

This document accompanies a blog posted after the AOB reform bill passed in 2019 and is provided here to inform on what some think the reforms may accomplish and the marketplace response.

In addition to the email exchanges below between myself and Gary Rosen in the aftermath of AOB Reform I also have two Power Point presentations he sent me regarding SB-122 which is similar to the final reform bill, HB-7065, that was signed by Governor DeSantis. The Power Points are also posted in the on-line library tab under the drop down menu item titled “Presentations and Power Points.”

Yes AOBs are DEAD for Harvey Cohen. But are they really dead?
NOT.

HB 7065 3b states: “If the insurer fails to inspect the property or provide written or oral authorization for repairs within 7 calendar days after the first notice of loss, the insurer waives its right to an award of attorney fees under this subsection.”

If the Carrier does not comply with the 7-day rule AOBs are very much alive.

What is an Inspection? Not defined in the bill. But since the bill requires that Contractors under an AOB comply with industry standards, we should look to IICRC S500-2015 for a definition of Inspection. S500 requires an intrusive inspection.

1.2.2.1 Initial Inspection.

- Inspect and document the source and time of the water intrusion, visible material deterioration, pre-existing damage and visible microbial growth.
- Provide moisture map.
- Establish drying goals.

1.2.2 Document and Inspect the Project

- Identify Category of Water: Cat 1 ,2, 3.
- Identify Class of Water: Class 1, 2, 3, 4.

☑ **10.6.3 Extent of Water Intrusion**

- Document the extent of water migration **in** structures, systems and contents.
- (Not only on surfaces.)

What Carrier has the ability to comply with the Industry Standard definition of Inspection or authorize repairs within 7-days? None (at least at this time.)

I'm sure that some Carriers will define an inspection as a walk through by an Adjuster but that will be challenged. And how is that going to result in the ability to "provide written or oral authorization for repairs"?

But there is a massive positive side to the 7-day rule for Carriers that at least some Carriers seem to appreciate.

The Homeowner **MUST** now allow the Carrier to Inspect. If the Carrier defines an inspection per industry standard, this means intrusive inspection including documenting pre-existing damage.

If the home owner denies the Carrier access for such an inspection during this 7-day period then simply deny the claim.

If the inspection finds pre-existing conditions (mold and rot especially that is dry) only pay for the dry out of the covered water event but don't pay to fix the pre-existing damage that has not resulted from the "covered loss".

Some Carriers (not many yet) are already sending people to our 3-day mold/water damage FLA mold assessor/remediator license training to qualify people to make such inspections. Unlike with any of the other 6 or so FLA mold license training providers, our students receive unique training as Certified Water Damage Mitigation Assessors.

Question: If the PH signs up with a PA or Attorney, will an Emergency Service Provider rip out all the pre-existing damage to get rid of “the evidence” before the Carrier does their 7-day Inspection? And if so, what are the legal ramifications?

If the cause of ripping out the damage is mold, the work must be done by a licensed mold remediator if more than 10 sq ft of mold. Mold remediators have \$1M in Environmental Insurance that would be at risk.

Not sure what the answer is to this question, but the overall answer is for the Carrier to perform (or demand to be able to perform) an IICRC compliant intrusive inspection within 7 days of FNOL.

Sincerely,

Gary Rosen, Ph.D. LEED AP

Florida Licensed Mold Exam Developer/ Provider

Florida Licensed Mold Contractor

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Florida Licensed Independent Insurance Adjuster

www.Mold-Free.org

www.Free-Mold-Training.org

Harvey Cohen Presentation on What's Next After HB 7065

Harvey gave a presentation in Ft Lauderdale earlier this week (5-29) on what's next after HB 7065.

For Harvey's firm, the AOB is dead. He will not be handling any new AOBs because it is risky based on the new rules about attorney fees. And besides, before you know it, all the Carriers will offer policies that do not allow AOBs and he feels those will be popular as they will be discounted.

However, for Harvey he was confident it would be business as usual.

The new model for his law firm is for an Emergency Service Provider to direct homeowners to sign up with an attorney (instead of a PA) to help the homeowner through the claim.

Once the attorney is involved, the contractor will be protected and the attorney will fight for the contractor to get paid the full amount. There are no changes in attorney fee provisions in HB 7065 if there is no AOB.

They will charge a 25% fee to the homeowner (vs 20% for a PA). And he discussed the advantages (from his perspective) to hiring an attorney vs a PA. One of them is that if there is a lawsuit and attorney fees, the fees will be applied to the 25% homeowner fee and potentially there is zero cost to the PH versus going with the PA.

There would be a GC/BC for each job to write a scope and manage the trades.

Questions not answered.

1. If you need a GC/BC to write the scope and manage the work, won't this delay the work? How would this approach be suitable for an emergency service for example if there is water on the floor that needs extraction (mopping, wet vac, dehumidification, then cleaning). Wouldn't it make sense to do the emergency extraction under an AOB (\$3K cap) while signing up with the attorney? Why would this be risky? Per IICRC, bulk water extraction and removal of permanently damaged components as well as repair of the leak should be done prior to an IICRC compliant inspection and prior to IICRC compliant mitigation/restoration.

You can't just leave water on the floor. Give the guy the attorney references. And walk out. Again, extraction per IICRC, is prior to and not subject to IICRC restoration protocols.

2. If you need a GC/BC to write up the scope and manage the job, what is the minimum size job for which this approach makes sense? \$50K or \$100K?

3. What are contractors going to do for \$10K jobs?

4. Following up on #1. What if the Extraction/ Cleaning and setting up dehus is performed for \$3K (under AOB)?

And then a detailed IICRC compliant intrusive inspection under containment and negative air is performed (for \$3500) with detailed protocol, and Xactimate scope of work with line items cross referenced to IICRC required procedures under AOB? Can this Inspection/Protocol be done under an AOB without undue risk while waiting for the home owner to sign up with attorney?

For example, on a \$10K job, what GC is going to want to write a scope and manage the work for 10+10? But if there is \$3500 for GC/Assessor to do the inspection and prepare the scope that could sound very attractive. That's really important. If under AOB, then neither the attorney nor the homeowner has to pay the \$3500 which again is a huge deal for a \$10K or even \$20K job. Under AOB what about appraisal when the Carrier doesn't pay rather than a risky lawsuit? Yes Carriers can deny appraisal and force a risky lawsuit. But will they for small jobs that are fairly priced?

5. There is a limited number of GCs/BCs that are Licensed Assessors and IICRC certified. And fewer yet willing to respond to emergency services. Where will you find these experts to manage the claims ... even larger claims?

6. Why would a home owner prefer this approach to a PA?

Sincerely,

Gary Rosen, Ph.D. LEED AP

Florida Licensed Mold Exam Developer/ Provider

Florida Licensed Mold Contractor

Florida Licensed Building Contractor

www.Mold-Free.org

www.Mold-Toxins.com

www.Free-Mold-Training.org

Of course. I'm behind you all the way. 😊

sj

Scott Johnson, AAI, CAE

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[Watch the Johnson Strategies Story!](#)



From: Gary Rosen <garyrosen72652@gmail.com>
Sent: Monday, May 20, 2019 5:13 AM
To: scott@johnsonstrategiesllc.com
Subject: Re: FYI FROM GARY ROSEN

I agree. But someone has to push it.

Sincerely,
Gary Rosen, Ph.D. LEED AP
Florida Licensed Mold Exam Developer/ Provider
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On Sun, May 19, 2019 at 7:48 PM <scott@johnsonstrategiesllc.com> wrote:

True, but my experience is that MRP's don't exist in other states due, in part, to the lack of abuse from things like AOB. AOB brought in a lot of unsavory characters which drove the development of Managed repair.

Some regulations could apply to all water firms whether or not they are owned by or affiliated with an insurer or independent; right? Couldn't they all be required to have a license and meet statutory standards of conduct.

Scott Johnson, AAI, CAE

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[Watch the Johnson Strategies Story!](#)



From: Gary Rosen <garyrosen72652@gmail.com>
Sent: Sunday, May 19, 2019 7:10 PM
To: scott@johnsonstrategiesllc.com
Subject: Re: FYI FROM GARY ROSEN

I think they should be. But the focus of the carriers is an hmo type of business where the carrier provides all services . Licensing does not fit that model,or is not a priority.

Sent from my iPad

On May 19, 2019, at 5:13 PM, <scott@johnsonstrategiesllc.com> <scott@johnsonstrategiesllc.com> wrote:

Thanks Gary.

I'm curious, what are your thoughts on whether Water firms should be regulated/licensed, etc.

Scott Johnson, AAI, CAE

President, Johnson Strategies, LLC

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From: Gary Rosen <garyrosen72652@gmail.com>
Sent: Sunday, May 19, 2019 3:16 PM
To: scott@johnsonstrategiesllc.com
Subject: Re: FYI FROM GARY ROSEN

See attached final powerpoint on how to comply with SB122/HB7065. Not easy for either contractor or carrier.

Sincerely,
Gary Rosen, Ph.D. LEED AP
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On Sun, May 19, 2019 at 3:05 PM <scott@johnsonstrategiesllc.com> wrote:

Gary: I'm certainly interested. I will be writing up something soon on the bill that actually did pass and opining on its potential impact in the marketplace, so...I appreciate the thoughtfulness in sending me your power points.

Stay tuned for my next blog. And, thanks for being a subscriber.

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From: Gary Rosen <garyrosen72652@gmail.com>

Sent: Friday, May 17, 2019 1:02 PM

To: scott@johnsonstrategiesllc.com

Subject: Re: FYI FROM GARY ROSEN

I thought you were I interested in the subject. That's all .

No comment necessary

Mr. Rosen: I received the email below from you last Wednesday, May 15, 2019. You may know that Sb-122 did not pass but a separate piece of legislation, HB-7065 was on its way to the Governor and is substantially the same as the slides regarding SB-122 and attached to your email describe.

I am not sure why you sent this to me or what I should say in response. Unless I hear otherwise from you, I will discard this within a few days. 😊

sj

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[Watch the Johnson Strategies Story!](#)

From: Gary Rosen <garyrosen72652@gmail.com>

Sent: Wednesday, May 15, 2019 7:03 AM

To: scott@johnsonstrategiesllc.com

Subject: FYI FROM GARY ROSEN

Scott,

See attached if you are interested in following Sb122.

Sincerely,

Gary Rosen, Ph.D. LEED AP

Florida Licensed Mold Exam Developer/ Provider

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Florida Licensed Building Contractor

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##end##