



# ASSIGNMENT OF BENEFITS IN THE STATE OF FLORIDA

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Thank you, Senator Broxson and members of the committee.

My name is James Lynch. I am chief actuary and vice president of research and education at the Insurance Information Institute (I.I.I.) 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.

Florida is one of the most expensive states in the nation for personal property/casualty insurance. According to statistics from the National Association of Insurance Commissioners, the average auto insurance expenditure in Florida in 2016 – the most recent year available – was the fifth highest in the nation, with the average

policyholder paying \$1,260. Only New Jersey, New York, Louisiana and Michigan drivers paid more.

Homeowners insurance is also distressingly expensive. The average expenditure in Florida was \$1,918 in 2016. That was third in the country, just behind Louisiana and Texas.

There are many factors that drive insurance costs higher in Florida. The state has struggled with the medical component of auto insurance, and of course, homeowners rates are affected by the annual threat of multibillion dollar losses from hurricanes.

In recent years, though, both the auto and homeowners 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. Others have described how assignment of benefits works. In every other state, this is a benign transaction. In Florida, it has fueled an insurance crisis.

The state's legal environment has allowed a few aggressive 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 any insurer that denies or disputes the claims. The resulting costs are like a hidden tax on consumers, helping to increase what are already some of the highest insurance costs in the country.

[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) succeeds, 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.

A second driver is that the insurer frequently does not know that the assignment has been made. There is no requirement that the insurance company needs to approve, or even know, that an assignment has taken place. Sometimes the insurance company is not aware of the claim until the third party seeks payment. At that point it is hard to tell what work was necessary.

The situation seems ripe for abuse. Once an aggressive third party obtains an assignment of benefits, they can run up outrageous bills, then present them to an insurance company. If the insurer objects, the third party hires a lawyer – an expensive one.

For the insurer, at this point, one of three things can happen – none good.

- It can fight the case and win, but it will incur its own significant legal bills in a tit-for-tat fight with the other side's attorneys;
- It can fight the case and lose. Then it incurs its own significant legal bills, its opponent's legal bills, plus the cost of the judgment;
- It can settle before judgment. Then it incurs somewhat less significant legal bills, the opponent's legal bills (which are a bit less than they would

be had the case run to conclusion), plus the negotiated settlement (again a bit less than it might have been).

The incentives for abuse seem clear, and they manifest themselves in the data.

The first manifestation comes from the Service of Process database from 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, 2018. 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 1,300 to 150,000.

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.<sup>1</sup> So in the 21<sup>st</sup> century, assignment of benefit lawsuits in Florida grew more than 25 times faster than wireless subscribership grew nationwide.

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

[SLIDE 3]

We also looked at how that growth was happening. We found that, 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 fever South Florida might have caught years ago, it is spreading.

[SLIDE 4]

We also saw evidence that the problem is spreading from line to line. This table shows how excess legal expenses wracked the no-fault automobile line of business, which is also known as personal injury protection, or by the acronym PIP. 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 through no-fault benefits.

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.

Rates responded favorably as the problem abated, with the average consumer expenditure on no-fault insurance falling to \$234 in 2015, according to the National Association of Insurance Commissioners, down from more than \$270 two years earlier. Even so, the toll was substantial. 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. And that savings would have been passed along to consumers, just as the post 2013 savings were.

[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.

This is the start of a process that will almost inevitably increase rates for no-fault insurance, absent reform. The process is as follows: The number of lawsuits rises. Over the next year or two, the amount paid in claims and claim settlement costs by insurers rises, thanks to bloated expenses and legal fees. And if the cause of the increase in lawsuits remains unaddressed, insurers logically anticipate the situation will continue to deteriorate, and they raise rates. Increased legal activity, left unchecked, will inexorably lead to consumers paying more for their auto insurance.

More important now for us is to consider: What happened here? Why has the problem returned?

First, the 2013 PIP 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 finds a new home.

[SLIDE 6]

Just after the PIP reforms, assignment of benefits lawsuits proliferated in other lines of business. This slide shows the growth in lawsuits in homeowners claims. 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]

The 2013 no-fault reforms also coincided with a sharp increase in the number of assignment of benefits lawsuits involving 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.

But here is the thing: Broken windshields are among the simplest of claims to settle. The glass breaks. You file a claim. The glass is fixed. The insurer pays the bill. It staggers the imagination to think that, virtually overnight, this simple set of benign transactions turned contentious – or that, as this slide indicates, the number of contentious claims remains four times higher than it was just five years ago (14,629 claims in 2018 being nearly four times bigger than the comparable number in 2013).

The state appears to have a whack-a-mole problem, and 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.

Claim adjustment expenses are not a large part of any these claims because there is no liability to a third party, so lawyers rarely need to be involved.

You can see how costs in Florida escalate, particularly after 2013. Meanwhile, in the rest of the country claims adjustment expenses are 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, until we arrive at 2017, where legal and other adjustment costs in Florida are double the national average. If you assume that Florida’s adjustment expenses had followed nationwide trends, the savings would have been about \$94 million. That additional cost is reflected in higher premiums paid by millions of Floridians. And again, our estimate does not try to take into account the billions in bloated claims costs stemming from assignment of benefit abuse.

One is left to wonder which insurance line of business is next. Our paper considered whether the problem could reemerge in small business insurance. We concluded that it would be possible, but difficult. Still absent any action, it is inevitable that the problem will continue to spread, even if we cannot say for sure where assignment of benefit abuse will pop up next.

To summarize:

- Assignment of benefit abuse is growing.
- 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.

Barring meaningful reform, assignment of benefit abuse will continue to spread – and will burden Florida consumers with more expensive insurance bills.

[END SLIDE]

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