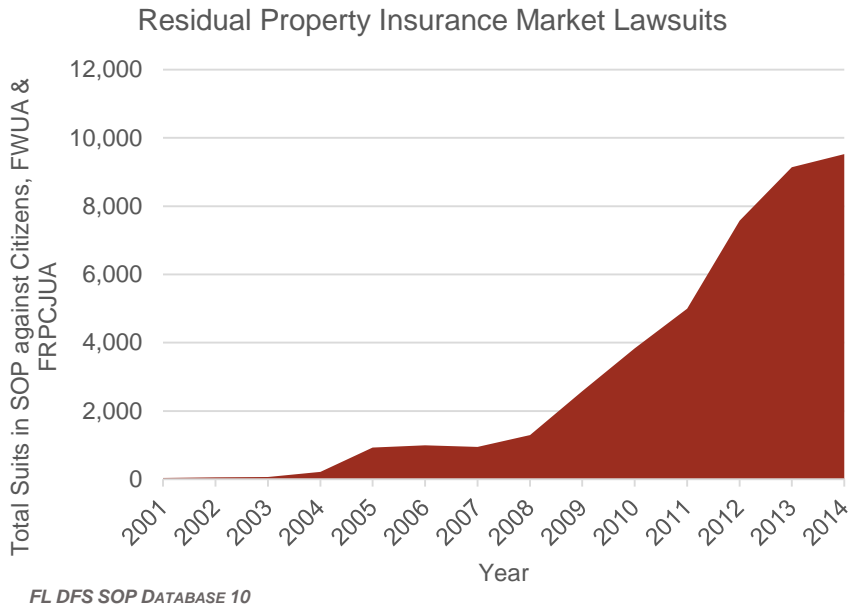
¹³³The chart below contains lawsuit and policy count information from Citizens Property Insurance Corporation, as well as the Florida Windstorm Underwriting Association ("FWUA") and the Florida Residential Property and Casualty Joint Underwriting Association ("FRPCJUA"). The latter organizations were merged in 2002, creating Citizens Property Insurance Corporation.

Residual Market: Citizens, FWUA, FRPCJUA



The continued increase in lawsuits after 2005 has two common characteristics: the lawsuits are increasingly for lower dollar amounts (as they are predominantly filed in county court) and assignee litigation is becoming more prevalent, based on the number of cases involving an “a/a/o” plaintiff.

Regrettably, Newton’s third law applies as equally in insurance as it does in physics, and the increase in litigation in the absence of storms has prompted a reaction in the form of Citizens’ 2016 rate filing. Thirty percent of Citizens policyholders are likely to see a rate increase based on “a significant number of water claims, which drives rate indications higher for those areas.”¹³⁴



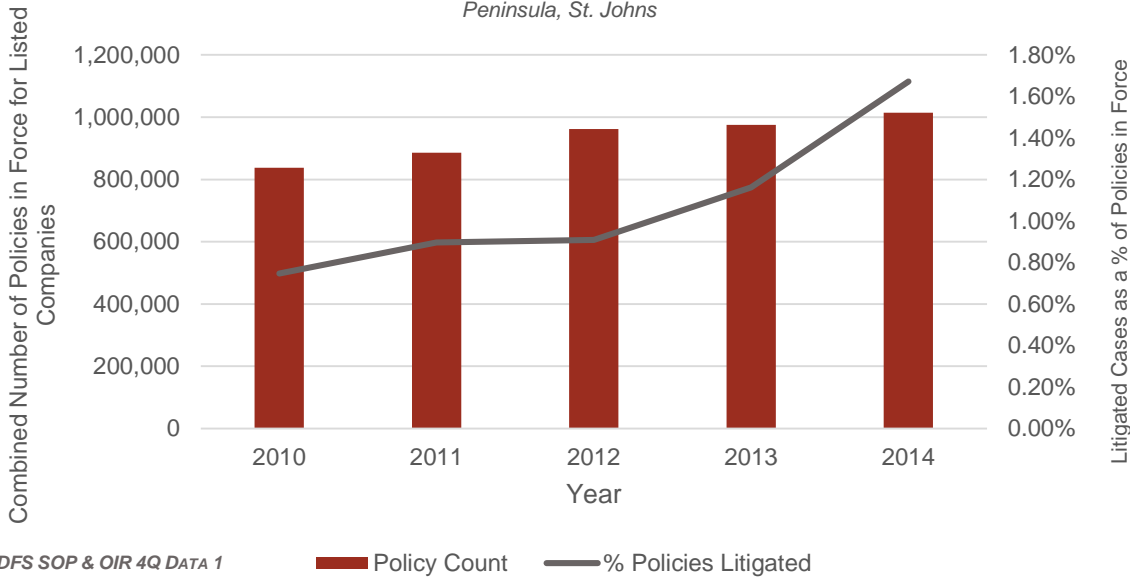
This was foreshadowed in a February 2015 presentation by Citizens’ Chief Claim Officer, who reported that 72% of water claims arise from the tri-county area of the state (Miami-Dade, Broward, and Palm Beach counties)—the same area that will be affected by the proposed rate increases.¹³⁵ Of those water claims, 98% had attorney representation. Based on a

¹³⁴Citizens Property Insurance Corporation, 2015 Rate Kit 2, <https://www.citizensfla.com/shared/press/documents/2015RateKit.pdf>.

¹³⁵Jay Adams, Chief Claims Officer, Citizens Property Insurance, Citizens Presentation on Assignment of Benefits 2 (Feb. 9, 2015), <http://piff.net/wp-content/uploads/2015/03/Citizens-Presentation-on-Assignment-of-Benefits.pdf>.

Florida Domestic

American Integrity, Florida Family, Security First, Castle Key Insurance & Indemnity, Florida Peninsula, St. Johns

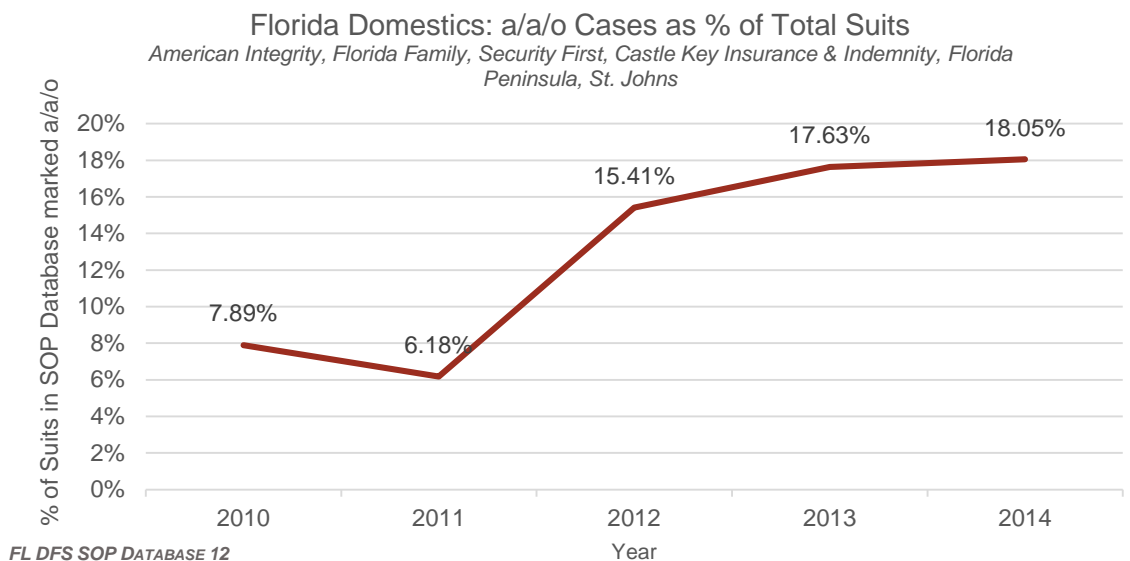


review of the lawsuits received as of December 2014,¹³⁶ Citizens found that 91% of the lawsuits were based on water claims, and that 98% of the lawsuits arose from claims in the tri-county area.¹³⁷ Notably, 85% of all the suits reviewed had an

attorney involved before the claim was even reported to the insurer, suggesting a coordinated—and potentially manufactured—effort to churn claims into litigation.¹³⁸

Anticipating the arguments of those who believe that this data does not, in and of itself, demonstrate an alarming trend exists, Citizens’ data can be compared and contrasted to that of the private market. Since the early 2000s, domestic, mono-line property insurers have entered the market more frequently and have collected similar data, providing yet another property insurance-only glimpse at lawsuit data. This data is nearly a mirror image of Citizens’ data, with litigation growing a full percentage point from 2010 to 2014 when controlled for policy count fluctuation.

Digging deeper, it appears that cases brought by assignees are a contributing factor. Cases that include an a/a/o in the plaintiff’s name have grown by about 10% of total litigated cases in a five-year period.



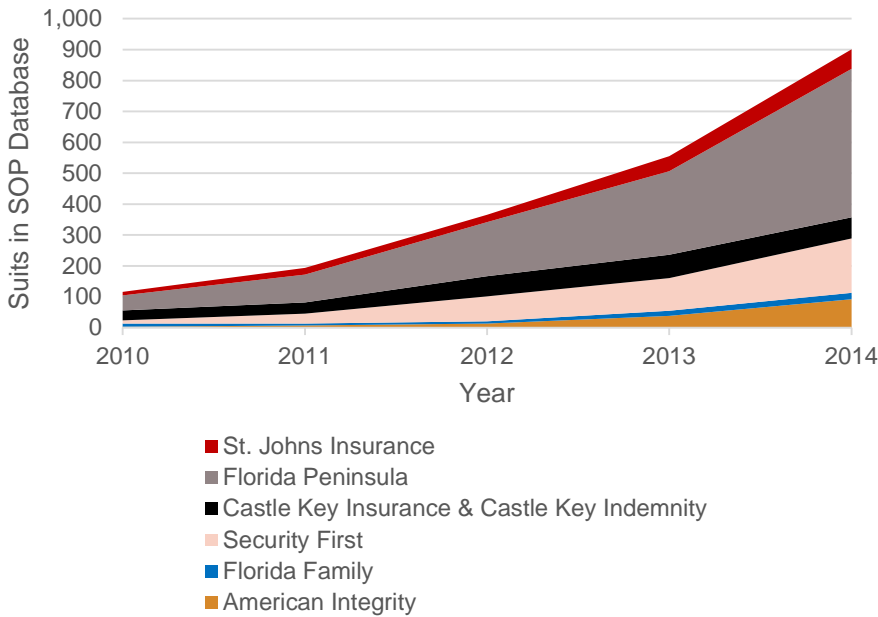
¹³⁶ See *id.* at 9.

¹³⁷ *Id.* at 6.

¹³⁸ *Id.* at 9 (stating that 479 of 562 suits had attorney representation at the first notice of loss).

Florida Domestic: County Court Litigation

American Integrity, Florida Family, Security First, Castle Key Insurance & Indemnity, Florida Peninsula, St. Johns



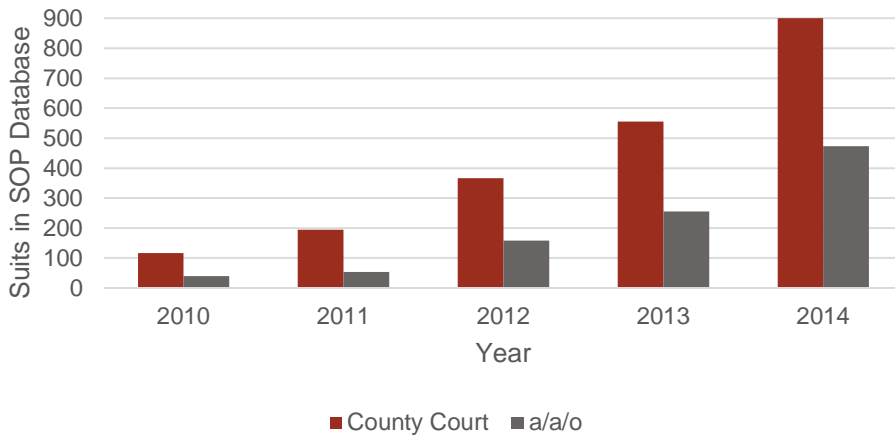
So is the influx of water claims occurring naturally? The data again shows that these claims concentrate in certain areas and are advanced by a relatively small class of service providers, suggesting that some other factor is at work. Would this large influx of naturally occurring, sudden, and accidental¹³⁹ water leaks and bursts really be serviced by the same set of providers?

Based on a review of lawsuit data provided by several property insurers, companies with names that included words such as “water,” “restoration,” “restore,” “flooring,” “remediation,” “mitigation,” “mold,” “carpet,” and “emergency” were frequently plaintiffs in lawsuits brought against insurers.¹⁴⁰ Accordingly, searches done in the SOP database with one or more of these search terms in the plaintiff field confirm that such service providers are comprising an increasing amount of insurance lawsuits.^{141,142}

FL DFS SOP DATABASE 13

Florida Domestic

American Integrity, Florida Family, Security First, Castle Key Insurance & Indemnity, Florida Peninsula, St. Johns



FL DFS SOP DATABASE 14

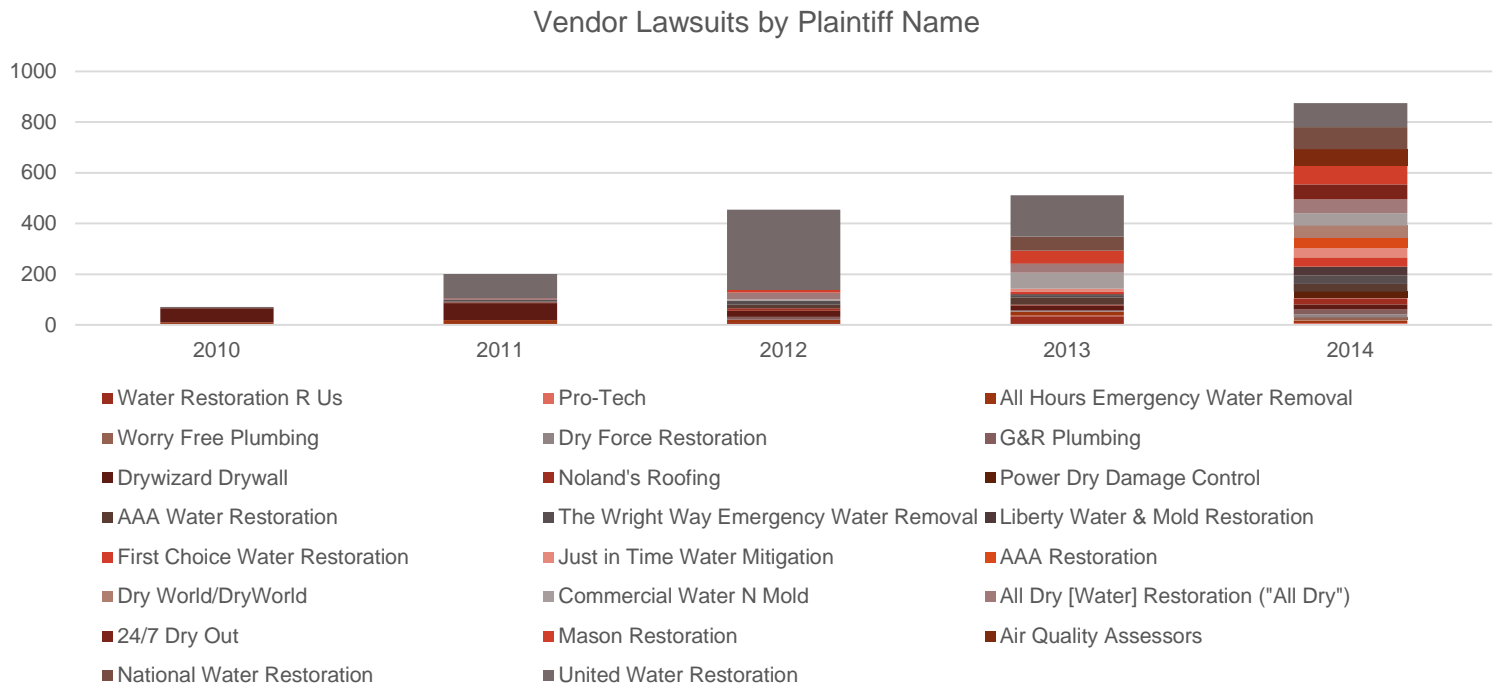
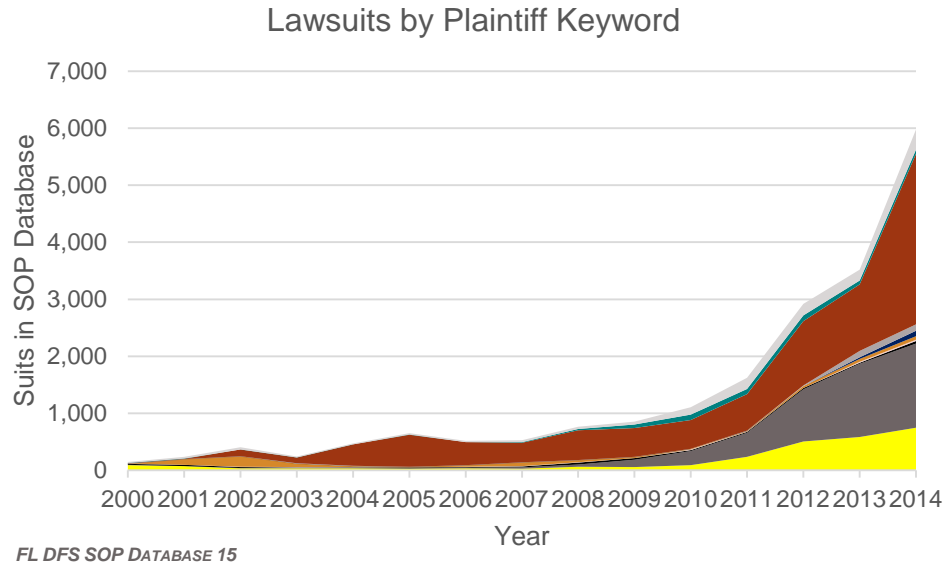
¹³⁹Most property insurance policies cover sudden and/or accidental water damage, but not leaks that have been constant, continuous, or occurring over a period of time and thus were preventable or capable of being easily corrected by mitigation efforts. For example, commonly covered perils under homeowners’ insurance include “[a]ccidental discharge or overflow of water or steam,” “a sudden and accidental discharge of water—such as a burst pipe or other plumbing failure, or claims that arise from water damage due to water instructions due to hurricanes.” Florida Department of Financial Services, Homeowners’ Insurance: A Toolkit for Consumers, 5, 12, <http://www.myfloridacfo.com/division/Consumers/UnderstandingCoverage/Guides/documents/HomeownersToolkit.pdf>.

¹⁴⁰Insurance Trade Association Survey Responses, Sept. 2015 (on file with authors).

¹⁴¹It should be noted that companies such as “Carpet Cleaning & Restoration” and “United Water Restoration” may be represented in this chart twice because their names include two of the search terms; however, even removing these types of names, the graph still represents a significant spike in assignee lawsuits. Individual plaintiffs with names that include the search terms were also not removed.

¹⁴²Truncated versions of words were used in some instances to capture two variations of the same word. For example, the search term “restor” was used to capture companies that used either the word “restoration” or “restore” in their business name.

Akin to auto glass AOB litigation, a group of lawyers and plaintiffs—albeit a larger group in this context—dominate the property insurance AOB litigation landscape. Most of these companies either did not exist or did not file lawsuits before 2008.



V. Conclusions & Recommendations

This report has identified the following trends:

- (1) Despite a decline in extreme weather events, and despite no other apparent increases in naturally-occurring and damage-causing events, insurance litigation continues to increase.
- (2) Decreases in AOB PIP litigation appear to coincide with legislative reform of PIP.

- (3) Assignee plaintiffs—often those service providers repairing the insured damage—are increasingly becoming the plaintiffs in lawsuits filed against insurers.
- (4) Indeed, a third of all lawsuits filed against insurers are brought by apparent assignee-plaintiffs.
- (5) Lawyers filing cases on behalf of these litigants are concentrated in a relatively small subset of all lawyers, yet represent an overwhelming majority of the counsel in these cases.
- (6) More qualitative data obtained from insurers suggests that insurers are reacting by settling these service provider-AOB claims out of court, often paying *less* than what the assignee originally demanded but paying comparatively high assignee's attorney's fees.

Logically, there must be some explanation for these trends. While litigation initiated by assignees has consistently been pervasive in certain lines such as PIP for many years, this litigation has only recently grown to include auto glass and property insurance litigation. Below are a few conclusions that we will posit for consideration, understanding that it is difficult to determine any causal or correlative link:

- PIP legislative reforms over the last decade may have made that line of insurance a less profitable source of litigation for third parties and attorneys.
- AOB litigation began increasing for other lines of insurance that were not impacted by significant or comprehensive legislative reform.
- AOB litigation is profitable because AOBs are relatively easy to obtain, AOB litigation involves relatively simple pleading, and prevailing plaintiffs are entitled to attorney's fees and costs while prevailing insurers are not. Insurers are incentivized to settle inflated claims to avoid paying a plaintiff's attorney's fees and costs.
- Insurers are even paying assignee's attorney's fees in settlement to avoid excessive litigation costs that are essentially promised by the presence of the one-way attorney fee statute and the potential for bad faith damages.

With those conclusions in mind, this report recommends the following to disincentivize this litigation and to return the one-way attorney fee statute to its original mission of making named insureds, omnibus insureds, and named beneficiaries whole:

- Clarify that the one-way attorney fee statute was intended for the protection of named and omnibus insureds and named beneficiaries only, and that service providers holding AOBs may not obtain attorney's fees pursuant to Section 627.428, Florida Statutes.
- Curb incentives for potentially fraudulent claiming behavior with reforms, such as:
 - ✓ Prohibiting the offering of things of value like gift cards in exchange for receiving an assignment of benefits.
 - ✓ Considering a shortened statute of limitations for non-catastrophic claims.

- ✓ Allowing policyholders a window of time for rescission of contracts assigning benefits, after the insurer is notified about the contract, akin to what is done for public adjuster contracts.
- ✓ Ensuring full and fair informed consent regarding the transfer of legal rights is obtained in the event of a transfer of all post-loss benefits.

However, the first recommendation gets at the root of what makes this form of litigation profitable: the availability of attorney's fees. Importantly, amending the statute to exclude third parties like service providers from its protection would eliminate only one avenue for holders of AOBs to obtain their attorney's fees.¹⁴³ Essentially, this recommendation would place holders of AOBs on equal footing with most other businesses involved in litigation. As noted above, parties are traditionally entitled to attorney's fees if provided by contract or statute. A plaintiff can agree by contract to a contingency fee arrangement with counsel, ensuring his attorney is paid in the event he prevails but also permitting the plaintiff to walk away without losing money in the event he does not. There are also other statutes that permit the award of attorney's fees to a prevailing party.¹⁴⁴ In short, such plaintiffs may still recover attorney's fees in a number of ways.

This report demonstrates that the one-way attorney fee statute is no longer serving its original purpose of ensuring litigation for individual insureds, named beneficiaries, and omnibus insureds is worthwhile. Instead, the statute is fueling an increase in litigation brought by sophisticated service providers and attorneys that do not require the protection of a one-way attorney fee. The Florida Legislature should consider amending the one-way attorney fee statute to curb the abuse of assignments of benefits by service providers and attorneys.

¹⁴³Indeed, the Florida Supreme Court has previously stated that it has "not interpreted section 627.428 as precluding the application of other attorney's fee provisions." *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1075 (Fla. 2006).

¹⁴⁴There are two notable statutory avenues to obtain attorney's fees in civil litigation. Section 57.105, Florida Statutes, permits a court to award a reasonable attorney's fee, including prejudgment interest, to a prevailing party if the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense presented to the court: (a) was not supported by material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then-existing law to those material facts. Another statutory avenue for obtaining partial attorney's fees is the offer of judgment statute, Section 768.79, Florida Statutes. If a plaintiff files a demand for judgment in compliance with the statute which is not accepted by the defendant within 30 days, and the plaintiff recovers a judgment in an amount at least 25% greater than the demand, the plaintiff is entitled to recover reasonable costs and attorney's fees incurred from the date of the demand's filing. § 768.79(1), Fla. Stat. (2015); see also *id.* § 768.79(6)(b); *Nichols*, 932 So. 2d at 1075-76 (holding that the offer of judgment statute applies to suits for PIP benefits and does not conflict with the one-way attorney fee statute).

VI. Survey Data

The following table catalogues the claims examples provided by the insurer trade associations surveyed that were collected by the authors in September 2015. Original copies of the surveys summarized in the table may be obtained from the authors.

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Auto glass damage from rock in road	5/18/2015	6/1/2015	Insured	5/21/2015	7/27/2015	Limited to Services Rendered, Assigned All Causes of Action, Waived Privacy, Irrevocable	\$ 1,118.48	n/a	30	N/A		Pending in court	
Cracked windshield, unknown cause	3/10/2015	5/19/2015		5/13/2015	5/19/2015	Limited to Services Rendered, Irrevocable	\$ 754.94	\$ 137.72		\$ 617.22			
Water leak in shower	1/27/2015	1/30/2015	Insured	1/30/2015	2/3/2015	Assigned All Causes of Action, Waived Privacy, Irrevocable, Hold Harmless Provision	\$ 19,644.00	Dry time of 5 days, additional fees for supervisory charges and overhead/profit	30	\$ 15,494.00		\$ -	
Auto glass damage from rock in road	1/24/2015	1/28/2015	Vendor	1/24/2015	1/26/2015	Assigned All Causes of Action, Limited to Services Rendered	\$ 159.75	Uncertain	Not specified	\$ 159.75		\$ 1,600.00	Settlement
Water damage in kitchen	1/23/2015	1/30/2015	Attorney	1/23/2015	6/23/14 (when lawsuit was received)	Limited to Services Rendered, Waived Privacy, Irrevocable	\$ 3,766.01	n/a	15	\$ 3,500.00		\$ 8,500.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Water loss	1/20/2015	1/21/2015	Insured	1/21/2015	2/5/2015	Limited to Services Rendered, Assigned All Causes of Action, Waived Privacy, Hold Harmless Provision	\$ 6,511.25	Carpet Cleaning Repair Installation Certifications violations based on extended drying time and lack of equipment removal as areas dried	10	\$ -	Global demand of \$10k including fees and work performed	\$ 3,500.00	Settlement
Auto glass damage from rock	12/10/2014	12/22/2014	Vendor	12/10/2014	12/22/2014	Assigned All Causes of Action, Limited Services Rendered	\$ 159.00	Uncertain	Not specified	\$ 159.00		\$ 1,600.00	Settlement
Windshield replacement	12/3/2014	10/27/2014	Vendor	2/28/2014	10/29/2014	Limited to Services Rendered, Assigned All Causes of Action, Irrevocable	\$ 356.45	\$ -		\$ 356.45	\$1,500.00	\$ 750.00	
Windshield replacement	11/20/2014	1/29/2015	Vendor	11/22/2014	1/28/2015	Limited to Services Rendered, Assigned All Causes of Action, Irrevocable, Hold Harmless Provision	\$ 635.63	\$ 283.39		\$ 352.24	\$750.00		
Cracked windshield	10/14/2014	11/13/2014		10/23/2014	11/13/2014	Limited to Services Rendered, Irrevocable	\$ 710.80	\$ 322.79		\$ 388.01			
Property damage from raccoon in attic	10/13/2014	10/20/2014	Insured	10/13/2014	10/20/2014	Limited to Services Rendered, Waived Privacy	\$ 14,525.00	Amount demanded deviated from Xactimate; peer review necessary \$8,290.72		\$7,290.72 (presuit offer)			Litigation ongoing

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Cracked windshield, unknown cause	8/23/2014	9/3/2014			9/4/2014	Irrevocable	\$ 738.75	\$ 314.22		\$ 424.53			
Wind/hail damage to roof, interior rain damage	8/8/2014	8/12/2014	Other	8/12/2014	8/26/2014	Limited to Services Rendered, Waived Privacy	\$ 4,730.83				\$3,500.00		Settlement
Cracked windshield, unknown cause	7/29/2014	8/5/2014		8/6/2014	8/5/2014	Limited to Svcs. Rendered, Irrevocable	\$ 692.38	\$ 331.16		\$ 361.16			
Lead from supply line in slab; damage to rooms	7/27/2014	7/29/2014	Insured	1/9/2014	8/18/2014	Assign All Causes of action, Waive Privacy, Hold Harmless	\$ 5,807.16	Excessive fees for administration, supply/materials, fuel surcharge, and supervisory charges; moisture inspection fee and overhead/profit	30	\$ 1,509.14		Pending in court	
Glass chip in windshield	7/2/2014	7/8/2014	Vendor	7/2/2014	7/3/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 85.20	\$ 74.90			\$1,250.00		
Water shower pan leak	6/28/2014	7/2/2014	Insured	7/2/2014	7/9/2014	Limited to Svcs. Rendered, Assign all Causes of action, Hold Harmless	\$ 1,808.80			\$5500 (global settlement)	\$8351.43 (global demand)	\$5500 (global settlement)	Settlement; claim excluded under policy, damages to insured denied
Auto glass damage from rock in road	6/24/2014	10/28/2014	Attorney	6/25/2014	10/28/2014	Assign All Causes of action, Waive Privacy, Irrevocable	\$ 160.50	n/a	30	\$ 1,500.00	\$1,339.50	\$ 1,339.50	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Kitchen supply line leak	6/24/2014	6/25/2014	Other	6/25/2014	8/4/2014	Limited to Svcs. Rendered, Waive Privacy , Irrevocable, Hold Harmless	\$ 4,650.33	Xactimate price deviation		\$ 3,400.00		\$ 4,350.00	Settlement
Water mitigation	6/22/2014	6/26/2014	Insured	6/22/2014	7/17/2014	Limited to Svcs. Rendered, Assign all Causes of action	\$ 25,824.75	Peer review found price should've been \$5,762.72		\$ 27,000.00	\$6,000.00	Apportioned from settlement balance	Settlement
Auto glass damage from rock in road	6/19/2014	6/24/2014	Insured	6/21/2014	8/7/2014	Assign All Causes of action, Waive Privacy, Irrevocable	\$ 539.80	n/a	30	\$ 2,039.80	\$1,500.00	\$ 1,500.00	Settlement
Roof leak, damage to drywall and paint	6/12/2014	6/12/2014	Vendor	6/12/2014	6/21/2014	Assign all Causes of action, Waive Privacy , Irrevocable	\$ 4,293.72	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,629.39		\$ 3,500.00	Settlement
Windshield repair	6/10/2014	9/22/2014	Vendor	6/10/2014	11/5/2014	Limited to Svcs. Rendered, Assign all COAs, Irrevocable, Hold Harmless	\$ 80.25	\$ 5.35		\$ 74.90	\$2,500.00	\$ 1,250.00	
Windshield replaced due to chip	6/10/2014	9/22/2014	Vendor	6/10/2014	11/5/2014	Limited to Svcs. Rendered, Assign all COAs, Irrevocable, Hold Harmless	\$ 80.25	\$ 5.35		\$ 74.90	\$1,250.00		
Shower drain leak	6/6/2014	6/16/2014	Insured	6/10/2014	6/30/2014	Assign all COAs, Waive Privacy , Irrevocable	\$ 11,590.53	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ -		\$ 2,500.00	Claim denied; settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Biohazard clean up	6/3/2014	6/4/2014	Other		6/25/2014	Limited to Svcs. Rendered, Waive Privacy , Irrevocable, Hold Harmless	\$ 26,421.00	Peer review found pricing irregularities, procedural issues with clean-up, and redundant work invoiced	10	\$ 20,000.00	\$32,000.00	\$ 5,000.00	Settlement
Repair due to multiple chips in windshield	5/22/2014	6/13/2014	Vendor	5/22/2014	9/11/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 160.50	\$ -		\$ 160.50	\$0.00		
Cracked windshield, unknown cause	5/17/2014	5/29/2014		5/21/2014	5/29/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable	\$ 652.43	\$ 237.11		\$ 415.28			
Property damage due to racoon in attic; damage to insulation	5/1/2014	5/20/2014	Insured	5/2/2014	5/22/2014	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 13,973.75			\$ 1,669.00	\$4,000.00	\$ 2,500.00	Settlement
Pipe leak, water damage throughout home	4/27/2014	4/27/2014	Insured	4/27/2014	5/22/2014	Assign all Causes of action, Irrevocable	\$ 9,696.26	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	30	\$ 7,875.74		\$ 2,500.00	Settlement
Unknown	4/24/2014	4/29/2014	Other	4/24/2014	5/3/2014	Assign all Causes of action, Irrevocable	\$ 159.00			\$ -			Plaintiff dismissed lawsuit
Unknown	4/8/2014	4/8/2014	Other	4/4/2014	4/7/2014	Assign all Causes of action, Irrevocable	\$ 159.00						Dismissed

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Cracked windshield repaired	4/3/2014	4/7/2014	Vendor	4/3/2014	4/4/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 159.00	\$ 105.50		\$ 53.50	\$1,500.00		
Damage to windshield due to rock	4/3/2014	4/4/2014	Other	4/3/2014	4/4/2014	Assign all Causes of action, Irrevocable	\$ 159.00			\$ 14.20			Plaintiff dismissed
Windshield replaced	3/28/2014	4/1/2014	Vendor	3/31/2014	3/31/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 159.00	\$ 105.50		\$ 53.50	\$2,500.00	\$ 1,250.00	
Windshield replaced	3/25/2014	8/6/2014	Vendor	3/25/2014	8/18/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 327.40	\$ -		\$ 327.40	\$0.00		
Toilet supply line damage, damage to carpet, vinyl, and paint	3/2/2014	3/2/2014	Insured	3/2/2014	3/7/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 3,860.39	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,766.24		\$ 3,364.80	Settlement
Leak from supply line in slab damaged rooms in home	2/15/2014	2/17/2014	Insured	2/20/2014	2/27/2014	Assign All Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 5,094.66	Drying time of 4 days; additional fees for unnecessary administrative charges and supplies	30	\$ 3,967.07		Pending in court	
Wind damage to roof	2/12/2014	2/17/2014	Insured	2/13/2014	2/18/2014	Limited to Svcs. Rendered, Waive Privacy, Waive Privacy	\$ 32,039.19			\$ 7,779.94	\$4,000.00	\$ 1,800.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Windshield replaced	1/30/2014	2/13/2014	Vendor	2/6/2014	2/27/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 451.49	\$ 280.36		\$ 171.13	\$0.00		
Slab leak, damage to wood floors	1/21/2014	1/27/2014	Vendor	1/27/2014	2/12/2014	Assign all Causes of action, Waive Privacy , Irrevocable	\$ 18,993.09			\$ -		\$ 4,500.00	Claim denied; settlement
Property loss due to mold	1/15/2014	2/27/2014	Insured	6/26/2014	10/9/2014	Limited to Svcs. Rendered, Waive Privacy , Irrevocable	\$ 15,399.75	Lack of itemized invoice, simply a flat rate entry for amount requested		Litigation ongoing	\$4,500.00	Litigation ongoing	Litigation ongoing
Fire from lightning, soot/smoke damage	12/17/2013	12/18/2013	Vendor	12/17/2013	12/27/2013	Assign all Causes of action, Irrevocable	\$ 7,079.46	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	30	\$ 6,472.07		\$ -	Dismissed
Windshield replaced	12/10/2013	10/24/2014	Vendor	1/21/2014	10/24/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 772.84			\$ -	\$2,500.00	\$ 750.00	
Cracked windshield	12/1/2013	12/17/2013		12/11/2013	12/17/2013	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable	\$ 602.25	\$ 290.90		\$ 311.35			
Auto glass damage	11/28/2013	10/27/2014	Attorney	6/6/2014	10/27/2014	Assign All Causes of action, Lmted. Svcs. Rendered	\$ 544.34	no		\$ 544.34	\$1,800.00	\$ 1,800.00	
Windshield replaced	10/5/2013	8/5/2014	Vendor	4/29/2014	8/5/2014	Limited to Svcs. Rendered, Assign all Causes of action,	\$ 337.66	\$ -		\$ 337.66	\$0.00		

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
						Irrevocable, Hold Harmless							
Windshield replaced	10/2/2013	10/16/2013	Vendor	10/8/2013	11/8/2013	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 615.58	\$ 615.58		\$ -	\$0.00		
Wind damage to roof	9/6/2013	11/18/2013	Insured	11/16/2013	11/22/2013	Limited to Svcs. Rendered, Waive Privacy	\$ 34,566.07						
Wind/hail damage to roof	8/31/2013	4/16/2014	Insured			Assign all Causes of action, Limited to Svcs. Rendered, Waive Privacy	\$ 13,029.50			\$ 9,953.57		\$ 2,000.00	Global settlement
Windshield replaced	8/15/2013	8/6/2014	Vendor	9/5/2013	8/7/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 258.76	\$ -		\$ 258.76	\$750.00		
Windshield replaced	8/15/2013	2/14/2014	Vendor	9/29/2013	2/20/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 447.47	\$ 175.06		\$ 272.41	\$0.00		
Dishwasher leak, flooring damage	7/10/2013	7/10/2013	Insured	7/11/2013	7/23/2013	Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 3,576.75	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 2,070.68		\$ 2,000.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Broken drain line, damage to laminate flooring	6/25/2013	6/25/2013	Insured	6/24/2013	7/8/2013	Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 3,046.60	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,807.03		\$ 2,000.00	Settlement
Pipe leak, carpet damage	5/30/2013	5/30/2013	Insured	5/31/2013	6/21/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 4,724.12	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	10	\$ 2,984.86		\$ 2,000.00	Settlement
Toilet leak, damage to ceilings and walls	5/13/2013	5/13/2013	Insured	5/13/2013	5/16/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 2,313.78	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	10	\$ 1,226.25		\$ 2,000.00	Settlement
Pipe leak, damage to carpet, drywall and paint	4/13/2013	4/15/2013	Insured	4/13/2013	4/19/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 2,396.64	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,575.49		\$ 2,000.00	Settlement
Long term shower leak	4/10/2013	4/10/2013	Insured	4/10/2013	4/25/2013	Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 2,568.05	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,770.80		\$ 2,000.00	Settlement
Pipe leak, damage to floor, cabinets and vanities	4/5/2013	4/8/2013	Insured	4/6/2013	4/19/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 5,453.15		10	\$ 1,363.85		\$ 2,000.00	Settlement
Wind damage to roof	3/24/2013	4/8/2013	Insured	1/30/2014	2/20/2014	Irrevocable	\$ 10,884.61	Excessive scope, higher than Xactimate		\$ 10,000.00		\$ 3,250.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Rock or pebble hit windshield	3/15/2013	3/25/2013	Vendor				\$ 687.11			\$ 407.40	\$1,650	\$ 1,500.00	Global settlement
Plumbing leak in bathroom	3/14/2013	3/15/2013	Insured	3/15/2013	3/20/2013	Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 3,044.77	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,854.56		\$ 2,000.00	Settlement
Windshield damage	3/11/2013	3/25/2013	Vendor		3/22/2013	Assign all Causes of action, Irrevocable	\$ 560.22			\$ 320.37		\$ -	Settlement
Water heater leak, interior water damage	2/25/2013	2/27/2015	Insured	2/26/2015	3/4/2015	Lmtd. Svcs. Rendered, Assign All Causes of action, Hold Harmless	\$ 4,983.12	no					
Unknown	2/12/2013	5/8/2013	Attorney	2/15/2013	5/8/2013		\$ 746.16			\$ 750.64			Negotiated
Rear view mirror fell and cracked glass	2/1/2013	5/8/2013	Vendor		7/9/2013		\$ 531.36			\$ -	\$1,650.00	1500 (global settlement)	Settlement
Pipe break, damage to carpet, drywall, and paint	1/23/2013	1/23/2013	Insured	1/23/2013	1/31/2013	Assign all Causes of action, Waive Privacy , Irrevocable	\$ 9,283.13	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	15	\$ 4,013.06		\$ 67,000.00	Settlement
Rock hit windshield	1/20/2013	1/31/2013	Insured	1/21/2013	7/2/2013	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable	\$ 908.98			\$ 560.72	\$1,650.00		
Pipe leak in wall, damage to carpet, drywall, paint, cabinets	1/13/2013	1/13/2013	Insured	1/14/2013	2/2/2013	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 3,722.04	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,684.08		\$ 1,800.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Rock hit windshield	1/2/2013	1/24/2013	Vendor	1/16/2013	1/24/2013	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy , Hold Harmless	\$ 556.70			\$ 335.68	\$1,650.00	\$1500 (global settlement)	Settlement for fees only
Slab leak, damage to carpet, drywall and paint	12/21/2012	1/4/2013	Insured	12/21/2012	1/7/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 5,634.46	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	10	\$ 2,468.48		\$ 2,000.00	Settlement
Rock cracked windshield	12/18/2012	8/8/2012	Vendor	5/9/2013	5/9/2013		\$ 309.12			\$ 309.12		\$ -	Dismissed
Rock hit windshield	12/4/2012	12/5/2012	Vendor	12/6/2012	12/18/2012	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable	\$ 626.86			\$ 353.11	\$1,650.00	\$ 1,500.00	Global settlement
Unknown	11/9/2012			11/13/2012	8/22/2013		\$ 869.91			\$ 528.42			Negotiated
Slab leak, damage to tile, drywall, and paint	10/1/2012	10/15/2012	Insured	10/22/2012	10/30/2012	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 2,559.15	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,399.78		\$ 10,000.00	Settlement
Unknown	9/10/2012					Limited to Svcs. Rendered, Irrevocable, Hold Harmless	\$ 801.18			\$ 680.99			Negotiation
Mold in bathroom	9/5/2012	9/10/2012	Insured		9/24/2012	Limited to Svcs. Rendered, Assign all Causes of action, Hold Harmless	\$ 2,342.44						Denied claim

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Unknown	8/31/2012		Other			Limited to Svcs. Rendered, Irrevocable, Hold Harmless	\$ 1,545.35			\$ 1,480.31			Negotiation
Pipe leak, damage to carpet, cabinets and vanities	8/1/2012	9/29/2012	Insured	9/28/2012	10/9/2012	Assign all Causes of action, Irrevocable	\$ 3,788.64	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	10	\$ 1,413.32		\$ 2,000.00	Settlement
Windshield hit by softball	7/21/2012	8/7/2012	Insured		9/14/2012	Assign all Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 869.62			\$ 549.49			Plaintiff dismissed lawsuit
Rock hit windshield	6/12/2012	4/12/2012	Vendor	4/5/2013	4/12/2013	Assign all Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 570.83			\$ 369.84		\$ -	Dismissed
Unknown	5/17/2012			6/6/2012	7/17/2012		\$ 399.87			\$ 418.86			Negotiated
Unknown	4/7/2012		Other	4/25/2012		Limited to Svcs. Rendered, Irrevocable, Hold Harmless				\$ 445.61			Negotiation
Slab leak, damage to carpet, drywall, and paint	10/11/2011	10/13/2011	Insured	10/13/2011	10/18/2011	Assign all Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 4,624.08	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	15	\$ 2,495.75		\$ 10,000.00	Settlement
A/C leak, damage to walls and ceilings	8/4/2011	8/5/2011	Insured	8/5/2011	8/8/2011	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 4,033.70	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 3,500.00		\$ 4,500.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Property damage in attic due to raccoon	6/9/2011	6/16/2011	Vendor		6/27/2011	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 8,710.00			\$ 8,843.06		\$ 43,220.57	Settlement
No facts obtained	6/4/2011	1/31/2013	Other	6/6/2011	1/31/2013	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy , Irrevocable	\$ 319.68			\$ -		\$ -	Dismissed
Damage to windshield prior to policy cancellation	5/19/2011	5/28/2012	Insured	6/11/2012	7/2/2012	Limited to Svcs. Rendered, Assign all Causes of action	\$ 516.95			\$ 315.15	\$3,000.00	\$ 1,500.00	Global settlement
Hail damage to roof	4/28/2011	11/27/2012	Insured	11/27/2012	12/7/2012	Limited to Svcs. Rendered, Assign all Causes of action	\$ 26,891.22	Different in scope, higher than Xactimate	30	\$ 15,727.25		\$ 4,500.00	Settlement
Damage to windshield prior to policy cancellation	2/25/2011	5/31/2012	Other	6/12/2012	6/19/2012	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy	\$ 824.95			\$ 543.78	\$2,500.00	\$ 1,500.00	Global settlement
Toilet overflow, damage to floor, baseboards, and walls	12/13/2010	12/16/2013	Insured		12/17/2010	Assign all Causes of action, Irrevocable	\$ 13,753.04	Excessive scope, higher than Xactimate	10	\$ 8,529.17		\$ 5,223.87	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Pipe leak, cabinet damage	10/7/2010	10/8/2010	Insured	10/12/2010	11/1/2010	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 14,521.11	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate, inappropriate use of O&P (Ova & Parasite)		\$ 10,000.00		\$ 5,000.00	Settlement
Garbage disposal leak		1/9/2015	Insured	1/9/2015	1/12/2015	Waive Lien Law, Assign All Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 1,420.74	no	3				
Auto glass damage		2/14/2012	Insured	2/14/2012	unknown	Irrevocable	\$ 264.28	no	19	pending			
Water mold							\$ 2,000.00						Withdrawn
Water Mitigation Rebuild							\$ 12,537.33	\$ 3,537.33		\$ 9,000.00		\$ 8,250.00	Settlement
Contractor Rebuild							\$ 21,061.00	\$ 4,123.90		\$ 8,800.00		\$ 3,400.00	Settlement
Water Mitigation Rebuild							\$ 19,021.22	\$ 2,753.00		\$ 21,774.22		\$ 6,975.78	Settlement
Water Mitigation Remediation							\$ 7,134.97	\$ 7,134.97		\$ 5,800.00		\$ 2,400.00	Settlement
Water Mitigation							\$ 7,154.51	\$ 4,905.94		\$ 3,500.00		\$ 2,500.00	Settlement
Water Mitigation							\$ 16,525.06	\$ 14,598.18		\$ 4,000.00		\$ 3,500.00	Settlement
Water Mitigation							\$ 6,653.09	\$ 3,997.57		\$ 2,842.90		\$ 3,950.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Water Mitigation							\$ 54,543.40	\$ 46,690.67		\$ 62,500.00	\$ 12,500.00	\$ 12,500.00	Settlement
Water Mitigation Mold							\$ 2,000.00	\$ 2,000.00	15	\$ 2,000.00	\$ 500.00	\$ 5,000.00	Settlement
Water Mitigation							\$ 5,631.62	\$ 3,114.69	15	\$ 4,500.00			Settlement
Water Mitigation							\$ 4,900.09	\$ 900.09		\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	Settlement
Water Mitigation							\$ 6,279.79	\$ 4,278.79		\$ 2,001.00		\$ 2,500.00	Settlement
Water Mitigation							\$ 2,860.54	\$ 860.54		\$ 2,000.00		\$ 3,000.00	Settlement
Roof Replacement							\$ 16,000.00	\$ 2,500.00		\$ 31,500.00		\$ 8,000.00	Settlement
Water Mitigation							\$ 6,151.98	\$ 2,651.98		\$ 1,000.00		\$ 2,500.00	Settlement
Water Mitigation							\$ 2,832.51	\$ 1,228.51		\$ 1,000.00		\$ 3,000.00	Settlement
Water/mold							\$ 22,422.00						Withdrawn
Water Mitigation							\$ 2,500.00	\$ 500.00		\$ 2,000.00		\$ 5,000.00	Settlement
Water Mitigation							\$ 6,541.00	\$ 3,541.00	15	\$ 3,000.00		\$ 3,500.00	Settlement
Water Mitigation							\$ 3,742.34	\$ 7,114.82		\$ 3,000.00		\$ 3,000.00	Settlement
Remediation							\$ 2,200.00	\$ 2,200.00	10	\$ 1,700.00		\$ 2,500.00	Settlement



Florida Office of Insurance Regulation

Florida's Assignment of Benefits (AOB) Crisis

Presented to:

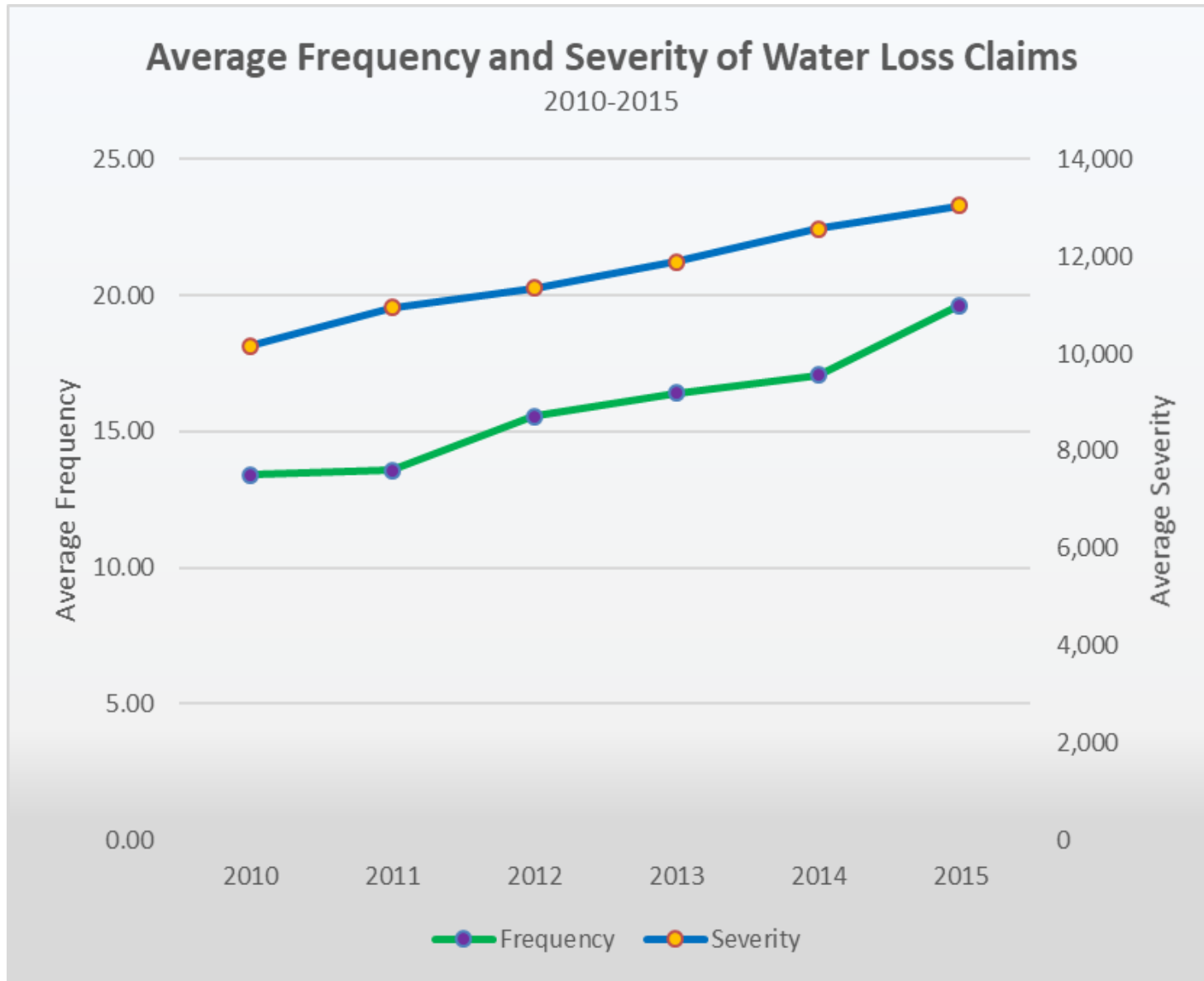
Senate Banking and Insurance Committee

January 22, 2019



Florida Office of Insurance Regulation

2015 AOB Study

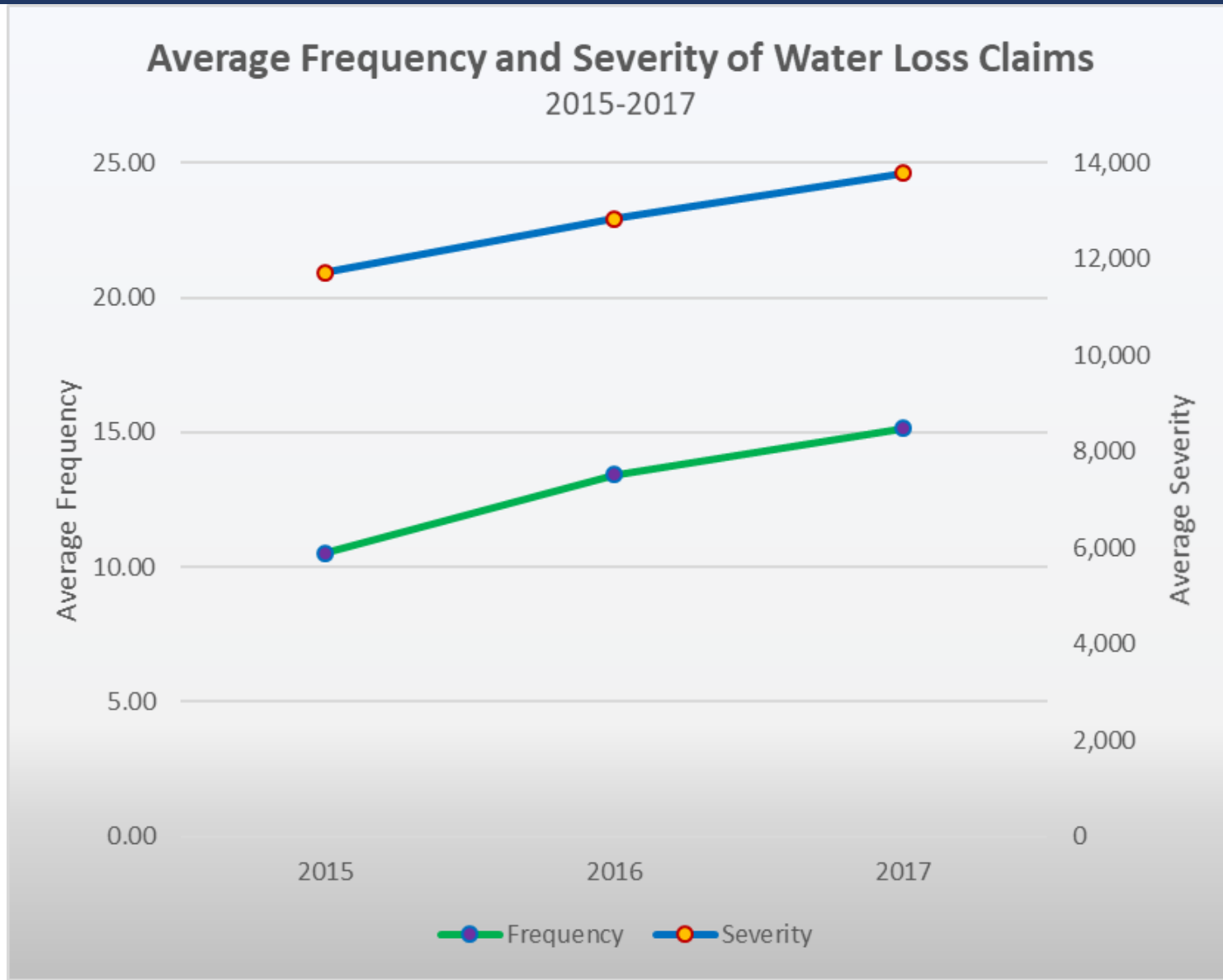


Source: Office Assignment of Benefits Data Call. Data based on claims for voluntary carriers with dates closed between 1/1/2010 and 9/30/2015. Insurer must have been able to provide information to determine the frequency and severity of HO-3/DF claims for water losses.

*Data is only shown for insurers that were able to consistently indicate for a given year that a claim had or did not have an (AOB).



2017 AOB Study



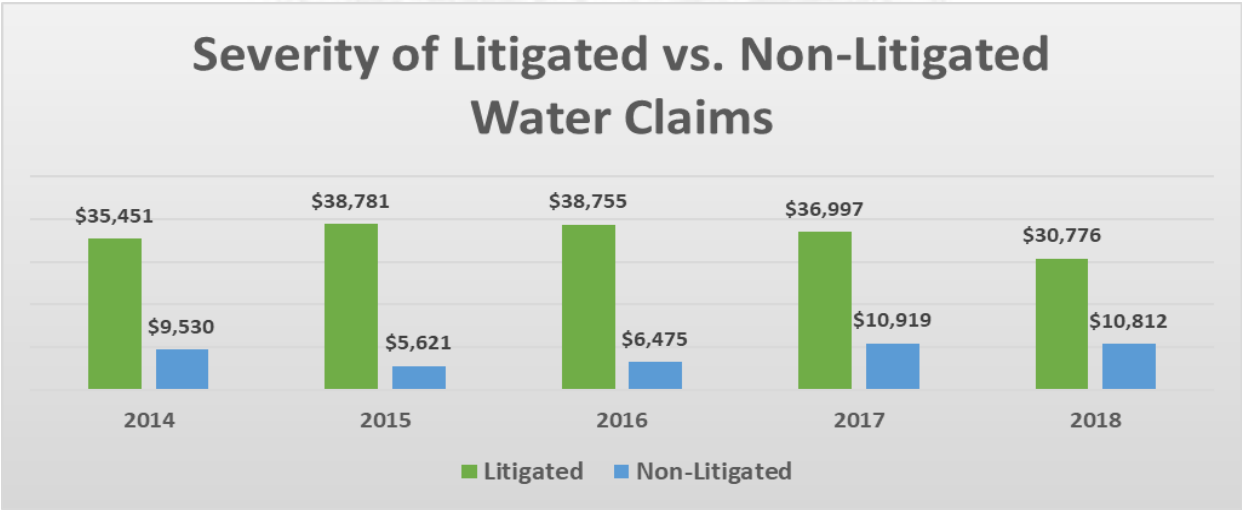
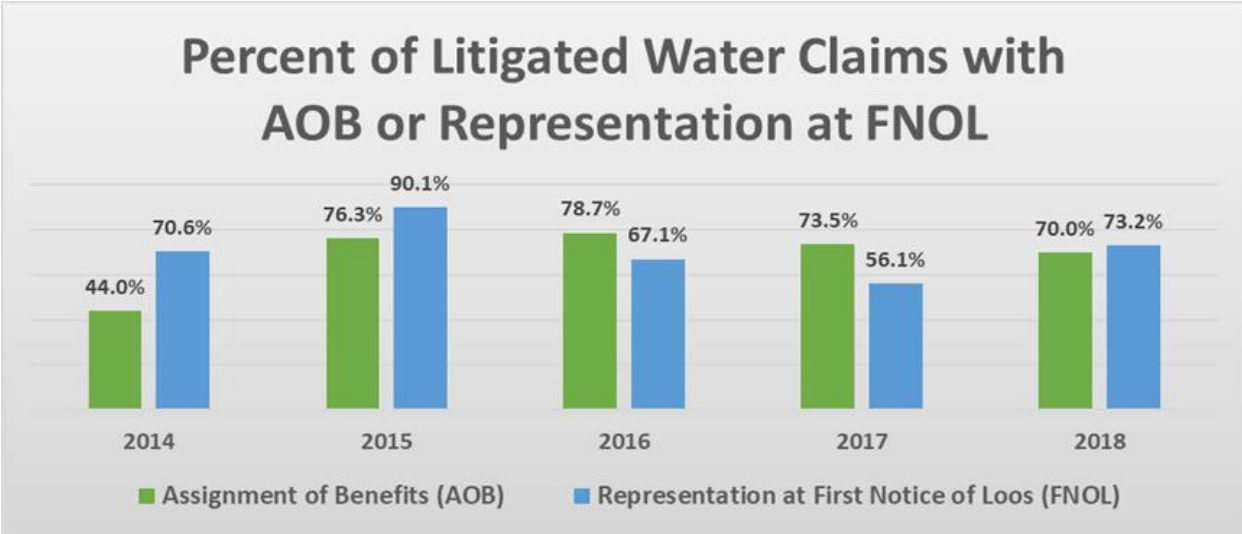
Source: Office Assignment of Benefits Data Call. Data based on claims for voluntary carriers with dates closed between 1/1/2015 and 6/30/2017. Insurer must have been able to provide information to determine the frequency and severity of HO-3/DF claims for water losses.

*Data is only shown for insurers that were able to consistently indicate for a given year that a claim had or did not have an (AOB).



Florida Office of Insurance Regulation

Experience: Citizens Property Insurance Corporation 2014-2018



Notes:

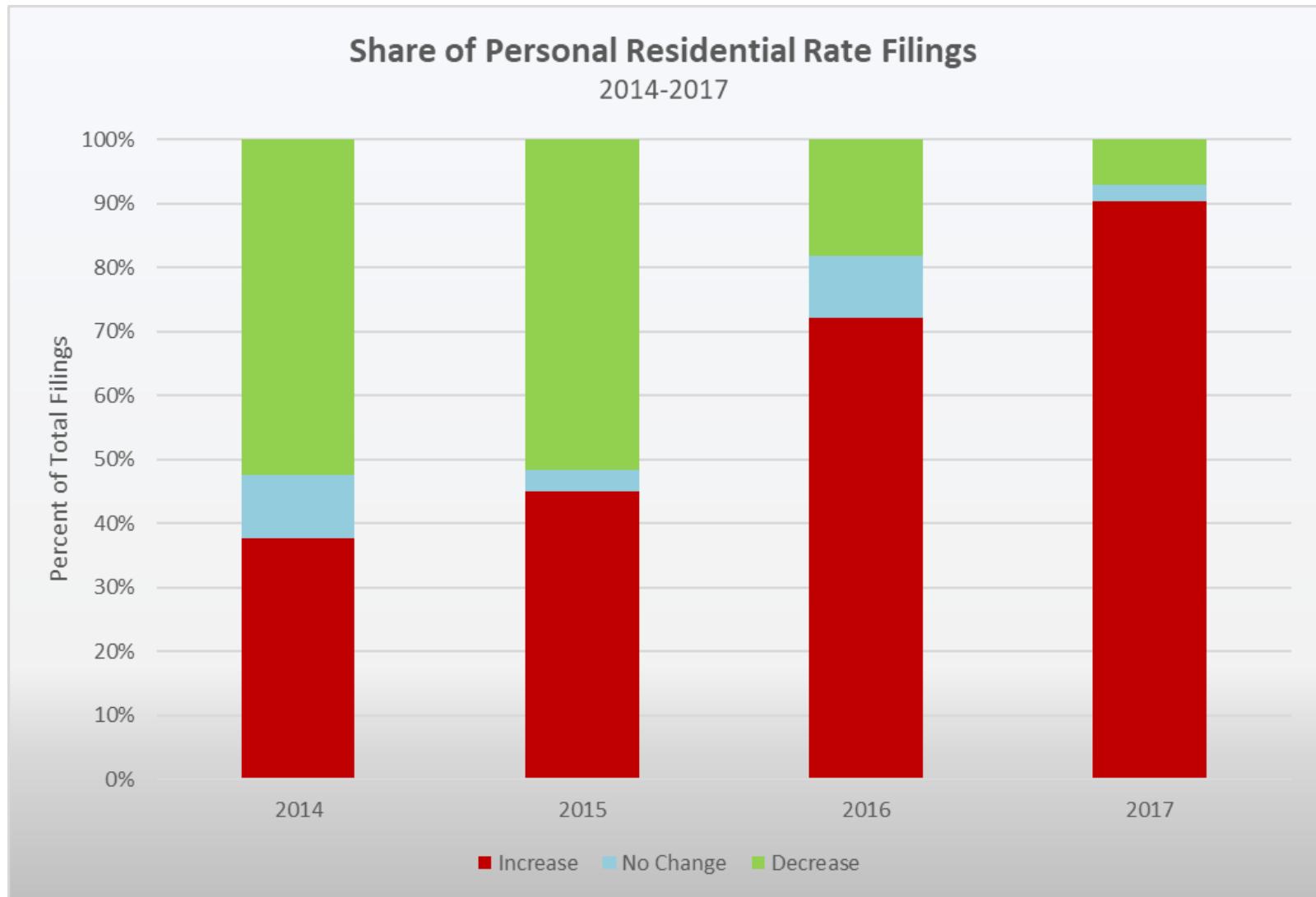
- 1) Claims data is based on non-weather related water claims by report year for Homeowners policies.
- 2) Severity of litigated and non-litigated claims are based on undeveloped report year incurred loss and allocated loss adjustment expense (ALAE)

Source: Citizens Property Insurance Corporation (2018)



Florida Office of Insurance Regulation

Property Insurance Affordability

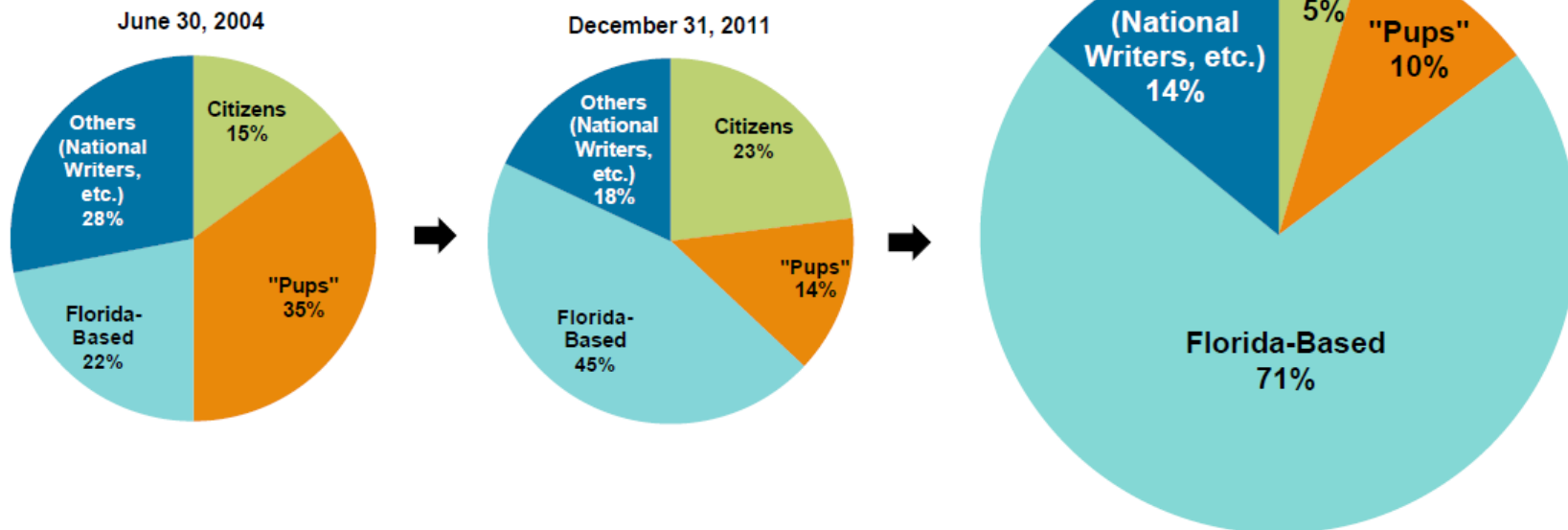


Citizens Property Insurance Corporation Overview

Barry Gilway
President



**For Policies that Include Wind Coverage
Florida Residential Property Insurance Market
Includes State Farm Florida
QUASR data as of June 30, 2018**

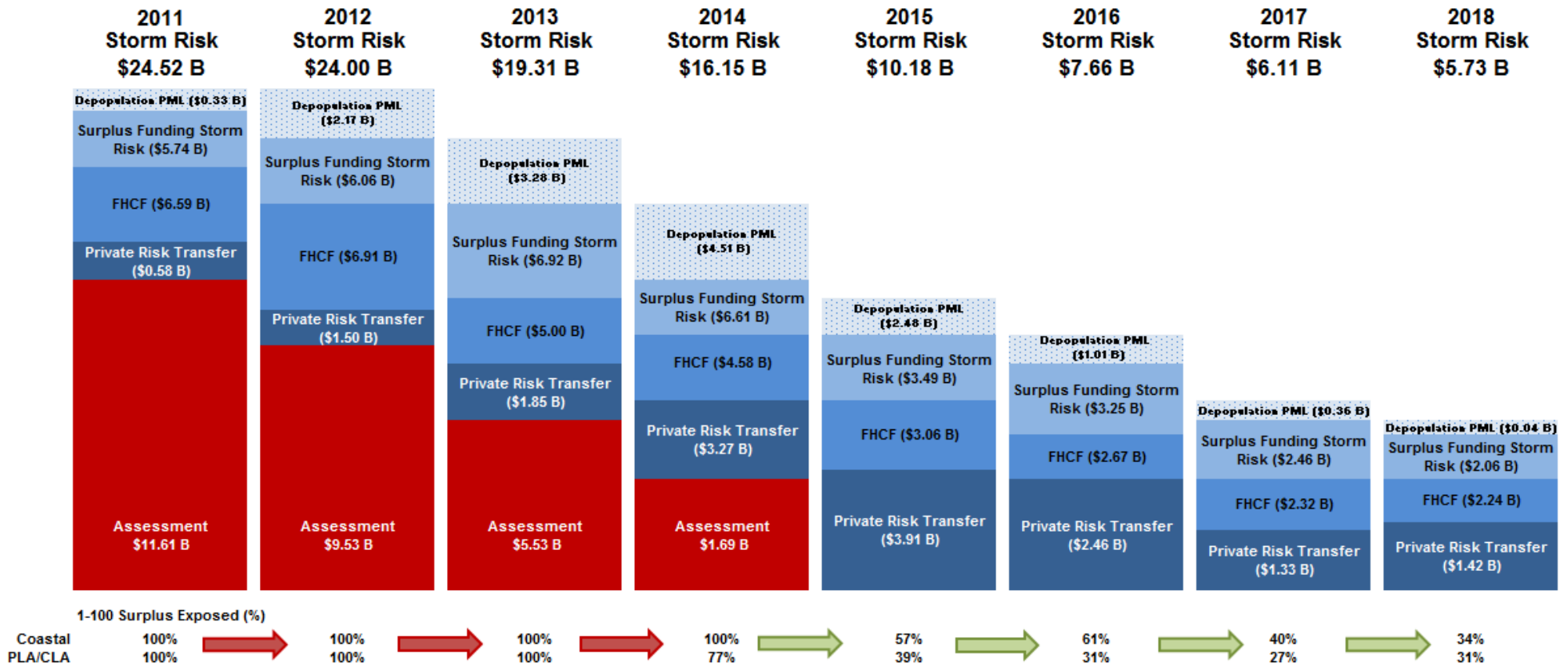


Insurer Category	Total Insured Value
Citizens	\$106,284,553,696
"Pups"	\$233,041,758,285
Florida-Based	\$1,612,889,890,922
Others	\$319,869,629,249
Total	\$2,272,085,832,151

The Florida Residential Property Insurance Admitted Market is divided into 4 major parts: (i) Citizens; (ii) Florida only subsidiaries "pups" of major national writers; (iii) Florida-based domestic companies; and (iv) non-domestic nationwide property writers, such as USAA, etc.

Storm Risk: 1 in 100 year PML

Public Summary of Citizens Assessment Reduction Efforts Over Time



Notes:

- Storm Risk is as measured by 1-in-100 year probable maximum loss (PML) plus estimated loss adjustment expenses using the Florida Hurricane Catastrophe Fund (FHCF) account allocation where PLA and CLA are combined. PLA/CLA combined PMLs are added to the Coastal PMLs to be consistent for surplus distribution. In general, the PMLs presented are as projected at the beginning of storm season; with the exception of 2017 which is as of August 31, 2017.
- Surplus and Assessments are as projected at beginning of storm season. Not all PLA/CLA surplus is needed to fund storm risk in 2014. In 2015 - 2018, not all surplus in PLA/CLA and the Coastal Account is needed to fund storm risk. Remaining surplus is available to fund a second event.
- Florida Hurricane Catastrophe Fund (FHCF) is as projected at beginning of storm season; with the exception of 2017 and 2018 which are Citizens' initial data submission to the FHCF.
- Depopulation PMLs are not included in storm risk totals and are presented as year end totals; with the exception of 2018, which is as of May 31, 2018. PMLs from 2011-2014 use a weighted average of 1/3 Standard Sea Surface Temperature (SSST) and 2/3 Warm Sea Surface Temperature (WSST). 2015 - 2018 PMLs reflect only SSST event catalog.

Litigation has been increasing steadily for all carriers.

	2013	2014	2015	2016	2017	2018
Citizens Property Insurance Company						
All	9,146	9,525	7,653	10,061	7,624	13,363
AOB	860	1,062	1,250	3,242	2,718	3,631
AOB %	9%	11%	16%	32%	36%	27%
All Other Carriers						
All	18,270	22,122	30,167	31,790	41,524	69,300
AOB	4,613	4,820	6,645	5,968	9,772	17,421
AOB %	25%	22%	22%	19%	24%	25%
Total All	27,416	31,647	37,820	41,851	49,148	82,663
Total AOB	5,473	5,882	7,895	9,210	12,490	21,052
Total AOB %	20%	19%	21%	22%	25%	25%

Data source – DFS LSOP 2013-2018 Q4

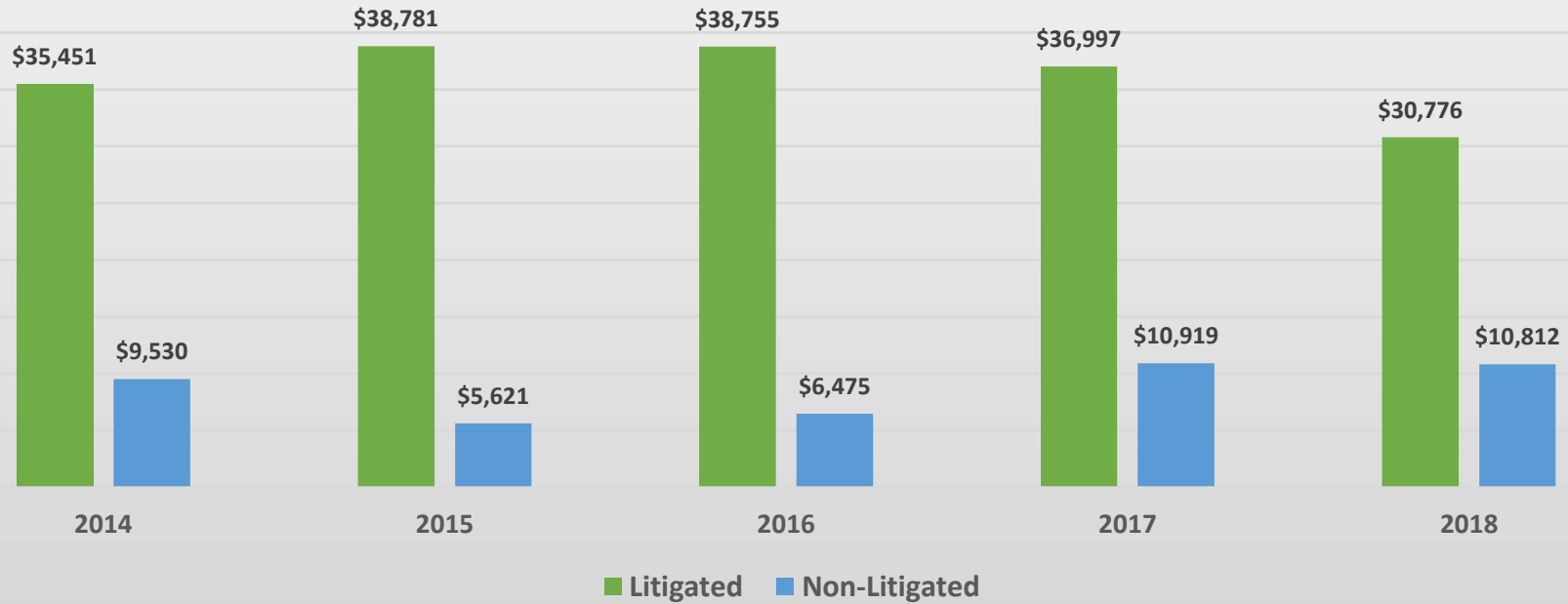
Note: 2018 Q3 data includes Hurricane Irma which represents around 60% of all new Litigation for Citizens Property Insurance in 2018.

Legal Service of Process 2013-2018 All State of Florida Carriers

	Miami-Dade	Broward	Palm Beach	Orange	Hillsborough	Duval	Polk
2013	10,759	4,383	2,116	1,578	2,064	725	326
2014	12,287	5,932	2,337	1,815	2,025	780	401
2015	13,133	8,309	3,184	2,101	2,019	960	363
2016	14,718	9,605	3,493	1,994	2,424	1,047	449
2017	13,993	11,137	4,403	2,980	2,913	1,487	623
2018	25,736	17,281	6,139	6,232	3,594	2,027	1,284

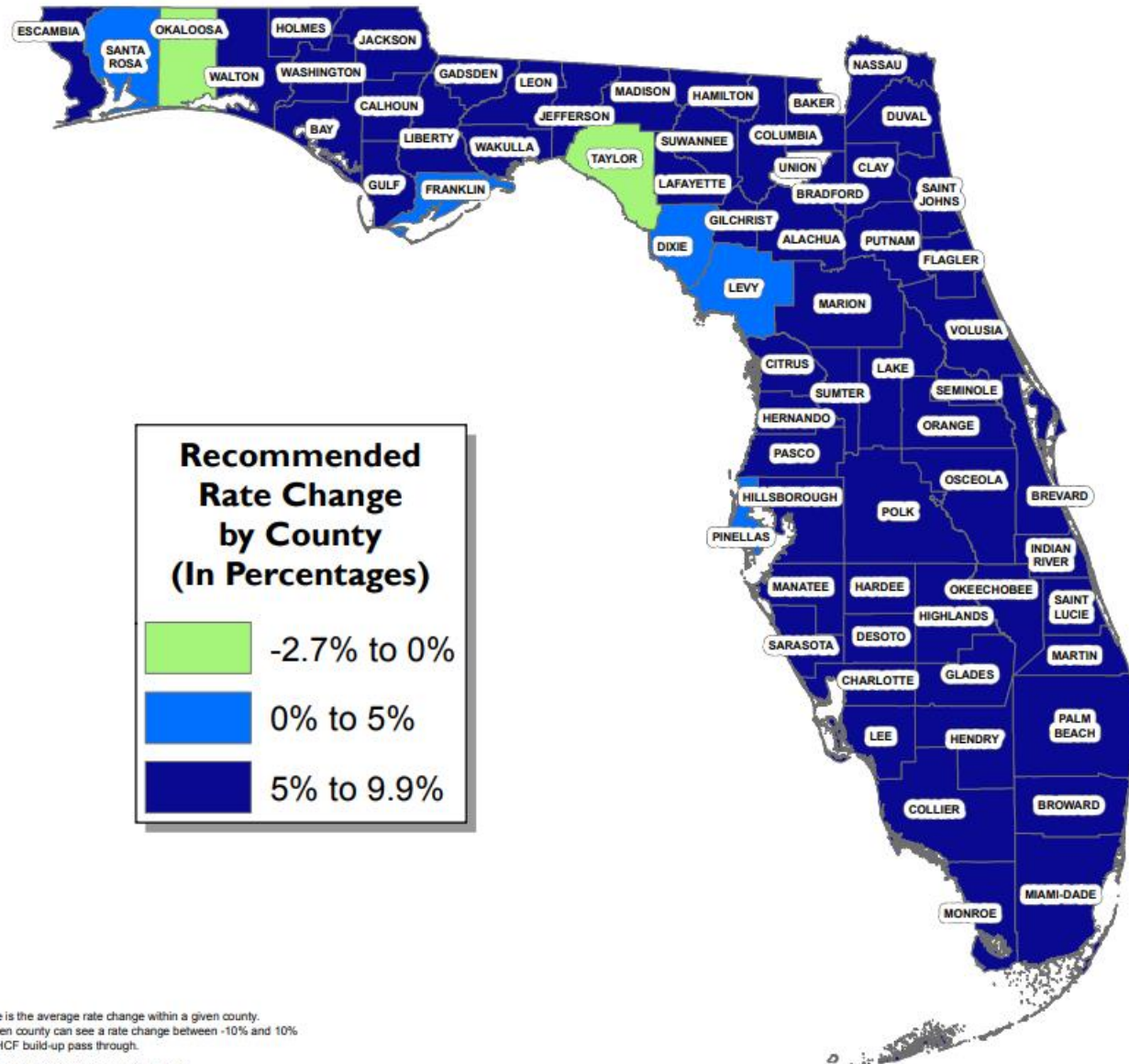
	Miami-Dade		Broward		Palm Beach		Orange		Hillsborough		Duval		Polk	
	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%
2013	2,782	26%	775	18%	355	17%	723	46%	133	6%	65	9%	47	14%
2014	2,872	23%	1,155	19%	286	12%	766	42%	34	2%	94	12%	44	11%
2015	3,240	25%	2,170	26%	580	18%	536	25%	26	1%	95	10%	65	18%
2016	3,772	25%	2,886	30%	719	21%	413	21%	95	4%	58	6%	63	14%
2017	4,464	32%	3,821	34%	1,052	24%	658	22%	209	7%	193	13%	76	12%
2018	6,940	27%	5,227	30%	1,346	22%	2,276	37%	636	18%	440	22%	263	20%

Severity of Litigated vs. Non-Litigated Water Claims



Homeowners Multiperil Rates

Exhibit 2 - Percent of 2019 Recommended Rate Change by County
Multi-Peril HO-3 Policies



Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no HO-3 policies as of 06/30/2018.

- Citizens current average actuarial rate indication for multiperil homeowners is 25.2% with a capped indication of 8.5%
- Actuarial rate need for homeowners multiperil policies ranges among Senate districts from 0.1% to 51.6%
- 97% of homeowners multiperil policyholders will see rate increases in 2019
- 70% of homeowners customers received rate decreases in 2015
- If AOB reform is successful the actuarial rate indication for homeowners multiperil would be reduced from 25.2% to 10.1%
- If overall litigation rates can be reduced to pre-2015 levels the actuarial rate indication for homeowners multiperil would be reduced from 25.2 to 1.5%

Available for Non-Weather Water Losses for Citizens' HO-3 and DP-3 Policies

- Voluntary program offered at time of loss for water losses caused by accidental discharge or overflow of water or steam from a plumbing, heating, air conditioning, automatic fire protective sprinkler system or household appliance
- **Emergency Water Removal Services**
 - No deductible
 - No cost to policyholder even if loss is not covered by Citizens
 - If the policyholder agrees to participate, Citizens provides a Citizens-approved contractor(s) to provide water removal and drying services to protect insured structures from further damage
- **Managed Repair Contractor Network Program**
 - Provides permanent repair services for covered damage
 - Policyholder works with licensed and insured contractors within the network
 - All contractors' claim related work is guaranteed for three years

2018 Policy Changes

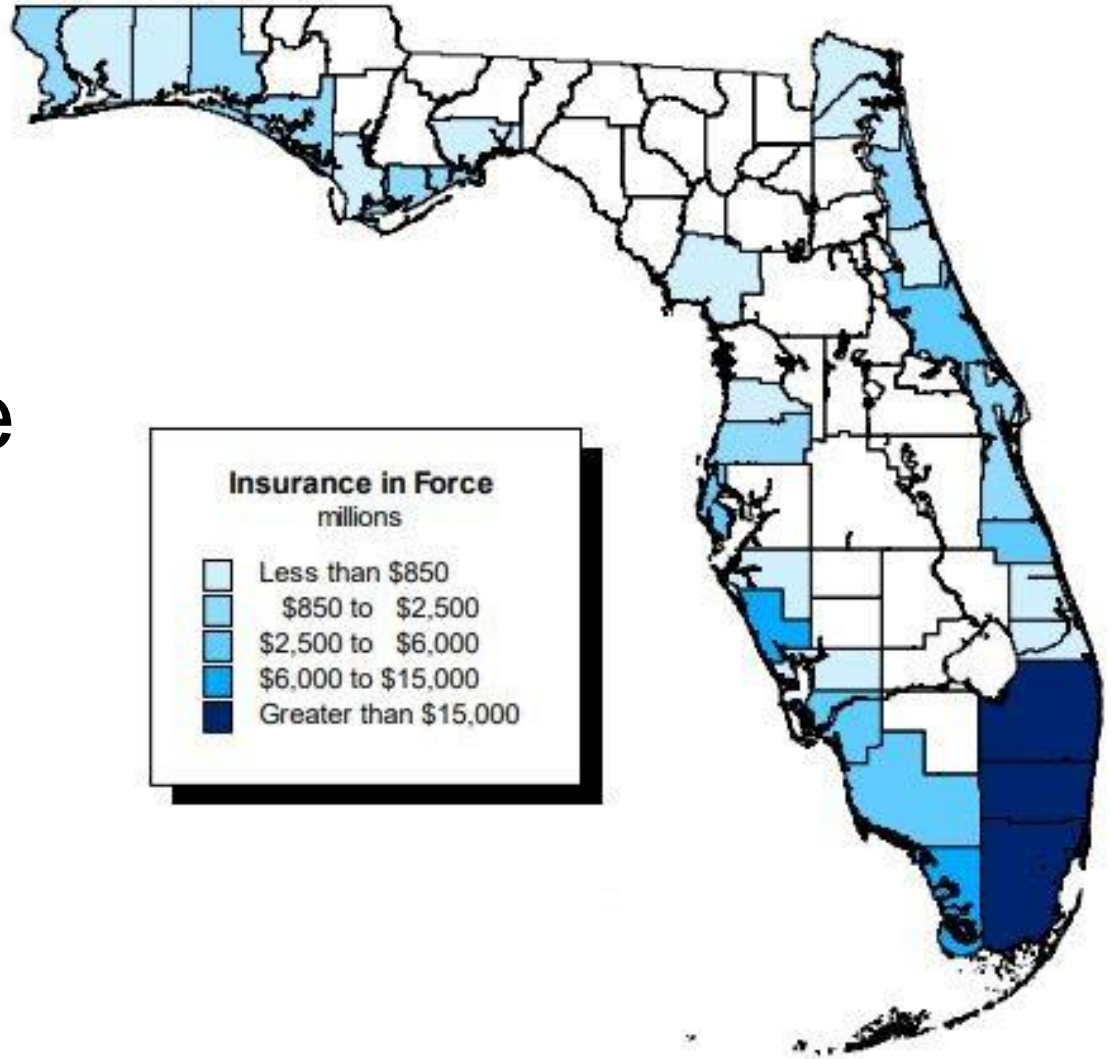
- Effective for HO-3 and dwelling DP-3 new business and renewals August 1, 2018
- \$10,000 Sublimit for Coverages A and B if Managed Repair Contractor Network not used
- Requires all claimants other than insured, their agent, representative or a public adjuster representing claimant to:
 - Provide documentation supporting the right to make a claim
 - Provide documentation detailing the scope and amount of loss
 - Participate in appraisal or alternative dispute resolution

**Value of the AOB during
Insurance Claims
for Contractors to Help
Customers**

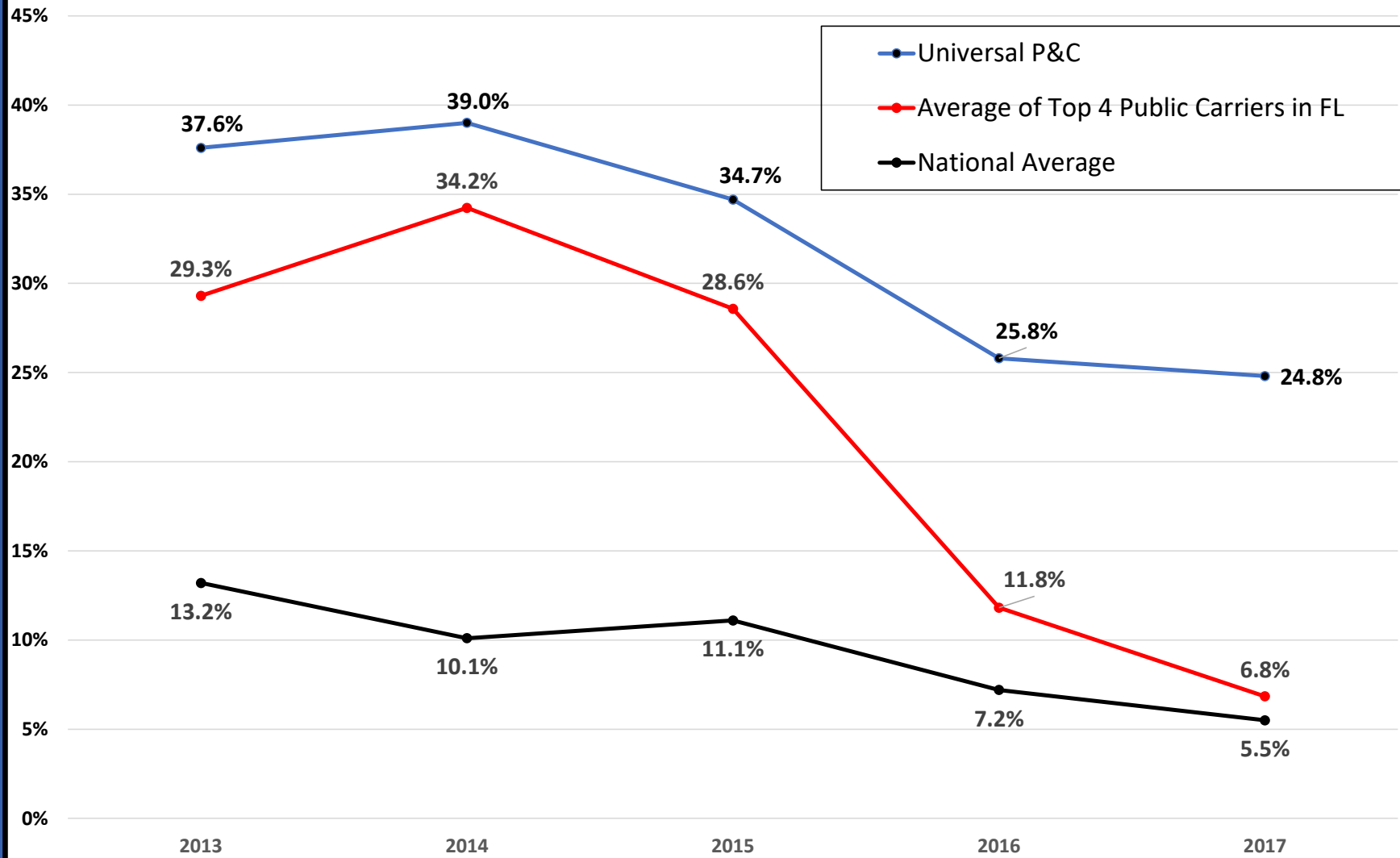
Insurance Companies Charge a Premium with a Promise to Make Customers Whole



Citizens Insurance Policies in Force

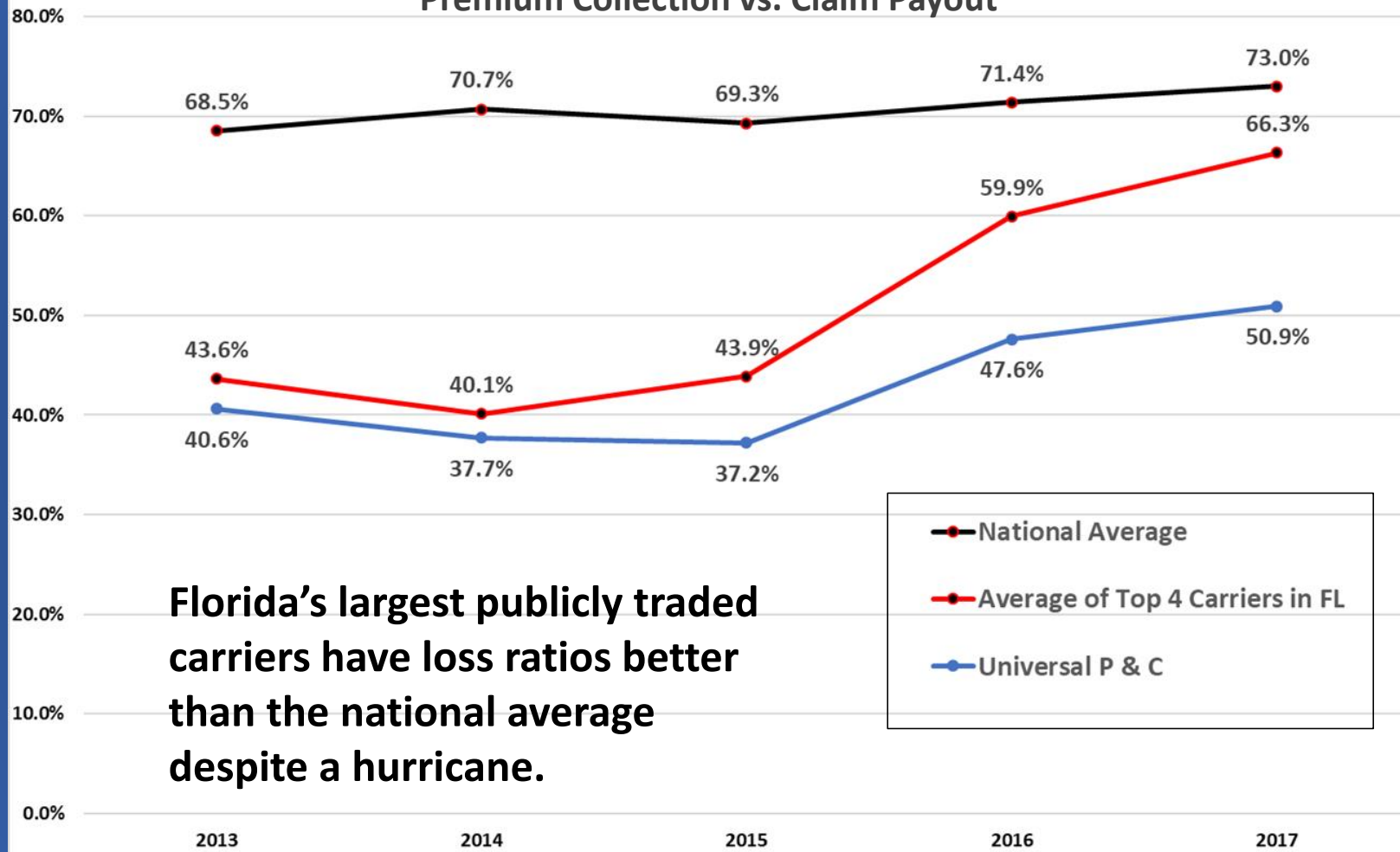


Net Income before Taxes (in thousands)



Loss Ratio

Premium Collection vs. Claim Payout



Florida's largest publicly traded carriers have loss ratios better than the national average despite a hurricane.

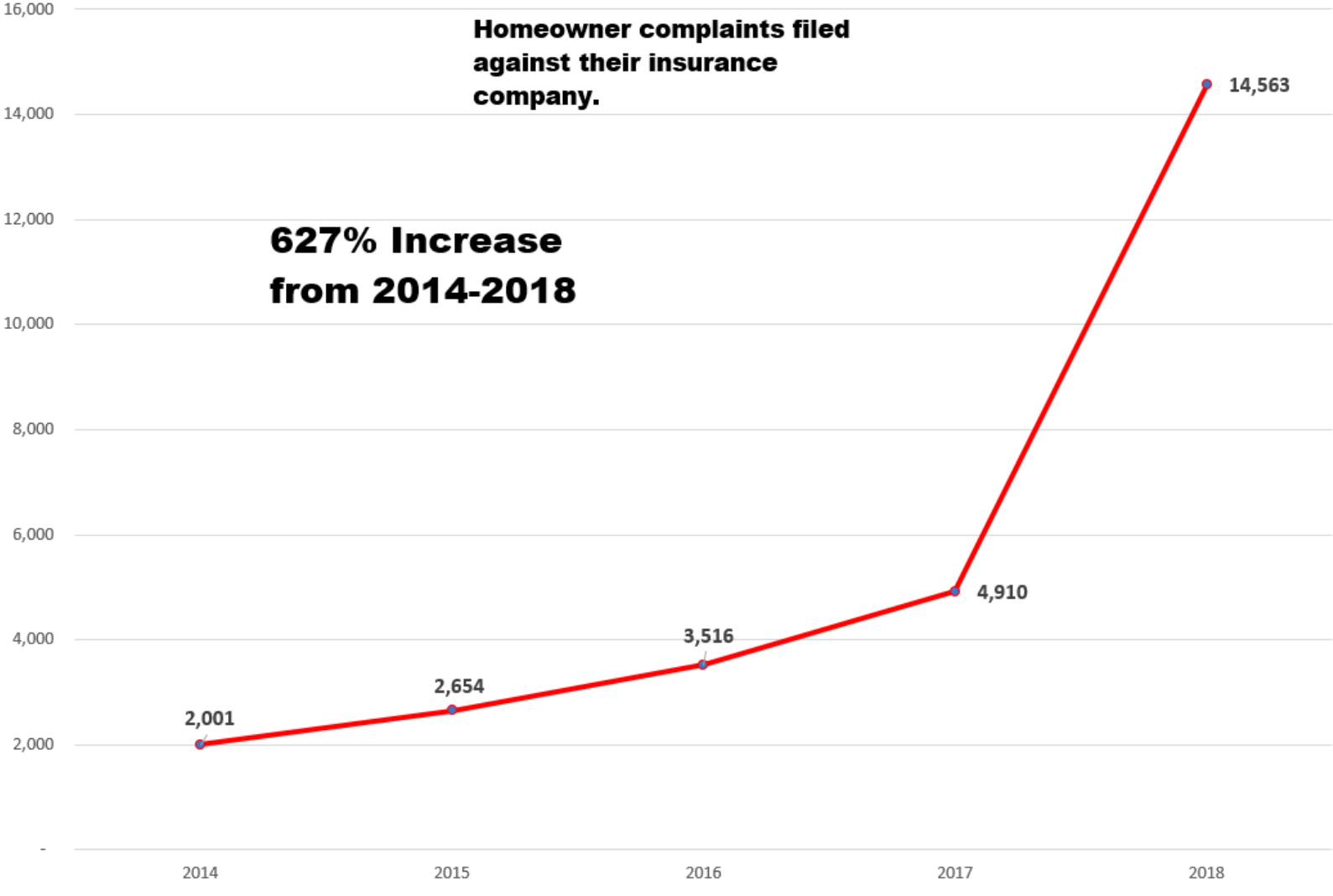
- National Average
- Average of Top 4 Carriers in FL
- Universal P & C

Decline in Payments Over Last 5 Years

Year	Job Count	Original Invoice	Undisputed from Carrier	Undisputed %	Amount Paid	% Rec'd	Delay in Payment
2013	16	\$ 380,449.91	\$ 296,064.01	78%	\$ 376,973.93	99%	651
2014	61	\$ 1,224,057.62	\$ 701,603.88	57%	\$ 1,148,978.40	94%	439
2015	55	\$ 1,306,743.03	\$ 512,583.53	39%	\$ 1,184,700.51	91%	483
2016	115	\$ 3,254,174.28	\$1,387,447.71	43%	\$ 2,921,703.52	90%	335
2017	40	\$ 619,933.53	\$ 198,715.77	32%	\$ 572,295.02	92%	251
2018	40	\$ 512,869.12	\$ 116,485.26	23%	\$ 446,125.84	87%	138
Totals	327	\$ 7,298,227.49	\$3,212,900.16	44%	\$ 6,650,777.22	91%	383

	Job Count	Invoiced Amount	Undisputed from Carrier	Undisputed %
Currently in Suit	52	\$ 2,473,098.93	\$ 469,521.63	19%
Current AR	208	\$ 4,115,451.90	\$ 863,232.05	21%
Total Work Completed	260	\$ 6,588,550.83	\$ 1,332,753.68	20%

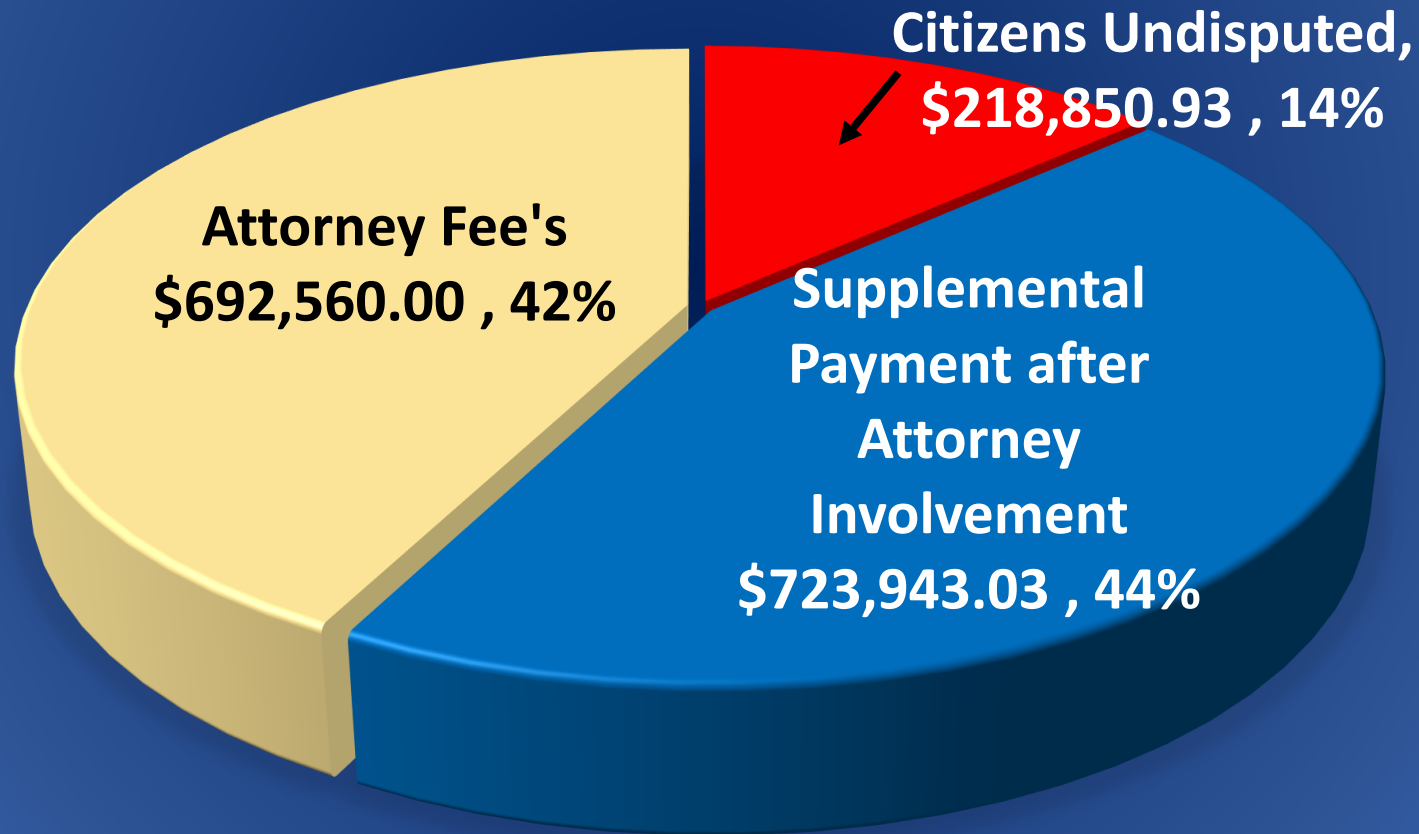
Florida Civil Remedy Notices



South Florida Contractor Claims with Citizens

The average invoice to Citizens was \$ 5,584.90 .

Between 2012-2016 the national average for a water claim was \$ 9,633 according to the Insurance Information Institute.





Vendor Programs

Backside of Shower



Vendor Program Restraints



Response from Insurance Company's Director of Customer Field Services

Good morning Josh,

Could you look at this claim, I have several issues with the way Wright Way handled it. My first concern is there appears to be a minimal amount of mold and we have turned this into a full blown mold claim causing unnecessary concern on the part of the insured. There seems to be less than 8 or 10 sq ft of mold normally contained and taken out with no muss or fuss. Another concern is that you went in there and wrote a pretty large water mitigation estimate, mold remediation estimate and build back estimate when all that we needed was a simple dry out. Our vendors usually communicate with the Examiner about these issues and are definitely not that aggressive. If I am missing something that would justify your handling of this claim please enlighten me. Thank you.

○

Best Regards

DIRECTOR OF CUSTOMER FIELD SERVICES



Sanibel Island Insurance Vendor Program Disaster

Sanibel Island Property





Proposed Solutions

1. Regulation of Restoration Contractors
2. Qualified and Educated Claims Staff
3. Serious Penalties for Insurance Fraud
-Contractors and Carriers
4. Penalties for Underpayment and Delayed
Claims
5. Proposal For Settlement

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name David Altmaier

Job Title Commissioner

Address Street

Phone

City

State

Zip

Email

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Office of Insurance Regulation

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.11.19

Meeting Date

122

Bill Number (if applicable)

Topic AOB - attorney's fees

Amendment Barcode (if applicable)

Name Ashley Kalitck

Job Title lobbyist - attorney

Address 101 E. College Ave # 102

Phone 222-9070

Tallahassee FL 32303

Email akalitck@capitol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Architects

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

2/11/2019

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 122

Meeting Date

Bill Number (if applicable)

Topic Attorneys Fees / AOBs

Amendment Barcode (if applicable)

Name Reggie Garcia

Job Title Lawyer + Lobbyist

Address PO Box 11069

Phone 933-7150

Street

Tallahassee

Fla.

32302

City

State

Zip

Email reggiegarcialaw@icloud.com

Speaking: [] For [x] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing The Florida Justice Association

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-19

122

Meeting Date

Bill Number (if applicable)

Topic Attorney's Fees / Assignment of Benefits

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief of Communications, Legislative and External Affairs

Address 2101 Maryland Circle

Phone 850-513-3746

Street

Tallahassee

Florida

32303

Email christine.ashburn@citizensfla.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Citizens Property Insurance Corporation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-11-19

Meeting Date

122

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Bonny Gordon

Job Title SR. Counsel

Address GEICO

Phone _____

Street

1 GEICO Plaza, Washington, DC

Email bgordon@geico.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing GEICO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.11.19
Meeting Date

122
Bill Number (if applicable)

Topic INSURANCE

Amendment Barcode (if applicable)

Name Trey Goldman

Job Title Legislative Counsel

Address 200 S. Monroe St

Phone 850/224-1400

Street Tallahassee FL 32301
City State Zip

Email treygo@floridarealtors.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA REALTORS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

2-11-19

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

122

Meeting Date

Bill Number (if applicable)

Topic Assignment of Benefits Abuse

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Director of Legislative & Cabinet Affairs

Address PL 11, Capitol

Phone 850.413-2890

Street

Tallahassee

FL

32399

Email meredith.stanfield@

City

State

Zip

myfloridacfo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Department of Financial Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

Topic Attorney Fee Awards

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 850-521-2913

Street

Tallahassee

FL

32312

Email

City

State

Zip

Speaking: [] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19
Meeting Date

122
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 122

Name Richie Kidwell

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Air Quality Assessors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19
Meeting Date

122
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 122

Name Joseph Glace

Job Title Attorney

Address 82 S. Barretts Sq. Unit 2B
Street

Phone 857-332-4551

City _____ State _____ Zip _____

Email jglace@vargasgonzalez.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-19

Meeting Date

JB 122

Bill Number (if applicable)

Topic ASSIGNMENT OF BENEFITS

Amendment Barcode (if applicable)

Name CAM FENTRISS

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQUARE #3243 Phone 850-222-2772

Street

JACKHASSSEE

City

FL

State

32312

Zip

Email AFENTRISS@AOL.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLA. ROOFING + SHEET METALS CONTRACTORS ASSN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19
Meeting Date

SB 172
Bill Number (if applicable)

Topic Against SB 172

Amendment Barcode (if applicable)

Name Tyler Chasez

Job Title Lawyer

Address 2876 S. OSCEOLA AVE

Phone 407 425 4640

Street Orlando State FL Zip 32806

Email Tyler@hhjlegal.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Hale, Hale + Jacobson

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Public record for this meeting.

THE FLORIDA SENATE APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/18

122

Meeting Date

Bill Number (if applicable)

Topic Attorney Fees

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

Topic SB 122

Amendment Barcode (if applicable)

Name Richie Kidwell

Job Title President

Address 941 W Morse Blvd

Phone 321-219-9060

Winter Park FL 32789

Email info@RAFlorida.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing RESTORATION ASSOC of FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

Topic Robert Showalter

Amendment Barcode (if applicable)

Name SB 122

Job Title Owner

Address 10798 Florence Ave

Phone 813-752-9372

Thonotosassa FL 33592

Email robert@showalter.co

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Showalter construction & restoration

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

Topic SB 122

Amendment Barcode (if applicable)

Name Mike Mayo

Job Title

Address 14923 SW Mike Mayford

Phone 850-509-6369

Street

Blountstown FL

City

State

Zip

Email sally_mayo2502@hotmail.com

Speaking: For [] Against [x] Information []

Waive Speaking: In Support [] Against [] (The Chair will read this information into the record.)

Representing Self-Homeowner

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [] No [x]

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

against

~~XXXXXXXXXX~~

Amendment Barcode (if applicable)

Topic SB 122

Name Manny Pozo

Job Title owner

Address 7351 NW 7th Unit F

Street

Phone 786-252-5207

Miami, FL

City

FL 33126

State

Zip

Email manny.pozo@bioresponsecorp.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Bio Response

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

against

Amendment Barcode (if applicable)

Topic SB 122

Name Phillip Pesko

Job Title Correction officer Lieutenant

Address 2904 W orilla RD

Phone 239 331 6265

Street

Avon Park

FL

33825

Email pphillip95@gmail.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Self - Homeowner

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

A

Sp 122

Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic In support of AOB

Name Todd Bergmann

Job Title Sgt. at NWFRC Annex 110

Address 721 5th st

Phone 850-326-8927

chipley FL 32428
City State Zip

Email Todd.Bergmann@flsenate.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing my self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



2/11/19
Meeting Date

122
Bill Number (if applicable)

Topic SB 122

Amendment Barcode (if applicable)

Name Josh Reynolds

Job Title owner

Address 300 Triple Diamond Blvd
Street

Phone 941-313-0998

Nokeomis FL 34275
City State Zip

Email Josh@wrightway.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Wright Way Emergency SVCS.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19
Meeting Date

SB 122

Bill Number (if applicable)

711030

Amendment Barcode (if applicable)

Topic Sen. Lee's Amendment

Name Tyler Chasez

Job Title Lawyer

Address 2876 S. OSCEOLA AVE

Phone 407-425-4640

City ORLANDO State FL Zip 32806

Email tyler@hhjlegal.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Hale, Hale + Jacobson Law Firm

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19
Meeting Date

122

Bill Number (if applicable)

711030

Amendment Barcode (if applicable)

Topic Robert Showalter

Name SB 122

Job Title Owner

Address 10798 Florence Ave

Phone 813-752-9372

Thonotosassa FL 33592

Email roberte@showalter.com

Street City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Showalter Construction

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

711030

Amendment Barcode (if applicable)

Topic SB122

Name Margaret Garher

Job Title Attorney

Address 925 S. Federal Hwy

Phone 407-304-6134

Street

Boca Raton FL 33432

Email mgarher@kpa

City

State

Zip

attorney.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Kanner & Pinaluga

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

5B122

Meeting Date

Bill Number (if applicable)

469254

Amendment Barcode (if applicable)

Topic Sen. Thurston's amendment

Name Tyler Chasez

Job Title Lawyer

Address 2876 S. OSCEOLA AVE

Phone 407-425-4640

City Orlando State FL Zip 32806

Email Tyler@hhjlegal.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Hale, Hale + Jacobsen Law Firm

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19
Meeting Date

122
Bill Number (if applicable)
4109254
Amendment Barcode (if applicable)

Topic SB122

Name Richie Kidwell

Job Title president

Address 941 W Marse Blvd
Street
Winter Park FL 32789
City State Zip

Phone ~~407~~-321-219-9060

Email info@RAFlorida.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Restoration Assoc. of FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

2/11/19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB122

Bill Number (if applicable)

469254

Amendment Barcode (if applicable)

Topic SB122

Name Joseph Glace

Job Title Attorney

Address 82 South Barnett Square, Unit 2B

Phone 850-332-4557

Street

Rosemary Beach

City

State

FL

Zip

32461

Email JGLACE@VARGASGONZALEZ.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Vargas Gonzalez

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

4109254

Amendment Barcode (if applicable)

Topic SB122

Name Manny Pozo

Job Title owner

Address 7351 NW 7 St. Unit F

Phone 786-252-5207

Street

Miami FL

City

State

33126

Zip

Email manny.pozo@bioresponsecorp.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Bio Response

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

122

Bill Number (if applicable)

469254

Amendment Barcode (if applicable)

SB 122

Topic

Jim Apuzzo

Name

V.P. OPERATIONS

Job Title

2200 Winter Springs Blvd

Address

407.326.8700

Phone

Street

Orlando

City

FL

State

32725

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Damage Control

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

X
122

Bill Number (if applicable)

487740

Amendment Barcode (if applicable)

Meeting Date

Topic

Name Mark Delegal

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing State Farm Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

X

4-11-19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

487740

Bill Number (if applicable)

Topic Assign of Benefits

Amendment Barcode (if applicable)

Name Bonny Gordon

Job Title SP. Counsel

Address 1 GEICO Plaza

Phone 301-986-2653

Street
Washington, DC 20076

Email bgordon@geico.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing GEICO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19
Meeting Date

X
SB 122
Bill Number (if applicable)

487740
Amendment Barcode (if applicable)

Topic AOB

Name Tyler Chase

Job Title ATTORNEY

Address 2876 S. ORSOLA DR

Phone 407 425 4640

Orlando FL 32806
City State Zip

Email TYLER@HHSLEGAL.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Hale, Hale & Jacobson

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19

Meeting Date

X 122

Bill Number (if applicable)

407740

Amendment Barcode (if applicable)

Topic SB 122

Name Margaret Gardner

Job Title Attorney

Address 925 S. Federal Hwy

Street

Phone 407-304-6134

Rock
City

FL
State

33432
Zip

Email m.gardner@kpettonney.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Kanner Pintaluga

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/2019

Meeting Date

X
122

Bill Number (if applicable)

Topic Attorney Fee Awards Under Insurance Policies and Contracts

Amendment Barcode (if applicable)

Name Christian Camara

Job Title Senior Fellow

Address 1212 New York Ave. NW, Suite 900

Phone 202-525-5717

Street

Washington

DC

20005

Email ccamara@rstreet.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing R Street Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-19
Meeting Date

5B 122
Bill Number (if applicable)

Topic ASSIGNMENT OF BENEFITS

Amendment Barcode (if applicable)

Name CAM FENTRISS

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQUARE #3-243
Street

Phone 850-222-2772

TALLAHASSEE FL 32312
City State Zip

Email AFENTRISS@AOL.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLA. REFRIGERATION + AC CONTRACTORS ASSN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-19

Meeting Date

122

Bill Number (if applicable)

Topic ASSIGNMENT OF BENEFITS

Amendment Barcode (if applicable)

Name TODD PALMER

Job Title SMALL BUSINESS OWNER

Address 5821 Silver Moon Ave

Phone 813-802-2516

Street

Tampa

City

Fl.

State

33625

Zip

Email todd@ix.myqwest.com

Speaking: [] For [] Against [X] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-11-19
Meeting Date

122
Bill Number (if applicable)

Topic ASSIGNMENT OF BENEFITS

Amendment Barcode (if applicable)

Name TODD PALMER

Job Title SMALL BUSINESS OWNER

Address 5821 Silver Moon Ave
Street

Phone 813-902-2916

Tampa Fl. 33625
City State Zip

Email toddp@fitmyquack.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/11/19
Meeting Date

122
Bill Number (if applicable)

Topic Atty. Fees

Amendment Barcode (if applicable)

Name Foyt Ralston

Job Title _____

Address 317 E. Park Ave.
Street

Phone _____

Tall. Fl 32301
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Assoc. of Restoration Specialist

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: KN 412
Caption: Banking and Insurance

Case No.:
Judge:

Type:

Started: 2/11/2019 4:31:00 PM
Ends: 2/11/2019 5:48:16 PM

Length: 01:17:17

4:30:59 PM Call to Order
4:31:00 PM
4:31:02 PM Roll call
4:31:21 PM Quroum present
4:31:29 PM Chair comments
4:31:47 PM Chair yields Chair to Vice Chair Rouson
4:32:17 PM Senator Perry moves time certain vote at 5:45pm for SB 122
4:32:36 PM Motion Adopted
4:33:06 PM Take up Tab 1- SB 122 by Senator Broxson
4:33:22 PM Senator Broxson for an explanation
4:33:53 PM Questions?
4:34:01 PM Amendments
4:34:04 PM Barcode 923034 by Senator Thurston
4:34:22 PM Motion to TP the amendment
4:34:36 PM Take up barcode 469254 by Senator Thurston
4:34:48 PM 469254 is out of order - no action
4:34:58 PM Late Filed Barcode 724484 by Senator Thurston
4:35:50 PM Senator Thurston for an explanation
4:35:57 PM Senator Thurston moves to withdraw the amendment
4:36:09 PM Late Filed 545092 Substitute Amendment -out of order -no action
4:36:29 PM Take up Late filed Amendment 487740 by Senator Lee
4:36:49 PM Senator Lee you are recognized
4:37:18 PM Senator Lee for an explanation
4:42:54 PM Questions?
4:43:10 PM Appearance Cards:
4:43:15 PM Bonnie Gordon, GEICO
4:44:05 PM Late Filed Substitute Amendment
4:44:13 PM Barcode 672446 by Senator Thurston
4:44:37 PM Amendment withdrawn by Sponsor
4:44:55 PM Appearance Cards
4:44:59 PM Mike Delegal, State Farm
4:45:16 PM Back on the amendment
4:47:46 PM More Appearance Cards for the amendment
4:48:49 PM Senator Lee for a question
4:49:39 PM Answer by Mr. Delegal
4:50:19 PM Series of questions
4:51:36 PM Mark Delegal for a response
4:52:41 PM Senator Taddeo for a question
4:52:58 PM Mark Delegal for a response
4:54:32 PM Senator Thurston for a question
4:54:54 PM Mark Delegal for a response
4:55:43 PM Senator Thurston for a follow up
4:56:30 PM Tyler Chasez, Hale, Hale & Jacobsen
4:58:41 PM Senator Thurston for a question
5:00:31 PM Margaret Garner, Attorney
5:03:37 PM Senator Thurston for a question
5:05:12 PM Debate?
5:05:19 PM Chair Broxson
5:05:29 PM Senator Broxson moves to TP the bill for 10 minutes
5:05:55 PM Recording Paused
5:17:29 PM Recording Resumed
5:17:37 PM Meeting is resumed called to order

5:17:45 PM Quorum present
5:17:52 PM Debate on Barcode 487740
5:18:09 PM Amendment is withdrawn by sponsor
5:18:14 PM Senator Thurston's amendment that was pending is withdrawn by sponsor
5:18:28 PM Back on bill SB 122
5:18:37 PM We will moved to Appearance Cards and Debate will begin at 5:30pm
5:18:54 PM Public Testimony is limited to 2 minutes
5:19:17 PM Josh Reynolds from Wright Way Emergency Services
5:22:44 PM Senator Broxson for a question
5:23:52 PM John Reynolds for a response
5:24:38 PM Todd Bergmann
5:26:53 PM Senator Broxson for a question
5:27:07 PM Christian Camara waives in support
5:27:14 PM Phillip Pesko
5:31:07 PM Chair Rouson will read appearance cards and their position on the bill
5:32:06 PM Mike Mayo
5:32:10 PM Robert Showalter
5:32:12 PM Richie Kidwell
5:32:15 PM Carolyn Johnson
5:32:19 PM Tyler Chasez
5:32:21 PM Cam Fentriss
5:32:25 PM Joseph Glace
5:32:31 PM Brewster Bevis
5:32:40 PM Meredith Stanfield
5:32:47 PM Trey Goldman
5:32:55 PM Bonnie Gordon
5:33:00 PM Christine Ashburn
5:33:04 PM Reggie Garcia
5:33:09 PM Ashley Fahter
5:33:13 PM David Altmaier
5:33:17 PM Foyt Ralson
5:33:22 PM Todd Palmer
5:33:34 PM We are now in debate
5:33:34 PM Time certain for Debate
5:33:44 PM Senator Brandes for debate
5:36:16 PM Senator Thurston in debate
5:38:08 PM Senator Perry in debate
5:41:57 PM Senator Taddeo in debate
5:42:53 PM Senator Lee moves revises vote on time certain to 5:50pm
5:43:26 PM Senator Lee in debate
5:45:01 PM Senator Rouson in debate
5:45:32 PM Chair Broxson is recognized to close
5:47:25 PM Senator Brandes moves to TP the bill
5:47:54 PM Without objection the bill is TP
5:48:03 PM Senator Taddeo moves we adjourn