

Assignment of Benefits Update 2018 Data

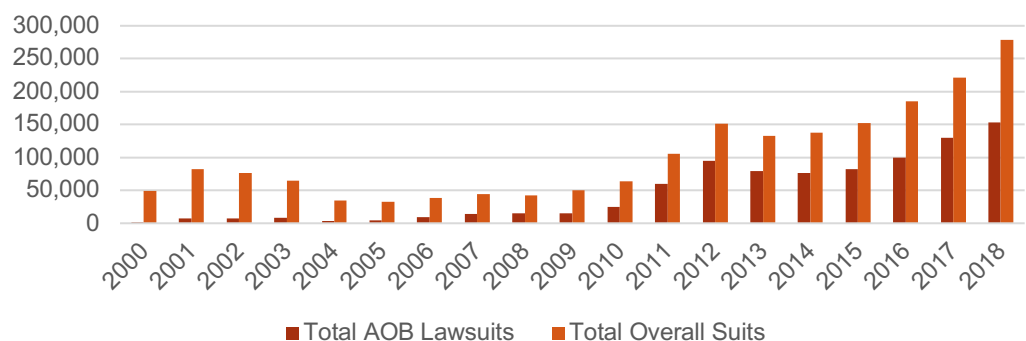
Since 2015, the Florida Justice Institute (FJRI) has been using data-driven practices to research and communicate the problems surrounding assignments of benefits (AOBs). From the very beginning of this effort, Florida's one-way attorney fee statute has been identified as the main driver of this problem, given the no-risk proposition it poses for the filing of lawsuits by vendor-assignees. Despite the statute's plain text—which describes awards in favor of named insureds, named beneficiaries, and omnibus insureds—and numerous Florida cases describing it as a benefit for policyholders,¹ Florida courts have extended it beyond these categories of individuals. This has caused significant distortions in the insurance marketplace and significant costs for premium payers, all for the benefit of a very few number of attorneys.

Overall, AOB Lawsuits Continue to Increase

For the eighth consecutive year, AOB lawsuits make up more than half of all litigation filed against insurers statewide. In 2018, 18% more AOB lawsuits² were filed than in 2017. If you compare 2018 to 2008 numbers, the percentage change is over 900%. In contrast, the percentage change in total lawsuits filed in that same 10-year period is less than half of that amount, just over 400%.

While the proportion of personal injury protection (PIP) cases only changed about 5%,³ property AOB cases saw a fairly dramatic growth—at over 70%—from last year. It appears that increasingly more

All Lawsuits in Database vs. Total AOB Lawsuits



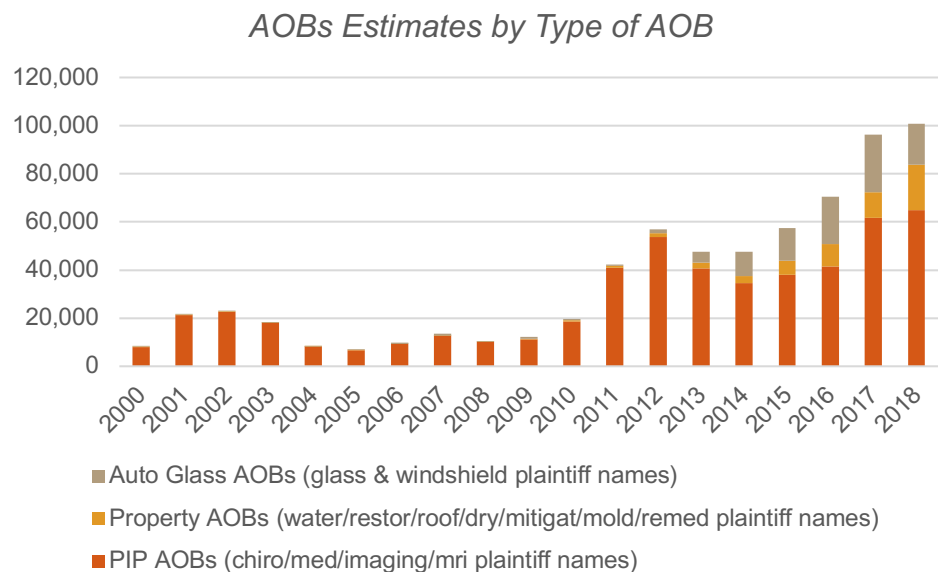
¹ See *Fewox v. McMerit Constr. Co.*, 556 So. 2d 419, 423 (Fla. 2d DCA 1989) (statute's purpose is to "reimburse successful *policyholders* forced to sue to enforce their policies" (emphasis added) (quoting *Zac Smith & Co. v. Moonspinner Condo. Ass'n*, 534 So. 2d 739, 743 (Fla. 1st DCA 1988)); see also *Stone*, 208 So. 2d at 829 ("Section 627.0127, F.S.A., . . . authorizes attorneys' fees where *insureds* are successful in maintaining suits on certain types of insurance policies . . ." (emphasis added)); *Fewox*, 556 So. 2d at 423 ("The legislative policy underlying Section 627.428 is served by requiring insurers to pay attorney's fees to a prevailing *insured or beneficiary* . . ." (emphasis added)); *Zac Smith & Co.*, 534 So. 2d at 743 (explaining that the policy underlying the one-way attorney fee statute is to "discourage the contesting of coverage by insurers and to reimburse successful *policy holders* when they are compelled to sue to enforce their policies" (emp O. Stripling, Jr., *Recovery of Attorney's Fees Under the Bussey Decision*, Fla. B.J., July 1970, at 386-87.

² Methodology: searched DFS Service of Process database for plaintiffs that included the unique terms "a/a/o," "aao," or "assignee" in their names. This likely understates the total number of AOB cases, as it does not include AOB cases that are only notated by a semicolon.

³ This number was derived from reviewing all AOB cases and delineating between PIP, auto glass, and property lawsuits.

“restoration” lawsuits⁴ are being filed, which could be attributable to hurricanes in that same time period, as reports of home repair solicitations were prevalent post-storms. As has been stated in FJRI’s other reports, PIP was really where the AOB scheme was invented, and it appears to have been exported to the property and glass coverages less than a decade ago.

Unexpectedly, lawsuits filed for assignments taken from comprehensive and collision coverage—nearly all for auto glass repairs—was down a bit, which was anticipated due to reports of numerous auto glass vendors and their attorneys offering “no sue” deals with insurers for generous pricing agreements. Unfortunately, the legal climate has deteriorated to a point that some insurers have been forced into the Hobson’s choice of paying well above fair market value in order to avoid the costs of defending meritless litigation, which is a direct result of the lack of bilateral responsibility in this particular type of business-to-business litigation.



Concentration is Key

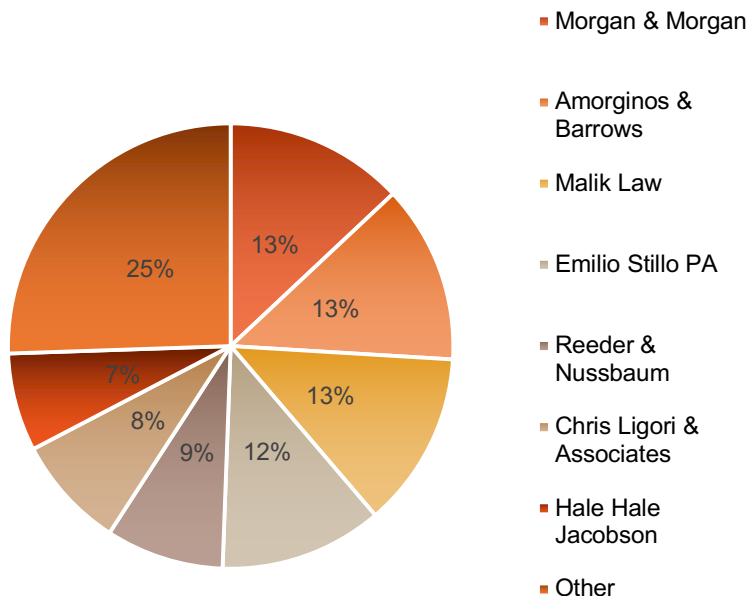
Attorneys

A compelling feature of AOB litigation is that, despite its increasing prevalence, it remains concentrated within a disproportionately small number of lawyers and firms. For example, in auto glass, just four firms—representing only 6 attorneys—filed nearly 50% of all AOB lawsuits. Nine firms—representing just 12 attorneys—file approximately 85% of all auto glass cases.

Similar, yet slightly less concentration is seen in property lawsuits, where a fifth of all property AOB litigation is filed by 5 firms, representing 6 attorneys. In personal injury protection

⁴ Lawsuits in which the plaintiff’s name includes “restor,” the truncated version of “restore,” “restoration,” and the like.

2018 Auto Glass AOB Cases by Firm



AOB lawsuits, a similar pattern is seen. It is worth noting that PIP AOB attorneys seem to be the most prolific lawsuit filers—for example, a search in the DFS system for PIP attorneys demonstrates that one lawyer⁵ filed over 30,000 PIP AOB lawsuits in 2018.

Confirming FJRI's previous analysis of the shift from AOB starting in PIP and then moving to other coverages, there are several firms that do multiple types of AOB work. For example, the well-known Morgan & Morgan does AOB lawsuits for PIP, auto glass, and property, as does Hale, Hale & Jacobson. Other firms, such as Malik Law and Emilio Stillo PA, work in at least two of these coverage areas, filing hundreds—sometimes thousands—of lawsuits annually.

Vendors

Comparable repetition is seen when looking at the vendor side. While this is harder to decipher, given the need to resort to time-consuming records searches with the Division of Corporations, FJRI has identified several owner groups that control more than one AOB lawsuit-filing vendor.⁶

Additionally, FJRI has found that some lawyers are even moving into the vendor side of the business.⁷ Alternatively, they are setting up billing companies, which take an AOB from the vendor, making it a double assignment situation. Then, a lawsuit is filed in the billing company's name.⁸

⁵ Gregory Gudin, Landau & Associates

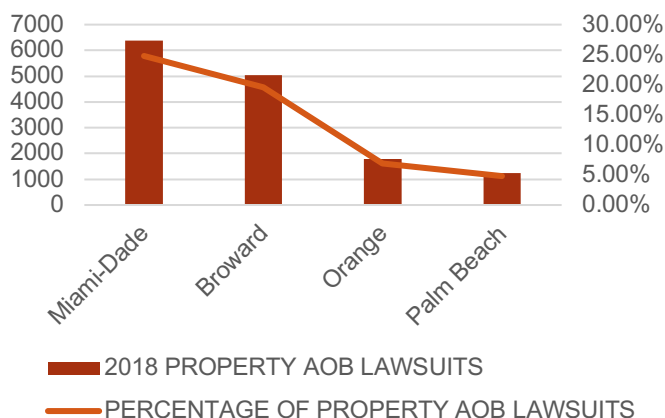
⁶ Charles Isaly owns Auto Glass America and AMJ Logistics. Jeff Searles owns DNS, Jaguar Glassworks, Seeknay, and Right at Home Glass, <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResults/OfficerRegisteredAgentName/isaly%20c/Page1>

⁷ Sterling Auto Glass, owned by the partners of Hale, Hale & Jacobson, <http://search.sunbiz.org/Inquiry/corporationsearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=STERLINGAUTOGLASS%20L160001567110&aggregateId=flal-l16000156711-0cf44437-22ac-4b7d-9aa3-545de85b6648&searchTerm=sterling%20auto%20glass&listNameOrder=STERLINGAUTOGLASS%20L160001567110>

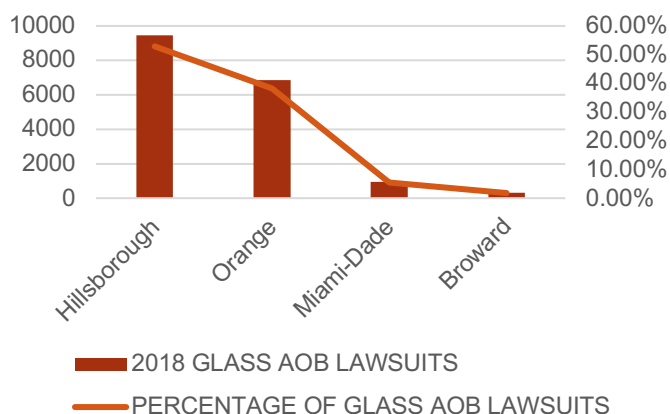
⁸ SHL Enterprises, owned by Christopher Ligori, <http://search.sunbiz.org/Inquiry/corporationsearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=SHLENTERPRISES%20L150000771230&aggregateId=flal-l15000077123-0dae0980-b55e-4729-88c6-a6f40238456a&searchTerm=shl%20enterprises&listNameOrder=SHLENTERPRISES%20L150000771230>; Page 42, owned by the principals of Lucas Magazine, <http://search.sunbiz.org/Inquiry/corporationsearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=PA>

It is not uncommon to see lawsuits brought in a different county from where an assignor lives. It is also not uncommon for lawsuits to be brought in counties other than the origin. Often, cases are brought in the jurisdiction closest to the assignee's lawyer. AOB cases are still fairly concentrated in few Florida counties, underscoring insurer arguments that the mathematical improbability of this phenomenon belies the accusation that insurer behavior is somehow driving the AOB problem.

*2018 Property AOB Lawsuits:
Regional Analysis*



*2018 Auto Glass AOB Lawsuits:
Regional Analysis*

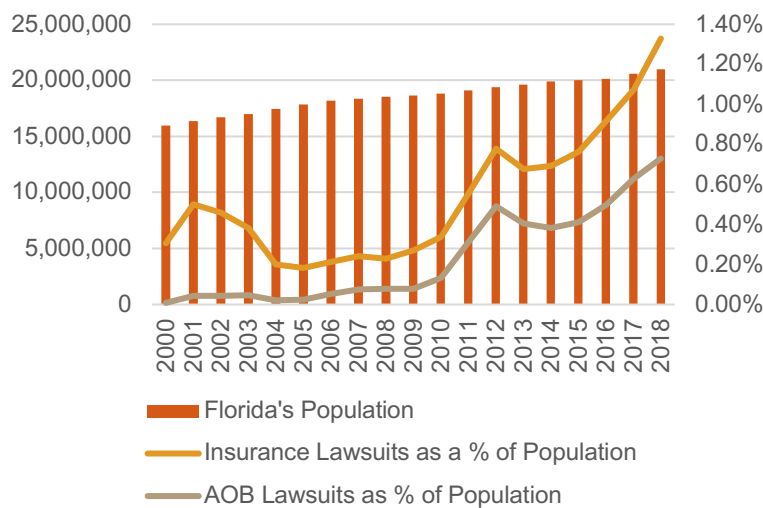


AOB Litigation—and Overall Litigation—Growth Outpacing Population Growth

Florida has a growing population, so it is not surprising, at least on its face, that lawsuits would also be increasing. However, absent aberrations in the tort system, one would expect to see a growth in litigation that is somehow commensurate with the population trajectory.

Unfortunately, Florida seems to be living up to its national reputation as one of the worst tort systems in the country, as litigation growth is much steeper than population growth. Looking specifically at AOB, what used to amount to little more

*All Lawsuits against Insurers & AOB
Lawsuits as a % of Population*



than a few one-hundredths of a percentage point as a fraction of Florida's population is now nearing a full three-quarters of a percent.

Methodology

Florida's Service of Process Database records all lawsuits against insurance companies. Assignment of benefits cases often use unique terminology in the case style, such as "a/a/o," "aao," or "assignee," signifying an assignment has occurred. Semicolons are also often used, but these are more difficult to analyze, as sometimes a semicolon is used in conjunction with another assignment term, and so these cases are not represented in the FJRI data in order to endeavor to prevent any type of duplication. Accordingly, the overall AOB numbers reflected here are likely an understatement of the actual number of AOB lawsuits.

For specific types of AOB cases, key words can be used to isolate the type of coverage involved. Because AOBs remove first-party insurance rights from policyholders, the most prevalent insurance policies involved in this litigation are personal injury protection, property, and comprehensive collision policies. For each of these coverages, FJRI has kept these key words consistent so that data can be accurately compared and contrasted year over year. For property, they include "restor," "water," "roof," "mitigat," "mold," "remed," and "dry." For auto glass, we simply use "glass" and "windshield," although some modifications have been made in other data pulls to ensure that the data is also the best and most accurate as it relates to glass, due to the increasing prevalency of auto-glass only billing companies, which we have attempted to identify and report within the data sets. For PIP, the keywords largely remain "chiro," "medical," "imaging," "massage," and "MRI." Note that FJRI downloaded all 2018 "aao," "a/a/o," and "assignee" cases and did the analysis within these data sets for the data in this update.