

In the Public's Interest

The misuse of assignment of benefit provisions in connection with homeowners policies has the potential to create a rise in fraudulent claims and rate increases.

A crisis looms for the homeowners insurance market, requiring, in some places, actuarially sound rate increases of as much as 189%. Various studies show these increases are driven by the rampant misuse of assignment of benefit (AOB) provisions in connection with homeowners policies. Insurers and regulators are aligning to stop this harmful activity before rates become unaffordable, insurers are forced to retreat from certain markets and mortgages fail for lack of insurance on property-securing home loans.

Take for example, a burst pipe and how something like that got us to this point. Before beginning water damage remediation, a contractor will require a homeowner to assign to the contractor the benefits under his homeowners policy for all repairs related to the loss. The AOB places the contractor in the shoes of the homeowner to directly access policy benefits without accepting the homeowner's responsibility to comply with various concomitant duties under the policy after a loss.

The contractor then sends to the insurer an invoice for charges which exceed any semblance of reasonableness. As the AOB has dispossessed the homeowner of any control over the claim process, the contractor sues the insurer for breach of contract if the insurer declines to pay the inflated invoice. The contractor may also threaten to place a lien on the home which, in certain states, can be enforced by foreclosure.

The insurer must decide whether to accept the excessive invoice or defend the lawsuit. Fee-shifting statutes help the insurer with this decision.



By
**A. Kenneth
Levine**

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Some states require payment of attorney's fees to prevailing policyholders or their beneficiaries while these fees are unavailable to prevailing insurers. In Florida, AOB lawsuits reportedly have increased by at least 16,000% since 2000 while all suits against insurers increased by 183% since then. These one-way fee statutes incentivize litigation against insurers with AOBs providing the means to extract compensation for unverified damages.

Homeowners must ultimately bear these excessive costs in the form of higher premiums. Insurance departments will be hard-pressed to disapprove lawful rate increases, because departments are bound by statute to ensure that insurers comply with various standards demonstrative of solvency.

Insurers are developing acceptable methods to address the rampant misuse of AOBs. For example, policy language is being deployed to indicate that there is no coverage for permanent (not emergency) repairs that begin before either 72 hours after the insurer is notified of the loss or the time of loss inspection by the insurer. This single contract revision should enable the insurer to verify the cause, character and scope of the damage before evidence of the loss is destroyed. The value of these measures may be short-lived, though, as long

as the statutes incentivizing misuse remain on the books.

Legislative intervention may be required for a lasting cure, including such things as specifying balanced criteria for AOBs absent requiring direct payment; making attorney's fees available to either party prevailing in an action; or sanctioning a consequence for prosecuting invalid claims.

AOBs must serve the public interest of providing loss remediation at a responsible cost. Without lasting reform, a manipulated market for these services will perpetuate the need for rate increases.

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Best's Review contributor **A. Kenneth Levine** is co-chair of the insurance and regulatory practice of Cozen O'Connor's Business Law department. He can be reached at klevine@cozen.com.