

# Restoring Balance in Insurance Litigation

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



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## 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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."<sup>5</sup> 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."<sup>6</sup> 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)

<sup>1</sup>This 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.

<sup>2</sup>See *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).

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

<sup>4</sup>§ 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.").

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

<sup>6</sup>Lawrence 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.<sup>7</sup>

In *Feller v. Equitable Life Assurance Society of the United States*,<sup>8</sup> 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.”<sup>9</sup> 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.”<sup>10</sup> 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.”<sup>11</sup> 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.<sup>12</sup> 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.”<sup>13</sup>

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<sup>7</sup>*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”).

<sup>8</sup>57 So. 2d 581 (Fla. 1952).

<sup>9</sup>*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).

<sup>10</sup>*Feller*, 57 So. 2d at 586.

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

<sup>12</sup>See *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.

<sup>13</sup>*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.<sup>14</sup> 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*<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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*,<sup>18</sup> 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.”<sup>19</sup> 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.”<sup>20</sup> 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.”<sup>21</sup> Four years later, the Florida Supreme Court reiterated in *Roberts v. Carter*<sup>22</sup> 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.”<sup>23</sup>

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<sup>14</sup>*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)).

<sup>15</sup>223 So. 2d 713 (Fla. 1969).

<sup>16</sup>See *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).

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

<sup>18</sup>278 So. 2d 1 (Fla. 1973).

<sup>19</sup>*Wilder*, 278 So. 2d at 2-3.

<sup>20</sup>*Id.* at 3 (internal citation omitted) (emphasis added).

<sup>21</sup>*Id.*

<sup>22</sup>350 So. 2d 78 (Fla. 1977).

<sup>23</sup>*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*,<sup>24</sup> 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.<sup>25</sup> 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*."<sup>26</sup> The plaintiff in *Prygrocki* was not a third party claimant but was, instead, an omnibus insured under the policy's PIP protection.<sup>27</sup> 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.<sup>28</sup>

Despite the return to a more expansive interpretation of the statute, in the 2008 decision *Continental Casualty Co. v. Ryan Inc. Eastern*<sup>29</sup> the Florida Supreme Court reaffirmed that the one-way attorney fee statute authorizes fees "in a discrete set of circumstances."<sup>30</sup> 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.<sup>31</sup> 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."<sup>32</sup>

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."<sup>33</sup>

### **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

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<sup>24</sup>422 So. 2d 314 (Fla. 1982).

<sup>25</sup>*Id.* at 314.

<sup>26</sup>*Id.* at 316.

<sup>27</sup>*Id.*

<sup>28</sup>*Id.* at 316 n.\*.

<sup>29</sup>974 So. 2d 368 (Fla. 2008).

<sup>30</sup>*Id.* at 374.

<sup>31</sup>*Id.*

<sup>32</sup>*Id.* at 375 (emphasis added).

<sup>33</sup>*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.<sup>34</sup> All contractual rights are assignable unless the contract prohibits assignment, the contract involves obligations of a personal nature, or public policy dictates against assignment.<sup>35</sup> So, for example, a chose in action—which is “the right to bring an action to recover a debt, money, or thing”<sup>36</sup>—arising out of contract is assignable and “may be sued upon and recovered by the assignee in his own name and right.”<sup>37</sup> A claim arising under an insurance policy is a chose in action and is thus assignable.<sup>38</sup> Once an assignment is made, the assignor no longer has a right to enforce the interest assigned.<sup>39</sup>

Florida law provides that an insurance policy “may be assignable, or not assignable, as provided by its terms.”<sup>40</sup> 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.”<sup>41</sup> 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.<sup>42</sup> 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

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<sup>34</sup>*Id.* at 376.

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

<sup>36</sup>Black’s Law Dictionary (9th ed. 2009).

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

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

<sup>39</sup>*Cont’l Cas. Co.*, 974 So. 2d at 376.

<sup>40</sup>§ 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).

<sup>41</sup>*Kohl*, 955 So. 2d at 1143.

<sup>42</sup>See *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.<sup>43</sup> In contrast, a policy may validly prohibit pre-loss assignments to “protect an insurer against unbargained-for risks.”<sup>44</sup>

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.*<sup>45</sup> 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*.”<sup>46</sup>

## **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.*,<sup>47</sup> 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.<sup>48</sup> 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.”<sup>49</sup> 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.”<sup>50</sup> 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,<sup>51</sup> the insurer consequently could “not overcome the presumption that the Legislature did not intend in Section 627.405 to alter common law.”<sup>52</sup> 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.<sup>53</sup>

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<sup>43</sup>*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.”).

<sup>44</sup>*Lexington Ins. Co.*, 704 So. 2d at 1386.

<sup>45</sup>77 So. 209 (Fla. 1917).

<sup>46</sup>*Teutonia*, 77 So. at 210-11.

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

<sup>48</sup>*Id.* at \*1.

<sup>49</sup>*Id.* at \*2 (quoting § 627.405, Fla. Stat. (2014)).

<sup>50</sup>*Id.*

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

<sup>53</sup>*Id.*



The Fourth District Court of Appeal in *One Call Property Services Inc. v. Security First Insurance Co.*<sup>54</sup> 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.<sup>55</sup> 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.”<sup>56</sup> 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.”<sup>57</sup> 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.”<sup>58</sup> 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.”<sup>59</sup>

In *Security First Insurance Co. v. State of Florida, Office of Insurance Regulation*,<sup>60</sup> 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.<sup>61</sup> 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.”<sup>62</sup> 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.”<sup>63</sup> But like its sister court, the First District Court of Appeal said the issue is one left to the legislature to resolve.<sup>64</sup>

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<sup>54</sup>165 So. 3d 749 (Fla. 4th DCA 2015).

<sup>55</sup>*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).

<sup>56</sup>*One Call Prop. Servs.*, 165 So. 3d at 755.

<sup>57</sup>*Id.*

<sup>58</sup>*Id.*

<sup>59</sup>*Id.*

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

<sup>61</sup>*Id.* at \*1.

<sup>62</sup>*Id.*

<sup>63</sup>*Id.* at \*2 (internal quotation marks omitted).

<sup>64</sup>*Id.*

More recently, the First District Court of Appeal in *United Water Restoration Group v. State Farm Insurance Co.*<sup>65</sup> 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."<sup>66</sup>

### ***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"<sup>67</sup> from insurers and using "the threat of litigation to extract [these] higher payments."<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> The

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

<sup>66</sup>*Id.* at \*2.

<sup>67</sup>See *One Call Prop. Servs.*, 165 So. 3d at 755.

<sup>68</sup>See *Sec. First*, 2015 WL 3824166, at \*2.

<sup>69</sup>See, 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.

<sup>70</sup>R. 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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup>

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*,<sup>76</sup> 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."<sup>77</sup> The court observed that "[t]hese attorneys are

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

<sup>72</sup> 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).

<sup>73</sup> 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).

<sup>74</sup> 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).

<sup>75</sup> 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).

<sup>76</sup> 942 So. 2d 969.

<sup>77</sup> *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."<sup>78</sup> 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."<sup>79</sup>

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.<sup>80</sup> 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

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<sup>78</sup>*Id.* at 973-74.

<sup>79</sup>*Id.* at 974.

<sup>80</sup>*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](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%).<sup>81</sup>

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.”<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

Using the “a/a/o” search criterion, a search was conducted through the Florida Department of Financial Services Service of Process website.<sup>85</sup> 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.<sup>86</sup> 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.

<sup>81</sup>Insurance 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.

<sup>82</sup>Cohen, *supra* at 22.

<sup>83</sup>Searching 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.

<sup>84</sup>See, 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/>.

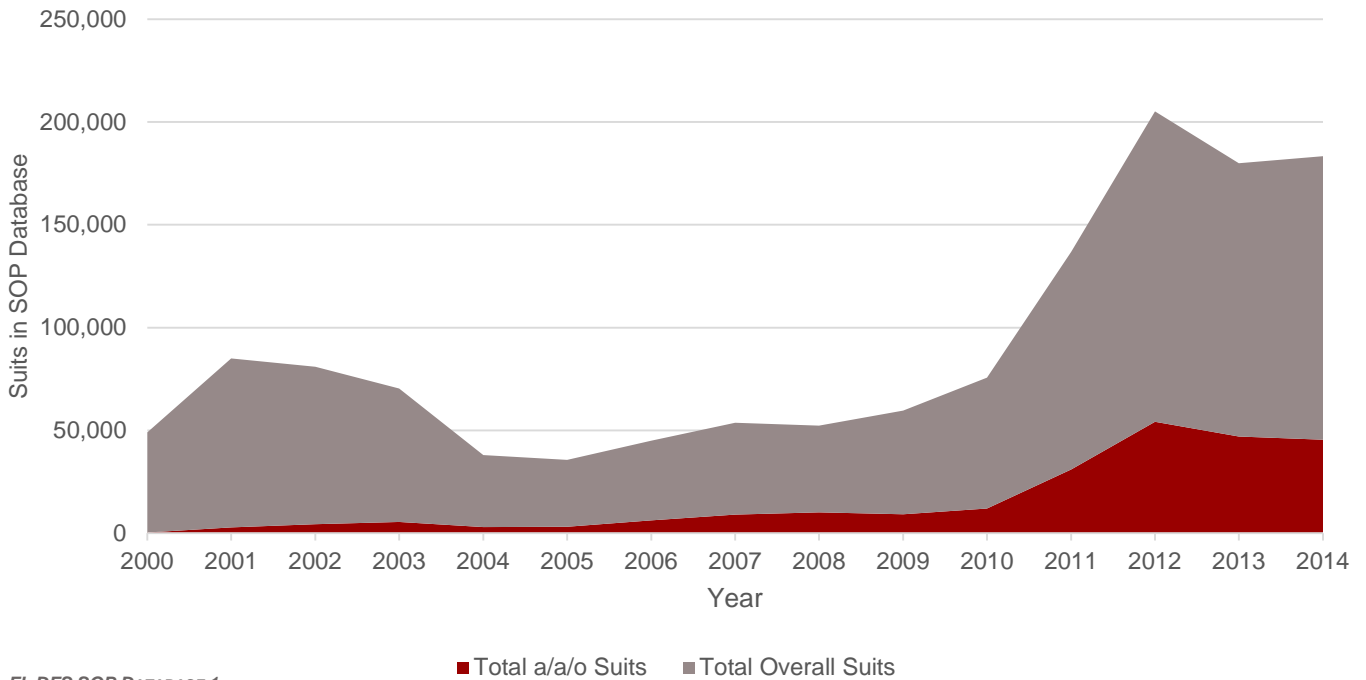
<sup>85</sup>Licensed insurers must appoint the Chief Financial Officer, as head of the Department of Financial Services, to receive service of all legal process in any civil action filed against a licensed insurer in Florida. § 624.422, Fla. Stat. (2015).

<sup>86</sup>See § 624.423, Fla. Stat. (2015).

## AOB Cases Increasing at Staggering Rate

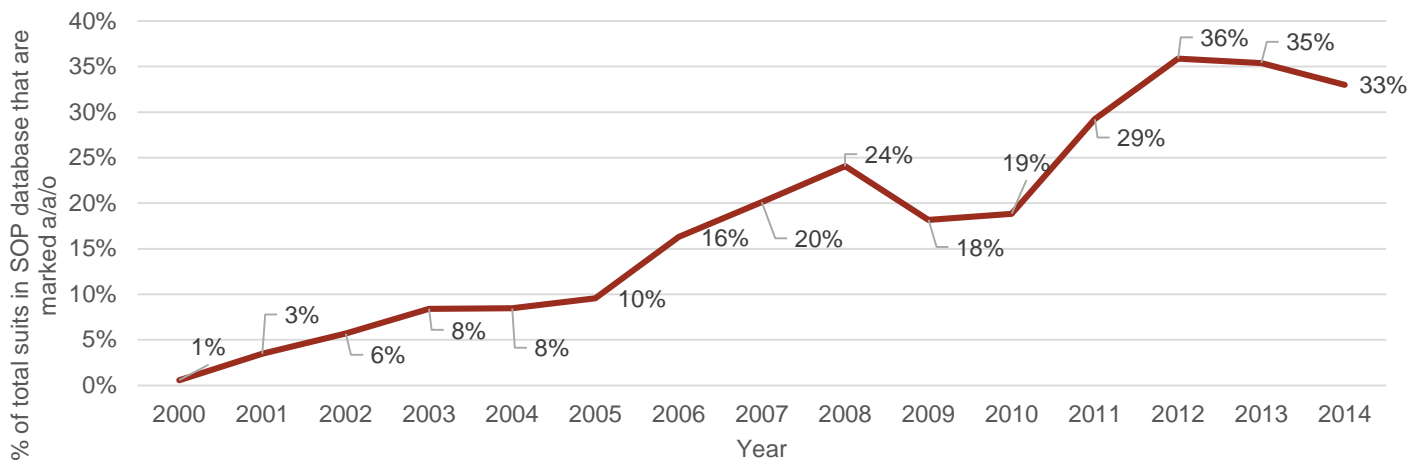
When searching just for cases that include “a/a/o” in the plaintiff’s name, the database reports a **16,000% increase** in such lawsuits since 2000. Only 281 “a/a/o” cases were served in 2000; 45,490 were served in 2014. Notably, the *total* amount of all service of process notices served only increased 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

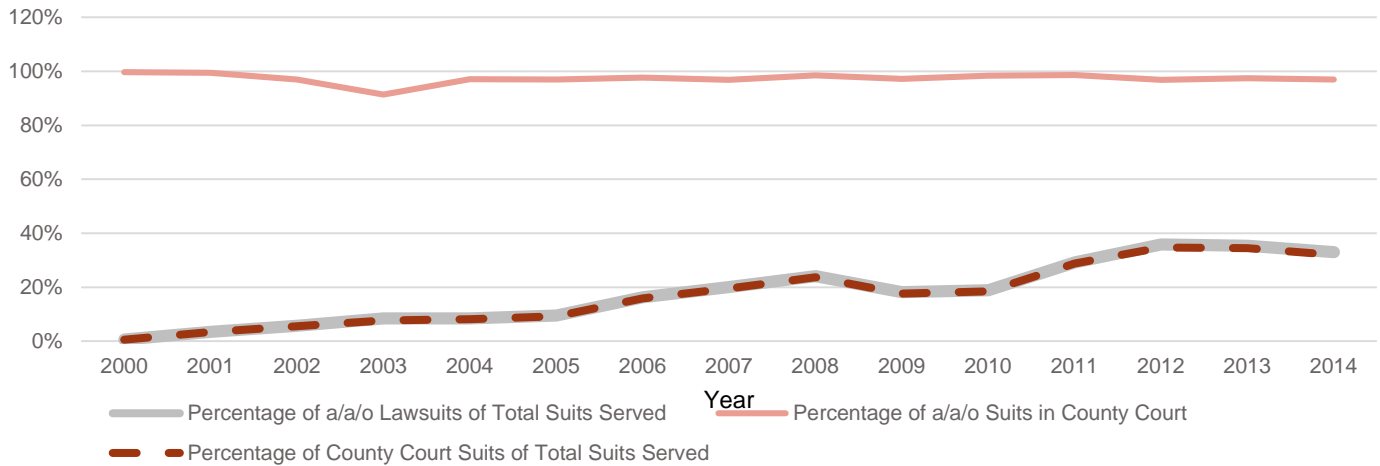
Closer Look: a/a/o Lawsuits as a Percentage of Total Lawsuits



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.<sup>87</sup> 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.<sup>88</sup>

### **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.<sup>89</sup>

<sup>87</sup>§ 34.01, Fla. Stat. (2015).

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

<sup>89</sup>A 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%**<sup>90</sup> 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.<sup>91</sup> 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."<sup>92</sup> 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.<sup>93</sup> The risk of a bad faith claim also significantly increases an insurer's damages exposure.

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<sup>90</sup>Insurance 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%.

<sup>91</sup>Insurance 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%.

<sup>92</sup>Cohen, *supra* at 28, 34.

<sup>93</sup>*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.”<sup>94</sup> 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.

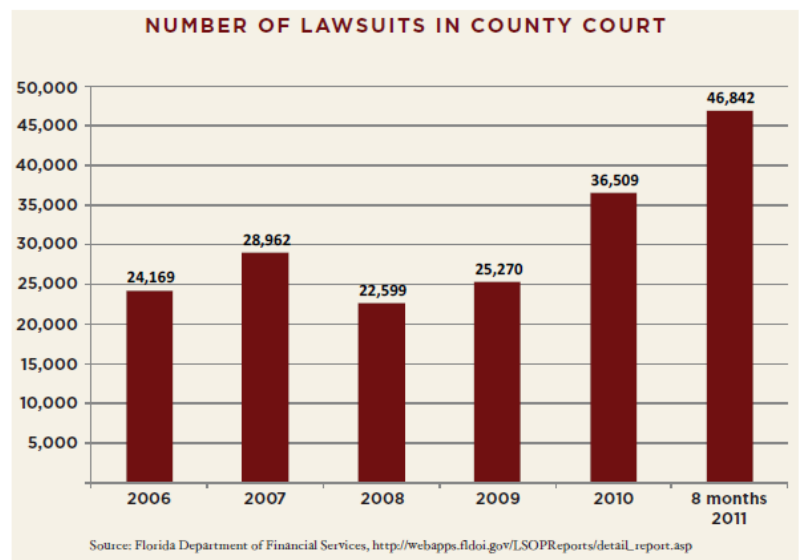
Unfortunately, Section 627.428’s intent—to shield policyholders from an insurer’s superior economic power—is being used as a sword by an altogether different set of persons.

### **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.<sup>95</sup> The workgroup’s report estimated that about 95% of the 36,509 cases filed against insurance companies in 2010 were related to PIP coverage.<sup>96</sup> 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,<sup>97</sup> and that providers of these modalities were increasingly becoming the actual plaintiffs in PIP litigation.<sup>98</sup> One insurer reported to the working group that based on its litigation experience, 99.6% of PIP AOB litigation is



<sup>94</sup>Cohen, *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/>.

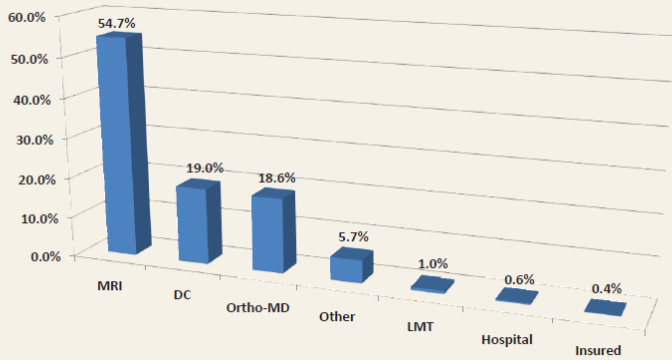
<sup>95</sup>Florida Department of Financial Services, Office of the Insurance Consumer Advocate, *Report on Florida Motor Vehicle No-Fault Insurance (Personal Injury Protection)* (Dec. 2011), <http://www.myfloridacfo.com/ica/docs/PIP%20Working%20Group%20Report%2012.14.2011.pdf>.

<sup>96</sup>*Id.* at 36.

<sup>97</sup>*Id.* at 2.

<sup>98</sup>*Id.* at 35.

**PROVIDER TYPE IN LITIGATION**

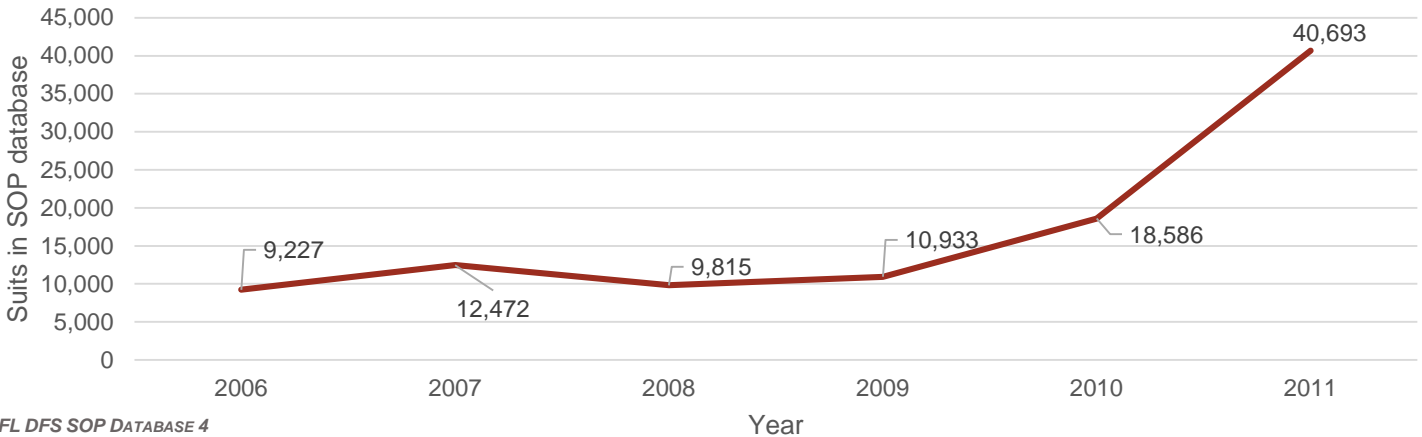


Source: Single insurer's litigation experience not independently verified.

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

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**

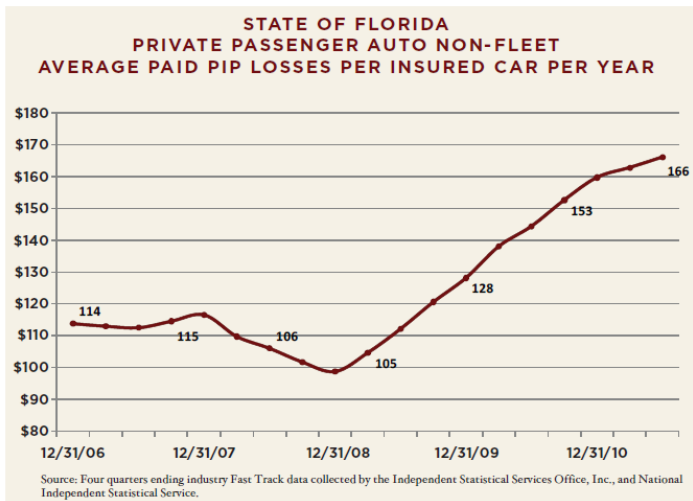


FL DFS SOP DATABASE 4

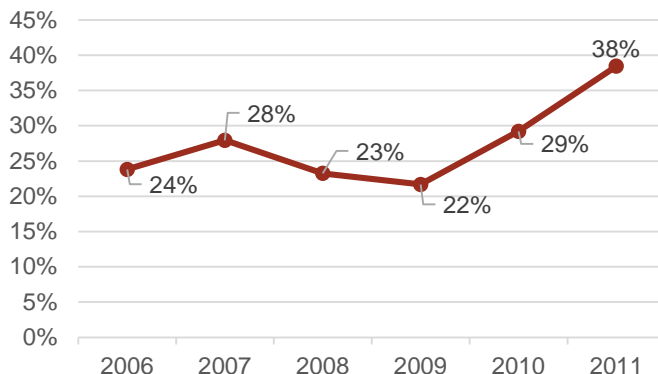
Interestingly, the line illustrating the number of lawsuits served by those providers catalogued by the SOP database parallels the line showing the average paid PIP losses per insured car, per year. The positive relationship between average paid PIP losses per car annually and lawsuits by service providers 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.”<sup>100</sup>

<sup>99</sup>*Id.* at 35.

<sup>100</sup>Kevin 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.<sup>101</sup> The PIP reform bill was passed on May 9, 2012 with an effective date of January 1, 2013.<sup>102</sup> In late 2012, certain chiropractors, acupuncturists, and massage therapists challenged the statute, prompting a series of stays and appeals that stretched into late 2013.<sup>103</sup> On October 23, 2013, the First DCA lifted the injunction placed on the implementation of the legislation based on the plaintiffs' lack of standing.<sup>104</sup> The plaintiffs' attempt to obtain review by the Florida Supreme Court was rejected on April 21, 2014.<sup>105</sup>

<sup>101</sup> 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>.

<sup>102</sup> *Id.*

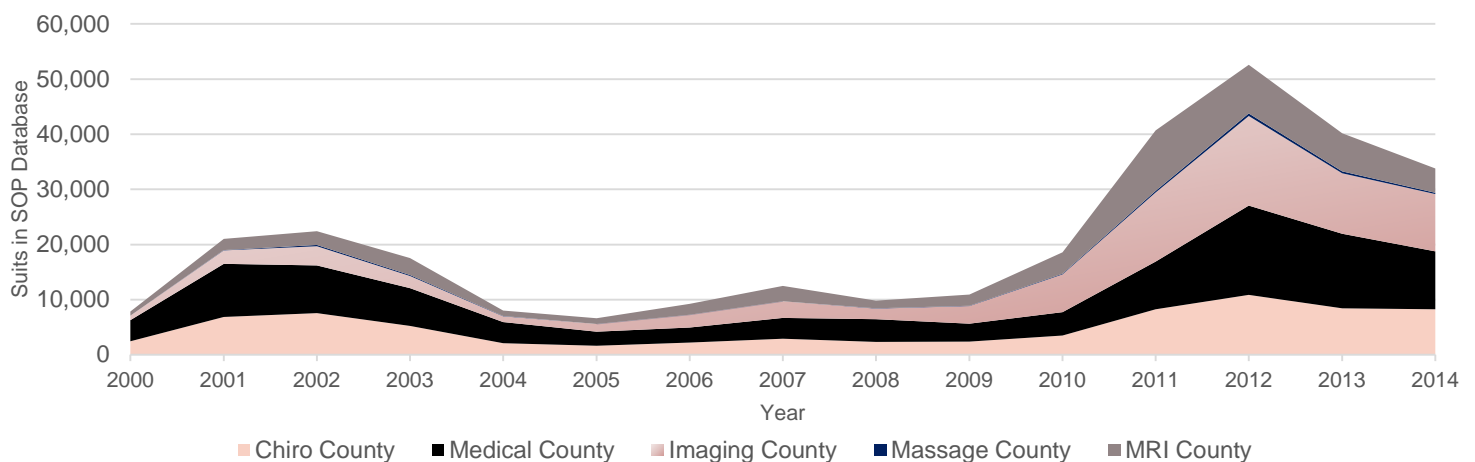
<sup>103</sup> See *McCarty v. Myers*, 125 So. 3d 333, 334-35 (Fla. 1st DCA 2013).

<sup>104</sup> *Id.* at 337.

<sup>105</sup> *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.<sup>106</sup> 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,<sup>107</sup> and in 2003, additional anti-fraud measures were added.<sup>108</sup> 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.<sup>109</sup>

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.<sup>110</sup> Windshields are excepted from an auto insurance policy’s deductible requirements by law.<sup>111</sup> 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

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

<sup>107</sup> See Ch. 2001-271, Laws of Fla.; Ch. 2001-163, Laws of Fla.

<sup>108</sup> See Ch. 2003-411, Laws of Fla.

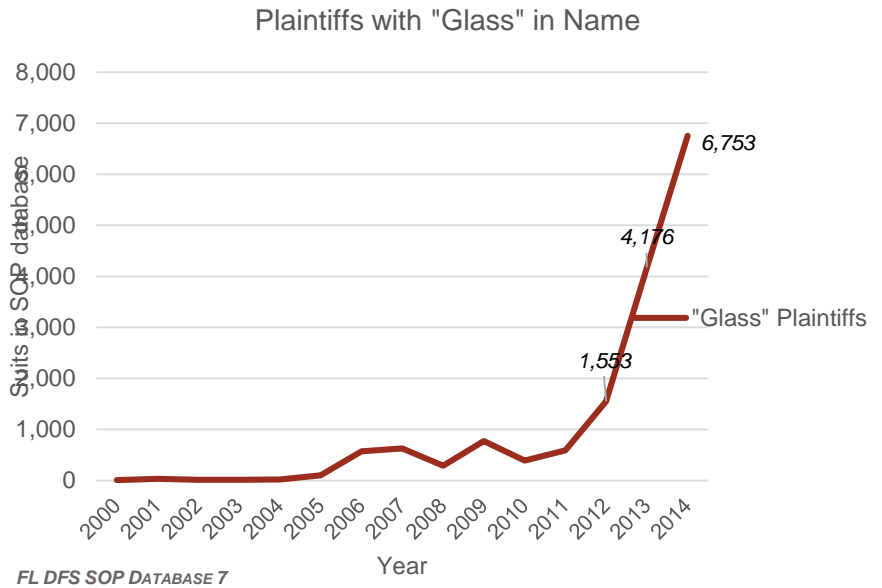
<sup>109</sup> Florida Office of Insurance Regulation, Cabinet Presentation—Personal Injury Protection 6 (Aug. 2011), <http://www.flair.com/siteDocuments/PIPPresentation08162011.pdf>.

<sup>110</sup> 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).

<sup>111</sup> § 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.<sup>112</sup>



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, 6,722<sup>113</sup>—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.<sup>114</sup> 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!”<sup>115</sup> on its website, filed 1,485 lawsuits in 2014. Mobile Auto Glass Repair, LLC—



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

<sup>112</sup>First 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/>.

<sup>113</sup>The 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.

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

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

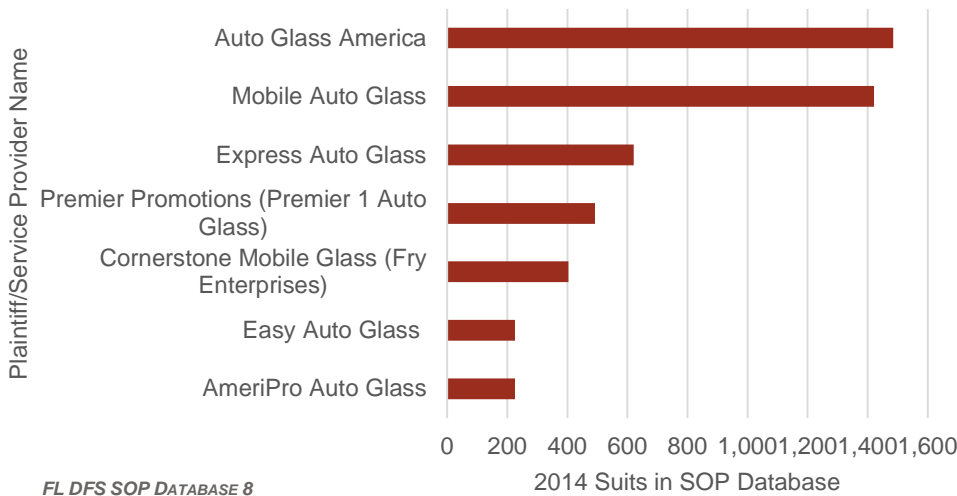
fronted by “Mr. Auto Glass”—filed 1,421 lawsuits in 2014, all by the same lawyer.<sup>116</sup>

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.

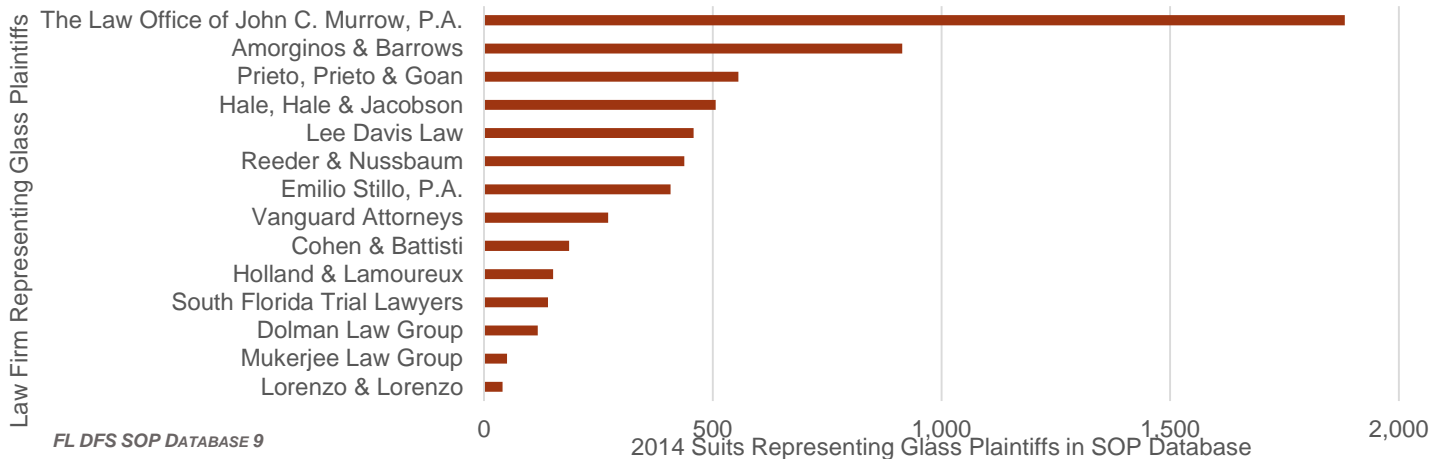
Again, these cases—predominantly filed in county court—are not high dollar cases. But these lawsuits are likely worthwhile because of the volume. For example, the Law Office of John C. Murrow filed 1,882 “glass”-affiliated plaintiff lawsuits in 2014. That amounts to a little more than **five lawsuits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

2014 Top Glass Lawsuit Plaintiffs



FL DFS SOP DATABASE 8

2014 Top Glass Plaintiff Attorneys



FL DFS SOP DATABASE 9

<sup>116</sup>Mr. 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).

<sup>117</sup>Since 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.*,<sup>118</sup> 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.<sup>119</sup> This contrasts with the litigation statistics mentioned above, which reflect a 162.77% and 168.90%

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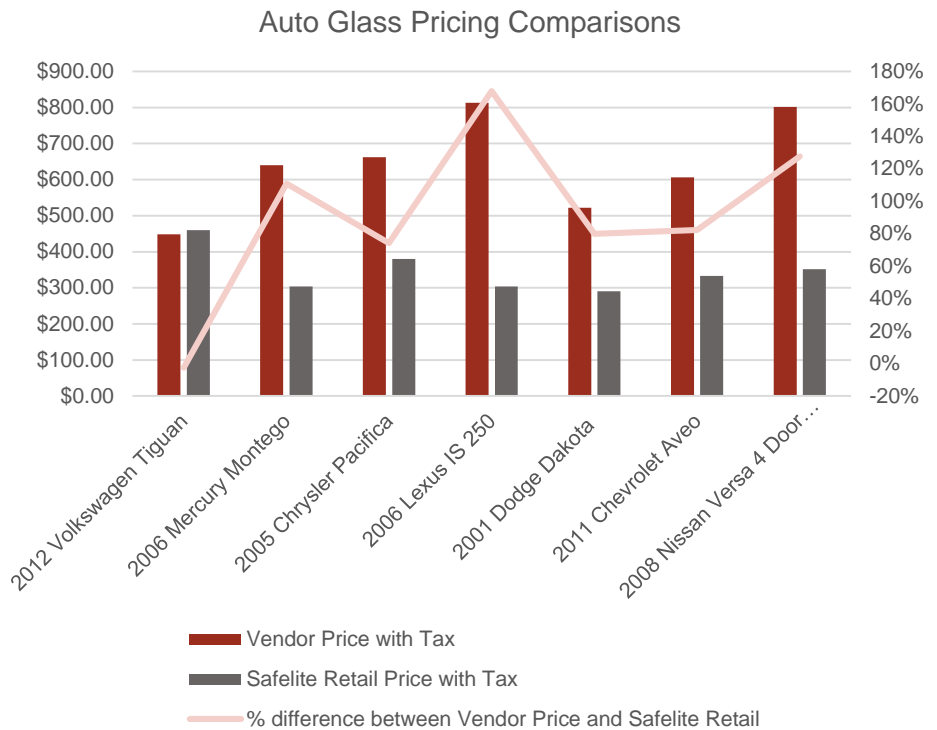
<sup>118</sup>Case No. 2013-SC-007075-0 (Fla. 9th Cir. Ct.) (filed Aug. 1, 2013). The complaint and attachments were accessed via the Orange County Clerk of Courts MyEClerk website, <https://myeclerk.myorangeclerk.com/>.

<sup>119</sup>Email 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.<sup>120</sup> 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.<sup>121</sup>

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

<sup>120</sup>The 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).

<sup>121</sup>The 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.<sup>122</sup> 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.<sup>123</sup>

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.<sup>124</sup> 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.<sup>125</sup> 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."<sup>126</sup>

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.<sup>127</sup>

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<sup>122</sup>The 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>.

<sup>123</sup>*Id.* at 12.

<sup>124</sup>Fla. 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>.

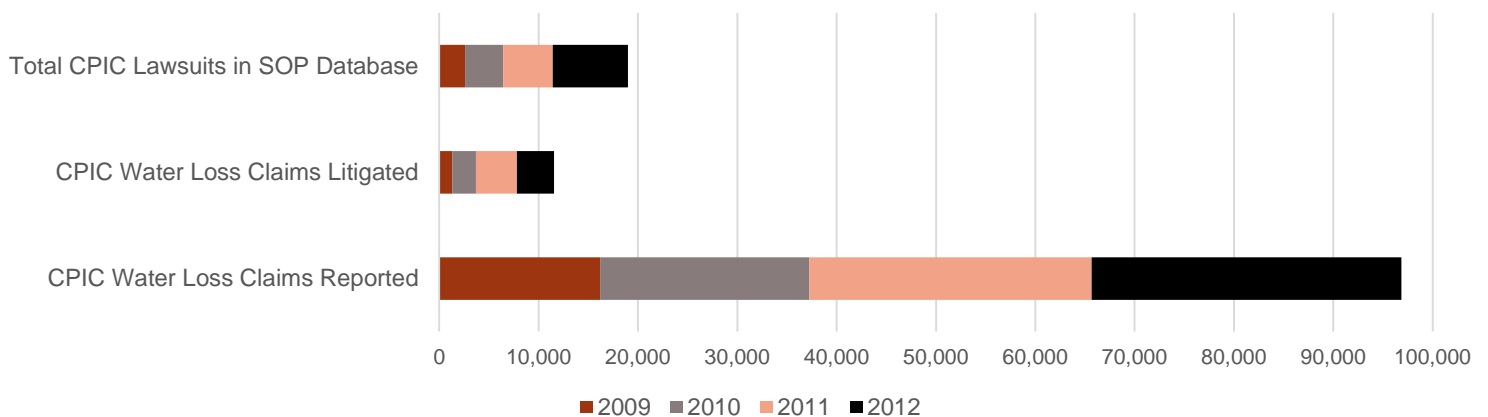
<sup>125</sup>*Id.*

<sup>126</sup>*Id.* at 10.

<sup>127</sup>See 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.<sup>128</sup> This is because non-sinkhole related claims are increasing.<sup>129</sup> 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.<sup>130</sup> For litigated claims, water leads the pack growing from 46% to 75% over that same four-year period.<sup>131</sup>

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.<sup>132, 133</sup>

<sup>128</sup>Citizens Property Insurance Corporation, *Litigation Analysis* 6 (Oct. 2013), [https://www.citizensfla.com/shared/press/documents/LitigationAnalysis\\_10-2013.pdf](https://www.citizensfla.com/shared/press/documents/LitigationAnalysis_10-2013.pdf).

<sup>129</sup>See *id.* at 7.

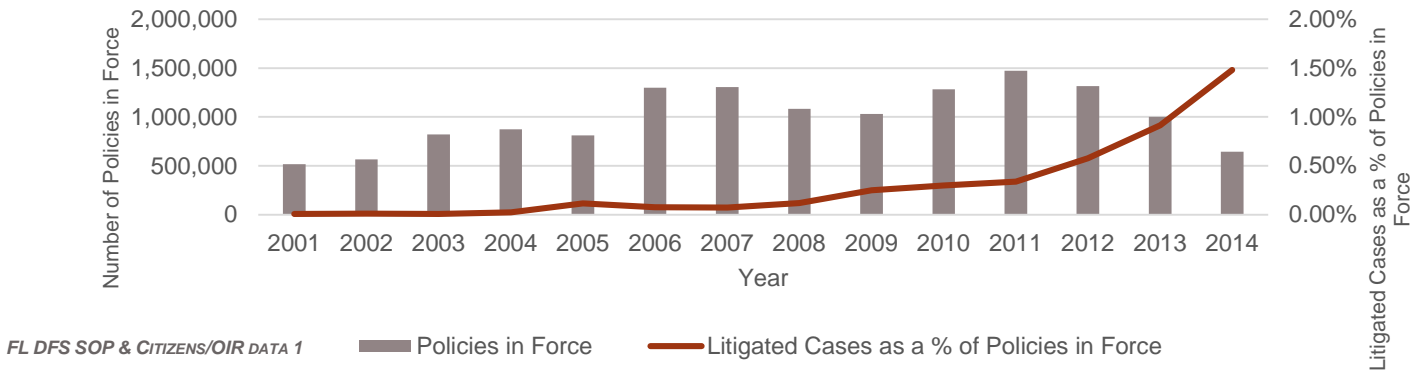
<sup>130</sup>*Id.* at 10.

<sup>131</sup>*Id.* at 11.

<sup>132</sup>See § 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.

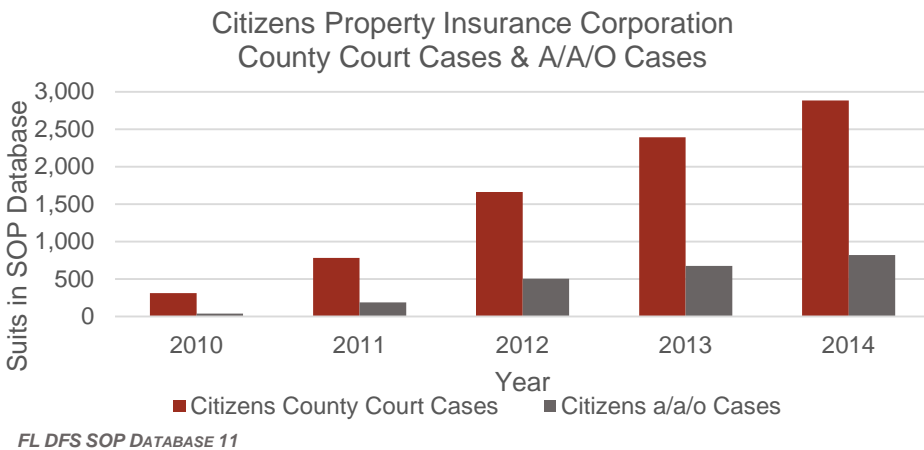
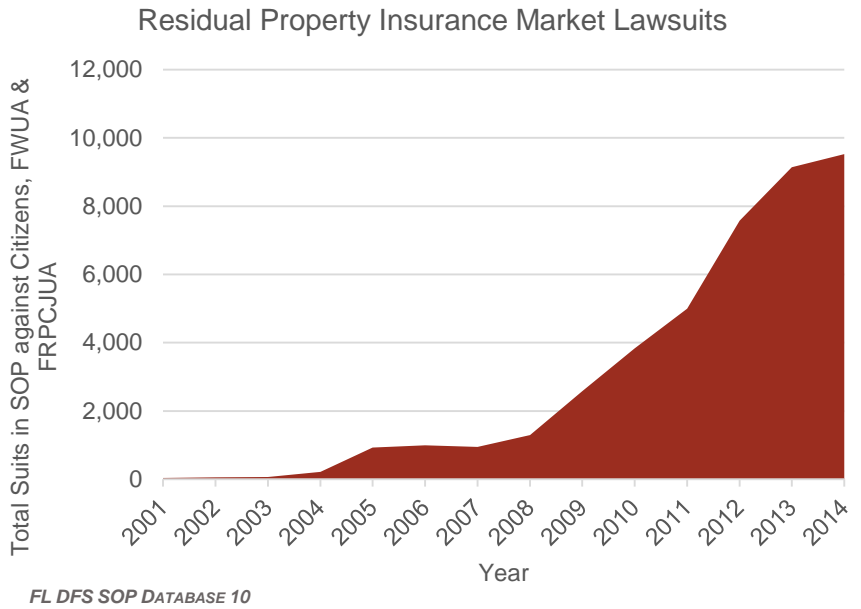
<sup>133</sup>The chart below contains lawsuit and policy count information from Citizens Property Insurance Corporation, as well as the Florida Windstorm Underwriting Association (“FWUA”) and the Florida Residential Property and Casualty Joint Underwriting Association (“FRPCJUA”). The latter organizations 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.”<sup>134</sup>



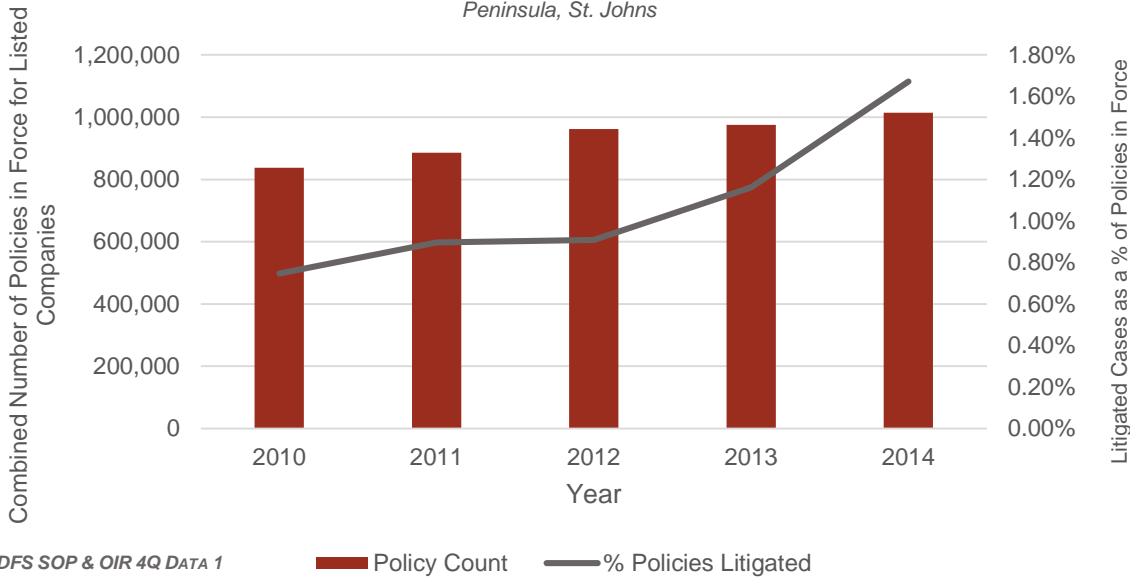
This was foreshadowed in a February 2015 presentation by Citizens’ Chief Claim Officer, who reported that 72% of water claims arise from the tri-county area of the state (Miami-Dade, Broward, and Palm Beach counties)—the same area that will be affected by the proposed rate increases.<sup>135</sup> Of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

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

<sup>135</sup>Jay 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

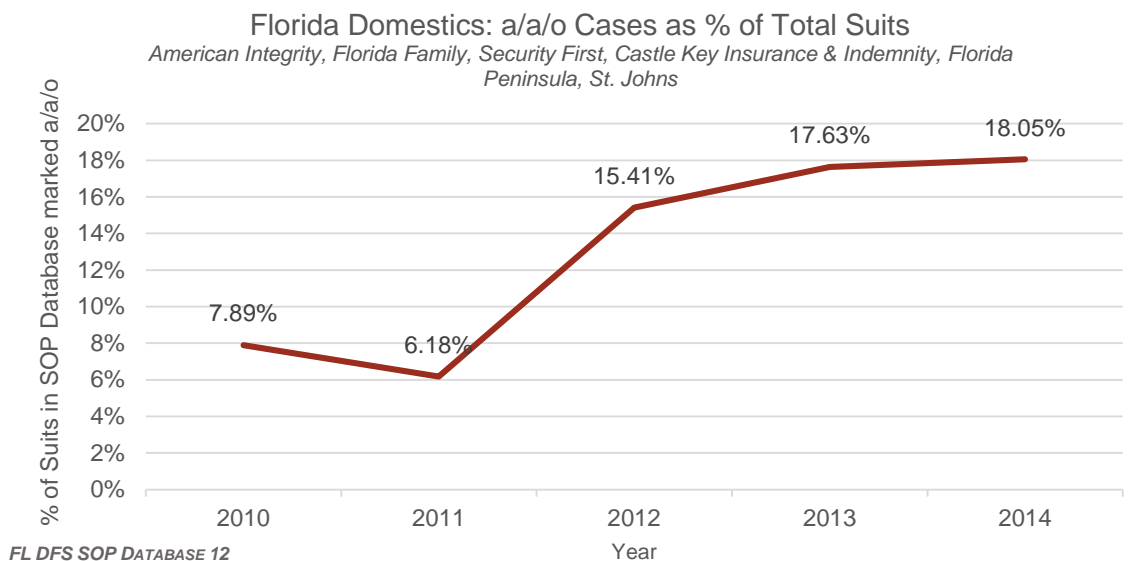


review of the lawsuits received as of December 2014,<sup>136</sup> Citizens found that 91% of the lawsuits were based on water claims, and that 98% of the lawsuits arose from claims in the tri-county area.<sup>137</sup> Notably, 85% of all the suits reviewed had an

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

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.



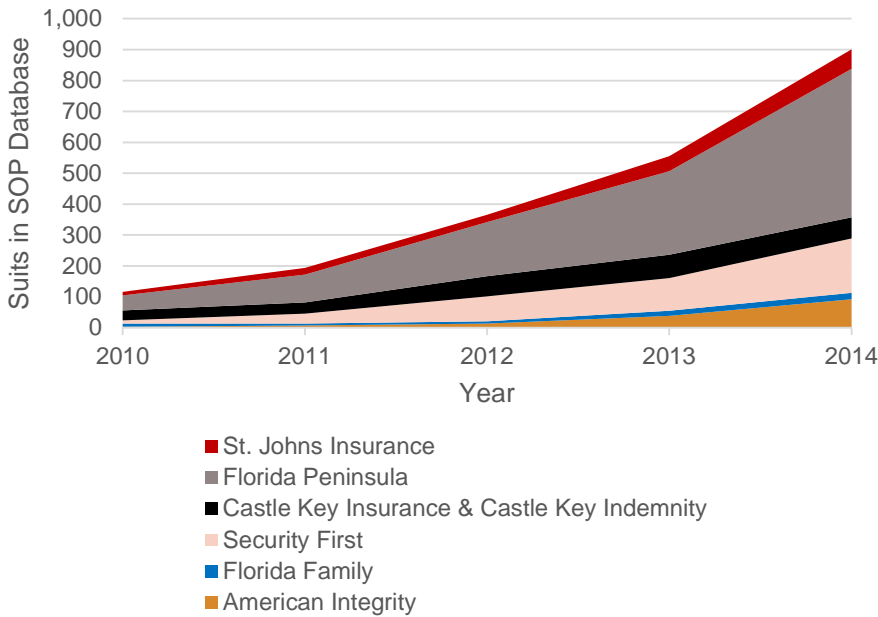
<sup>136</sup> See *id.* at 9.

<sup>137</sup> *Id.* at 6.

<sup>138</sup> *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



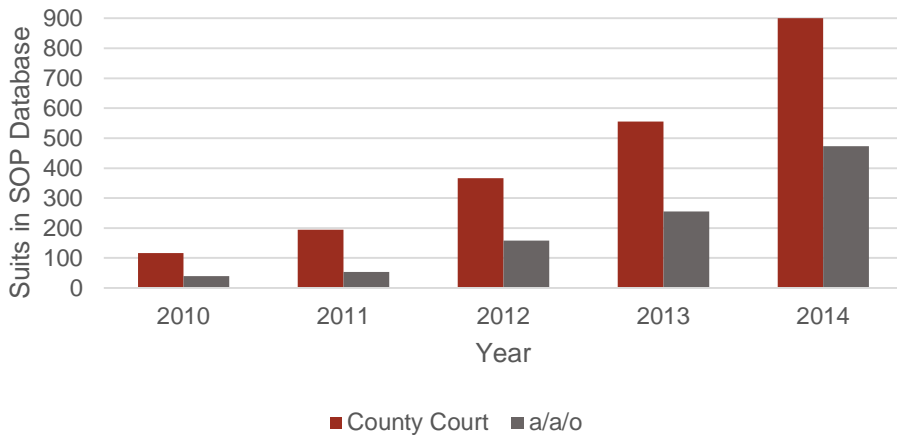
So is the influx of water claims occurring naturally? The data again shows that these claims concentrate in certain areas and are advanced by a relatively small class of service providers, suggesting that some other factor is at work. Would this large influx of naturally occurring, sudden, and accidental<sup>139</sup> 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.<sup>140</sup> 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.<sup>141,142</sup>

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

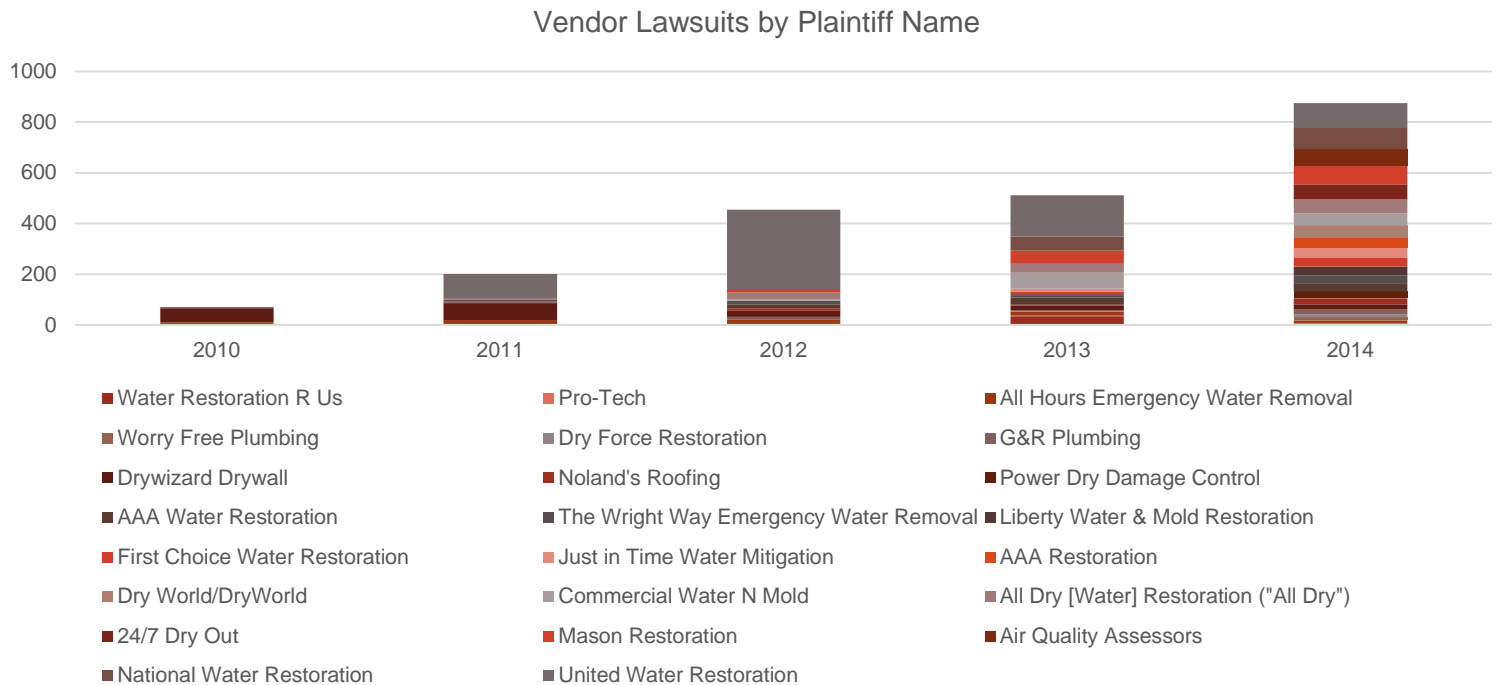
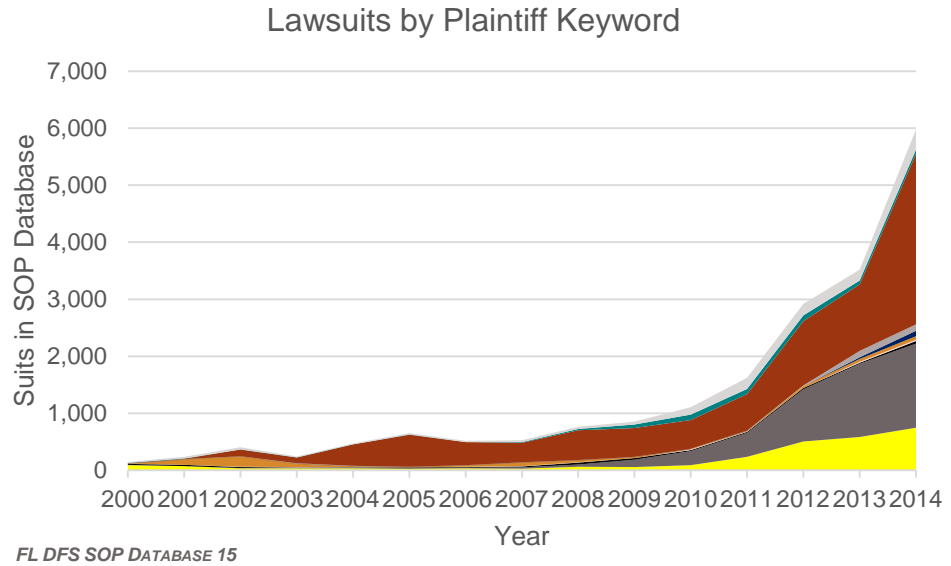
<sup>139</sup>Most property insurance policies cover sudden and/or accidental water damage, but not leaks that have been constant, continuous, or occurring over a period of time and thus were preventable or capable of being easily corrected by mitigation efforts. For example, commonly covered perils 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>.

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

<sup>141</sup>It 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.

<sup>142</sup>Truncated 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.<sup>143</sup> 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.<sup>144</sup> 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.

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<sup>143</sup>Indeed, 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).

<sup>144</sup>There 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