
Assignment of Benefits Abuse a Looming Problem for Insurers

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(Coauthored by **Matthew J. Gray** and **David W. Earley**)

In recent years, assignment of benefits abuse has wreaked havoc on Florida's property insurance industry. According to a recent report by the Florida Justice Reform Institute, over 54% of insurance cases served in Florida in 2016 involved an assignment of benefits. This rise in assignment of benefits cases has resulted in significant increases in insurer costs and insured premiums. Insurers in other states are potentially at risk as well. However, with appropriate safeguards, insurers can minimize the risk that assignment of benefits abuse poses.

An assignment of benefits is the assignment by an insured to a third party of the proceeds of an insurance policy resulting from a claim. A classic example is a homeowner assigning the benefits of his or her policy to a water remediation company after a water loss occurs in the home. Rather than seeking payment from the insured, the water remediation company would seek reimbursement from the insurer directly.

At first glance, a rise in assignments of benefits would seemingly be of no significant concern to insurers. Instead of paying the value of the claim under the policy to the insured, the insurer would simply pay that same value to a third party instead. Unfortunately, this arrangement is repeatedly abused.

First, assignees (i.e., the person or company to which the benefits are assigned) may seek an inflated claim and delay reporting of that claim. Often, much of the mitigation and repair is completed by the time the claim is reported. Investigating these delayed and inflated claims takes additional resources from insurers who may ultimately end up paying the inflated claim even after a proper investigation, and despite the late reporting.

Second, a refusal to pay the entirety of the inflated claim may result in costly litigation. Some jurisdictions require that an insurer pay a plaintiff's legal fees incurred pursuing policy benefits under certain circumstances. The statutory law in this regard is crucial. Florida, where this problem has been most acute, has a statute mandating the award of attorneys' fees with no limit. North Carolina, on the other hand, allows the discretionary awarding of attorneys' fees with a statutory cap of \$10,000. Even if an insurer is successful in defeating these inflated claims, it will still have to pay its own legal bills, which may rival the cost of the inflated claims themselves.

As a further problem, some unscrupulous contractors may generate entirely fraudulent claims by offering insureds incentives to assign their benefits. For example, some contractors may offer insureds a free roof if they are willing to sign an assignment of benefits. Other contractors may offer a free gift card to a restaurant if they assign their benefits

for a fraudulent windshield repair claim. Such assignment of benefits mills only exacerbate the problem.

There are a few ways that insurers can safeguard themselves against assignment of benefits abuse. First, their policies can provide that assignment of benefits is prohibited. Though many standard insurance policies include anti-assignment clauses, such general clauses are likely insufficient to prevent assignment of benefits. In North Carolina, two insurers have recently revised their policies to explicitly prohibit the assignment of post-loss benefits. Please note that case law in some jurisdictions may prevent this policy clarification.

Second, insurers can revise their policies to mitigate the potential for abuse in the event of an assignment of benefits. Such revisions might include adding provisions limiting the amount of emergency work that can be done without approval or requiring that insurers be given a specific amount of time to inspect losses before repair work can begin. In this way, insurers can more regularly defeat contractors with inflated or fraudulent claims in court, disincentivizing these contractors (and their attorneys) from bringing such cases at all.

The assignment of benefits crisis in Florida is a dire warning to insurers to safeguard themselves. Though such safeguards will necessarily be constrained by state law, insurers would be well-served to do what they can to prepare for this problem.

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Please contact **Matt** or **David** if you have any questions about this article or would like to discuss it further.

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