



Insurance & Banking Subcommittee

**Monday, February 9, 2015
4:00 PM
Sumner Hall (404 HOB)**

MEETING PACKET



The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Steve Crisafulli
Speaker

John Wood
Chair

AGENDA

Monday, February 9, 2015

404 HOB

4:00 pm – 6:00 pm

- I. Call to Order
- II. Roll Call
- III. Presentation by Citizens Property Insurance Corporation

Jay Adams
Chief Claims Officer
Citizens Property Insurance Corporation

- IV. Assignment of Benefits Panel

Douglas Buck
Florida Home Builders Association

Michael Carlson
Personal Insurance Federation of Florida

Gary Farmer
Florida Justice Association

Steve Geller
Florida Association of Public Insurance Adjusters

Paul Handerhan
Florida Association for Insurance Reform

Lee Jacobson
Florida Justice Association

Matthew Jerabek
Mr. Dry Out

Scott Johnson
Johnson Strategies

Jon Lavender
Florida Association of Restoration Specialists

V. Public Testimony

VI. Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time: Monday, February 09, 2015 04:00 pm
End Date and Time: Monday, February 09, 2015 06:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Workshop on assignment of benefits for property and casualty insurance

NOTICE FINALIZED on 02/02/2015 15:49 by McCloskey.Michele

Citizens Property
Insurance Corporation

Citizens Property Insurance Corporation

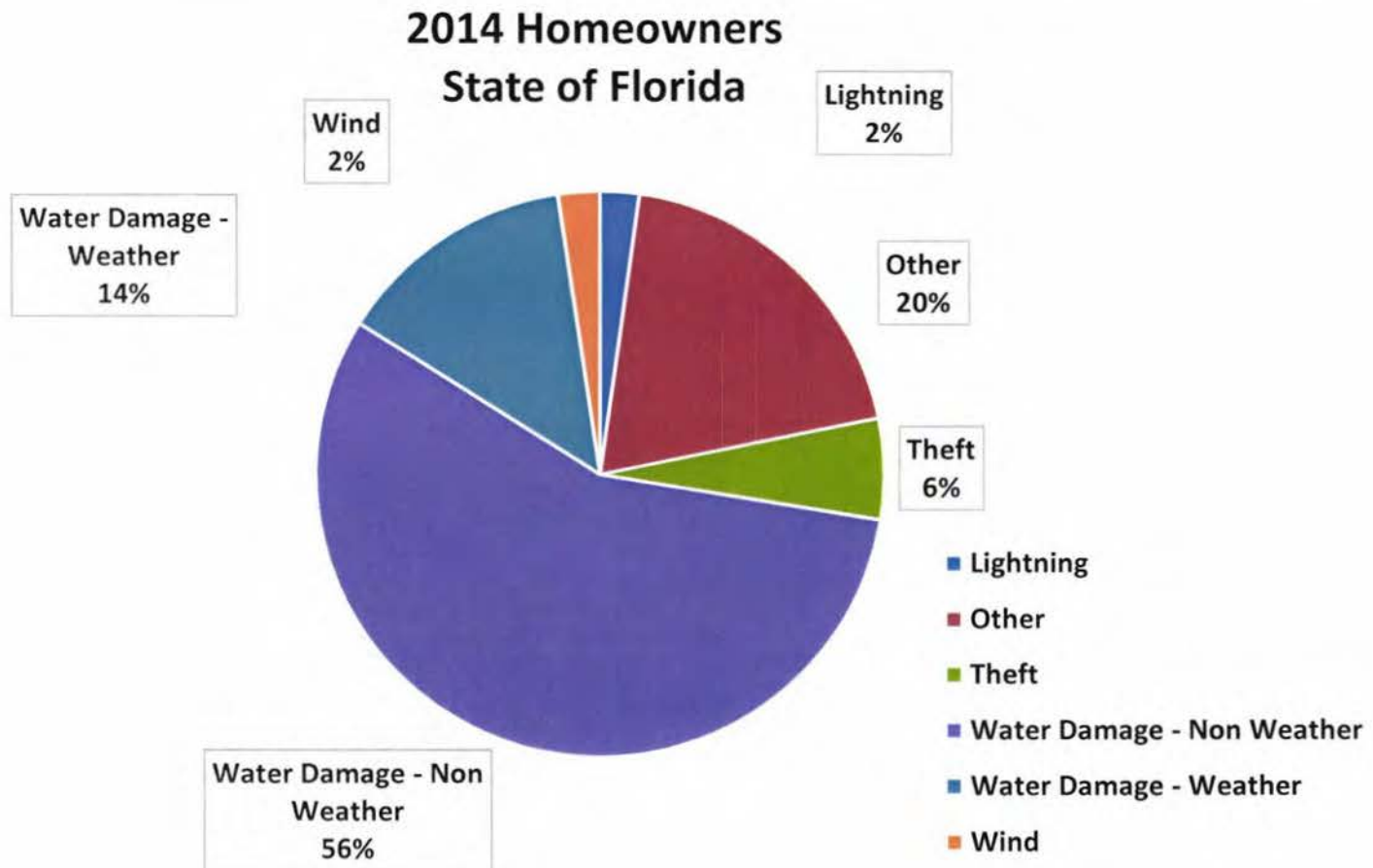
Jay Adams, Chief Claims Officer

Citizens Presentation on Assignment of Benefits

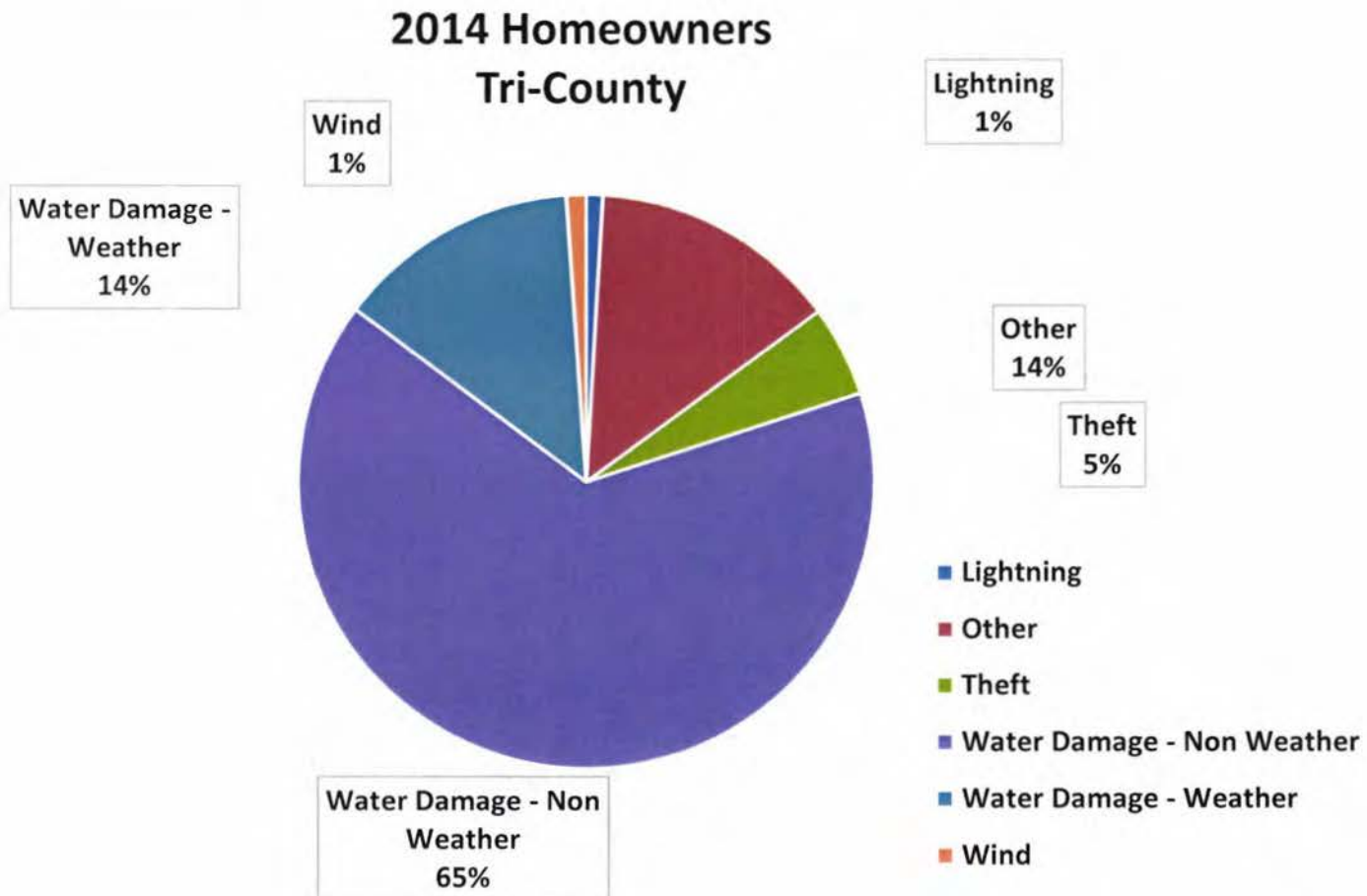
February 9, 2015



2014 Claims Volume by Cause of Loss

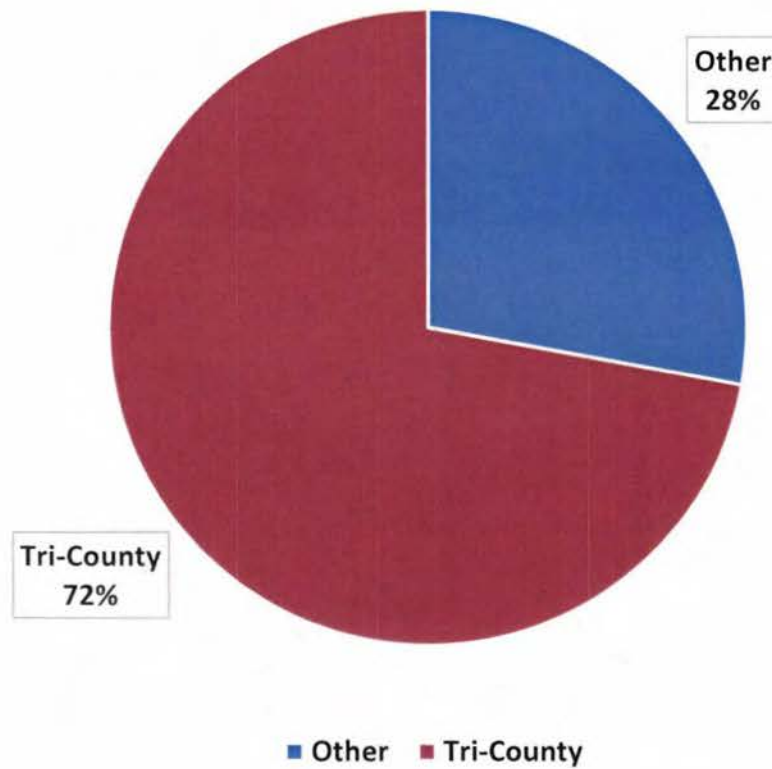


2014 Claims Volume by Cause of Loss



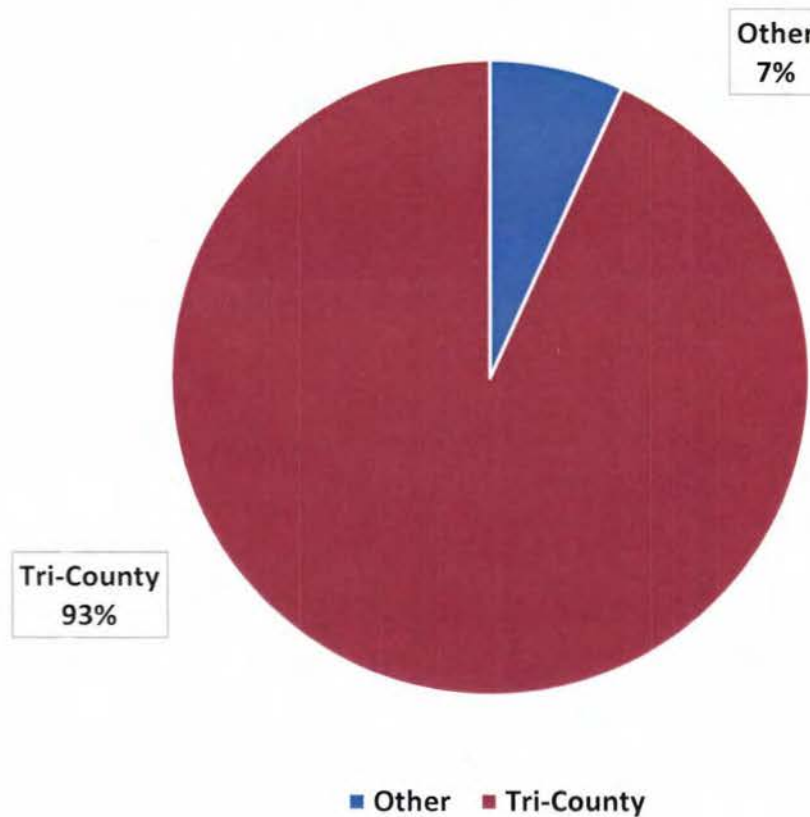
2014 Water Claims Volume

2014 Homeowners



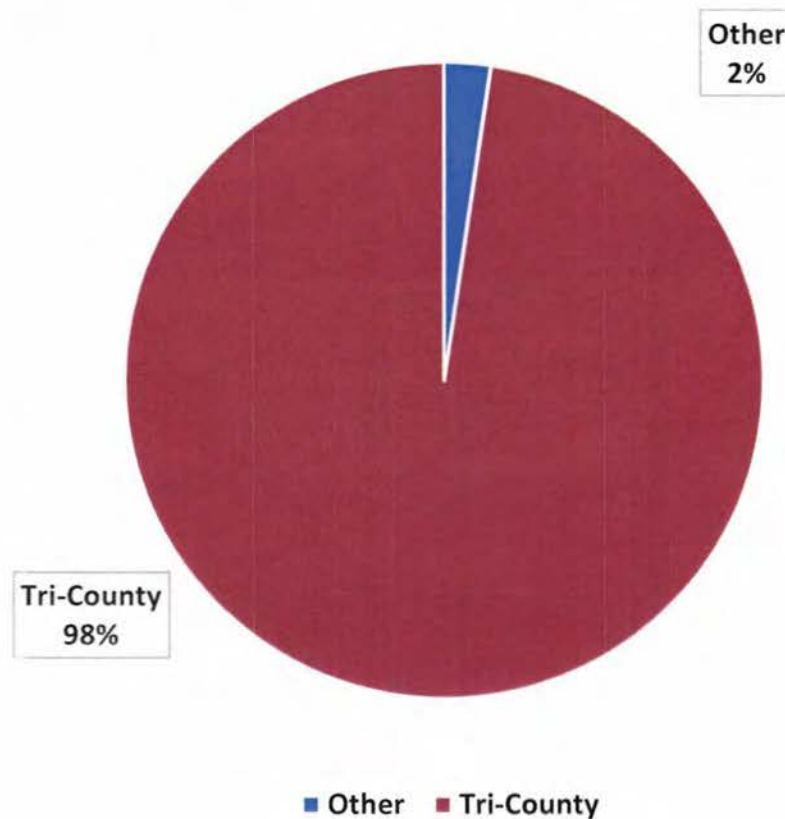
2014 Claims with Representation

2014 Claims with Representation



2014 Water Claims with Representation

2014 Water Claims with Representation



2013 Litigation Study Statistics for Water

- Water Claims
 - Represents 50% of all new reported claims
 - Represents 75% of all Litigation
- Miami-Dade
 - Represents 19% of total PIF
 - Represents 67% of total Litigation
 - Represents 68% of all water Litigation
- Miami-Dade/Broward/Palm Beach
 - Represents 43% of total PIF
 - Represents 93% of total Litigation
 - Represents 96% of all water Litigation

Paid ALAE Expenses

	Other	Water	Total
Miami-Dade	15.1	19.6	18.3
All Other	10.5	15.7	13.6
Total	12.3	17.7	15.8

- Based on Accident Year 2007 – 2013 for all Homeowner forms

- Disproportionate total claims expenses from Miami-Dade
- Expenses shown are per loss in Miami-Dade versus the remainder of state

December 2014 Triage Team Statistics

- 562 new suits reviewed
 - Water represented 513 suits or 91%
 - Top 3 counties represented 549 suits or 98%
 - Miami-Dade represented 390 suits or 71%
 - Broward represented 139 suits or 25%
 - Palm Beach represented 20 suits or 4%
 - 479 of 562 suits were represented at the First Notice of Loss (FNOL)

- Representation for water claims at FNOL has increased from **8%** in 2009 to **24%** in 2014

AOB Team Statistics

	<u>Nov-14</u>	<u>Dec-14</u>	<u>Jan-15</u>
New AOB Suits Received	115	127	80
# of Suits with Water as COL	105	109	77
% of Suits from Tri-County	99%	91%	91%
Miami-Dade	82	70	40
Broward	25	35	24
Palm Beach	7	10	9

- For **2013**, a total of **1,397** AOB suits were received
- For **2014**, a total of **1,526** AOB suits were received

AOB Increases ALAE Costs

Accident Year	% of Claims (1)	% of ALAE (2)
2007	0.21%	0.00%
2008	0.24%	4.09%
2009	0.16%	0.28%
2010	0.76%	1.25%
2011	2.32%	5.08%
2012	8.26%	14.41%
2013	10.93%	14.90%

- (1) % of litigated AOB water claims to total number of litigated water claims
- (2) % of litigated AOB ALAE paid to total ALAE of litigated water claims

- ALAE severity for a litigated AOB claim is **60%** higher than a litigated claim without an AOB

Calendar Year Non-Wind/Non-Sinkhole Loss and LAE Ratios

PLA-HO3	FL X Miami-Dade	Miami-Dade	Total
2011	23.9%	71.2%	38.0%
2012	28.2%	69.7%	40.8%
2013	23.4%	49.7%	31.9%
3 Year Total	25.3%	63.4%	37.1%

Calendar Year Non-Wind/Non-Sinkhole Loss Ratios

PLA-HO3	FL X Miami-Dade	Miami-Dade	Total
2011	20.6%	58.6%	31.9%
2012	23.5%	53.0%	32.5%
2013	17.0%	34.1%	22.5%
3 Year Total	20.5%	48.8%	29.2%

Calendar Year Non-Wind/Non-Sinkhole LAE Ratios

PLA-HO3	FL X Miami-Dade	Miami-Dade	Total
2011	3.3%	12.7%	6.1%
2012	4.7%	16.7%	8.3%
2013	6.5%	15.5%	9.4%
3 Year Total	4.8%	14.6%	7.9%

Questions

Overview AOB

Assignment of Benefits: Property Insurance

Background:

An assignment is the transfer of the rights of one party under a contract (assignor) to another party (assignee). Once an assignment is made, the assignee can take action to enforce the contract. The party receiving the assignment, however, cannot assert new rights of his or her own that did not belong to the person assigning the rights. Assignment of benefits are commonly used in health insurance and personal injury protection insurance. In health insurance, a policyholder typically assigns his or her benefits to payment for a covered medical service to the health care provider. Thus, the treating physician gets paid directly from the insurer.

Assignment of benefits can be made in two circumstances, *pre-loss assignment* of benefits and *post-loss assignment* of benefits. Pre-loss assignments are made before a claim arises and post-loss assignments are made after a loss. Florida law states that a policy may be assignable, or not assignable, as provided by its terms.¹ Florida courts have interpreted the law as allowing an insurer to prohibit a policyholder from making pre-loss assignments without consent of the insurer.² In other words, an insurer can include a provision in a property insurance policy that, in effect, prohibits a policyholder from assigning his or her policy to a third party. However, the courts have further held that such a provision does not prohibit the policyholder from assigning his or her benefits under the policy once a claim arises.³

The Issue:

Assignment of benefits are becoming increasingly common in property insurance claims, especially in water damage claims (often from faulty pipes) where a homeowner is in need of immediate mitigation to prevent further damage. To avoid incurring expenses upfront, the homeowner signs an assignment of benefits contract with a contractor/water remediation company for services. Some insurers assert assignment of benefits to a contractor or vendor in a water damage claim is problematic because it is resulting in:

- Policyholders, often unknowingly, assigning away all rights, not just those for services rendered, or assigning away the rights but not the duties under a policy.
- Increased frequency, cost, and litigation of claims.
- Fraudulent claims.
- Practices that circumvent statutory consumer protections.

The Courts:

Currently, four property insurance assignment of benefits cases are under appeal to a Florida district court.⁴ The following summarizes the major arguments asserted by litigants in these cases.

¹ s. 627.422, F.S.

² This is usually done by a "consent to assignment clause." See Cordis Corporation v. Sonics International, 427 So.2d 782 (Fla. 3rd DCA 1983) noting "contractual provisions assignability are generally enforceable in Florida."

³ Highlands Insurance Company v. Kravec, 719 So.2d 320, (Fla. 3rd DCA 1998); Cordis Corporation v. Sonics International, 427 So.2d 782 (Fla. 3rd DCA 1983). See also West Florida Grocery Company v. Teutonia Fire Insurance Company, 77 So. 209, 211 (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."); Better Construction, Inc. v. National Union Fire Insurance Company of Pittsburgh, 651 So.2d 141, 142 (Fla. 3d DCA 1995) ("A provision against assignment of an insurance policy does not bar an insured's assignment of an after-loss claim.")

⁴ ASAP Restoration and Construction, Inc. v. Tower Hill Signature Insurance Co., Case No. 4D13-4174, 2014 WL 3558189, (4th DCA Mar. 13, 2014); One Call Prop Services Inc., Case No. 4D14-0424, (4th DCA Apr. 3, 2014); Emergency Services 24, Inc. v. United Prop. & Cas. Ins. Co., Case Nos. 4D14-0576, 4D14-3320, 2014 WL 7201865 (4th DCA Nov. 19, 2014); Security First Ins. Co. v. State of Florida, Office of Insurance Regulation, Case No. 1D14-1864 (Aug. 4, 2014).

<p>When does the Contractor/Vendor take assignment of an enforceable right?</p>	<p>Is the assignable benefit a <u>right to insurance proceeds</u> that are fixed as of the date of the loss or a <u>right to payments due and owing</u> under the policy only after one of the following policy conditions (Loss Payment Clause) is met:</p> <ol style="list-style-type: none"> 1. Agreement between insured and insurer; 2. A court judgment; or 3. Filing of a mediation agreement with insurer. <p>Stated differently, does the Loss Payment Clause create a “duty to adjust” which the insured cannot assign, or does it only govern the delivery of a check for the proceeds after coverage has been admitted or after determination of the amount due when the amount has been disputed?</p>
<p>Does a Contractor/Vendor who seeks to enforce assignment of a prospective insurance recovery whose amount has not yet been determined engage in unlawful public adjusting?</p>	<p>A “public adjuster” is a person “who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims.”⁵ Public adjusters are required to be qualified and licensed by the Department of Financial Services and are subject to enforcement actions for violations of certain consumer protection standards. Under Florida law, the only people authorized to adjust a claim are the insured, an attorney, or a public adjuster.⁶</p>
<p>Can an insurance policy expressly prohibit assignment of post-loss rights?</p>	<p>The issue presented is whether the Office of Insurance Regulation (OIR) improperly construed Florida case law as <u>prohibiting</u> an insurer from including in its policy a provision that would prohibit assignment of post-loss benefits and whether the OIR exceeded its statutory authority by disapproving a policy endorsement based on Florida case law and not a provision of the Florida Insurance Code.</p>

⁵ s. 626.854(1), F.S. (2014).

⁶ ss. 626.854(1) and 626.860, F.S.

Proposal AOB

ASSIGNMENT of BENEFITS PROPOSAL for DISCUSSION:

a. Allow insurers to prohibit AOB with three exceptions

627.422 Assignment of policies; prohibition on the post-loss assignment of rights, benefits, causes of action, or other contractual rights. – A policy may be assignable, or not assignable, as provided by its terms.

(1) Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

(2) A property insurance policy may prohibit the post-loss assignment of rights, benefits, causes of action, or other contractual rights under the policy, except:

(a) An insured may assign the right for payment to a person or entity providing services or materials to mitigate or repair damage directly arising from a covered loss. The assignment is limited solely to the right to be named as copayee for the benefit of payment for services rendered and materials provided.

(b) For the limited purpose of compensating a public adjuster for services authorized by s. 626.854(11).

(c) For the payment of attorney fees for representation of the insured.

(3) Except as provided in subsection (2), any post-loss assignment of rights, benefits, causes of action, or other contractual rights under a property insurance policy that prohibits such assignment renders the assignment void.

b. Clarify extension of insurance interest and clearly prohibit public adjusting by contractors

627.405 Insurable interest; property. –

(1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

(2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

(3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.

(4) Insurable interest does not survive an assignment, except to a subsequent purchaser of the property who acquires insurable interest following a loss.

626.854 "Public adjuster" defined; prohibitions. – The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(16) (a) A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

(b) Any assignment or agreement that purports to transfer the authority to adjust, negotiate, or settle any portion of a claim to such contractor or subcontractor, or that is otherwise in derogation of this section, is void.

Personal Insurance Federation of Florida Proposal – February 9, 2015

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(b) For the limited purpose of compensating a public adjuster for services authorized by s. 626.854(11).

(c) For the payment of attorney fees for representation of the insured.

(3) Notwithstanding subsection (2), the policyholder, and any loss payees named in the insurance policy declarations, shall maintain the exclusive right to enforce payment from the insurer, including enforcement of payment through the terms of the policy and any dispute resolution form, including litigation.

(4) Except as provided in subsection (2), any post-loss assignment of rights, benefits, causes of action, or other contractual rights under a property insurance policy that prohibits such assignment renders the assignment void.

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FAPIA



The Licensed Public Insurance Adjuster vs. Unlicensed Persons ***(Acting as a Public Insurance Adjuster)***

- ***Florida Administrative Code #69B-220.201 Ethical Requirements, “The work of adjusting insurance claims engages the public trust”***
- ***Florida Statute 626.8739 states, “... any person who acts as a resident or nonresident public adjuster or holds himself or herself out to be a public adjuster to adjust claims in this state, without being licensed by the department as a public adjuster and appointed as a public adjuster, commits a felony of the third degree...”***
- ***Contractors, restoration companies and other persons calling themselves “Claim Experts”, “Loss Consultants” and other “Unregulated Titles” are bypassing public policy regulations when they attempt to adjust property claims for policyholders.***

Unauthorized Practice of Public Adjusting (UPPA) – Problem

Policyholders: Consumers are in some cases contracting with unregulated and unqualified entities. Furthermore, these entities are advising policyholders how to navigate the often times complicated claims handling process. As a result, some policyholders fail to be fully indemnified for legitimate claims. Public Adjusters are the only licensed professionals that are trained to quantify the amount of loss and value of covered damages for Florida’s policyholders.

Insurers: Carriers will benefit from dealing with licensed and regulated Public Adjusters. Public Adjusters are trained and skilled at reviewing policy language and presenting claims in a manner that is acceptable and reasonable by Industry standards. Many Insurers appreciate the value of working with licensed and trained professionals who are experts in the claims handling process. None of these benefits are present when carriers are presented with claims from unlicensed and unregulated entities.

Public Adjusters: These unlicensed entities are unfairly competing against licensed public adjusters and taking market share in a non-transparent and unregulated manner.

“There has been a recent spike in the number of complaints FAPIA has received about the unlicensed practice of public adjusting in Florida. Persons engaging in the UPPA pose a threat to policyholders who are uneducated about claims and susceptible to misrepresentations made by unregulated entities.

Statutory Requirements Set Forth to Protect the Public	Public Insurance Adjuster	Unlicensed Person (<i>acting as a Public Insurance Adjuster</i>)
Must meet the Department of Financial Services eligibility requirements including minimum age and citizenship requirements	Yes	No
Must comply with a strict code of ethics as it pertains to public adjusters under 69B-220.051	Yes	No
Finger printing & criminal background check. Persons who have committed certain felonies or crimes of moral turpitude are permanently barred	Yes	No
Study for, pay for and pass the State Public Adjuster Apprentice Exam	Yes	No
Application and state fee for the Public Adjuster Apprentice License	Yes	No
Apply for and purchase a \$50,000 surety bond, renewed annually	Yes	No
Apply and pay state fee for an statutorily required appointment, renewed annually	Yes	No
12 Months, and 1200 logged hours of Apprenticeship Training under a mentor public adjuster licensee	Yes	No
Successfully complete the Accredited Claim Adjuster Training Programs approved by the state	Yes	No
Submit application and pay state fee for the Florida Public Adjuster License	Yes	No
Study for, pay for and pass the state public adjuster examination	Yes	No
Continuing education requirement of at least 24 hours of public adjuster specific education every two years	Yes	No
Fiduciary duty to the policyholder	Yes	No
Must designate a primary public adjuster	Yes	No
Must refrain from any activity that would be construed a conflict of interest including receiving referrals or direct or indirect payment connected to the repairs of the property in excess of \$25.00	Yes	Contractors, roofers and others typically pay and receive an exorbitant amount of referral fees since their industry is not regulated
Public adjusters must "put the duty for fair and honest treatment of the claimant above the adjuster's own interests in every instance" (§ 69B-220.201, Fla. Admin. Code.)	Yes	Contractors and others engaging in the unlicensed practice of public adjusting have no such duty
Contract must be in writing and prominently display fraud statement and right to cancel the agreement	Yes	No



February 4, 2015

Representative John Wood
Chair, Banking and Insurance Subcommittee
Florida House of Representatives

Chair Wood:

On September 5, 2014, FAIR convened a working group consisting of representatives of property insurance companies, the construction industry, plaintiff's attorneys (including an attorney who represent water extraction and restoration contractors), and public adjusters to study the issue of post property claim Assignments of Benefits. Based on the discussions from the working group and numerous other conversations with various stakeholder groups and members, we present the following findings and recommendations.

Summary of Findings:

1. There is significant debate and disagreement regarding the legality of post claim property Assignments of Benefits (AOBs) and whether they can be voided by a policy of insurance.
2. There is compelling evidence that AOBs are an important tool used by legitimate contractors to get paid for legitimate work.
3. There is significant agreement that there exists a widespread problem caused by the abuse of AOBs that is harmful to both insurance consumers and the industry. This abuse of AOBs is committed by certain contractors who provide various services that are reimbursable by property insurance companies. Examples include water extraction and restoration contractors. These abuses can create significant financial distress and leave the property owner without sufficient funds to complete repairs.

These abuses include:

- a. Collusion with plumbers, A/C contractors, insurance agents, and property managers that includes monetary incentive payments or "kickbacks".
- b. Significant inflation of the cost of services provided causing bloated litigation costs which ultimately leads to higher property insurance rates.
- c. Price gouging that can leave the insured without necessary funds under their policy limits to complete necessary repairs.
- d. Violation of Florida law by acting as a public adjuster without the necessary licensing and training.

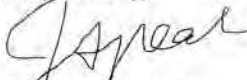
In our recommendations to the Committee, FAIR staff has focused on narrowly tailored solutions that focus on the problem and that minimize the risk of unintended consequences. As such, we submit that bad actors who abuse the process are the problem to be fixed, not the legal status of AOBs.

Proposed Solutions:

1. Bar kickbacks from any party for the referral of any insurance related mitigation, repair, or restoration service. Violations to be punishable by fines and/or loss or suspension of license.
2. Void any AOB that does not include the following:
 - a. A detailed estimate of scope and cost of services to be provided.
 - b. Notification to the insurance company within 48 hours of the date of the assignment.
 - c. A three day right of rescission by the Assignor (5 days during a declared state of emergency).
 - d. A required disclosure in bold print separately signed by the Assignor explaining the above and disclosing that the Assignor may be responsible to pay charges not covered by the insurance policy.
3. Enforcement of AOBs limited to the scope of work performed.
4. Require that owners/principals/officers of water extraction and remediation companies be licensed and bonded.
5. Require that all employees and subcontractors be certified by IICRC for the services that they are providing and be bonded.

We appreciate the opportunity to provide this and additional input and look forward to participating in the February 9, 2015 Committee Workshop.

Respectfully,



Jay Neal, MBA, JD
President and CEO