# The Struggle is Real: Florida Legislative Efforts to Curve AOB Abuses and Workers' Compensation Rate Increases Fail to Gain Approval

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The 2017 Florida legislative session came to an end on May 8 when the Legislature adjourned after approving a budget compromise on the State's $82.4 billion budget. A total of 241 bills were approved this session, 230 of which were signed by Florida Governor Rick Scott. A number of important bills did not gain final approval, including two key insurance reforms involving Assignment of Benefits ("AOB") for property insurance losses and workers' compensation. Below is a summary of each proposal.

<u>Assignment of Benefits</u>

According to the Florida Office of Insurance Regulation ("OIR"), an AOB is "a document signed by a policyholder that allows a third party, such as a water extraction company, a roofer, or a plumber, to 'stand in the shoes' of the insured and seek direct payment from the insurance company." While the practice has been permitted for many years, in the past few years AOB abuse in Florida has skyrocketed. The problem is generally concentrated around claims for water damage, which can be expensive to remediate.

Since 2010, AOB claims have increased in severity by roughly 28 percent, and the frequency of AOB claims has increased by 46 percent over this same period. The higher costs of settling these claims have caused homeowners insurers to significantly raise rates.

For the fifth consecutive year, the House and Senate were unsuccessful in finding common ground on how to address the AOB issue. Governor Scott worked closely with the business community and the insurance industry to push for legislation to control this practice. Two proposals were advanced this session: House Bill 1421 and Senate Bill 1038. The bills were similar in that they introduced additional notice requirements to insurance companies when a policyholder assigns a claim. Both bills also introduced new restrictions on AOB to increase transparency, such as requirements that contractors provide additional information regarding the work they did and the cost for the work. However, there were some notable differences between the bills that the legislature was unable to reconcile.

Importantly, the House bill imposed restrictions on fees recoverable by assignees, but the Senate bill did not have such restrictions. The Senate bill would have required water damage remediators to obtain a license before providing restoration services. Ultimately, the two Chambers were unable to agree on an approach and neither bill passed.

<u>Workers' Compensation Reform</u>

In April and June of 2016, the Florida Supreme Court held unconstitutional portions of the workers' compensation law which substantially weakened prior legislative reforms. The rulings in *Castellanos v. Next Door Company* and *Westphal v. City of St. Petersburg* were released almost two years after the Court first heard oral arguments in each case. The decisions struck down Florida laws that restricted claimants' attorneys' fees to a statutory formula tied to the benefits secured by the claimant and limited the recovery of benefits to 104 weeks for temporary total disability ("TTD").

As a result of the Court's decisions, the National Council of Compensation Insurers proposed a workers' compensation rate increase of 19.6 percent. Ultimately, OIR approved a 14.5 percent increase effective December 1, 2016. The premium increase resulted in the Senate and House advancing competing measures in the 2017 session: Neither House Bill 7085 nor Senate Bill 1582 passed during the legislative session.

The House bill would have made a number of reforms, including permitting direct payment of attorneys by claimants, increasing the combined TTD and temporary permanent disability benefits ("TPD"), from 104 weeks to 260 weeks, and closing a benefit gap that was at issue in *Westphal*, which currently makes it possible for an injured worker's TTD and TPD benefits to expire even though the worker has not reached maximum medical improvement. Notably, the bill would have permitted deviations under certain circumstances from the current statutory attorney fee schedule.

The Senate bill was similar, but included some important differences. Like the House bill, claimants' TTD and TPD benefits would have been extended from 104 weeks to 260 weeks, essentially codifying the Court's holding in the *Westphal* decision. The Senate bill also permitted deviations from the current statutory attorney fee schedule, but the maximum hourly rate that could be used to determine the fee would have been $250 per hour, instead of the $150 per hour proposed in the House bill. An attorney fee cap of $1,500 on medical-only claims would have also been removed. These differences became an issue later on, and contributed to the failure of both bills.

***This article appeared in the summer 2017 ABA TIPS Insurance Regulation Committee (IRC) newsletter. Reprinted with permission of the ABA.***