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Tampa Bay is ground-zero for assignment of benefits cases over broken auto glass

By [Malena Carollo](#)



Auto glass lawsuits filed by a third party (through what's known as assignment of benefits) are skyrocketing in Tampa Bay. [Times file photo]

When Rachel Thorpe tried to renew her auto insurance last year for her Toyota RAV4, she was stunned to see her monthly premium had nearly doubled to \$600. The Sarasota driver was baffled since her only recent claim was over a broken windshield.

The problem: she had signed over her rights to deal directly with the insurance provider to her auto glass company. And, unbeknownst to Thorpe, her insurance company was sued over the repair. Then came the rate hike.

"I was irate," she said. "I was totally irate."

There is an air of familiarity to this tale.

Homeowners and insurance companies the past few years have cried foul over what's known as assignment of benefits, in which a property owner signs over their insurance rights to a third party like a contractor, repair firm or attorney.

A barrage of non-weather related water claims led to big losses at Citizens Property Insurance and other companies, which, in turn, has triggered higher rates for consumers.

Now, instead of property insurers being sued for busted water pipes and leaking roofs, it's auto insurers sued for cracked windshields. And instead of south Florida — the focal point of the water damage insurance claims — Tampa Bay is now ground zero for auto glass claims.

In the past few years, lawsuits brought by auto glass companies against insurance companies exploded from 1,389 in 2012 to 19,695 in 2016 according to the Florida Department of Financial Services.

Hillsborough County accounts for almost 35 percent of such cases statewide for 2016 — 6,663 — followed by Pinellas County at just above 4,415, a January study by the Florida Justice Reform Institute found.

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Claims that make it to court follow a pattern: An auto glass company offers to fix a consumer's windshield and deal with the insurance company for them. The consumer then signs an assignment of benefits agreement, allowing the glass company to deal directly with insurance issues. The glass company bills the insurer for the repair, and if the insurance company refuses to pay that amount, the glass company brings a lawsuit.

The latter part is what Thorpe didn't expect when she had her windshield replaced in February 2016. A crack from an errant rock on the highway grew into a gash one hot day, so she called her insurance company to have it fixed. Everything seemed to go smoothly. Auto Glass America, a company she chose after hearing their ads, replaced the windshield.

But Thorpe was unaware of what happened next. Auto Glass America billed her insurance company, Esurance, for just over \$1,200 for the windshield replacement. When Esurance refused to pay, Auto Glass America then assigned Thorpe's benefits over to a second company, Broward Insurance Recovery Center, which took Esurance to court. Thorpe's name was included in the plaintiff section as the assignor of benefits to Broward.

Here's where the central issue crops up: When a consumer takes their insurance company to court over a disputed amount and wins, they are eligible for what's known as a one-way attorney fee. The fee is a Florida statute that requires insurance companies to pay the winning consumer's lawyer fees.

"The idea was if David, the insured, is going to take on Goliath, the insurer," then the smaller party should have their fees paid, said William Large, president of FJRI.

In assignment of benefits cases, the auto glass company is acting as the consumer, and is thus entitled to have their lawyer's fees paid. This drives up what could be a dispute over a few hundred dollars to a potential bill for a few thousand dollars for the insurance company. Large argues that this is an abuse of assignment of benefits.

"This is a business model perfected by third party corporate vendors and their attorneys to use a statute that was meant to benefit an insured (consumer), not them," FJRI's Large said.

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According to the FJRI analysis, a majority of the suits come from a small set of auto glass vendors and lawyers. Auto Glass America files far and away the most lawsuits against insurance companies across Florida courts, including 5,589 for 2016. Broward Insurance Recovery filed the second most at about 1,600.

Auto glass companies, however, say they are heading to court so often because insurance companies give them no other choice. Chuck Isaly, owner of Auto Glass America, said that his company has the most lawsuits because of its size. He said lawsuits are the only recourse companies like his have to get paid fairly if insurance companies refuse their bill.

"I can assure you that all auto glass companies simply want to be paid fairly and not be strangled by these Goliath insurance companies," Isaly said. "We just want to be paid fairly and then compete against each other for the business and make a fair living. That's all we want in life."

What's more, he said, it's just a few large insurance companies that balk at paying glass companies' prices. A large swath of Auto Glass America's cases are against Geico, the largest auto insurer in Florida. Many large companies, Isaly said, have pricing agreements with auto glass companies, which

helps both parties avoid such litigation. Isaly said Geico doesn't have a pricing agreement with his or most other glass companies. Geico would not answer questions for this article, instead referring the *Tampa Bay Times* to Property Casualty Insurers Association of America, an industry trade association.

Logan McFaddin, Florida-based regional manager for PCIAA, couldn't directly address Geico's practices.

But she acknowledged that lawsuits can have unintended consequences for the consumers involved, even unknowingly.

"If you're seen as a litigious consumer who's going to sue your (insurance) company right out of the gate, then that's a risk for the company," McFaddin said.

The breadth of lawsuits may also lead to higher premiums for consumers, though it's unclear how much the litigation will actually affect insurance prices. And regulators aren't talking about it.

Insurance companies and regulators have been extremely vocal about how assignment of benefits have affected their costs. It was a major issue during the recent session of the Florida Legislature, though lawmakers wound up making no changes. When it comes to assignment of benefits for auto insurance, however, state regulators are reluctant to even discuss the topic.

The Office of Insurance Regulation typically tracks assignment of benefits issues and acknowledges that such claims have existed in the state for over a century. But OIR spokesperson Amy Bogner said the agency doesn't track auto glass claims because they fall under the umbrella of comprehensive coverage and aren't separated out specifically.

OIR deferred to the Florida Department of Financial Services, which tracks lawsuits related to assignment of benefits, including those for auto glass. DFS would not make someone available for an interview and did not answer a list of emailed questions sent Monday, instead emailing a short statement.

"Similar to what is being seen in the property insurance market, these rising trends will produce negative impacts for consumers in the form of higher rates," Ashley Carr, director of communications for DFS, said in a email.