

# SINKHOLES & AOB ABUSE

ONE SUCCESS; ONE TO GO

Presented by Angel D. Conlin  
Vice President, General Counsel & Secretary  
American Strategic Insurance Group



# SINKHOLES...

- Thank you to the diverse team of legislators, regulators, subject matter experts, and industry representatives who worked together to accomplish meaningful sinkhole reform.
- SB 408 is working:
  - Real sinkhole claims are getting paid
  - Sinkhole claims abuses have waned
  - Sinkhole litigation has decreased
  - A cost driver has been minimized...saving consumers money

# SINKHOLES & AOB...

## IS AOB A SINKHOLE-LIKE PROBLEM?

- The “signs” say YES



# WHY HAS AOB BECOME AN ISSUE?

- No hurricanes & sinkholes are no longer a profit driver
- AOB's are the latest abusive claims practice – they are a cost driver
- Fortunately, we have a template for success



# WHAT IS AN “ASSIGNMENT OF BENEFITS”?

- Let’s hear from one of the most active plaintiff firms counseling water remediators, roofers, contractors, wildlife trappers, and other vendors to use AOB’s:

## **Insider Secrets: Legal Assignment of Insurance Benefits**

**Harvey Cohen, the Johnny Appleseed of Assignment of Benefits,**

*Harvey V. Cohen, Esquire*  
Managing Partner  
Cohen Battisti Attorneys at Law

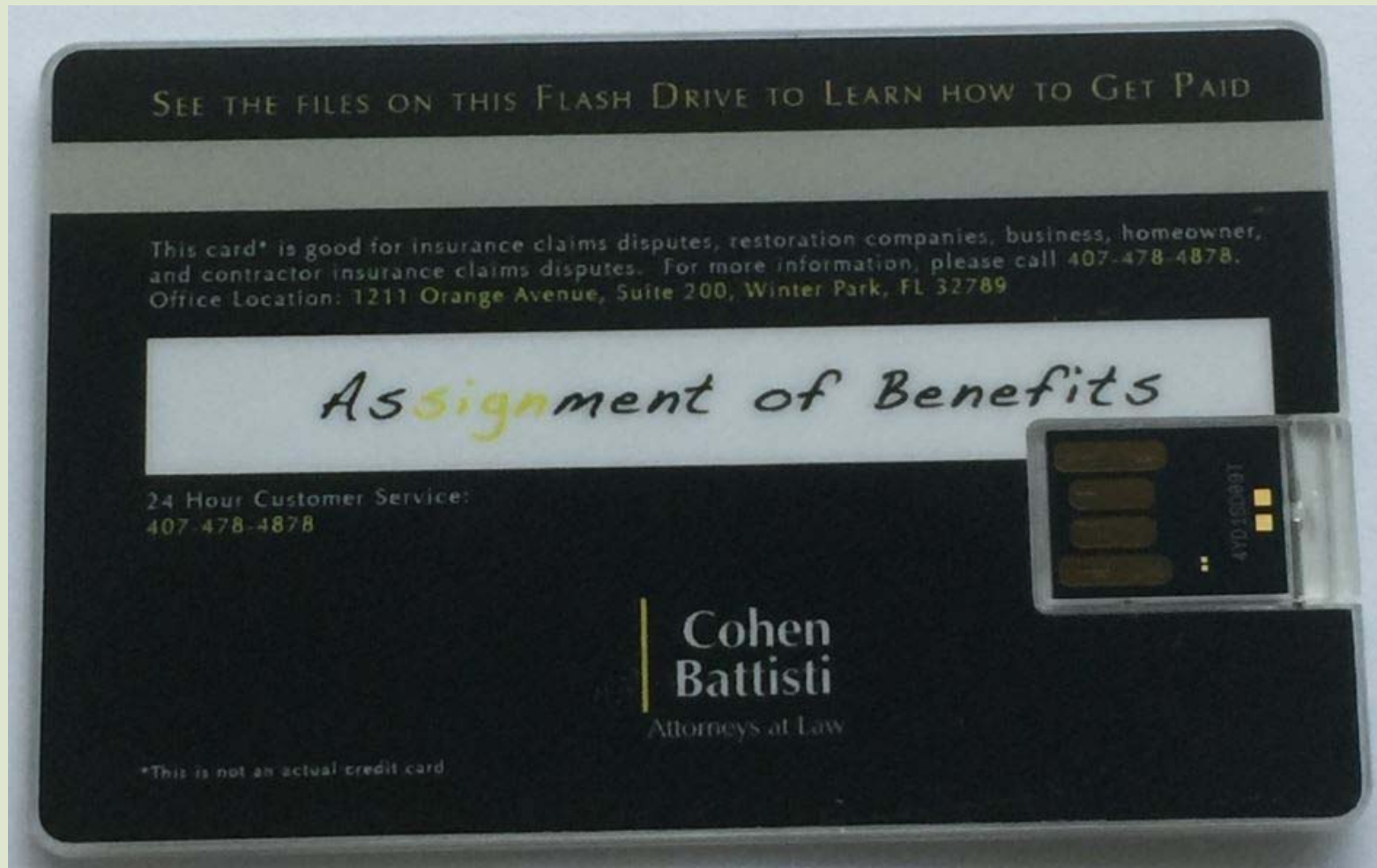
# WHAT IS AN "ASSIGNMENT OF BENEFITS"?

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# WHY HAVE AOB'S BECOME SO PREVALENT?



# WHY HAVE AOB'S BECOME SO PREVALENT?

Why?



# WHY HAVE AOB'S BECOME SO PREVALENT?

- AOB's allow vendors to get paid directly

- Allows you to be paid directly from Insurance Company as if you were the property owner/policy holder
- Check issued with your company name on it



# WHY HAVE AOB'S BECOME SO PREVALENT?

- AOB's allow vendors to avoid insurance policy obligations ...even though they “stand in the shoes of the insured” and are seeking to collect under the insurance policy
- This defeats the terms on which the contract was formed

## Policy Holder Obligations

- Examination Under Oath (EUO)
- Sworn Statement
- Proof of Loss
- Notify Insurance Company
- Reduce impact of damage



# WHY HAVE AOB'S BECOME SO PREVALENT?

- AOB's allow lawsuits and bad faith set-ups

## Difference between Assignment of Benefits and Direction to Pay

### Direction to Pay

- Simply instructs the insurance company how to pay
- Conveys no legal standing
- Can not bring suit under a direction to pay
- Bad faith, not an option

### Assignment of Benefits

- Conveys legal standing
- Conveys to bring suit/claim against insurance company in dispute
- Allows the assignor to stand in the shoes of insured
- Bad faith becomes an option

# WHY HAVE AOB'S BECOME SO PREVALENT?

- AOB's allow attorneys to generate and collect fees

## Fee Shifting

- Allows law firm to obtain their fees and costs separately from any client funds
- We do not take a penny of your money
- No costs to you
- See Florida Statute 627.428
- See your attorney for state specific statutes and/or case law

# WHY HAVE AOB'S BECOME SO PREVALENT?

- AOB's are used to try to recover retroactively

## Important Things to Know

- Call your documents contracts not work authorization
- Provide proof of loss (photos + drying logs)
- Document the file
- You can go back five years to look at your owed claims



# WHY HAVE AOB'S BECOME SO PREVALENT?

- AOB's may lead to suits against mortgage companies

## Frequently asked questions

What if the mortgage company is holding my check?

**Answer:**

If you are a remediation company send your claim to us right away they should not be holding your check. We may be able to sue the mortgage company for unjust enrichment.

# WHY HAVE AOB'S BECOME SO PREVALENT?

- “AOB’s” have been expanded into BROAD, IRREVOCABLE POWERS OF ATTORNEY

Sample  
Contract

Your Company Name  
Your Address  
Your Phone Number  
Your Web Address

ASSIGNMENT OF INSURANCE BENEFITS

Client/Insured \_\_\_\_\_

## II. DIRECT PAYMENT AUTHORIZATION

I, hereby, authorize Company be given irrevocable power-of-attorney and my express permission to endorse my name on any and all checks received from an insurance company on my behalf for services provided by Company. I agree that any portion of work, deductibles, betterment, depreciation or additional work requested by the undersigned, not covered by insurance, must be paid by the undersigned on or before its completion. I also hereby authorize and unequivocally instruct direct payment of any benefits or proceeds to Company.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2010, in \_\_\_\_\_, Florida

\_\_\_\_\_  
(Print Name) Owner/Agent

\_\_\_\_\_  
Address

\_\_\_\_\_  
(Signature) Owner/Agent

\_\_\_\_\_  
Phone

General Contractors of Central Florida LLC

Invoice

CGC1523012 - MRSR2456 - MRSR2259

|  |           |         |           |           |
|--|-----------|---------|-----------|-----------|
| 0Commodity Cir. #121<br>ndo, Fl. 32819<br>(407)745-5079 Fax:1(813)925-6938 | Date      | Terms   | Due Date  | Invoice # |
|  | 7/27/2015 | 15 Days | 7/27/2015 | 204       |

|                      |   |
|----------------------|---|
| nce Corp.<br><br>702 | Ship To   |
|                      | Rodriguez, Andres<br>10043 Vista Cove Lane<br>Orlando, FL 32825 |

|                          |            |           |              |
|--------------------------|------------|-----------|--------------|
| Insurance                | Policy No: | Claim No: | Date Of Loss |
| Perferred Insurance C... | FLP132312  | 331798    | 07/17/2015   |

| Description                                  | Quantity | Rate     | Amount   |
|--|----------|----------|----------|
| ofing to stop water intrusion. (DESCRIPTION) | 1        | 2,600.00 | 2,600.00 |
|  | 1        | 350.00   | 350.00   |
| ing Fee                                      | 1        | 1,500.00 | 1,500.00 |

CONTRACT TERMS AND CONDITIONS

The following provisions form part of the contract between the parties hereto. United Reconstruction Group, Inc. will be referred to as "United".  
**GUARANTEE:** Unless otherwise provided in the body of this contract, all work performed by United is guaranteed for one year. The guarantee covers any defect in workmanship or in materials supplied by United which cause damage to the premises. The guarantee does not cover acts beyond the control of United, including but not limited to windstorms, hurricanes, tornados, lightning, plant or animal life, such as termites, damage caused by Owner or other parties, or work done by parties not under the control of United. Mechanical and electrical modifications are not part of United's responsibility unless included in the scope of work otherwise described herein. The extent of this guarantee shall not exceed the contract amount paid to United and shall not extend to consequential damages. United Reconstruction Group, Inc. is authorized to photograph the property in order to determine the scope of services, marketing, or other purposes associated with the project.

**CLAIMS:** All claims for nonfulfillment of the contract shall be made within 30 days from completion of the work. United reserves the right to correct any condition for which it is responsible including damage to other property. In the event others repair or attempt to repair any problem with the work done by United, unless authorized by United in writing, all guarantees and warranties associated with this project shall be waived, void, and of no other further force and effect. United shall not be liable for any cost of work or repairs to its work done by others unless previously authorized by United in writing.

**PAYMENT:** Final payment is due on the completion of the job and is a condition precedent to any warranty or guarantee obligation of United. United's right to payment is not contingent upon the acceptance of work done by others and over which United has no control. The prevailing party in any litigation, arbitration or mediation relating to this agreement shall be entitled to recover its costs, including reasonable attorneys' fees from the non-prevailing party for all matters, including, but not limited to appeals. Broward County, Florida, shall be the sole and exclusive venue for any litigation involving this agreement. Interest shall be due on all amounts not paid within 30 days of the date due at eighteen percent (18%) per annum on all outstanding balances. Owner hereby irrevocably assigns to contractor any and all rebates or credits available associated with this project and agrees to execute any documents necessary for such contractor to receive payment for all rebates or credits. The insurance company's summary of claim is incorporated into the Agreement and shall become part hereof. The owner agrees that United shall be entitled to all payments made by Owner's insurer of the scope of work contained in the summary of claim. At such time as the insurance company accepts the claim, the owner shall be obligated to pay the contractor the full amount of the claim and permit United to perform the scope of work set forth in the summary of claim.

**UNFORESEEN CONDITIONS/CHANGES IN THE SCOPE OF WORK:** Any change in the Scope of Work specifically required by Owner or required by plan reviewers, city inspectors, and county or state building/planning departments involving extra costs ("Additional Work") will be performed only upon written change order, and will become an extra charge over and above the contract price. Also, Additional Work may be required if concealed conditions are discovered after work has commenced which require work beyond the work described in the Scope of Work. Contractor may stop work until the parties execute a change order. In the event that additional work is performed and a change order between the parties was not executed, work will be changed on a time and material basis, plus 20% for Contractor's profit and overhead expenses. Owner shall pay Contractor for all Additional Work. Examples of concealed conditions which will be considered an unforeseen condition giving rise to an increase in the cost of the job would be the discovery of additional damage inside a wall cavity, original workmanship defects, or any other condition that United should not reasonably have anticipated and included in the price provided for in the contract.

**OWNER RESPONSIBILITIES:** Unless otherwise provided for in this contract, Owner is responsible for any of the following conditions: Asbestos testing and removal expenses, if any; wind uplift and moisture testing if required; engineering and attachment or enhancement of the existing/proposed structural component of the building or any other structural deficiencies which may contribute to preventing positive restoration and/or reconstruction.

**DELAYS:** Time Is Not Of The Essence Of This Contract. United shall not be liable for damages resulting from any delays. In the event United must remobilize as a result of any action for which the Owner is responsible, or due to weather or other conditions not the responsibility of United, United shall be entitled to an increase of the contract price attributed thereto.

**MATERIAL PRICE CHANGES:** Due to extreme volatility in construction material prices, the price set forth in this contract applies only to orders for construction products that are ordered and paid for within thirty (30) days of the date of this contract. All other orders shall be subject to price increases based upon increases in the price of construction related products charged to United. Similarly, if there is an increase in the price of products to be used on this project subsequent to execution of this contract, the price set forth in this contract shall be adjusted to reflect the increase in price.

**AFTER PAYMENT OF THE CLAIM TO INSURED, BUT PRIOR TO COMMENCEMENT OF CONSTRUCTION:** In the event owner cancels this agreement, the owner shall be obligated to pay a fee to United equal to 30% of the total claim paid by the insurance company, and said payment shall constitute liquidated damages, not as a penalty, and United agrees to accept said payments reasonable and just compensation for said cancellation. The parties acknowledge and agree that damages that United might reasonably anticipate in the event of a breach of this agreement by owner will be difficult to quantify and the amount stipulated herein is a reasonable estimate of such damages, I.E. the coordination with adjusters and engineers, drawings, writing estimates, detailed inspections and following through until the settling of the claim.

**SUPPLEMENTS TO THE INSURANCE COMPANY:** In the event that there is additional repair needed due to unseen conditions, United will submit a "Supplemental Estimate" to the insurance company for the cost of additional repairs as necessary, and if/when payment is made by the insurance company to the owner, the owner shall pay said amount to United, in full. If the insurance company does not pay or rejects the claim, Owner shall remain liable for payment for such work.

**AFTER PAYMENT OF THE CLAIM TO INSURED, BUT PRIOR TO COMMENCEMENT OF CONSTRUCTION:** In the event owner cancels this agreement, the owner shall be obligated to pay a fee to United equal to 30% of the total claim paid by the insurance company, and said payment shall constitute liquidated damages, not as a penalty, and United agrees to accept said payments reasonable and just compensation for said cancellation. The parties acknowledge and agree that damages that United might reasonably anticipate in the event of a breach of this agreement by owner will be difficult to quantify and the amount stipulated herein is a reasonable estimate of such damages, I.E. the coordination with adjusters and engineers, drawings, writing estimates, detailed inspections and following through until the settling of the claim.

**OTHER THAN PAYMENT OF THE DEDUCTIBLE, THERE WILL BE NO ADDITIONAL COST TO THE OWNER ABOVE OR BEYOND THE AMOUNT PAID BY THE INSURANCE CARRIER, UNLESS THE PARTIES AGREE IN WRITING TO ADDITIONAL WORK.**

**LIMITATION OF LIABILITY:** United Reconstruction Group, Inc. is not liable for any claim for injury or damages, whether based upon a contractual, statutory or tort theory, which result from: (a) natural disasters including but not limited to lightning, windstorm, hail, hurricane, tornado, wind gale force or greater; (b) misuse, neglect or unauthorized alterations of the house or building or as a result of or connected with materials supplied or installed by others; (c) exposure to damaging substances such as oil, solvents etc.; (d) lack of recommended maintenance; (e) any claim related in any way to damage or injuries from mold, spores, fungus, any organic pathogen or exposure to toxic or noxious substances fumes or vapors. United Reconstruction Group, Inc. shall have no obligation under this Contract until receipt of payment in full for all work performed pursuant to this Agreement. If any materials provided pursuant to this Agreement are covered under a manufacturer's Warranty, Owner's sole recourse in the event of defect shall be against the manufacturer pursuant to its Warranty and United shall bear no liability for same. The warranty and liability of United shall only accrue to and be for the benefit of the original Owner named herein, and is NOT assignable or transferable without prior written approval and inspection by United Reconstruction Group, Inc.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNITED RECONSTRUCTION GROUP, INC. DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR LIMITS SUCH WARRANTY TO THE DURATION AND TO THE EXTENT OF THE EXPRESS WARRANTY REPRESENTED BY THIS WARRANTY.** United shall not be liable under any circumstances, or under theories of statutory or strict liability, or any other theory of liability, other than the exclusive liability set forth in this warranty which Owner agrees is its sole remedy notwithstanding the type or category of damages claimed. Under any circumstance, United Reconstruction Group, Inc. will not be liable for any personal injury claims, or claims for consequential damages to the structure or its contents, loss of time or profits or any inconvenience or expense incurred by Owner. Any change to the provisions of this section must be in writing and signed by a corporate officer of United Reconstruction Group, Inc.

FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND

PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD  
 1940 MONROE STREET, SUITE 33  
 TALLAHASSEE, FL 32399-1039

NOTICE-Customer has signed an ASSIGNMENT OF INSURANCE IF PAYMENT authorizing an instructing the insurance carrier to al Contractors of Central Florida LLC - Forms Enclosed.

I/E: General Contractors of Central Florida LLC. TAX: 47-2402516

|             |            |
|-------------|------------|
| Total       | \$4,450.00 |
| Balance Due | \$4,450.00 |

Thank you for your business.



# WHY HAVE AOB'S BECOME SO PREVALENT?

- AOB's allow vendors to have their cake and eat it too...
- AOB vendors demand payment while refusing to provide any documentation, itemization, or justification, (claiming they don't have to comply with policy requirements)
- AOB vendors can “stand in the shoes of the insured” against the insurance company and still file a lien against the insured's home to collect



# WHAT HAPPENED BEFORE AOB'S?



- Homes got fixed without claims inflation or litigation
- Vendors submitted invoices at customary rates and insurance companies paid them
- AOB is a recent Florida problem – only arisen since sinkhole reform and years without hurricanes
- The other 49 states do not have AOB's used in this way yet claims get paid every day

# HOW DO AOB'S HARM CONSUMERS?

- CONSUMERS WHO HAVE CLAIMS can be negatively impacted by:
  - A total loss of control over their claim
    - Kept in the dark about the nature, cost, and status of their claim
  - A total loss of control over lawsuits filed “on their behalf”
  - Getting hit with outrageous fees
  - Being placed in the middle of disputes over inflated fees
  - Having repairs delayed due to a vendor’s refusal to cooperate with the insurer
  - Having to indemnify or hold vendors harmless
  - Being sued for the difference between what the insurer legitimately paid the contractor and what was actually billed
  - Having liens filed against their homes

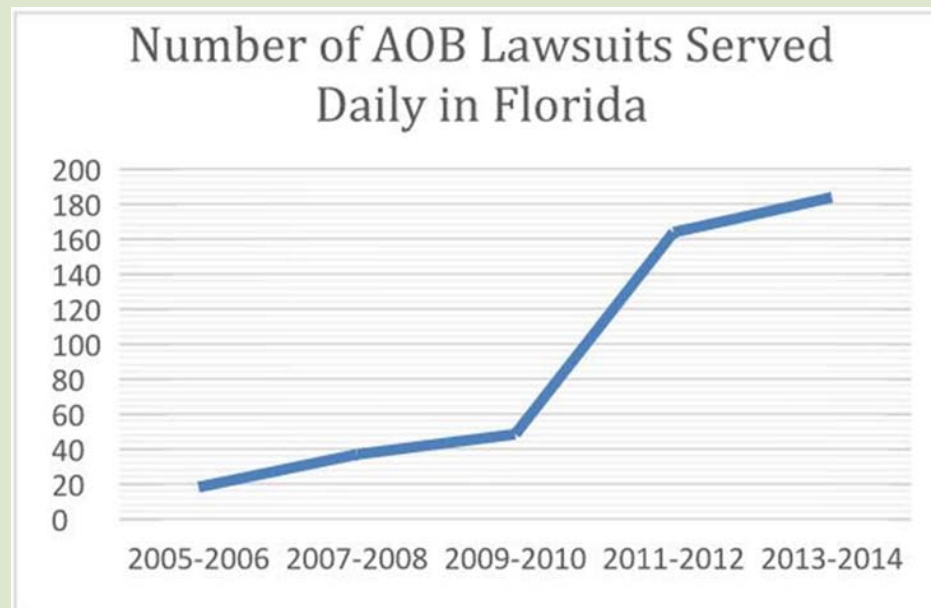
# HOW DO AOB'S HARM CONSUMERS?

- AOB is a cost driver that impacts everyone
- **EVERYONE** is harmed by increased insurance rates from skyrocketing claim costs
  - Claims are inflated from:
    - Plumber referral fees - Suing insurance companies has become so lucrative that water remediation contractors are paying up to \$1,500 in referral fees to plumbers for AOB claims. That referral fee is built into the cost of the claim.
    - Inflated invoices
    - Padded service fees
    - Public adjuster fees
    - Attorneys fees
  - Former Insurance Consumer Advocate, Robin Wescott, warned that AOB's are driving homeowners insurance rates up 17% annually
  - In some parts of the state, AOB claims settlements average nearly 3 times the amount of non-AOB claims (\$32,000 vs. \$12,000)
  - The unnecessary costs created through AOB abuses must be included in rate filings to the OIR, which increases rates or cancels decreases due to lower reinsurance costs or other favorable conditions

# HOW DO AOB'S HARM CONSUMERS?

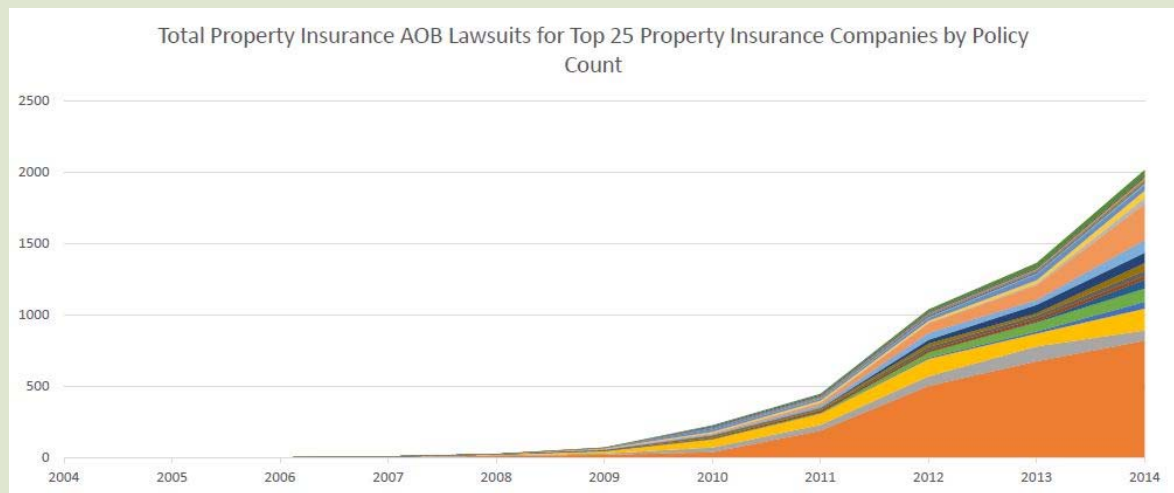
- **EVERYONE** is harmed by **SKYROCKETING LITIGATION**
  - 1000% increase in total AOB lawsuits 2005-06 to 2013-14
  - AOB lawsuits related to residential property insurance gone from 0 in 2005, to 70 in 2009, to over 2,000 in 2014.
  - Some law firms are filing 50-75 lawsuits a day

- **Total AOB Lawsuits**
  - 92,521 from 2013-2014
  - 85,137 from 2011-2012
  - 25,155 from 2009-2010
  - 19,154 from 2007-2008
  - 9,424 from 2005-2006

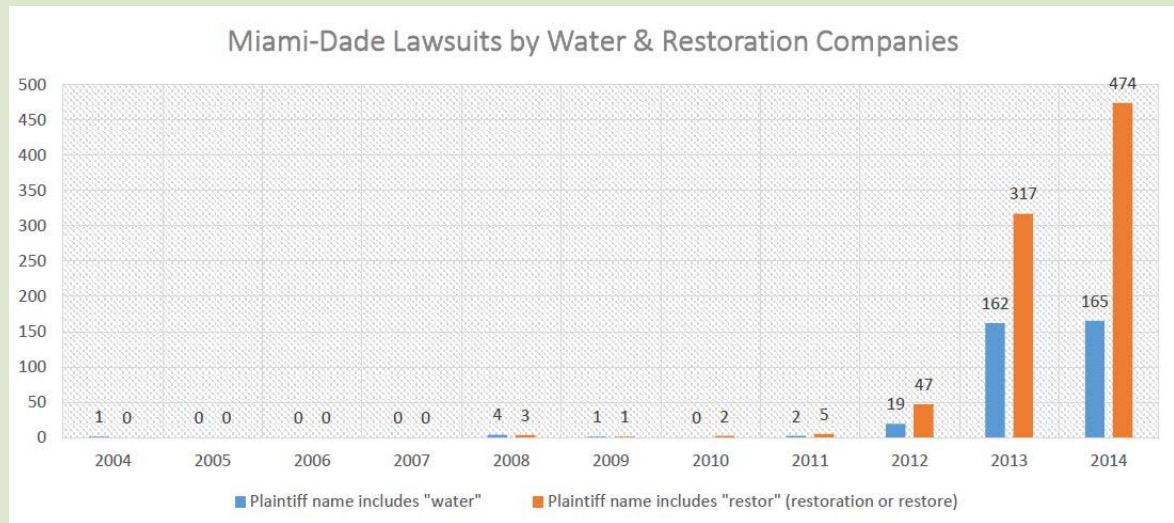


# HOW DO AOB'S HARM CONSUMERS?

- AOB Lawsuits climbing



- Miami-Dade frequency up 2600% in 10 years



# HAVE WE TRIED TO ADDRESS AOB'S?

- Yes, insurers have attempted to:
  - Attack AOB language;
  - Assert coverage defenses;
  - Assert lack of standing; and
  - Assert an inability to assign rights before they exist in coverage but Florida's courts have rebuffed these efforts
- The courts have clearly deferred to the Florida Legislature

# WHAT CAN BE DONE?

- This truly is a consumer issue and legislative reform is required to address this abusive practice and cost driver
- Reforms could codify that:
- An assignment cannot transfer the right to enforce payment for post-loss benefits under the policy (627.405 was intended as a consumer protection, not a profit generator for third-party vendors)
- The terms of insurance policy may control how AOB's will be permitted
- No liens – if assignee elects to stand in the shoes, cannot also lien
- Assignee must adhere to policy obligations
- An AOB must:
  - Be provided to insurer within 3 business days
  - Include a 3-day revocation period (triggered when provided to insurer)
  - Include a disclaimer clarifying what rights are being relinquished
  - Include a fee schedule
- An AOB cannot:
  - Include cancellation fees, processing fees, etc.
  - Prevent or inhibit communication between the insured and insurer



# WHAT IF A FIX IS NOT IMPLEMENTED?

- This problem is already out of control in South Florida and spreading to Orlando, Tampa and other areas of the state.
- If a fix is not implemented, this abusive claims practice will escalate like we've already seen with PIP and sinkhole abuse.
- We know how these sorts of cost drivers cause higher insurance rates and out-of-control litigation.

# HOW DO WE MOVE FORWARD?

- Reform will require a team effort
- Senate Bill 596 and the effort for reform should be supported
- Data calls are underway but I would assert that we have sufficient data to know we have a call to action
- John Rollins has provided substantial and credible data about the impact this cost driver is having on Citizens
- John will now bring us up to speed with the latest information