Appraisal Process: Scope of Loss and Causation Included?

The appraisal clause in the Standard Homeowners' Policy reads:

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the “residence premises” is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.¹

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Chair Message

Dear Property Insurance Law Committee Members:

I am extremely excited and proud to serve as Chair for the Tort Trial and Insurance Practice Section’s Property Insurance Law Committee (“PILC”) for the 2018/19 term. The PILC is made up of the leading property insurance lawyers and insurance professionals in the country and serves as a hub for lawyers who practice in the area of property insurance law. The committee enjoys a long history of providing thought leadership on the legal and practical issues that both the insurance industry and the insurance consumer encounter in first-party property insurance and enjoys an equally long history of collegiality, dedication and cooperation amongst its varied members. I am privileged to help continue these traditions over the next year.

Many thanks are owed to Shannon O’Malley, our immediate past-Chair, for all her hard work and dedication to the PILC. I personally owe Shannon a debt of gratitude for mentoring me through the process of becoming Chair. I am certain I will continue to rely on her enthusiasm, subject matter expertise and institutional knowledge going forward and I hope that I can similarly aid Jonathan MacBride, our current Chair-Elect, as he prepares to become Chair and navigates through the intricacies of completing a “Form A.”

Building on Shannon’s leadership, we will continue to offer many exciting opportunities for our members to serve as thought leaders and enhance their professional reputations within the property insurance community. I invite each of you to take advantage of all the opportunities that the PILC has to offer, such as publishing an article in our newsletter or The Brief, planning a webinar, producing a podcast on a current issue and/or becoming a Vice Chair. Please always feel free to reach out to me directly (sclancy@rc.com) to discuss any of these opportunities or to simply share your thoughts on how the PILC can better serve its membership.

In addition to the foregoing, the PILC also offers industry specific CLE via our Annual Spring CLE Meeting. The Annual Spring CLE Meeting is well-known for providing balanced, in-depth and comprehensive analysis of property insurance law and this year’s meeting will continue that proud tradition. Our Program Vice Chairs, Kesha Hodge (KHodge@merlinlawgroup.com) and Daniel R. Bentson (Dan. Bentson@bullivant.com), our already hard at work planning our next Spring CLE Meeting, which will be held at the J.W. Marriott in Austin, Texas, from May 8th to May 10th, 2019. As always, we will have distinguished speakers from both sides of the bar, as well as insurance industry clients and consultants to offer their collective expertise. Please keep an eye out for our upcoming Save the Date and please plan on attending this wonderful event.

Stephen O. Clancy
Robinson & Cole LLP
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Finally, to keep up to date with the PILC throughout the year, please consider joining us on our monthly business calls. We will have calls on the first Wednesday of each month at 4 p.m. Eastern. The call-in number is 1-888-853-9384 and the Participant Passcode is 860-275-8367.

I look forward to working with all of you this year.

Sincerely,

Stephen O. Clancy

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Copies may be requested by contacting the ABA at the address and telephone number listed above.
Assignment of Benefits Under Florida Law: A Judicial or Legislative Concern?

In what appears to be part of an ongoing pattern, the District Court of Appeal of Florida again punted the issue of assignment of benefits ("AOB") to the Florida Legislature in 2017. The reluctance of the Florida courts to address the issue seems to be shared by the legislature, which has failed to take meaningful action on the subject in recent years.

Neither the courts nor the legislature could have predicted the implications of AOBs for the insurance market in Florida. In 2016, AOB property insurance claims totaled 28,000, up from 843 in 2010, and 405 in 2006, according to Florida’s Chief Financial Officer, Jeff Atwater. The insurgence of AOB litigation in Florida, absent legislative reform, poses a significant threat to the financial stability of insurers and has led to increased premiums for Florida insureds due to the rising number of fraudulent claims that have been filed over the past several years.

Generally speaking, contractual rights are assignable unless the contract prohibits assignment, the contract involves obligations of a personal nature, or public policy dictates against assignment. A chose in action (i.e., a right to property that is enforceable only through legal action) arising out of contract is assignable and “may be sued upon and recovered by the assignee in his own name and right.” Where there is no provision forbidding assignment, “an insurance policy may be assigned as any other chose in action.”

In One Call Property Services Inc. v. Security First Insurance Company, an insured’s alleged assignee brought a breach of contract action against a homeowners’ insurer for failing to adequately compensate the assignee for emergency water removal services. One Call, the alleged assignee, maintained that: (1) post-loss assignments of insurance are valid under Florida law even if the policy contains an anti-assignment clause, (2) the right of payment accrues on the date of the loss, and (3) the loss payment provision does not preclude an AOB and has never been construed as having any bearing on the issue of assignments. Security First argued the assignment was invalid pursuant to the policy’s anti-assignment and loss payment provisions. Security First also maintained that the assignment impermissibly sought to assign rights not yet accrued under the policy.

Citing Curtis v. Tower Hill Prime Insurance Co., the court observed that “[t]he loss-payment provision of the policy did not render the suit premature; indeed,
Dealing with Demands for Phone Inspections and Facebook Account Data During Claim Investigations.

The typical first-party property insurance policy requires the insured to "cooperate" with the insurer’s investigation in the event of loss and perform other post-loss duties such as "produce records and documents" the insurer requests. The consequence of failing to perform these obligations can be the denial of the claim.

Relying on these post-loss duties, insurers are increasingly demanding that their insureds turn over their cell phones for forensic examination and produce their social media account activity during investigations of first-party property insurance claims for fire and theft when foul play is suspected.

Forensic analysis of modern smartphones can reveal the user’s location history, call history, voicemails, text messages and their contents, emails, photos (including where and when they were taken), web searches and browsing history, and much more. Even deleted information can be recovered. These types of forensic examinations involve the extraction of a “mirror image” of all of the device’s data using specialized software that is then downloaded and sorted by the examiner into a readable format. Image 1, below, is an extraction report listing all of the information obtained from an iPhone.

Similarly, Facebook, a social media platform used by 68% of all U.S. adults, records all of the user’s activity on Facebook since the account was opened. Pew Research Center, *Social Media Use in 2018*, (Mar. 2018). With just a few mouse clicks, a user can download his entire Facebook account or archive to a zip file. The archive includes everything the user has posted, including photos, videos, list of “friends”, IP addresses used to log in to the account, transcripts of “Messenger” conversations, and call and text history to contacts that Facebook mines from the user’s phone—often without the user’s knowledge. This activity download does not differentiate content based on privacy settings or the user’s intended audience but instead lumps the data together.

Some of this information may be relevant to an insurer’s investigation. A phone’s GPS location data may help pinpoint an insured’s whereabouts at the time of a fire. Other obvious examples include text messages or social media communications concerning a loss event or communications with a person of interest.

On the other hand, much of the data on an insured’s phone or his social media activity may contain highly personal and irrelevant information. Browsing histories containing an insured’s private interests, salacious photos, and conversations dealing with a relationship are a few examples of potentially embarrassing information that that may have no relevance to the claim investigation.

The insurance policy’s post-loss duty to cooperate does not mean that an insurer is entitled to everything it requests. Rather, the insurer’s requests for information must be material to the circumstances giving rise to liability on its part. *Tran v. State Farm Fire and Cas. Co.*, 961 P.2d 358 (1998).

For example, *Chavis v. State Farm Fire and Cas. Co.*, 346 S.E. 2d 496 (N.C. 1986) dealt with a broad release of financial information requesting the insured to:

> Authorize any representative of all banks and/or any type of lending institution which I have done any business with to consult with and/or deliver to any representative of [the insurer] *any and all records* referred to or requested by any representative of [the insurer].

The North Carolina Supreme Court found that an insurer does not have an “unlimited right to roam at will through all of the insured’s…records without restriction
of reasonableness and specificity. Such an obligation would subject an insured to endless document production...as the insurer fished for evidence on which to build “its defense.” *Id. at 499.*

The manner in which courts have addressed discovery disputes over access to social media information and electronic data may be instructive. Many courts agree that "a party is no more entitled to...unfettered access to an opponent's social networking communications than it is to rummage through the desk drawers and closets in his opponent's home." *Ogden v. All-State Career School, 299 F.R.D. 446, 450 (W.D. Pa. 2014); Appler v. Mead Johnson & Co., LLC, 2015 WL 5615038, *4 (S.D. Ind.); Tompkins v. Detroit Metro Airport, 278 F.R.D. 387, 388 (E.D. Mich. 2012).* Instead, the requesting party must identify some specific evidence tending to show that relevant information exists. *McCann v. Harleysville Ins. Co. of N.Y., 78 A.D. 3d 1524, 1525 (N.Y. App. Div. 2010).*

One of the key factors courts consider before ordering forensic examination of electronic devices is the specificity of the request and relevance to the action. See *Freres v. Xyngular Corp., 2014 WL 1320273, *4 (D. Utah) (granting motion to compel examination of plaintiff’s cell phone where defendant sought “narrow category of information”); *Bakhit v. Safety Marketing, Inc., 2014 WL 2916490, *2 (D. Conn.) (denying request for inspection because it was overbroad, the requesting party did not show it could not obtain the information elsewhere, and the request implicated privacy concerns in the cell phone data); Ramos v. Hopele of Ft. Lauderdale, LLC, 2018 WL 1383188 (S.D. Fla.) (denying request for forensic examination of cell phone because it was not “tailored to obtain information that is relevant to any claim or defense in this case”); *John B. v. Goetz, 531 F.3d 448, 459-60 (6th Cir. 2008) (denying request for forensic imaging because it was “extremely broad in nature and the connection between the [devices] and the claims” was “unduly vague or unsubstantiated in nature”).*

In light of these principles, policyholders should respond to carriers demanding a cell phone inspection or production of social media activity by expressing their legitimate concerns that these requests will involve the disclosure of private and irrelevant information. The insured should then ask its insurer the following:

First, what type of information is being sought from my cell phone or social media account?

Second, is there a less intrusive way to provide the information sought?

When addressed in this manner, most carriers respond by identifying the specific type of information sought relating to the investigation. The probable reason is the reality that a court may not find an insured breached his or her duty to cooperate.
where the insurer failed to specify the relevant information being sought and instead insisted on carte blanche access to all information contained in the insured's mobile device and social media account.

If there is no less intrusive way to provide the information sought, a well-drafted protocol should be considered. Forensic examinations of mobile devices require an extraction of all of the items from a specified category before sorting through the data—the extraction cannot be limited to a certain time period or to certain subjects (e.g., if text messages are sought, all text messages will be collected—not just those involving conversations between specific people or phone numbers). For this reason, the insured should propose a protocol addressing (1) the independent examiner performing the inspection; (2) the gathering of the information by the examiner that is responsive to the insurer's request; (3) a procedure allowing the insured to first review the information obtained for privilege and relevance to the claim and preparation of a privilege log describing any information the insured objects to disclosure and the basis; and (4) a mechanism for resolving any disputes over information identified on the privilege log via a court or other third party.

As electronic information is increasingly requested in insurance claim investigations, policyholders should be proactive in addressing blanket demands for examination of their mobile devices and social media accounts. Insurers should specify the type of information sought that is relevant to their investigation and a protocol should be agreed upon as appropriate. If both sides are reasonable, then the insurer's concerns about obtaining information material to its investigation and the insured's concerns about handing over private, potentially embarrassing, and irrelevant information can both be alleviated.
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Pursuant to this clause, appraisers have the power to determine the amount of the loss. Disagreements often arise between the insurer and the insured as to whether the dispute is a “scope of loss” issue, or a “causation” issue and whether such is proper for the appraisal panel to consider. Litigation often follows. In response, some courts have held that determining the scope of loss is subject to appraisal and other courts have held that determining scope of loss should not be included in the appraisal process. Courts have also reached different results as to whether the appraisal clause permits the appraiser to determine the cause of the loss.

This article examines how some courts have ruled on whether scope of loss and causation is considered a part of the appraisal process, or whether it is considered a coverage determination, which should only be decided in court.

I. Scope of Loss

a. Scope of Loss as a Part of Valuation

A scope of loss is generally a “document or a set of documents and measurements that describe the amount and type of damage that has been done to a structure, plus the quantity and quality of materials and the current cost of those materials and labor that will be needed to repair or rebuild that structure.”

When faced with the argument that the appraisers acted beyond their authority by determining the scope of loss, some courts have ruled in favor of the insureds, holding that the scope of loss is a part of the appraisal process, rather than a part of the coverage determination that should be addressed by the court. For example, in a Louisiana Federal District Court decision, St. Charles Parish Hosp. Service Dist. v. United Fire and Cas. Co., 681 F.Supp.2d 748 (E.D. La. 2010), an insured brought suit against the insurer to enforce payment of an appraisal award that the insurer refused to pay because the appraisal panel improperly evaluated both the scope of loss and the causation. The district court rejected the insurer’s argument, holding that the appraisal panel did not exceed its authority, because the “scope of loss must be measured” in order to determine the amount of loss.

The Colorado District Court ruled similarly in Cochran v. Auto Owners, 11CV8434 (Colo. Dist. Ct. – Denver, October 22, 2012), stating that the scope of loss must be determined during the appraisal process to determine the amount of loss. In that case, the insured, who had suffered a hail loss, filed suit against the insurer due to a dispute on the scope of appraisal. The insureds asked the appraisal panel to determine the amount of the loss for the entire roof, while the insurer contended that only a portion of the roof should be subject to appraisal, since the remainder of the roof was damaged by wear and tear (an excluded peril) and not by hail (a covered...
peril) alone. The court in that case held that the “determinations of what damages were caused by hail are within the scope of the ‘amount of loss’ to be determined in the appraisal” and are actually required to determine the amount of loss.

### b. Scope of Loss Is Not Within the Authority of the Appraisal Panel

On the other hand, some courts have determined that the scope of loss is not within the power of the appraisal panel. In a California appellate court decision, *Safeco Ins. Co. v. Sharma*, 160 Cal.App.3d 1060 (Cal. App. 1984), the insured claimed a loss of a set of paintings, stating it was a matching set. The appraisal panel evaluated the items and determined that it was not a matching set. Thus, the amount of the loss was lower than what the insured had claimed. The trial court confirmed the appraisal award set by the appraisal panel. The court of appeals, however, ruled that “an appraisal panel is empowered to determine the value of a loss and not coverage issues, such as the extent of the loss” and vacated the appraisal award. From that Court’s perspective, the appraisal panel was not empowered to “determine whether an insured lost what he claimed to have lost or something different.”

Other courts have ruled similarly, stating that the scope of loss should not be determined by the appraisal panel, but rather, by the insured prior to demanding appraisal. Another California appellate court decision, *Kacha v. Allstate*, 140 Cal.App.4th 1023. (Cal. App. 2006), illustrates this. In *Kacha*, the insured sought to nullify the appraisal award for fire damage to his home. The court of appeals ruled that the appraisal panel exceeded its powers by evaluating the scope of loss, which the court held was a coverage issue, and the appraisal award was vacated.

### II. Causation

#### a. Causation Determination Allowed During the Appraisal Process

Several courts have held that it is necessary for the appraisal panel to determine causation in order to determine both the scope and amount of loss. A leading decision on this issue is the Texas Supreme Court decision in *State Farm Lloyds v. Johnson*, 290 S.W.3d 886 (Tex. 2009). In *Johnson*, the insured’s roof was damaged by hail. The insurer’s repair estimate was lower than the insured’s. When the insured sought appraisal, the insurer argued that, because the appraisal would include a determination of “causation and not amount of loss,” the issue was outside the scope of appraisal. The court found for the insured and stated that “appraisers must always consider causation, at least as an initial matter. . . . [A]ny appraisal necessarily includes some causation element, because setting the ‘amount of loss’
requires appraisers to decide between damages for which coverage is claimed from damages caused by everything else.”

In *Quade v. Secura Ins.*, 814 N.W.2d 703 (Minn. 2012), the insured filed suit after the insurer denied a portion of the claim for damages to the roof of the insured’s building, contending that the damages were due to deterioration of property (an excluded peril), and not from the windstorm (a covered peril). The Minnesota Supreme Court held that “the phrase ‘amount of loss,’ as it relates to the authority of the appraiser under the policy, unambiguously permits the appraiser to determine the cause of the loss.”

In many cases, scope of loss and causation are tied together. Some courts, in addressing both issues, have held that the appraiser can determine causation in order to determine the scope and amount of loss. In *St. Charles Parish Hosp. Service Dist.*, *supra*, the Court acknowledged that an appraiser may need to take causation into account to a certain extent in order to determine what the term “amount of the loss” refers to. Similarly, in *CIGNA Ins. Co. v. Didimoi Prop. Holdings*, 110 F.Supp.2d 259 (D. Del. 2000), the Delaware Federal District Court held that “an appraiser’s assessment of the ‘amount of loss’ necessarily includes a determination of the cause of the loss, as well as the amount it would cost to repair that which was lost.”

b. Causation Determination Prohibited During the Appraisal Process

Other courts have been split on whether the appraisers can decide on causation issues. Those courts have held that a determination of causation exceeds the authority of the appraisal panel. For example, in *Munn v. Nat’l Fire Ins. Co. of Hartford*, 115 So.2d 54 (Miss. 1959), the insured’s residence sustained damage from a storm. Because of disputes over the amount of damage, the insured and insurer appointed appraisers to estimate the damage. After the estimates were made, the insured requested that the appraisers also include in their estimates the damage to the walls. The appraisers, however, decided that the damage on the walls was not caused by the storm, but was due to aging or deterioration of the house, and they refused to include the damage in their estimates. The Mississippi Supreme Court rejected the insured’s argument that the appraisers should have determined the damage to the walls and held that the appraisers did not have the power to “determine the cause of the damage. Their power is limited to the function of determining the money value of the property which may be damaged by the storm.”

The courts that have held that causation is out of the scope of appraisal have often done so because appraisers do not have authority to make coverage decisions.
a Texas appellate court decision, Wells v. American States Preferred Ins. Co., 919 S.W.2d 679 (Tex. App. 1996), the appraisers determined that the insured's loss was not covered, because the damage was caused by both covered and uncovered perils. The court vacated the appraisal award, holding that the policy's appraisal clause only gives appraisers the power to determine the amount of loss, and "not what caused or did not cause loss."

In the foregoing decisions, the courts were looking at a single cause for the damage or injury to the property, and not multiple causes. In cases where there are "different types of damage that occur to different items or property, the appraiser may have to decide the damage caused by each before the courts can decide liability" under the policy.

III. Conclusion

Practitioners can anticipate challenges to the appraisal panel's authority and whether the matter involves coverage issues. The case law to date is not clear in how the courts will address that issue, with some courts siding more with the policyholder's view and others with the insurer's view. Close examination of the applicable case law is required in order to determine whether the courts in a particular jurisdiction will likely determine any particular issue submitted to an appraisal panel to be a coverage issue, and, therefore, not subject to appraisal.

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Endnotes

1 ISO Form HO 00 05 11, 2010 (emphasis added).
Assignment... Continued from page 6

that provision expressly contemplated that there might be a final judgment – presumably stemming from a lawsuit – before payment was due.\(^7\) Following this reasoning, the court held that a standard loss payment provision in an insurance policy does not preclude a post-loss assignment of claim, even when payment is not yet due.\(^8\) The court concluded that the loss payment clause merely addresses the timing of the payment and expressly contemplates that a lawsuit could occur before payment is due.\(^9\)

Last year, the Florida District Court was given another opportunity to examine the issue of assignability of insurance benefits in \textit{Security First Insurance Co. v. Florida Office of Insurance Regulation}.\(^{10}\) In \textit{Security First}, a Florida-licensed property and casualty insurance company submitted a proposed policy endorsement for approval with the Office of Insurance Regulation ("OIR"). The proposed endorsement would have amended the conditions section of its "Homeowner’s, Tenant Homeowner’s, Condominium Unit Owners, and Dwelling First Insurance" policies. The proposed amendment read as follows:

\begin{enumerate}
\item \textbf{28. Assignment of Benefits:}
\begin{enumerate}
\item For any assignment of benefits after a loss:
\begin{enumerate}
\item You must disclose the assignment to us prior to the payment of any claim: and
\item You must comply with all of section I-Conditions, 4. Your Duties After Loss. \textit{We have no duty to provide coverage under this policy if you fail to comply with these duties.}
\end{enumerate}
\end{enumerate}
\item No assignment of claim benefits, regardless of whether made before loss or after loss, shall be valid without the written consent of all “insureds”, all additional “insureds”, and all mortgagee(s) named in this policy.
\item If we deny your claim, that denial will be applied to a valid claim of any assignee(s) and/or any other third parties contracted by you to services rendered to you to repair or replace damaged property.
\item We will not be responsible for payment to any assignee or third parties for payments for services rendered that are not covered property losses under this policy.\(^{11}\)
\end{enumerate}
\end{enumerate}

\textit{Last year, the Florida District Court was given another opportunity to examine the issue of assignability of insurance benefits in \textit{Security First Insurance Co. v. Florida Office of Insurance Regulation}.}\(^{10}\)

Rather than use this opportunity to evaluate the significant concerns facing insurers and consumers in Florida, the court followed in the footsteps of its brethren and agreed that the asserted public policy concerns are best addressed by the Florida Legislature.
OIR issued a letter disapproving the proposed endorsements, stating that the forms would “violate the intent and meaning of Florida Statute Sections 627.411(1)(a)-(e).”\(^{12}\) It further stated the endorsement contained “language restricting the assignment of post-loss claim benefits under the policy, contravening Florida law.”\(^{13}\) On appeal, Security First conceded that an endorsement requiring an insurer’s consent for a post-loss assignment of benefits is not enforceable, but argued that legal proscription was only applicable to provisions that required an insurer’s consent.\(^{14}\)

The court disagreed. Perhaps the most significant portion of the decision came when the court addressed the insurer’s public policy concerns, stating:

> We note that this issue boils down to two competing public policy considerations. On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices. On the other side, contractors argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.

> Our court is not in a position, however, to evaluate these public policy arguments. There is simply insufficient evidence in the record in this case—or in any of the related cases—to decide whether assignments of benefits are significantly increasing the risk to insurers. If studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform.\(^{15}\)

Rather than use this opportunity to evaluate the significant concerns facing insurers and consumers in Florida, the court followed in the footsteps of its brethren and agreed that the asserted public policy concerns are best addressed by the Florida Legislature.

2018 marked the third consecutive year in which a bill designed to curb AOBs failed to make it through the legislative process.\(^{16}\) This year’s bill, House Bill 7015, titled “An Act Relating to Property Insurance Assignment Agreements,” would have authorized insureds and restoration companies to enter into post-loss assignment agreements that transfer rights, including benefits to repair, replace, and/or mitigate damaged property. However, H.B. 7015 also sought to impose additional requirements that
may have provided safeguards for insurers. Specifically, the bill would have created section 627.7152, which provides in pertinent part:

(3) An assignment agreement is not valid unless it meets all of the following requirements:

a) The assignment agreement is in writing and is executed by all named insureds;

b) The assignment agreement contains a provision that permits all named insureds to rescind the assignment agreement without any penalty or rescission or cancellation fee within 7 business days after the date the assignment agreement is executed by all named insureds;

c) The assignment agreement contains a provision requiring the assignee or transferee to provide a copy of the executed assignment agreement to the insurer no later than 3 business days after the assignment agreement is executed by any named insured; and,

d) The assignment agreement contains a written, itemized per-unit cost estimate of the work to be performed by the assignee or transferee.

By tackling the availability of attorneys’ fees, H.B. 7015 also aimed at reducing the number of unnecessary AOB-related lawsuits filed. Similar to its predecessor, H.B. 1421, H.B. 7015 aimed at creating a sliding scale for attorneys’ fees in cases where the insurer is the prevailing party. Currently, when the insured or assignee prevails, their reasonable attorneys’ fees are paid by the insurer, but there is no mechanism or right to recovery for the insurer.

Having passed the House vote by an overwhelming majority (82-20), H.B. 7015 moved to the Florida Senate for discussion and vote. However, the bill died in Banking and Insurance Committee on March 10, 2018, after being confronted with pushback from the Florida trial bar.

Since the Florida courts refuse to weigh in on this issue, we are left waiting on the legislature to level the playfield. Until then, the battles will continue to be waged in the courtroom.
Endnotes
1 See Florida’s AOB Abuse by the Numbers: “Alarming Trend” Reaches Crisis Point, by Amy O’Connor.
2 Kohl v. Blue Cross & Blue Shield of Fla., Inc., 988 So. 2d 654, 658 (Fla. 4th DCA 2008).
3 Spears v. W. Coast Builders’ Supply Co., 101 Fla. 980, 983, (1931) (A “chose in action” is the “right to bring an action to recover a debt, money or thing.” Black’s Law Dictionary (9th ed. 2009).
4 Kohl v. Blue Cross & Blue Shield of Fla., Inc., 955 So. 2d 1140, 1143 (Fla. 4th DCA 2007).
5 165 So. 3d 749 (Fla. 4th DCA 2015).
6 154 So. 3d 1193(Fla. 2d DCA 2015) (rejecting the insurer’s argument that the insureds could not “maintain a breach of contract suit until the time for payment under the loss-payment provision had come and gone without payment.”)
7 Id.
8 One Call Prop. Serv. Inc., 165 So. 3d at 755.
9 Id.
10 No. 5D16-3425, 2017 WL 5907449, at *1 (Fla. 5th DCA Dec. 1, 2017)
12 Id.
13 Id.
14 Id.
15 One Call Prop. Servs., 165 So. 3d at 755.
16 House Bill 1421 made it through the House in 2017, but failed to make to through the Senate before the 2017 legislative session ended.
17 H.B. 7015
## Calendar

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Venue</th>
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<tbody>
<tr>
<td>January 16-18, 2019</td>
<td><strong>Fidelity &amp; Surety Law Midwinter Conference</strong>&lt;br&gt;Contact: Juel Jones – 312-988-5597</td>
<td>Hilton San Diego Bayfront&lt;br&gt;San Diego, CA</td>
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<td>January 17-19, 2019</td>
<td><strong>Midwinter Symposium on Insurance and Employee Benefits</strong>&lt;br&gt;Contact: Danielle Daly – 312-988-5708</td>
<td>Hyatt Regency&lt;br&gt;Coral Gables, FL</td>
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<td>January 23-27, 2019</td>
<td><strong>ABA Midyear Meeting</strong>&lt;br&gt;Contact: Arthena Little – 312-988-5672</td>
<td>Las Vegas, NV</td>
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<tr>
<td>February 21-23, 2019</td>
<td><strong>Insurance Coverage Litigation Midyear Conference</strong>&lt;br&gt;Contact: Janet Hummons – 312-988-5656&lt;br&gt;Contact: Danielle Daly – 312-988-5708</td>
<td>Arizona Biltmore Resort &amp; Spa&lt;br&gt;Phoenix, AZ</td>
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<td>March 20-22, 2019</td>
<td><strong>Transportation MegaConference XIV</strong>&lt;br&gt;Contact: Janet Hummons – 312-988-5656&lt;br&gt;Contact: Danielle Daly – 312-988-5708</td>
<td>Sheraton New Orleans&lt;br&gt;New Orleans, LA</td>
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<tr>
<td>March 22-23, 2019</td>
<td><strong>Admiralty and Maritime Law National Program</strong>&lt;br&gt;Contact: Juel Jones – 312-988-5597</td>
<td>Sheraton New Orleans&lt;br&gt;New Orleans, LA</td>
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<td>April 4-5, 2019</td>
<td><strong>Motor Vehicle Products Liability Conference</strong>&lt;br&gt;Contact: Janet Hummons – 312-988-5656&lt;br&gt;Contact: Danielle Daly – 312-988-5708</td>
<td>Hotel Del Coronado&lt;br&gt;Coronado, CA</td>
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<tr>
<td>April 5-6, 2019</td>
<td><strong>Toxic Torts &amp; Environmental Law Conference</strong>&lt;br&gt;Contact: Janet Hummons – 312-988-5656</td>
<td>Hotel Del Coronado&lt;br&gt;Coronado, CA</td>
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<tr>
<td>May 1-5, 2019</td>
<td><strong>TIPS Section Conference</strong>&lt;br&gt;Contact: Janet Hummons – 312-988-5656&lt;br&gt;Contact: Juel Jones – 312-988-5597&lt;br&gt;Speaker Contact: Arthena Little – 312-988-5672</td>
<td>Westin NewYork Times Square&lt;br&gt;New York, NY</td>
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<tr>
<td>May 8-10, 2019</td>
<td><strong>Fidelity &amp; Surety Law Spring Conference</strong>&lt;br&gt;Contact: Janet Hummons – 312-988-5656&lt;br&gt;Contact: Danielle Daly – 312-988-5708</td>
<td>JW Marriott Hotel Austin, TX</td>
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