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Oh No, Not Again! Assignment of Benefit Reform Failed. Now What?

Commentary by Jason B. Wolf, Daily Business Review

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For all the outrage mustered by the insurance industry about the devastating Assignment of Benefit (AOB) crisis afflicting Florida, our Legislature wrapped up its session earlier this month and did ... wait for it ... absolutely nothing.

That's right. Nothing happened, either in the regular session or the special session. Reform looked promising at first, but any chance at progress died in various Senate committees in the mad rush to adjournment. Some versions of reform passed in the House, but the end result is that AOB reform is off the table, at least until the next Legislative session, which opens on Jan. 9, 2018.

The key questions facing the industry are: What's next? Why did it fail? What will it take to actually enact reform?

The answer to the first question is simple. There will be no significant alterations in the current system. The key proposed changes, limiting the fee statute on lawsuits brought on behalf of water mitigation contractors pursuant to AOBs, will not take effect, meaning the fee statute survives. An attorney who sues an insurance company on a \$600 invoice can rack up sky high fees. Certain revisions in homeowners' insurance policy language which restrict policyholders' ability to enter into AOBs are sure to make their way to the Office of Insurance Regulation, and they may or may not be permitted after regulatory review. Overall we are stuck with the current system.

The answer to the second question is, unfortunately, far more difficult to pin down. If we knew precisely why it failed, perhaps a solution could be crafted to address those reasons, and elected officials could bring a bill more likely to pass. However, the over-arching reason for failure is that while interests on both sides of the issue are powerful, entrenched and well-organized, clearly, those opposed to reform are stronger.

This is the fifth consecutive year that Legislative efforts have been unsuccessful and some industry insiders believe that a tipping point and subsequent crisis is imminent, which brings us to the third question. The allegedly looming crisis is two-fold. First, the industry argues that rates will skyrocket, creating problems for Florida residents when they simply can't get property insurance. If a homeowner can't get insurance, he typically can't get a mortgage and therefore he can't buy a house and the entire real estate market collapses. It seems improbable that Florida's entire real estate market will fall apart any time soon, but still, it's a concern for the future.

Second, the logic goes, the crisis will cause more insurance companies to pull out of Florida—or, at least leave the areas which have the highest concentration of AOB claims—or cause some

companies to go out of business. The next phase in the tipping point that some people see is counter-intuitive. A crisis in the industry may be the impetus to solve the problems and push reform through the Legislature next year. Is a crisis then a good thing? If an insurance company that covers hundreds of thousands of Florida residents goes under, the Legislature may understand that some type of meaningful change is necessary. Fortunately, Florida has a fund to protect policyholders in the event of an insolvency in the short term, but if this happens, the industry will appear to be in full-blown crisis mode.

What happens if Florida is battered by hurricanes? Insurance companies have sufficient reserves and re-insurance to control against the aggregate loss of several disastrous storms. Reports surfaced that the fund has \$17.6 billion available, but that number is high because we've had no major hurricanes since 2005. No one knows how a series of massive storms will impact the market over a two- or three-year stretch. While the current crisis is the AOB situation, hurricanes and the ensuing losses would escalate the problem by piling losses upon losses.

Ultimately, what it should take to solve the crisis is common sense and common interests. During past reform attempts, everyone has learned to cite the extreme arguments on both sides. In the small example above, in which an unscrupulous AOB company has a \$600 unpaid invoice, an attorney sues and earns hundreds of thousands of dollars in fees, is, clearly, an irrational occurrence. That's an extreme, but not unrealistic, example. All stakeholders in this industry have seen the rip-off reports on local news where an unsuspecting homeowner is taken advantage of by an unethical contractor using an AOB. This happens. Everyone who is in the industry knows about the egregious fraud cases. On the other side of the coin, industry groups and insurance companies complain about greedy plaintiffs lawyers gaming the system and unscrupulous contractors taking advantage of unsuspecting homeowners, which wreak havoc on insurance rates and the bottom line. This is not a fictional crisis. As with the outrageous fraud, these things are happening.

Common sense should prevail and continually referencing extreme positions to reach a solution is not conducive to meaningful reform. Is there a problem? Yes! There are no alternative facts in this situation! While the very existence of a problem cannot be disputed, the extent of the problem, the best solution to the problem and the current and future impact of the problem is hotly debated. Here's hoping that if the two sides would put their heads together, a workable solution can finally be found in the next Legislative session.

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