

## Florida Chapter Update, by Christopher Butler



New Assignment of Benefits (AOB) law set to take place in Florida on July 1, 2019 once signed by newly elected Governor Ron DeSantis. Florida Senate Measure (SB 122) and House Bill 7065 addresses AOB abuse for both residential and commercial properties. Of the provisions most noted will be the requirement of service providers to give an insurer and the consumer prior written notice at least 10-business days before filing a lawsuit on a claim. Also noted will be the transfer of certain pre-lawsuit duties under the insurance contract to the assignee. In plain English, the assignee will be subject to post-loss policy conditions. According to a report by the Florida Justice Reform Institute, there has been over a 400% increase.

The Florida Insurance Fraud Education Committee (FIFEC) will be holding its annual conference in Orlando, FL. The conference brings together numerous parties across the insurance industry and law enforcement agencies together to fight insurance fraud through education and commitment. For more information, please go to: <https://fifec.org/conference-information.html>.

## Here We Go Again! Florida Supreme Court Reverses Itself and Endorses Daubert Standard for Expert Testimony, by Brian P. Henry, Esq., Rolfes Henry Co., LPA

On May 23, 2019, in a shocking reversal of its own seven-month old precedent, the Florida Supreme Court issued a *per curiam* opinion **adopting** the previously-rejected 2013 legislative amendments to Florida Statute Section 90.702, which codified the *Daubert* standard for the admissibility of expert testimony in Florida cases.

The decision, presently labeled as *In re: Amendments to the Florida Evidence Code*, SC19-107 (May 23, 2019), seems to overturn the Court's October 2018 decision in *DeLisle v. Crane Co.*, 258 So. 3d 1221 (Fla. 2018), wherein the court determined the *Frye v. United States* test governing the admissibility of expert testimony, which had been utilized in Florida before the legislative amendments, was the proper standard, and that the 2013 legislative amendments to Section 90.702 were unconstitutional. However, the *Amendments* decision does not address the *DeLisle* case directly, with the Court instead choosing to adopt the *Daubert* standard through its ability to establish procedural rules of evidence.

Significantly, the Court majority in *In re: Amendments* included two of three justices recently appointed by new Florida Governor Ron DeSantis, who ruled differently than their predecessors had in *DeLisle*. The new *In re: Amendments* decision rejected the claimed constitutional deficiencies in the legislature's actions found by the *DeLisle* court, and once again implements the *Daubert* standard for the admissibility of expert testimony by **adopting** the 2013 legislative amendments to Florida Statute Sections 90.702 and 90.704. The Court specifically held that the decision is "effective immediately."

In *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), the United States Supreme Court established a flexible yet rigorous standard for the admissibility of expert testimony, requiring the Court to perform a "gatekeeper" function to keep unreliable expert testimony from juries. That standard requires the assessment of the reliability of proposed testimony by considering the facts and data upon which an expert relies for his or her opinion; the methodology employed by the expert in reaching

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**Here We Go Again! Florida Supreme Court Reverses Itself and Endorses *Daubert* Standard for Expert Testimony** *(cont'd.)*

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the opinion; and whether the expert has reliably applied the chosen methodology to the facts of the case.

Through this decision, the ten-year debate in Florida on the proper standard for the admissibility of

expert testimony should come to an end, as Florida joins nearly 40 other states who have adopted the *Daubert* standard. This decision also re-establishes the opportunity to dramatically affect litigation through properly challenging “junk science” or deficient expert witnesses.

**News From Our Illinois Chapter**

***The Chapter President’s Message from John Barnacle...***



Thank goodness summer is right around the corner since Illinois has had a brutal winter and I really can’t say that we had much of a spring since we had 8 inches of snow in Chicago a few weeks ago.

We had our Chapter training meeting in April and the speaker was Robert Rapp from the Illinois Department of Insurance. He had a wealth of knowledge regarding Public Adjusters and the training turned out to be a great success.

Looking forward to the next training meeting in September. We are still working on a topic and speaker.

Enjoy your summer everyone!

**News From Our Indiana Chapter**

***The Chapter President’s Message from R. Shane Otto...***



Greetings from the Indiana Chapter of NSPII! As the President of the Indiana Chapter for 2019, I would like to thank our membership for its continued support and I look forward to serving you. We are coming off an amazing year led by past President Gene Pinkus of Kopka Pinkus Dolin, PC. 2018 saw several amazing events including the 4<sup>th</sup> annual Midwest Medical Symposium as well as the 2018 National Seminar in Indianapolis.

In 2019, we are excited to bring more amazing training and educational opportunities to the fraud fighting community. The 5<sup>th</sup> annual Midwest Medical Symposium is being held on June 13, 2019 at the Indiana Government Center in Indianapolis with our 5<sup>th</sup> year partner, the IN Attorney General’s Medicaid Fraud Control Unit. The 2019 NSPII National Insurance Fraud Seminar will be held October 7-9 in Lawrenceburg, Indiana. In early May, EFI Global will be presenting a Lunch & Learn on Vehicle Accident Reconstruction and Black Box Data Recovery. In addi-

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