



### Inside this issue :

NCOIL Statement on ALI Restatement **P.1**

NCOIL Health Interim Call **P.1**

IEC Direct Article **P.2**

Summer Meeting Schedule **P.2**

**NCOIL CIP Planning Meeting**  
**June 13—14, 2018**  
**Jersey City, NJ**



Sen. Jason Rapert, AR  
 NCOIL President



Thomas B. Considine  
 NCOIL CEO

## NCOIL STATEMENT ON ALI 'RESTATEMENT' OF LIABILITY INSURANCE

NCOIL President Jason Rapert (Sen, AR) & Commissioner Tom Considine, NCOIL CEO issued the following statements regarding passage of the American Law Institute (ALI) Restatement of Liability Insurance Law:

"For more than a year we have been working with the ALI to ensure that legislative prerogatives were respected. This vote makes clear that the ALI has indeed departed from the path that has caused it to amass such respect with its earlier restatements in the areas of Contracts, Torts etc. Previously, I called it a 'NEWstatement' and while we have had positive dialogue with the ALI leadership, and there have been some positive changes made to it along the way, the final version passed by the ALI does not alter that general view."

NCOIL President Sen. Jason Rapert of Arkansas stated "NCOIL will not allow the constitutionally protected legislative prerogatives in each state to be infringed upon by an unelected body. Legislative action includes both the passage as well as the consideration and non-passage of bill language. We will examine all necessary steps to rectify this overreach, including the necessity for a model law that accurately states what the law is on certain liability *Con'd on Page 2.*

## INTERIM HEALTH COMMITTEE CALL ON JUNE 8th

Assemblyman Kevin Cahill (NY) will be hosting an interim conference call meeting of the NCOIL Health, Long Term Care and Health Retirement Issues Committee on Friday, June 8th from 12:00 p.m. to 2:00 p.m. (EDT).

The purpose of the interim committee meeting is to discuss NCOIL President, Jason Rapert's (Sen, AR) discussion draft of the NCOIL Pharmacy Benefits Manager Licensure and Regulation Model Act. Interested parties are encouraged to submit comments on the discussion draft by Tuesday, June 5th. These will be used

to facilitate discussion during the call. Please direct any comments on the discussion draft to NCOIL Legislative Director Will Melofchik at [wmelofchik@ncoil.org](mailto:wmelofchik@ncoil.org).

All comments on the discussion draft and all other material will be posted on the NCOIL website. If you have any questions, please do not hesitate to contact the NCOIL national office at 732-201-4133. Dial-in information and a formal agenda will be circulated prior to the call.

Click the below banner to register.

**NCOIL HEALTH COMMITTEE INTERIM CALL**  
**JUNE 8TH, 2018 • NOON-2:00PM (EDT)**

**CLICK HERE FOR MORE INFORMATION**

## ALI Restatement con'd

insurance law topics”.

Rapert continued, “in the meantime, judges around the country should recognize this Restatement is as much a drafters’ wish list as an authoritative reference regarding established rules and principles of liability insurance law.”

NCOIL has devoted considerable time to discussing this issue, including most recently on an interim Executive Committee call earlier this month, at the 2018 Spring Meeting in Atlanta and the 2017 Annual Meeting in Phoenix, where a Resolution was introduced, and later adopted, urging the ALI to significantly change the Restatement. Past relevant releases can be viewed below.

<http://ncoil.org/wp-content/uploads/2017/12/ALI-Res-FINAL.pdf>

<http://ncoil.org/wp-content/uploads/2018/01/ALI-Res-Exec-Cmte-release-FINAL.pdf>



Rep. Matt Lehman, IN  
Treasurer



Asm. Ken Cooley, CA  
Secretary



Rep. Steve Riggs, KY  
Immediate Past President



Sen. Travis Holdman, IN  
Immediate Past President

## IEC Direct

### Assignment of Benefits on Property/Casualty Insurance Policies: A Lesson in Unintended Consequences

*This article is co-authored by the National Association of Mutual Insurance Companies (NAMIC), American Insurance Association (AIA), and Property Casualty Insurers Association of America (PCI) in conjunction with the IEC*

A near-catastrophic explosion of litigation in Florida has caused a property/casualty insurance crisis due to the misuse and abuse of assignment of benefits (AOBs) for property/casualty insurance policies under Florida’s law.

AOBs allow policyholders to assign or transfer the right to the benefit of payment of proceeds of an insurance policy to third parties. In the case of property/casualty insurance policies, it goes to service providers or contractors. The perceived benefit is to alleviate the policyholder’s need to be engaged in the claim while it is being processed and fulfilled. However, the rights transferred include the ability for the service provider to file court actions and act as if he or she is the policyholder.

Not only can recipients of AOBs – the service providers – hire attorneys to represent their interests and sue insurance companies under a first-party contractual right, they may also pursue actions for statutory unfair trade practices. This structure puts the service providers in an inappropriate position ahead of the policyholder’s rights and potentially divergent from the consumer’s interest.

The highest concentration of AOB use and abuse in Florida involves windshield damage in automobile loss claims, wind or hail damage to roofs, and water damage to homes in homeowner’s claims. In auto claims, the policyholder will traditionally enter into an AOB for their windshield damage with a replacement company. Although these claims are traditionally a low-dollar, low-severity claim, under Florida’s system the claim will more than likely result in litigation and inflated costs to the system.

To ascertain the quantity of that inflated cost, we can examine the number of lawsuits filed since AOB abuse has taken hold. From 2000 to 2005 there were 92 windshield lawsuits filed in Florida. Between 2010 and 2014, there were 13,100 lawsuits, nearly a 14,000 percent increase. This is an example of the widespread lawsuit abuse for which Florida is gaining national notoriety. In fact, the state was recently named the nation’s worst “Judicial Hellhole” by the American Tort Reform Association.

The central problem for most insurers doing business in the state is a unilateral or one-way attorney fee shifting statute that has resulted in a deeply flawed system with a skyrocketing litigation rate. Having been granted access to the benefits of an insurance policy via an AOB,

*Con’d on Page 3.*



Rep. Bill Botzow, VT

### Rep. Botzow Resigns as NCOIL Vice President

We are sorry to report that Rep. Bill Botzow has informed us that he will not seek another term in the Vermont House of Representatives and has resigned as NCOIL Vice President effective immediately. The NCOIL Nominating Committee is seeking applications and will meet to select a replacement to serve the remainder of the term as Vice President and put their name forward in December to serve as NCOIL President. Eligible applicants have been sent the application with the June 7th deadline.

## *IEC Direct con'd*

a third-party vendor/service provider with the help of an AOB attorney can then sue the insurer for the disputed costs of the mitigation and remediation of a property loss. If the third party prevails, by even as little as \$1, the insurer must pay all attorney fees. The same does not hold true if the insurer prevails. The law creates an incentive for third-party vendors to inflate costs to ensure the claim will be litigated. Attorneys who file such lawsuits do so with little risk because of this one-way attorney's fee statute.

AOB abuse additionally stresses the system via rate setting. State law requires insurers to charge those rates that sufficiently allow for coverage of risk anticipated. Failure of rate increases to meet expected losses will undoubtedly lead to loss ratios and combined ratios vastly exceeding premium recoupment thereby causing a deficit in operations and ultimately an unsustainable operation.

Florida is a cautionary tale for the insurance regulatory regime. State insurance legislators play a vital role in this matter, and they should act to adopt a national model to stem AOB abuse.

We would support and encourage model legislation that would incorporate principles that aim to curb AOB abuse:

**Disallowance of attorney fee shifting especially for AOB recipients** – Unfortunately, this fee-shifting approach has been a large driver in the abuse of the AOB usage. Litigation costs and loss-adjusting expenses for claims have dramatically increased simply due to AOB use.

**Mandatory disclosures as to risks of AOB for homeowners** – A list of disclosures and explanations should be created and required to be presented in writing to ensure that the property or auto owner is given a full and accurate explanation of what they are undertaking, the ramifications of their actions, and whether they consent to the conduct itself.

**Require all AOBs to be in writing** – The matter should be required to be in writing up-front or void at the policyholder's discretion.

**Required period of at least 7-10 days to rescind AOBs** – The pressure to get property repaired timely can cause some to act irrationally or hastily. The auto or property owner should be able to rescind as if the contract never existed although still being liable for any professional work completed to date whether covered or not in the absence of fraud or misrepresentation.

**Cost estimates be provided in advance of signing AOBs** – Work should not begin on any property unless there is a cost estimate prepared in writing that adequately explains what is being undertaken as well as timely updates on any progress or changes.

**Prohibit cost incentives or things of value from being offered in exchange for AOBs** – Apparently some service providers offer monetary or other types of gifts, including coupons, tickets, or other incentives, to enter into AOBs. The consideration for the AOB should not be induced by such avenues.

**Pre-suit discovery, appraisal, and written notification of intent to file** – Many of these matters could be resolved in a timely manner by the insurer if only given notice. Unfortunately, many of these lawsuits get filed before notification to the insurer simply to avail themselves of the attorney fee shifting.

**Mandatory pre-suit alternative dispute resolution, mediation, or arbitration** – Regardless of dollar amount, the parties should meet and try to resolve their differences in some alternative and cost-effective forum. Litigation should only be a last resort, not the first consideration for action.

AOBs have solved issues in the health care area where it may allow a patient to get critical or necessary treatment from a health care provider amidst an array of billing procedures. However, AOB abuse in the P&C realm has escalated into an exponential litigation windfall that must be contained or risk dramatic future rate increases, bringing availability and affordability coverage implications to all.

## NCOIL SUMMER MEETING TENTATIVE SCHEDULE

### THURSDAY, JULY 12, 2018

Welcome Breakfast	8:15 a.m.	-	10:00 a.m.
Networking Break	10:00 a.m.	-	10:15 a.m.
Property & Casualty Insurance Committee	10:15 a.m.	-	11:45 a.m.
Life Insurance & Financial Planning Committee	11:45 a.m.	-	1:00 p.m.
The Institutes Griffith Foundation Legislator Luncheon	1:00 p.m.	-	2:15 p.m.
Innovation General Session	2:15 p.m.	-	3:45 p.m.
Join State-Federal Relations and International Insurance Issues Committee	3:45 p.m.	-	5:00 p.m.
Budge Committee	5:00 p.m.	-	5:30 p.m.
Welcome Reception	5:30 p.m.	-	6:30 p.m.

### FRIDAY, JULY 13, 2018

Financial Services Committee	9:00 a.m.	-	10:15 a.m.
Networking Break	10:15 a.m.	-	10:30 a.m.
Fundamentals of Insurance Session I (To run concurrent with Financial Services Committee and Health General Session)	10:00 a.m.	-	11:30 a.m.
Health General Session	10:30 a.m.	-	12:30 p.m.
Luncheon with Keynote Address	12:30 p.m.	-	2:00 p.m.
Legislative Micro Meetings	2:00 p.m.	-	2:30 p.m.
Workers' Compensation Insurance Committee	2:30 p.m.	-	3:45 p.m.
Fundamentals of Insurance Session II (To run concurrent with Workers' Compensation Insurance Committee)	2:30 p.m.	-	3:30 p.m.
Networking Break	3:45 p.m.	-	4:00 p.m.
NCOIL-NAIC Dialogue	4:00 p.m.	-	5:30 p.m.
IEC Board Meeting	5:30 p.m.	-	6:00 p.m.
CIP Member & Sponsor Reception	6:00 p.m.	-	7:00 p.m.

### SATURDAY, JULY 14, 2018

Health, Long Term Care, and Health Retirement Issues Committee	9:00 a.m.	-	11:00 a.m.
Networking Break	11:00 a.m.	-	11:15 a.m.
P&C General Session	11:15 a.m.	-	12:45 p.m.

### SUNDAY, JULY 15, 2018

Business Planning and Executive Committees	9:00 a.m.	-	10:30 a.m.
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