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The Challenge of Overreaching Florida Legislation Aimed at Assignment of Benefits Scams

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Homeowner's assignment of property insurance benefits ("AOBs") to repair and restoration companies was a hot topic at the November 2015 meeting of the Florida Association of Public Insurance Adjusters ("FAPIA"). This is no surprise. In 2015 insurers challenged AOB's through court cases and pursued legislation aimed at severely limiting AOBs. Insurers' efforts fell flat. Courts upheld the AOBs punting to the legislature to effect change if needed and the legislature did not act during the 2015 legislative session.

But, that is not the end of the story. Insurers continue to pursue legislation and seek the help of regulators to stem what they describe as growing abuses by water restoration companies, plumbers, roofers, and other vendors who grab homeowner's property insurance rights and then bring inflated insurance claims directly against the insurance company. See, Florida Senate Bill 596, already filed and awaiting the 2016 legislative session.

Not surprisingly, Citizens Property Insurance Corp., Florida's insurer of last resort, is leading the charge. Citizens' reports 1,397 AOB lawsuits in 2013 and 1,526 AOB lawsuits in 2014. [See](#), *"Consumers need legislative fix to home repair scam"* Carlson, Michael, *Piff.net*, www.miamiherald.com/opinion/op-ed/article27519238.html. Indeed, Citizens blames AOBs and increased water loss claims in South Florida for its most recent South Florida rate increases of up to 30%.

The greater problem though is that Citizens' CEO, Barry Gilway, has cast blame far beyond the supposed unscrupulous water mitigation companies, roofers, and plumbers and their attorneys. In connection with increased water loss claims, Gilway is quoted as having said:

"Every time an attorney or public adjuster gets involved these claims the costs sky rocket - that's the bottom line."

[See](#), *"Citizens Highlights 'Disturbing' Water Loss Trend at FLOIR Rate Hearing"*, O'Conner, Amy, www.insurancejournal.com/magazines/features/2015/09/07380291.htm. Gilway is also quoted as comparing water loss cases to sinkhole cases calling the situation "out of control." See *Id.*

As a result of such rhetoric, Public adjusters have good reason to fear the enactment of overly-broad legislation that curtails or discourages policyholders from getting the help they need with their claims. Fortunately though, FAPIA and AAPIA (American Association of Public Insurance Adjusters) are well positioned and working directly with lawmakers to fight against an overly

broad enactment that curtails policyholders' rights.

Notably, though, not everyone in Florida and Tallahassee is blindly accepting the wolf cry of Citizens and other insurers on the topic of water losses or AOBs. Florida's newly appointed Insurance Consumer Advocate, Sha'Ron James, is pursuing information from insurers to examine their story about AOBs and increased water claims. [See, "Consumer Advocate Challenges Insurers on Water Damage Claims", www.sun-sentinel.com/business/consumer/fl-complaints-about-insurance-20151013-story.html](#). Indeed, the Office of Insurance Regulation has ordered Florida's largest property insurers to submit detailed information on water loss claim, assignment of benefits, and other matters. [See, "Florida Issues Data Call for Water Claims, Assignment of Benefits Costs" www.insurancejournal.com/news/southeast/2015/11/10388031.htm](#). Perhaps a neutral evaluation of this data will shed some light on the validity of the insurers' concerns. The data submission deadline unless extended is set for December 7, 2015. See, Id.

At least one investigative columnist has seriously questioned Citizens' conclusions. Sun Sentinel Columnist, Michael Mayo, did some sleuthing of his own on the question of increased water claims and reported:

"I think Citizens is spinning hard and the reality is more nuanced."

"Bottom line: Water claims in South Florida have dropped in the last two years (from 22,202 in 2012 to 9,293 in 2014). But last year's cost (\$200 million) looks high because the total includes claims from previous years that were settled in 2014. And the sharp drop in Citizens customers means the per-policy payout average increases dramatically."

[See, "Citizens blames water claims for SoFla rate hikes, but is that the full story?" www.sun-sentinel.com/news/fl-citizens-rates-mayocol-b090315-20150902-column.html](#).

Most importantly, however, Public Adjusters and first party property lawyers must work together to ensure that any "legislative fix" to the AOB question fits the real problem and does not impair the time-honored ability of Public Adjusters to represent policyholders in the claims process.

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