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Florida insurance industry balances optimism for AOB reform against experience

Insurers expect a positive impact from long-sought changes to Florida law meant to slow property claims abuses, but they also know attorneys and contractors may find other loopholes to exploit.

The response from opportunists to the coming changes in assignment of benefits, or AOB, outran the pace of the reform bill as it wound through the state legislature, according to industry representatives. Claims spiked in advance of the July 1 effective date, with one law firm posting an online instructional video on how to file quickly, said Logan McFaddin, a regional manager at the American Property Casualty Insurance Association who lobbied for AOB reform.

"We saw a rush of trial lawyer attorneys advertising to clients ... 'Run, don't walk, to use your AOB claims,'" he said in an interview.

That phenomenon illustrates concerns from many in the industry that, despite the hard-won changes to state regulations that encouraged inflated storm damage claims and soaring litigation costs, the claim-and-lawsuit cottage industry could shift its attention to other lines of insurance, McFaddin said.

Florida AOB reform



Florida's assignment of benefits, or AOB, law uses a typical insurance claim mechanism to allow home or car owners to sign over their collection rights to vendors or repair contractors to get storm repairs underway quickly.

Provisions of AOB that resulted in legal abuse:

- Contractors often submitted inflated claims. If insurers challenged them and were judged to owe any amount above what they offered to settle, they had to pay contractors' attorney fees. Claimants never had to pay insurance companies' legal costs even if they lost in court.
- The "one-way" attorney fee provision encouraged insurers to settle claims, driving up litigation costs and loss expenses in the state.

Reform provisions:

- Replaces "one-way" attorney fee provision for vendors and contractors assigned insurance benefits with a formula that awards fees according to how the judgment from each legal challenge compares to the insurance company's original settlement offer.
- Insurers can make available property insurance policies that prohibit or restrict assignment of benefits after storm damage occurs along with policies that do not restrict AOB. Those with restrictions must be offered at a lower cost.

While many in the industry are "pleased" by the soon-to-be-effective law, there is a "lingering worry" that abuses could creep into other areas, agreed Lucian McMahon, a senior research specialist at the Insurance Information Institute. Years before the most recent spike in litigation, claims abuse began in personal injury protection in auto insurance. Reform measures stemmed that tide, but then similar abuses started happening in homeowners property and auto glass, he pointed out.

McMahon said the industry is dealing with a "whack-a-mole" situation as Florida has experienced several cycles of claims fraud impacting different areas of insurance due to assignment of benefits rules. Assignment of benefits is a mechanism that allows policyholders to sign away to third-party contractors their rights to collect from insurance companies in an effort to get repairs started quickly.

The Sunshine State has acquired a reputation for a litigation-friendly environment that winds up being costly to business. A study published by the U.S. Chamber of Commerce in 2018 ranked Florida first in the nation in legal costs and compensation as a percentage of state GDP.

As the reform legislation neared passage, Citizens Property Insurance Corp. estimated that the changes would reduce statewide average rate need to 10.1% from 25.2%. The drop in rate need would be even more pronounced in South Florida, which Citizens described as the "epicenter" of the legal abuse. Rate need is the amount premiums need to rise for them to be actuarially sound.

