BUSINESS IN NEW JERSEY

A much-needed protection for insurance consumers

Jay Feinman *Guest Columnist*

Here's the insurance company advertisement you will never see: "You're in good hands, we're here to make life go right, we're on your side — unless you file a claim. If we deny your claim, act unreasonably in denying it, even violate the law in doing so, there's nothing you can do about it. Of course you could sue us, but the most you'll recover is what we owed you in the first place — minus the lawyer's fee you had to pay to get it."

If a New Jersey insurance company acts unreasonably in delaying payment or denying a valid claim — even if it breaks the law in doing so — under current law a policyholder has no effective recourse. Policyholders who sue to recover the benefits they are entitled to under their insurance policies are never made whole, because they have to pay attorney fees and court costs to get what was promised. Policyholders with small or medium-sized claims are even worse off, because the size of the claim doesn't justify the expense and aggravation of litigation.

The proposed New Jersey Insurance Fair Conduct Act — passed by the Senate, now pending in the Assembly — would change that. Under the bill, if an insurance company unreasonably delays or denies payment or violates the law, a policyholder can sue to receive what it is entitled to under the policy along with attorney fees and treble damages. The attorney fees ensure that the policyholder is made whole. The treble damages deter insurers from acting unreasonably in the first place.

The bill would correct a major gap in the law. Right now, a policyholder has an effective recourse only if his or her insurance company knows that it has no basis at all for denying a claim but denies the claim anyway. That is one of the toughest standards in the country; many other states have consumer protections like those proposed in this legislation. And the current standard is almost impossible to meet. The law is so stacked against insurance consumers that since the Supreme Court established the current rule in 1993, only one case has even made it to a jury trial.

Insurance companies argue that the Insurance Fair Conduct Act is unnecessary and would be harmful. Actually, research shows that in states that have similar protections, insurance companies are less likely to delay or underpay claims, and policyholders who do not have to sue are the ones who benefit the most.

Insurance companies also commissioned a study suggesting that the bill would dramatically raise insurance premiums. A report by actuarial consulting firm Milliman, paid for by insurers, claims premiums could increase by $2.5 billion, with auto coverage increasing 20 to 40 percent and homeowner policies going up 17 percent. That's just wrong, and it's based on a clear misreading of the bill.

In fact, correcting that misreading and even using the Milliman report's own numbers, auto insurance premiums might increase by about 6 percent. And other errors in the report suggest that the real number will be much lower.

Here's how to think about why — even if the legislation causes a modest increase in insurance premiums — that still would be good for New Jersey insurance consumers. The average annual expenditure for auto insurance in New Jersey is about $1,300. Suppose you go to Best Buy and purchase a really nice television. The sales clerk gives you a choice. You can buy the TV for $1,300, but if you do, it comes without a warranty; if it doesn't work when you get it home or if it stops working later, you're on your own. But for another few dollars, you can buy a warranty that guarantees the TV will work; and if it doesn't, Best Buy will repair or replace it. Which would you buy?

The Insurance Fair Conduct Act is like a warranty. You buy an insurance policy. How do you know the insurance company will treat you reasonably and follow the law if you have a claim? The bill makes sure that the company will. If the company doesn't, you can sue to get what you were promised without having to deduct your lawyer's fee from the recovery. And the threat of extra damages gives the company an incentive to do the right thing in the first place.

Jay Feinman is a distinguished professor at Rutgers Law School. An expert in insurance law, he also serves as co-director of the Rutgers Center for Risk and Responsibility and is the principal author of the Essential Protections for Policyholders Project (epp.law.rutgers.edu), which provides a roadmap that states across the nation can follow to improve homeowners insurance and protect consumers.

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