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AUTO GLASS CLAIMS – FRAUD SCHEMES & TRENDS

Problems ~ & ~ Viable Legislative Solutions

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Florida is one of only three (3) states which statutorily waive the deductible for windshield repair or replacement.¹ This deductible “waiver” is not the “problem”; but the emerging fraud scheme/fraud trends with Glass Claims can be traced back to the *unscrupulous windshield replacement vendor and sometimes the unscrupulous attorney representing said vendor*. Most insurance industry representatives (adjusters, claims personnel, agents, defense attorneys) are aware of the Glass Claim nicknames known as “The New PIP Schemes” or “New Avenue for Plaintiff Attorney’s Fees”. Similar and analogous to these “unscrupulous” windshield replacement vendors were the medical providers and PIP attorneys creating the catalyst to the sweeping PIP legislative changes made since 2003.² This article focuses on the issues, problems, and potential solutions of the Glass Claim Fraud which are specific to Florida.

AUTO GLASS CLAIMS ~ SCHEMES AND TRENDS

While there are **numerous** tactics employed by the windshield replacement vendor, to market/solicit innocent insureds, there are **two focus areas** for purposes of this article and the solutions proposed. These focus areas are **1) Assignment of Benefits** obtained from the insured and **2) Invoices**.

Assignment of Benefits

The unscrupulous windshield replacement vendor(s) [hereinafter referred to as “vendor” or “vendors”] will engage in questionable conduct to secure the Assignment of Benefits [hereinafter referred to as “AOB”]. This conduct includes such acts as *misrepresenting the law of windshield claims to insured; offering cash money to secure the AOB; and/or providing some other type of kickback to the insured to sign the AOB*. In addition, assuming the AOB is not signed by

¹ The two other states are Kentucky and South Carolina.

² See §627.736, Fla. Stat.; and the *Second Interim Report of the Fifteenth Statewide Grand Jury*; and Staff Analysis and Economic Impact Statement provided in Fla. S. Comm. on Banking and Insurance, CS for SB 1092 Staff Analysis (March 26, 2001)

the insured then the AOB is simply forged.³ Many times, an insured will execute an Affidavit Re: AOB as “evidence” that the insured(s) signature(s) is forged.

Invoices

The vendor will manipulate the invoicing process, even with legitimate AOB, by engaging in questionable conduct that includes (but is in no way limited to) *falsifying the invoice where no services were provided; inflating the invoice to charge for a windshield for a luxury type vehicle having been installed on a non-luxury vehicle; and/or submitting two invoices (right behind each other) with minimal/nominal changes between the first and second invoice* [known as the “duplicate invoice scheme” or “draw litigation scheme”. This duplicate invoice scheme is specifically designed to exploit the busy and/or inexperienced adjuster. The adjuster sees no real difference between the two invoices and pays the first one submitted OR has already issued payment when the second invoice is submitted. The “second invoice” or “duplicate” has an extra nominal charge such as “taxes” or possibly “service charge” not appearing on the first invoice.⁴ Because “demand letters” **are not** required prior to the filing of any glass/windshield litigation, the failure to pay the amount shown on the “duplicate” invoice becomes the basis for the civil litigation and thus the attorney fees and costs associated therewith.⁵

AUTO GLASS CLAIMS – THE PROBLEM

Internal Operational Problems for Insurer

For the insurer, the “problem” is threefold as follows: **1)** Training adjusters to recognize and handle the questionable/fraudulent invoice or AOB; **2)** due to the quantity of glass claims, managing the volume of the claims and being able to reconcile the paperwork in an efficient manner; and **3)** defense fees and plaintiff fees paid when defending and settling any litigation; litigation that many times seems over “nominal” or “diminimis” amounts/damages and thus worthy of settlement.⁶ Additionally, there is the “corporate layering” of some vendors to disguise the true ownership by the very plaintiff’s counsel advancing litigation against the insurer. Like the savvy and unscrupulous medical providers in the PIP insurance claims, these glass vendors are very aware of what insurers pay without question in response to invoicing *or* pay based on the “cost benefit” for the carrier.

³ For complete information on tactics, please contact the firm at Melissa@thezlg.com or call 352-634-6988.

⁴ Many times, the AOB assignee (vendor name) does not match the name of the provider as listed on the invoice.

⁵ See §627.428, Fla. Stat.

⁶ The insurer requirements pursuant to §626.989 and §626.9891, Fla. Stats. are not part of this discussion but should be considered due to administrative penalties to the insurer.

Regulatory Oversight of the Windshield/Glass Claim Vendors

Florida Motor Vehicle Repair Act

Vendors are restricted by certain provisions via the *regulatory oversight* of motor vehicle repair shops pursuant to §559.901 - “Florida Motor Vehicle Repair Act” (“FMVRA”). The Act, established “to protect consumers against misunderstandings arising from oral estimates of motor vehicle repairs and the legal disputes and litigation that results from the ... claims for repair work already done”⁷, falls under the authority of the Florida Department of Agriculture⁸, the statute defines the “motor vehicle repair shop”, in part, as follows:

Any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor...garages...self-employed individuals...paint and body shops...and shops *doing glass work*...[emphasis added]⁹

FMVRA provides a list of 18 “unlawful acts and practices”¹⁰ at §559.920 (1) – (18) and provides, in pertinent part, as to following *listed* subsections:

- (2) Engage or attempt to engage in repair work for compensation of any type without ...being registered with or having submitted...exemption to the department;
- (3) Misrepresent that repairs have been made to a motor vehicle;
- (6) Fraudulently alter any customer contract, estimate, invoice, or other document;
- (8) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive or misleading;
- (9) Make false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (10) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to her or his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop;
- (16) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer’s established repair procedures or specifications and allowable tolerances for the particular model and year; or
- (17) Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.

⁷ See ***Osteen v. Morris***, 481 So.2d 1287 (Fla. 5th DCA 1986)

⁸ Not a focus of this article but, again, should be noted – the Dept. of Agriculture maintains a “business” listing for the auto repair shops. Many times, the information on the agency’s website has company status as “closed-out of business” while operations are still underway, and billing is being submitted for auto glass repair. The records also show complaints filed against the companies.

⁹ See §559.903(6)

¹⁰ These “unlawful acts and practices”, among other parts of §559.

The above statutory provisions address many of the “problems” presented with the various fraud trends and schemes. These provisions provide statutory defenses to the insurer required to defend baseless litigation. A review of a sampling of 100 Answers/Defenses, filed in Hillsborough County glass matters, fails to reveal any statutory defenses pursuant to the above provision(s) while there is evidence supporting fraud defense(s). Further, a review of Auto Glass vendors on-line licensing records reveals *less than ten (10) complaints* having been filed for violation(s) of §559.920. These complaints do appear to carry any consequence(s) for the vendor.

Voluntary Organization(s) Provide Oversight/Accreditation

Specific regulations and oversight to “Auto Glass Replacement Technicians” are administered through agencies such as the Auto Glass Safety Council (www.agsc.org) which offers several leveled “Technician Accreditation(s)”¹¹ and is guided by its membership with the American National Standards Institute (ANSI) (www.ansi.org).¹² This “volunteer” organization offers “standards” of practice totaling *one* page of less than 10 bullet points without mention of any prohibition on engaging in fraud, deceit or misrepresentation related to the business of auto glass installation and/or repair.¹³

Past Legislative Efforts to Address the Auto Glass Claim Fraud

The Florida Legislature has attempted to make advances with the statutory provisions that could, at minimum, slow or curtail the fraudulent Auto Glass Claims. Drastic changes and additions to the property insurance laws resulted in, among other items, inclusion of parameters, restrictions/prohibitions when an insured enters into AOB contract and assigns the policy benefits to a third-party contractor or other vendor. This passage of House Bill 7065 (HB 7065) had a similar parallel Senate Bill 122 (SB 122) which tracked the AOB language and provided a specific provision to address the assignment of *auto windshield claims*. Ultimately, for several reasons, the Senate abandoned SB 122 and voted on HB 7065.

However, the “trend” towards shutting down the AOB suit proliferation and the underlying fraud schemes within the glass claim industry is noticeably on the horizon. Glass companies, since that “near miss” in 2019 with the SB 122, have surely taken notice that making more claims and filing more suits is a *must* while the possibility of doing so still exists.

¹¹ Please review the *one-page* Code of Ethics promulgated by AGSC. While it requires the adherence to the laws of the US, the State and local authorities, there is no such laws in the State of Florida.

¹² ANSI is a private, non-profit organization that “administers and coordinates the U.S. *voluntary* standards and conformity assessment system.

¹³ That is not to say that organizations such as AGSC or ANSI are not addressing the fraud/misrepresentation issues.

¹⁴ See William Rabb, “Florida Appeals Court Upholds Dismissal of 16 Auto-Glass AOB Suits vs. Progressive”, *Insurance Journal*, November 18, 2022, <https://www.insurancejournal.com/news/southeast/2022/11/18/695786.htm>.

¹⁵ See (one of several similar appellate decisions) *Shazam Auto Glass a/a/o Elmeron Flores v. Progressive American Insurance Company, et. al.*, 5D21-1282, WL1602296 (Fla. 5th DCA Nov. 4, 2022) – Opinion Not Final

Litigation statistics, having risen substantially in just five (5) focus counties since 2019, seems to support the “rush to the courthouse” theory before the legislature is able to restrict the specific glass windshield claim industry like it did the property insurance claim(s). In 2020, glass litigation increased from 438 filed in 2019 to 1,094 filed in 2020. This represents a 150% increase in auto glass litigation. Along the above increase in litigation, it was recently suggested that the trial courts are growing frustrated with the amount of the AOB auto glass litigation.¹⁴ Recently, Florida’s 5th District Court of Appeals upheld 16 dismissals of AOB Auto Glass litigation that had been filed against Progressive. The trial court’s basis for dismissing the litigation was grounded in the fact that the Assignee/Glass Company failed to comply with the post loss obligation of appraisal.¹⁵

AUTO GLASS CLAIMS – THE LEGISLATIVE SOLUTION

The efforts by the Senate, to address the AOB issue with the auto glass windshield claims, are worth the revisit given the statistical increase in claims from the 2019 abandonment of the proposed legislation. However, to directly address the *fraud/misrepresentation/schemes* and provide a statutory defense for the insurers and consumers it is worth considering simple realigning of already enacted statutory provisions within §817.234; and one additional sentence for inclusion in §559.920.

Florida Statute 817.234 (8)(a), in sum, makes it unlawful to solicit business from a person involved in a motor vehicle accident for purposes of making a tort claim or a claim for personal injury protection benefits. It provides various parameters that are not relevant for purposes of this article. Thereafter, §817.234 (8)(d) provides as follows:

Charges for any service rendered by any person who violates this subsection in regard to the person for whom such services were rendered are noncompensable and unenforceable as a matter of law.

Given most insureds cooperate with insurer investigations regarding the fraud schemes, it is easily established when a glass company has engaged in conduct that violates §817.234 (1)(a) which provides, in pertinent part:

817.234 False and fraudulent insurance claims.—

(1)(a) A person commits insurance fraud punishable as provided in subsection (1) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

2. Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such

statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; ...

Proposed Legislative Changes

The simple and most logical change to the above would be to move the statutory provision as outlined in §817.234 (8)(d) to §817.224 (11) and shift the rest of those provisions down. Therefore, the statute would provide that if violation(s) of *any of the statutory provisions as outlined* would render the charges (including auto glass invoices) “*noncompensable and unenforceable as a matter of law*”.

Similarly, the same wording should be considered as an addition to §559.920 and can be inserted at the end and titled (19).

Both solutions are simply *moving* an already approved provision to give protection to *all consumers* and not just those that are impacted by an unlawful solicitation by a doctor or attorney for purposes of a fraudulent/false tort or PIP claim. At the time of this writing, our firm is communicating with legislative officials to consider the proposal and assist with the drafting of such legislation.

CONCLUSION

The true impact of the fraudulent Auto Glass Windshield claims is likely unknown for several years. Hopefully, Florida law makers will be able to make headway this next (2022-2023) legislative session. As noted, while seemingly over simplified, providing a *statutory basis* for summary judgment on any of these claims may deter the Plaintiffs but also provide insurers with some comfort in advancing the litigation costs to defend such litigation. The current statutory defenses provided for in §590.920, F.S. (for glass companies that have availed themselves to same via registration with the Dept. of Agriculture) are worth using to educate the trial courts on the issues presented with Auto Glass Claims. While judges are well versed on the policy defenses, the value of advancing a statutory defense cannot be measured. Such defenses often act as guidepost for the Florida Legislature to use as sometimes a “sword” and sometimes the “shield” when trying to pass legislation. For certain, enacting new legislation will curtail the prevalent Auto Glass claim fraud being perpetrated on innocent Florida consumers by unscrupulous auto glass companies.