

**Around the States: Florida**

## Assignment of Benefits Proposals for the Florida 2018 Legislative Session

Assignment of benefits abuse is a widespread problem affecting the Florida homeowners insurance market. A contract involving assignment of benefits (an “assignment agreement”) transfers an insured’s under a policy after a loss has occurred to a third party contractor, such as a water extraction company, roofer, or plumber, normally for the performance of remediation or repair services. The contractor then owns the claim and can receive payment directly from the first-party insurer. This process can be abused; for instance, the work can be undertaken and even completed before notice of the loss is reported to the insurer and the contractor could submit an inflated invoice to the insurer. The insurer may dispute the claim and has limited ways to defend the claim. The resulting litigation exposes the insurer to liability to pay the attorney’s fees of the plaintiff contractor. This can be replicated by several contractors on one job involving one loss, thereby exposing the insurer to multiple claims, each pressed by separate attorneys seeking fees for their work related to their client’s piece of the overall loss.

According to the Florida Office of Insurance Regulation (“Office”), since 2010, claims involving assignment of benefits have increased in severity by 28%, with a 46% increase in frequency.<sup>1</sup> Former Florida Chief Financial Officer Jeff Atwater has stated that “in 2006, there were 405 AOB lawsuits across all 67 counties in Florida and in 2016, that number had risen to 28,200.”<sup>2</sup> According to Citizens Property Insurance Corporation,<sup>3</sup> due to water and assignment of benefits-driven losses, “for every \$1 of premium earned in 2015, Citizens spent \$1.05 statewide and \$1.22 in Miami-Dade County.”<sup>4</sup> Citizens states that assignment of benefits-related lawsuits are causing claims costs to rise, thereby driving up rates.<sup>5</sup> Referring to rate increases by private insurers, the Office states that “absent any legislative reform, homeowners could begin to see 10% rate increases per year going forward.”<sup>6</sup>

During the 2017 legislative session, both the Florida House and Senate debated and passed bills addressing assignment of benefits abuse, but the two chambers were unsuccessful in finding common ground, and neither proposal passed. So far, two new bills addressing assignment of benefits abuse have been filed for the 2018 legislative session: SB 62, filed by Senator Dorothy Hukill (R-Port Orange), and SB 256, filed by Senator Gary Farmer (D-Fort Lauderdale).

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**Rich Fidei**  
*Greenberg & Traurig  
Fort Lauderdale, FL*



**Fred Karlinsky**  
*Greenberg & Traurig  
Fort Lauderdale, FL*




**Jamey Zellner**  
*Greenberg & Traurig  
Fort Lauderdale, FL*

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Senator Hukill's bill provides that, with respect to lawsuits based on claims arising under property insurance policies, plaintiffs seeking relief against an insurer pursuant to an assignment agreement may not collect attorney's fees from the insurer under the "one-way" attorney fee statutes.<sup>7</sup> These statutes provide that when a judgment is rendered against an insurer and in favor of an insured, the insured may collect attorney's fees from the insurer. The bill further creates several new conditions for assignment agreements to be valid. For instance, the insured must be able to rescind the agreement without any penalty within 7 business days of execution. Also, the agreement must contain a written, itemized, per-unit cost estimate of the work to be performed by the third party. Lastly, for any claims submitted under an assignment agreement, the contractor's failure to take certain actions create an automatic presumption that the insurer is prejudiced. For instance, the contractor must maintain records of all services provided, cooperate with the insurer in the investigation of a claim, and provide the insurer with a written, itemized, per-unit cost statement of services actually performed. The contractor's failure to comply with these and other requirements would provide the insurer with a defense to the contractor's claim and an argument that it has been prejudiced by the contractor's failure to comply.

The bill proposed by Senator Farmer, a South Florida trial attorney, is viewed as less favorable to the industry. The bill states that any property insurance policy may not prohibit the post-loss assignment of benefits. The bill also states that if an insured receives attorney's fees pursuant to a one-way attorney's fees statute, the insurer may not use include these fees in its rate base and may not use the fees to justify a rate increase. Like Senator Hukill's bill, SB 256 provides that an assignment agreement is not valid unless it meets certain requirements, including a requirement that the policyholder be permitted to unilaterally rescind the agreement within 7 days of execution. The contractor must "guarantee to the policyholder that the work performed conforms to current and accepted industry standards." Insurers must also provide an annual report to the Office addressing claims paid pursuant to an assignment agreement. For litigated claims, the report must include items such as the amount of fees paid to the insured's attorney. This report must first be sent to opposing counsel for verification.

These two bills represent significantly different approaches to the problem of AOB abuse in the Florida insurance market. Although both establish certain transparency and consumer protection standards the bills diverge on several important issues, most notably attorney's fees. While these bills await further action, the Office and

the industry are taking steps to educate consumers about the hazards of assignment of benefits abuse. 

*Richard J. Fidei, Greenberg & Traurig, Fort Lauderdale, FLA focuses his practice on national insurance regulatory and compliance matters. He represents a wide variety of insurance entities including insurance companies, health plans, reinsurers, managing general agencies, brokers, third-party administrators, claims companies and other insurance-related entities in connection with regulatory, corporate, compliance and transactional issues. Rich is experienced in the formation, licensure and capitalization of insurers, business expansion activities, financial and market conduct examinations, reinsurance and alternate risk transfer mechanisms, product filings, as well as many other operational and regulatory issues applicable to insurance entities.*

*Fred E. Karlinsky, Greenberg & Traurig, Fort Lauderdale, FLA is Co-Chair of Greenberg Traurig's Insurance Regulatory and Transactions Practice Group. Fred has nearly 25 years of experience representing the interests of insurers, reinsurers and a wide variety of other insurance-related entities on their regulatory, transactional, corporate and governmental affairs matters. Fred is a recognized authority on national insurance regulatory and compliance issues and has taken a leadership position in many insurance trade organizations, has many industry-driven legislative and regulatory initiatives, and is a sought after thought leader who has spoken and presented to insurance executives and governmental officials, both nationally and internationally.*

*Jamey Zellner, Greenberg & Traurig, Fort Lauderdale, FLA focuses his practice on government law and policy matters. He is experienced handling a wide range of insurance regulatory and corporate transactions, including company and agent/agency compliance, throughout the country.*

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## Endnotes

1 "Assignment of Benefits (AOB) Resources," Florida Office of Insurance Regulation, <http://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx>

2 *Id.*

3 Citizens Property Insurance Corporation is a Florida governmental entity that provides property insurance coverage to policyholders who unable to find coverage in the private market.

4 "Assignment of Benefits: What You Need to Know," Citizens Property Insurance Corporation, <https://www.citizensfla.com/documents/20702/460724/Assignment+of+Benefits.pdf/2e157905-8ccb-4396-996a-3e111b2c5f5c>

5 *Id.*

6 "Assignment of Benefits (AOB) Resources," Florida Office of Insurance Regulation, <http://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx>

7 See Fla. Stat. Ann. § 626.9373; Fla. Stat. Ann. § 627.428.