



ASSIGNMENT OF BENEFITS IN THE STATE OF FLORIDA

Written Statement to National Council of Insurance Legislators

Nashville, Tennessee

March 15, 2019



James Lynch
Chief Actuary and Vice President of Research and Education
Insurance Information Institute
jamesl@iii.org (212) 346-5533

My name is James Lynch. I am chief actuary and vice president of research and education at the Insurance Information Institute in New York. Our organization has for nearly six decades worked to increase public understanding of insurance – what it does and how it works. We have more than 50 insurance company members, including 10 of the 20 largest writers of personal auto insurance in Florida and seven of the 20 largest homeowners writers. It is important to note that the I.I.I. does not engage in direct lobbying. Instead, we aim to provide objective, fact-based information about insurance, information that is rooted in economic and actuarial soundness.

I am a Fellow of the Casualty Actuarial Society, the leading property/casualty actuarial organization in the world, and I serve on the society's board of directors. I am a member of the American Academy of Actuaries. I have more than a quarter-century of experience in property/casualty insurance and reinsurance and have held senior actuarial positions at QBE the Americas and White Mountains Reinsurance of America.

Last year, I was lead author of a study titled "Florida's assignment of benefits crisis: Runaway litigation is spreading, and consumers are paying the price." Today I will summarize the study's findings and show how the Assignment of Benefits problem harms the state's insurance market and raises prices for consumers. I will also discuss whether this problem could spread to other states.

In recent years, though, both lines of business have incurred billions in unnecessary costs from the abuse of a common tool that, in every other state, facilitates the efficient settlement of claims.

This tool is the Assignment of Benefits. Here is how it normally works: As a convenience, a policyholder after an accident grants a third party – an auto glass repair

shop, a medical practitioner, a home contractor – permission to directly bill an insurer to settle a claim. The policyholder has assigned the ability to collect the benefits they were expecting from the insurance company over to the party that patched up whatever was damaged in the accident.

AOBs are common in health insurance. Preapproved doctors and hospitals can bill the insurer directly for covered costs. They also have long been used for personal auto physical damage claims: a body shop estimates repair costs subject to insurer approval. After the repair, the insurer pays the body shop.

The state's legal environment has encouraged vendors and their attorneys to solicit unwarranted assignments from tens of thousands of Floridians, conduct unnecessary or unnecessarily expensive work, then file tens of thousands of lawsuits against insurance companies if the company denies or disputes the claims. We estimate that this behavior has caused cost policyholders billions spent in excessive claim settlements and legal fees. These costs are like a hidden tax on consumers, helping to increase what are already some of the highest insurance costs in the country.

Florida is the only state – as far as we can tell the only place on earth – where this is happening.

[SLIDE 2]

The primary driver of abuse is the way attorneys get paid if there is a lawsuit over a disputed claim. If the plaintiff (the medical provider or contractor or glass repair shop) wins any amount at trial – even one dollar – the insurance company must pay the plaintiff's legal costs. However, if the insurer wins, the plaintiff owes the insurer nothing.

It is a one-way, loser pays arrangement. If the case is settled before judgment is rendered, the plaintiff's attorneys typically negotiate a partial payment of legal fees.

The abuse manifests itself in the data.

The chart here is built from data in the Service of Process database maintained by the Florida Department of Financial Services. The database gives details of every instance in which a plaintiff gave legal notice a lawsuit had been filed. We went line by line through more than 500,000 records dating back to 2013 to isolate Assignment of Benefit cases, and the results are reflected in the chart that you see. (I should note that our white paper only reflected lawsuits filed through November 9. The slides you see today reflect filings through year-end.) Over those five years, the number of assignment of benefits cases nearly doubled.

Other organizations, like the Florida Justice Reform Institute, have done similar work going back even farther. That organization found that in 2000 there were roughly 1,300 Assignment of Benefit lawsuits. So in 18 years, the number of assignment of benefit cases has increased well over 100 fold – from thirteen hundred to one hundred fifty thousand.

This is a stupefying increase, and I can comfortably say that no other state has experienced a phenomenon remotely like this, either in insurance or in just about anything else. It is hard to find growth that fast anywhere in the American economy. For example, over the same period, the number of wireless connections for cellphones in the United States merely quadrupled.¹ So in the 21st Century Assignment of Benefit

¹ To 400 million from 109 million, according to the [Cellular Telecommunications Industry Association](#).

lawsuits in Florida grew more than 25 times faster than wireless subscribership grew nationwide.

[SLIDE 3]

Florida is the only state where we find any significant AOB abuse. And in Florida we find it everywhere – contrary to what some believe, this is a statewide problem. The slide you are looking at shows that by 2013 the problem was entrenched in South Florida, with more than 55,000 Assignment of Benefits suits filed. But it had also been growing in the I-4 corridor that stretches from Tampa through the heart of the state (more than 17,000 cases) and everywhere else in the state (just more than 6,000). Note that each area of the state has several times more lawsuits than the 1,300 the Florida Justice Reform Institute calculated as the total for the entire state a little more than a decade earlier.

The numbers do not peak in 2013. In South Florida, they grow another 30 percent through 2018. Along the I-4 corridor they more than tripled. In the rest of the state, the number of lawsuits filed more than doubled. So whatever took root in South Florida years ago, it is proliferating – the kudzu of insurance claims.

[SLIDE 4]

Our research shows that to understand the problem, one needs to see how it has spread from one line of business to the other. It started with no-fault auto insurance.

This table shows how excess legal expenses wracked the no-fault automobile line of business. Each bar shows the claims adjustment expenses as a percentage of incurred expenses. In 2006, for example, for every dollar spent paying reimbursements for injuries in no-fault claims, insurance companies spent 6 cents in claims adjusting.

But as the Assignment of Benefits crisis took hold, insurers had to spend more and more on legal fees, driving up overall adjustment expenses. By 2014 insurance companies spent 22 cents on adjusting claims for every dollar they spent covering injuries.

As the problem ramped up, the Florida Legislature enacted reforms. But insurance has a long tail – many injury claims, especially the most severe, take a year or more to settle. So clearing the system of a lot of fraud and abuse did happen by 2015, though you can see by the chart that adjustment expenses remained a bigger drain on insurers at the end of the period – 9 percent of claims – than at the beginning.

Had adjustment expenses for no-fault automobile insurance claims been held at their 2006 level; had they not been driven higher by increasing legal expenses, the savings would have been \$900 million.

[SLIDE 5]

Whatever progress was made earlier this decade, though, seems to be disappearing. This slide shows the number of no-fault lawsuits filed has increased by nearly a third, to more than 94,000 last year from just over 70,000 five years earlier.

What happened?

First, the 2013 reforms did not address the core issue – the one-way attorney's fees that create an incentive to sue. Instead (among other reforms) it restricted no-fault payments to certain healing professions, like massage therapists. But excluding some services does not affect other healing professions. So abuse returns and in the meantime finds a new place to fester.

[SLIDE 6]

That place would be homeowners insurance. This slide shows that in South Florida, from 2013 to 2018, the number of Assignment of Benefits lawsuits increased nearly six-fold, to 12,570 last year from 2,190. In the rest of state, there were more than 10 times as many claims last year – 6,689 – as five years earlier.

[SLIDE 7]

Another place was auto glass repairs. This slide shows that in 2014, in the wake of no-fault reforms, the number of lawsuits involving no-fault fell by 12 percent. But the number of lawsuits involving auto glass claims more than doubled. This trend continued in 2015. In 2016 and 2017, we can see the issue has returned to no-fault, but the auto glass problem continued to get worse.

[SLIDE 8]

In 2018 there was a marked drop in the number of lawsuits, which is a welcome development. In our paper, we suggest this was caused by insurers who entered into pricing agreements with aggressive vendors. And we have heard that an aggressive organization appears to have exited South Florida.

The state appears to have a whack-a-mole problem, one that no other state has. Any solution that addresses just one line of business is likely to exacerbate a problem in another line or create problems in yet another line.

[SLIDE 9]

The difficult legal environment for auto glass claims has taken a toll, and we attempt to quantify it. This chart again shows how many cents of claim adjustment costs a company incurs for every dollar of repairs made. Florida's results are the bars, and the line is the nationwide average.

This chart is not only for glass claims, but all first party auto claims – the cost the insurer incurs fixing its customer’s car after an accident or other calamity, like a fallen tree branch.

You can see how costs in Florida escalate, particularly after 2013. Meanwhile, in the rest of the country claims adjustment expenses are actually falling as a percentage of incurred losses – that’s what the line on the chart shows - as insurers take advantage of technological changes that make simple claims easier to adjust.

Florida’s costs keep rising, and the rest of the nation’s keep falling, till we arrive at 2017, where legal and other adjustment costs in Florida are double the national average.

[SLIDE 10]

We have been asked many times whether this problem has spread – or will spread – to other states. We cannot say for certain; after all it is impossible to prove a negative. Based on our knowledge of the situation in Florida, there are several questions policymakers can ask about their own states.

[CLICK IN POINT 1]

First, is it legal to assign benefits to third parties? Though the practice is common in every state, it is not permitted in every line of business. For example, it is our understanding that in Texas, recovery from property claims cannot be assigned to third parties.

[CLICK IN POINT 2]

Second, do other parties with an interest in the claim, such as insurance companies, lenders or even the spouse of the person making the assignment, need to

approve or at least know that the assignment has taken place? In Florida the answer is no, and insurers often only hear about a claim when the bill is presented – too late to ensure that repairs are done efficiently and at a reasonable price.

[CLICK IN POINT 3]

Does the beneficiary of the legal benefit also get the right to sue? Without the right to sue, plaintiffs and contractors have little chance to create the legal processing mill that is the lifeblood of the AOB crisis.

[CLICK IN POINT 4]

Is there a one-way, insurer-pays provision at trial? This provision creates an enormous incentive to contest every claim. As far as we can tell, the answer to this question will be no. We are aware of two-way, loser-pays legal environments, and of one-way arrangements where the filing of a frivolous lawsuit ends with the plaintiff paying the defendant's fees, but we haven't seen anything like Florida's provision.

If a state has any of these features, regulators and policymakers should, at the very least, monitor the filing of lawsuits to ensure that this crisis has not spread to their state.

To summarize:

- Assignment of benefit abuse is growing.
- Florida is the only state where we have found it.
- It is spreading across the state.
- It is spreading across lines of insurance, from no-fault to homeowners and auto glass.

- The cost of settlements and the legal fees increase costs that insurers bear and, ultimately, results in higher premiums for Floridians.
- We do not believe the problem has spread beyond Florida, but policymakers should monitor the situation.

[END SLIDE]

Thank you for your time. I would be happy to respond to any questions you might have.