

Contractors Versus the Insurance industry— AOB's Are Under Attack

By [Chip Merlin](#) on December 3, 2018 Posted in [Florida](#), [Insurance](#), [State Legislation](#)



The [National Association of Public Insurance Adjusters](#) held its mid-year meeting last week and the topic of assignment of benefits, commonly referred to as AOB's, was on the agenda. [Lisa Miller](#), an insurance lobbyist and regulator I have come across for over twenty-five years was the speaker on the topic.

Miller is a very bright and an excellent communicator. When Lisa Miller speaks about what the insurance industry has on its legislative agenda, I listen carefully. I would suggest Florida roofers and contractors do so as well. Here is a little about her background:

As a former deputy insurance commissioner, Lisa represents and advises property insurance companies representing 25% of Florida's six million personal and commercial residential policies. She served as lead advisor to Florida's Property and Casualty Insurance Fraud Task Force and serves as regulatory consultant to investors who are entering Florida's insurance market. Lisa is the exclusive insurance lobbyist and technical consultant for the Florida Realtors association with 140,000 members in all Florida counties.

She made several points about AOB's which my notes reflect as follows:

1. AOB's were not historically required for restoration contractors to get paid by insurance companies. They are a recent phenomenon being promoted by a small group of law firms to the restoration insurance industry.

2. AOB's have led to a significant increase in first party property insurance lawsuits. She showed me statistics after her speech which indicated at least a quarter of all first party property insurance lawsuits are being brought by restoration contractors and roofers.
3. Premiums are rising as insurance companies face many needless lawsuits. She claims she has many examples of lawsuits being "leveraged" by the restoration contractors and their lawyers to pay amounts greater than what is legitimately owed. She has examples of some law firms who do shoddy legal work or who represent contractors with repetitive shoddy construction practices.
4. AOB's allow some contractors to rip off policyholders duped into the belief they will get quick quality work done and a quick claims handling by the contractor. Instead, those policyholders find they get no or little work done and are outside parties to a lawsuit owned by the contractor and their lawyers. I expect that she will have a number of policyholders testify about this occurrence at upcoming hearings in the Florida legislature.
5. The Florida Attorney's Fees statute protecting policyholders was never intended to protect parties not part of the insurance contract.

Here is what she says, in part, on the topic in her blog:

The hustle is real and it's happening every day in Florida.

Under an Assignment of Benefits (AOB) contract, unsuspecting homeowners are being duped into signing away all their insurance policy rights to a third-party repair or renovation contractor. When the contractor submits their often inflated claim to the insurance company and the insurer refuses to pay it – the contractor sues, aided by lawyers able to game Florida's one-way attorney fees and bad faith laws to collect all their attorney fees.

It's a vicious and costly game, where insurance companies settle frivolous lawsuits only because it's cheaper than going to trial. *AOB abuse has created an additional \$1 billion of inflated insurance claims* over recent years – costs eventually passed along to all homeowners through higher rates. And the problem is getting worse.

Last year, I went to Tallahassee to speak with legislators about this issue and even ended up testifying about this and other issues. In Tallahassee, I also met with several longstanding and reputable restoration contractors about all the hassles they now have with insurance companies which did not exist fifteen years ago. I agree. The insurance industry property claims departments have changed a lot since I started working in this field in 1981. Computers and big data drive claims processes with many claims processes all geared towards one goal—pay less on claims. There is a war going on in the field between restoration contractors and the property insurance claims industry. We see it every day and for every alleged "bad" example by restoration contractors, I and other Merlin Law Group attorneys are told horrendous stories by former insurance adjusters of how they are forced to underpay claims.

Our firm does represent contractors. We are not one of those mill law firms that teaches gamesmanship to contractors about how to leverage AOB's so that insurers are in a no-win situation. A number of my attorney colleagues that do so are also horrible litigators and have had numerous significant sanctions against them. Those instances will be used by Lisa Miller and the insurance industry in their fight against AOB's.

A number of public adjusting firms actually represent restoration contractors. Yet, other public adjusters are furious with the restoration industry and have provided me factual instances of those contractors working with those same shoddy attorneys as runners. Whether the newly elected Florida Attorney General Ashley Moody or local state prosecutors will do something about these actions wait to be seen. To the extent they are prosecuted or indicted, I can guarantee those instances will also be shown by Lisa Miller and the insurance lobby as a need for AOB reform.

How all this will play out is anybody's guess. But, the sweeping Republican victory does not bode well for the restoration construction industry and the future of AOBs in Florida. The insurance industry is in bed with Florida Republican leaders who have stated that AOB reform is a priority for them.

I hope those republicans and other leaders remember how important it is to support reputable contractors to get paid to do a first-rate job. Cheap, illegal and improper construction is easy to do and hide—at least for a while. [I made the following comment last week](#) and believe those making public policy should reflect on it and allow good contractors a means to enforce their ability to make a living against an insurance industry hell bent on reducing claims payments anyway they can:

Contractors are a core group that help restore our communities after catastrophes. Those contractors that come from far away communities and do quality work just as they do in their own communities are very important because there is no way local contractors can do all the work demanded following a large scale catastrophe. Professional restoration contractors that build with quality methods, materials, and pursuant to all local building codes are not the enemy and should be congratulated for their entrepreneurialism and willingness to work a long way from friends and families.

I really do not like going to Tallahassee in the winter and watch legislation being made. It is like watching sausage being made, at best. But, it looks like Tallahassee will be an inevitable place for me, again. I would suggest those good and reputable Florida restoration contractors and roofers prepare for a fight because you have one on your hands.

Thought For The Day

The American legislative process isn't well suited to large and complex measures.

—George J. Mitchell

8 Comments: See below



[Cal Spoon](#) • [13 days ago](#)

Excellent post on a very hot topic. One thing that all of these articles and opinions forget, the interest of the insured. This article is geared towards those in our profession, however, it still manages to instill the core belief that the insured/policyholder are the ones to protect. I believe this is where the entire industry, on both sides, has gone astray. Profit over all else creates a toxic environment that breeds the same toxic behavior from everyone involved. Standing up/against those injustices is imperative, again... from both sides. #ProtectTheInsured should be the number one goal. Until the premise is remembered, and followed, chaos is what will ensue. Chaos, much like war, is very profitable for folks whose morals have long been left on the wrong side of the road.



[Chip Merlin Cal Spoon](#) • [13 days ago](#)

Cal,

Great to hear from you. I know you are out there fighting the good fight with your team and beautiful wife.

You made a really great comment with:

“the insured/policyholder are the ones to protect. I believe this is where the entire industry, on both sides, has gone astray. Profit over all else creates a toxic environment that breeds the same toxic behavior from everyone involved.”

This is something everybody has to look in the mirror and ask who is really trying to do right by the policyholder or give into profits over ethical adjustment and representation which requires time with the policyholder. But, things are changing quickly in the internet age and spending extra time with the policyholder and the policyholders claims is increasingly getting ignored by many.

So, thank you for this observation.



[Jim Johnson](#) • [13 days ago](#)

"When Chip Talks, People Should Listen."

Seriously, I have respect for your common sense and dedication to fair dealing and maintaining upstanding principals!



[Chip Merlin](#) [Jim Johnson](#) • [13 days ago](#)

Jim,

Thank you for the very kind comment.

First, I am not perfect. I am a screw up and do stupid things at times. Usually, I get upset and do not stop to cool off before I shoot off something that even if correct, is so wrong and injurious in the tone that I lose. Second, it is hard to manage others in an organization to have the same zeal and understanding with wisdom that comes with experience. I should do better teaching even in my own law firm and in such a way that others would have a much higher level of desire to serve others first before putting personal profit in front of those we have ethical and even fiduciary allegiance.

And I say this knowing how hard and dedicated Merlin Law Group attorneys are towards our clients. I know I could do better for them and have recently committed a goal to be a better teacher and “old sage” for them.

Cal made a very good point in his comment—we should first be champions for those we agree to serve. When we look at the world in this perspective, it is much easier to see right from wrong and why we have to be very vigilant to commit to lifetime learning and positive action in our professions and trades. We know that those seeking riches versus service are almost always not serving their clients to the best of their ability because our service is not a commodity.

It is hard to be a great public adjuster. It is hard to be a great restoration contractor. It is hard to be a great policyholder attorney. But, in this day where we can so freely advertise,

you would think all these new entries into the market of taking care of others have been championing policyholders forever and know what they are really doing. Instead, it is often all about the selling of service with no service or ignorant service being given.



[King Of Claims](#) • [13 days ago](#)

As long as we agree it is not cut and dry that contractors who use AOBs are all bad. I personally see a place for AOBs, as many insureds will not agree to pursue denied or underpaid insurance claims on their own. They just won't. It is like anything else, the AOB can be used for good, or it can be used for bad, by unethical individuals. I just don't want to create a group, called AOB contractors, and say (or suggest) they are bad.



[Edward Fako](#) • [13 days ago](#)

The more ethical Attorneys will also be affected when obvious claims underpayments are occurring and the Attorneys Fee provision would not be enforced. That would reduce the quantity and quality of legal representation available if they insist on pushing through with throwing the baby away with the bath water.

Who decides though, that this reported 1 Billion Dollars in alleged inflated insurance claims?

To be accurate, the amounts being alleged should be carefully scrutinized. Does that amount also include the 33% to 40% plus expenses for the Attorneys to litigate? Just that alone drops slices those amounts on nearly half by the time expenses are incurred.

What about the typical enjoined Breach Of Contract Judgments? Are they including those amounts in that total? An oversight committee should be established to determine the accuracy of the totals being bandied about.



[Chip Merlin Edward Fako](#) • [13 days ago](#)

Edward,

You raise a very good point about made up statistics by the insurance industry. I wrote about this in <https://www.propertyinsuran...> and stated:

“For years, a colleague of mine, Eugene Anderson has questioned whether the insurance industry is involved in a conspiracy against its own customers by claiming that a sizable portion of them are involved in insurance fraud. The insurance associations claim an enormous amount of insurance fraud is committed every year. For example, the Insurance Information Institute says that ten percent of all property and casualty losses, totaling \$30 billion, is the result of insurance fraud. An insurance fraud investigation firm, D.M. Disney, claims on its website that fraud cost the insurance industry \$96.2 billion in 1999, and cost the average American household more than \$5,000 in higher premiums in 2001. The last figure seems absurd since the median household income in 2007 was just over \$50,000. Anderson and I question the veracity of these claims and wonder what they are based upon.

A more skeptical person may assume these statistics are made up by the insurance industry and broadcast by their paid spokespeople to assuage anger over their exorbitantly high premiums. A highly respected claims expert, Gary Fye, has suggested to me that the insurance industry propagandists are engaged in a wrongful attempt to create a culture where society suspects all claims are fraudulently created or inflated. It does not take a genius to figure out why insurance companies would love to encourage this myth among the general populace.”

I would suggest you call Lisa Miller. She is not afraid to hear other points of view.

Then, you should join us to help fight the propaganda of the insurance claims industry.



[Edward Fako Chip Merlin](#) • [12 days ago](#)

Thank you very much Chip.

I would love to serve further than I have been and am in the beginning stages of developing a continuing education platform that encourages widespread collaboration between the members.

Myself and another highly regarded person of irrefutable character and integrity have taken this first step. At some point, guidance, mentoring and low key sponsorship of this will be sought out. In it's developmental stages, I have key individuals tasked to coordinate their local regional unification of creating a solidified team, which will cohesively place Public Insurance Adjusters, Contractors and Appraisers under the same roof to enhance a unified goal rather than create diversity and become the tool of the insurance carriers negative PR campaigning attempting to have similar advocates fighting with each other instead of uniting.

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