



Attorney Addresses The Assignment of Benefits Issue, or AOB, in Florida - Episode # 106

Posted: Wed., Jun. 10, 2015



Hosted by: John Czuba, Managing Editor

Guest Attorney: Travis Miller of the [Radey Law Firm](#)

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John Czuba: Welcome to the Insurance Law Podcast, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, managing editor of *Best's Directory of Recommended Insurance Attorneys*.

We're pleased to have with us attorney Travis Miller from the [Radey Law Firm](#) in Tallahassee, Florida. Travis practices primarily insurance regulatory law, business and transactional law, and administration law.

He assists insurance companies and other regulated parties before the Florida Office of Insurance Regulation, and the Florida Department of Financial Services. In addition, he provides counsel and general representation to members of the insurance industry in their regulatory affairs and business transactions.

Travis, we're very pleased to have you with us today.

Travis Miller: Thank you. I'm happy to be here.

John: Today's discussion is the assignments of benefits issue, which is a prominent topic in the Florida property insurance market. Travis, what are people referring to when they talk about the assignments of benefits or AOB problem?

Travis: When we talk about assignment of benefits or AOB in Florida, we're generally referring to post loss assignments to vendors that are involved in remediating a loss.

For example, a policy holder might experience a loss and call an emergency services contractor. That contractor might begin to perform work only after the policy holder signs a contract assigning the policy holder's rights to insurance proceeds to that contractor.

John: This sounds like a post loss assignment of policy proceeds. Aren't post loss assignments generally allowed?

Travis: Historically, they have been. The theory is that once a loss occurs the amount of the loss is determinable.

There's no real moral hazard associated with the assignment. Unfortunately, in the AOB situation, this isn't necessarily the case, because the vendor taking the assignment, in a sense, can influence the amount of loss. Most vendors are reputable and will perform the same service at the same price, regardless of whether an assignment is involved.

Unfortunately, there are some vendors that appear to be using these assignments as a way of increasing the amount they charge for services, which ultimately is leading to higher claims costs and higher premiums in the long run.

John: Travis, if insurers are seeing abuses and believe certain vendors taking these assignments are inflating their claims, why don't they just resist the claims and address this as a loss settlement process?

Travis: They do. That's the first line of defense, of course. The issue here is that the vendor also in the assignment gains the benefit of the policy holder's one way right of attorney's fees against the insurer.

The claims that we're talking about tend to involve relatively small dollar amounts. If the insurer doesn't fully pay, the vendor then can sue and the insurer finds itself in litigation against a commercial third party that has the right to recover its attorney's fees if it prevails.

Many of these claims involve a small number of vendors and a relatively small number of attorneys. This pattern is repeating itself and the insurers are confronted with how much can they expend on these claims in relation to the amount that they would expend in litigation.

John: How is this affecting the market?

Travis: Some insurers are reporting higher non catastrophe losses and loss adjustment expenses than normally would be expected. This creates upward pressure on rates and increased cost to consumers.

One of the questions we hear in the Florida market right now is why homeowner's insurance costs aren't going down as much as people think they should when the state hasn't experienced a storm in over a decade. You can usually look at other factors, non catastrophe losses, as being one of the factors.

Part of this can be attributed to issues like assignment of benefits where those non catastrophe costs are higher than they probably should be.

John: Is the Florida legislature addressing this issue?

Travis: They looked at the issue in 2015. There were a couple of bills that surfaced. They received a lot of attention in committees, but they ultimately did not pass in the 2015 legislative session.

John: Can the insurers seek judicial relief?

Travis: Right now, that is the forum in the absence of legislation. Some insurers have been pursuing this issue with some success at the trial court level.

They've raised issues such as whether the contract prohibits these assignments, whether the vendors lack a requisite insurable interest, or even that the vendors are engaged in unlawful adjusting of claims when they're involved in determining the ultimate amount of those claims.

Unfortunately, despite some success at the trial court level, these arguments haven't met with success at the appellate courts. We've seen about four decisions recently over the last couple of months that have gone adverse to the insurers. Courts have rejected arguments relating to the insurable interest and to a potential contractual prohibition on those assignments.



The courts generally have been saying that under the current contracts and under the current law, this is an issue that's better left to the legislature. But of course, as you just asked, the legislature didn't address the issue in 2015.

Right now, it appears that the ball is in the court of the legislature, but we won't have them meeting again on this type of issue until 2016.

John: Where does the situation stand as of now? What are the next steps?

Travis: Right now, we're seeing quite a number of lawsuits involving repair and remediation issues. These lawsuits have increased dramatically in number. This is leading to higher losses and loss adjustment expenses which, of course, end up working their way into the rates.

This produces frustration for the insurance companies, but also, for the consumers and for policy makers. We see these questions about why rates aren't going down commensurate with the lack of hurricane activity.

But unless the trend changes in the court cases, or unless the legislature chooses to address this issue in 2016, we can expect this to continue. We can expect the implication of these increased costs to be felt throughout the industry.

As the case with so many things in the insurance industry, the acts of a relatively small group end up being spread among the larger group of policy holders as a whole.

John: Travis, thanks very much for joining us today.

Travis: Thank you.

John: That was Travis Miller from the [Radey Law Firm](#) in Tallahassee, Florida. Special thanks to our producer today, John Weber.

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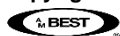
I'm John Czuba, and now this message.

Transcription by CastingWords

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