

William Large: Florida must end assignment of benefits abuse, self-serving windfalls



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A state law that was originally intended to give individual policyholders special rights in disputes with their insurance companies is instead being used by some repair vendors and their lawyers to generate a self-serving windfall. The problem is serious and growing, and it's driving insurance costs higher and higher.

The so-called “one-way attorney fee” allows a policyholder to collect their legal fees from their insurer if they win a claims dispute. But, if the policyholder loses in court, they don't have to pay the insurer's legal fees.

Some repair vendors, though, are tricking policyholders into signing an assignment of benefits or AOB. This allows the vendor to seize control of the policyholder's special rights, file a claim and sue the insurer, often without the policyholder's knowledge or consent.

Now, this litigation-for-profit scheme has become an incentive for lawyers and their vendor clients — often water damage remediation firms, roofers, or auto glass shops with aggressive marketing schemes — to clog the courts with lawsuits and generate big paydays for themselves.

Recently, the Florida Justice Reform Institute revealed how the growing use of AOBs and the one-way attorney fee by third parties is increasing litigation and costs.

Using the Florida Department of Financial Services' service of process database, we discovered some startling insights.

From 2000 to 2016, Florida's population increased 26 percent, while total litigation filed against insurance companies increased about 280 percent.

In particular, AOB litigation increased by over 66 percent from 2010 to 2011, fell briefly after the 2012 auto insurance reforms, and then started rising again. From 2014 to 2015, AOB litigation increased 10.7 percent, and then 21 percent from 2015 to 2016.

AOB lawsuits initiated by vendors who provide water cleanup, restoration, drying, mitigation, mold detection, or remediation services were overwhelmingly concentrated in Palm Beach,

Broward and Miami-Dade counties. On average, these three counties produced more than 80 percent of litigation from these vendors in 2014, and that share rose to nearly 85 percent in 2015, and nearly 89 percent in 2016.

Unfortunately, the problem is not just confined to home insurance claims. Auto glass claims also saw a staggering increase — over 3,000 percent in five years — from 591 claims in 2011 to 19,558 claims in 2016.

But the most surprising discovery was that nearly 25 percent of all AOB cases — from property to auto to auto glass — filed in Florida between 2013 and 2016 were filed by just 11 lawyers.

The bottom line is that all this rampant AOB abuse and litigation is driving insurance costs up. Insurance Commissioner David Altmaier had it right last month when he told the Governor and Cabinet that there's no other explanation other than the one-way attorney fees.

The Florida Legislature has strong data supporting this growing problem. It's time for them to pass meaningful reforms and stop a handful of unscrupulous repair vendors and their lawyers from using the policyholders' special rights for their own benefit. Keep consumers in control of the insurance policies they bought and paid for, and stop the abuse that's sending insurance rates higher.

William Large is President of the Florida Justice Reform Institute.

The Florida Justice Reform Institute was created in 2005 to fight wasteful civil litigation through legislation, promote fair and equitable legal practices and provide information about the state of civil justice in Florida. Visit fljustice.org for more information.