

Insurers share blame for billing disputes, increased lawsuits, lawmakers say



[Ron Hurtibise](#) Contact Reporter Sun Sentinel

Both sides share fault in the battle between insurers and water restoration companies that's driving up lawsuits and insurance costs for all policyholders, say lawmakers. Independent vendors say they are unfairly lumped in with 'bad actors' by insurers who routinely dispute invoices and delay payments.

Jean-Marie Appleby arrived at her home after work on a Friday in May “and I opened the front door and all the water started rushing out,” she said.

The supply line to an upstairs toilet had broken, discharging water into a nearby AC vent and through the house’s ductwork. Carpeting, cabinets, wood flooring, plywood under the second-floor carpet and much of the drywall were soaked.

Appleby had no way of knowing at the time, but she was about to become a casualty in a war between home insurance companies and water restoration companies that began in South Florida and spread statewide. The years-long conflict has motivated insurers to promote their lower-cost “preferred vendor networks” over independent local companies and put policyholders like Appleby in the middle of billing disputes and lawsuits that can delay repairs for months.

Appleby, who lives in Ormond Beach in north central Florida, said she now knows she should have called an independent emergency restoration company to begin extracting water from her home immediately that night. Instead, she allowed her insurer to send a company from its preferred vendor network.

Had she hired an unaffiliated company, Appleby would have been asked to sign an affidavit called an “Assignment of Benefits” [AOB] authorizing the company to seek payment on her behalf.

Insurers see AOBs as an existential threat, and since 2012 have sought laws — unsuccessfully so far — restricting their use by restoration companies.

But companies outside of South Florida are fighting back, saying they are being unfairly targeted in the industry’s efforts to beat back “bad actors” from Miami-Dade and Broward counties that abuse the system by submitting hundreds of inflated and fraudulent invoices then swamp insurers with lawsuits to force settlements and payment of legal fees.

In workshops held by the state Senate Banking and Insurance Committee this month, lawmakers acknowledged that some insurers are contributing to rising costs by treating legitimate water restoration companies as so-called bad actors.

Owners of those companies described insurers withholding or dragging out payments and leaving them with no choice but to sue to get paid.

Dave DeBlander, owner of Pro Clean Restoration and Cleaning in Pensacola, said he sued last week to force an insurer to pay an \$863 invoice that's been ignored for 90 days.

DeBlander told the committee that more insurers are trying to avoid dealing with AOBs by coercing customers into using preferred vendor networks. Dry-outs can be costly, involving multiple humidifiers, fans and material tear-outs, and preferred vendors enable insurers to control the scope of work.

Some insurers are "scaring the homeowner," DeBlander told the committee, by falsely telling them, "If you sign an AOB, your house is not going to be restored. If you don't use our preferred vendor, we're not going to pay for it."

Appleby said while she didn't feel bullied by her insurer, the company's preferred vendor did not get to her home until noon the day after the flood, leaving the water to soak the house for hours more. The preferred vendor showed up without proper equipment and didn't remove saturated carpets, cabinets and drywall, she said. Ducts were still wet after a month, mold grew in the house, and she ultimately hired an independent company to remove the damaged materials. Five months later, the house remains gutted and the insurer still hasn't agreed on a price to restore it, she said.

In interviews with the South Florida Sun Sentinel, restoration company owners contended insurers challenge nearly every bill they submit.

Jeff Grant, a Tallahassee restorer and president of the Florida Restoration Association, said companies often send specialists from their preferred vendor networks to audit his work and invoices, he said. The review always concludes that his invoice was too high "and [insurers] want to pay us a fraction," he said.

State-run [Citizens Property Insurance Corp.](#), which this year hired its own preferred vendor network, decided in 2016 to hire a company called Lynx Services to review restoration company invoices and identify "overcharges or unreasonable charges," according to the document seeking approval from Citizens' governing board.

Lynx reviewed 3,229 invoices from water mitigation contractors between September 2016 and June 2017. The invoices averaged \$5,537 and Lynx told Citizens the work was actually worth an average of \$2,258 — or 59 percent less than what the contractors billed.

But Citizens doesn't treat Lynx' estimates as the last word. Spokesman Michael Peltier said the Lynx estimates are used "as a starting point" to negotiate settlements with the water companies and "do not represent what is finally paid on the claim."

Josh Reynolds, owner of Wrightway Emergency Services in Venice, said he has about 30 open lawsuits with the state's largest insurer, Universal Property & Casualty, because that company delays payments or offers partial payments. In response to criticisms by DeBlander after a committee hearing in October, a Universal spokesman said the company employs more in-house adjusters than before and pays "valid claims" faster than at any point in its history.

Reynolds said Wrightway now refuses to work for Universal policyholders unless they pay up front from their own pockets.

Still, some contractors acknowledge that the negotiation process requires them to build charges into their invoices that they know will be surrendered during negotiations.

Brian Christensen, owner of Restoration 1 of Central Florida in Orlando, called it a "horse trade," adding, "On average, I'll give up 6 to 12 percent" of his invoice. "I'm not greedy. I just want to pay my employees."

In 2015, Citizens and other insurers supported a legislative bill that would have eliminated restoration companies' ability to use AOBs. That proposal failed. In 2017, Citizens helped state Insurance Commissioner David Altmaier draft a bill that would have barred any third party working under an assignment from collecting so-called "one-way attorneys fees."

Those fees are allowed under a longstanding law granting policyholders the ability to recover all of their legal fees if they sue their insurer and win any amount of money above the insurer's initial settlement offer. The "bad actors" are using this law to file hundreds of frivolous suits and collect large sums when insurers decide not to litigate, insurers say.

The Citizens-backed bill against one-way attorneys fees failed when Senate Banking and Insurance Committee chair Anitere Flores refused to bring it up for debate by her committee, saying insurers wouldn't commit to lowering rates for policyholders.

In the second of two workshops hosted by the committee on Oct. 24, several lawmakers and even some insurance industry representatives acknowledged that legitimate restoration companies have been unfairly lumped in with fraudulent South Florida companies.

Sha'Ron James, the state's Insurance Consumer Advocate, said both sides have valid complaints.

"Third-party attorneys fees are definitely a negative cost driver [for insurers] and are causing increases in rates for homeowners. That's a consumer issue.

"But at the same time, many homeowners are using AOBs because they are frustrated by the claims handling process of insurance companies. That's also the reality."

Participants suggested possible reforms that would temper abuses by both insurers and water restoration companies while protecting rights of each side.

Restorers suggested state licensing of restoration companies to weed out “bad actors,” and deadlines for insurance companies’ adjusters to inspect damage claims.

Industry representatives, including Altmaier, said if one-way attorneys fees can’t be eliminated in suits by companies working under AOBs, some sort of financial risk should be built into the system to penalize abusive restoration companies that file hundreds of frivolous suits.

James said she favored requiring the sides to participate in alternative dispute resolution — such as mediation or arbitration — before being allowed to file a lawsuit.

That would deter litigation “which is where a lot of exorbitant legal fees are coming from,” she said.

rhurtibise@sun-sentinel.com, 954-356-4071, twitter: twitter.com/ronhurtibise

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