

# The Protection Gap in Homeowners Insurance: An Introduction

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In the past few years the insurance community has paid increasing attention to the “protection gap” — the extent to which significant property losses are not covered by insurance. Because insurance plays an important economic and social role in many ways, the protection gap is significant to individuals, firms, the communities in which they reside or operate, and the economy as a whole.

In March 2019, the Rutgers Center for Risk and Responsibility at Rutgers Law School held a conference on The Protection Gap in Property Insurance. Academics in law and business, policyholder-side and insurer-side coverage lawyers, regulators, consumer advocates, and other professionals engaged in insurance issues explored protection gaps: what they are, where they occur, what causes them, and how to cure them. This paper provides an orientation to the issues raised at the conference.

## **What is a Protection Gap?**

The Geneva Association, the insurers’ global think tank that has pioneered research into the protection gap, offers two definitions of a protection gap. Both are useful, but neither entirely captures the issues involved in thinking about protection gaps.<sup>1</sup> The GA definitions are:

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- *The risk protection gap*—The difference between total losses and insured losses.
- *The insurance protection gap*—The difference between the amount of insurance that is economically beneficial and the amount of insurance actually purchased.

The *risk protection gap* definition identifies the extent to which insurance is not providing protection, and it is relatively easy to calculate, at the individual and societal levels. After a natural disaster, for example, government and private entities readily can calculate the losses caused that could be covered by available insurance and the amount of insurance paid. (The “losses caused” are limited to ordinarily insurable losses; the owner of a fire-damaged house can insure the cost of repairs and the additional living expense of relocation while repairs are underway, but the real cost of time off from work to deal with contractors is uninsurable.)

The *insurance protection gap* definition introduces an important normative element in its emphasis on economically beneficial insurance, focusing attention on the kind of insurance that *should be* provided and not just the kind of insurance that is in place. Losses derive from risks, but insurance is only one way of addressing risk, and often not the only way or the best way. For some risks, control or mitigation may be superior to insurance. For others, especially highly correlated risks, insurance may be unavailable at a price that potential insureds are willing or able to pay. The insurance protection gap definition forces attention to the process of evaluating particular types of insurance or insurance decisions, because it takes account of the beneficial role of insurance in some circumstances, its limited role in other circumstances, and the potentially negative consequences of insurance, such as in encouraging moral hazard.

But the insurance protection gap definition is incomplete. The concept of insurance that is “economically beneficial” focuses on insurance as a financial transaction of risk transfer entered into by an economically rational policyholder. In fact, that is not the whole story. At the individual level, policyholders have different levels of risk preference and different underlying financial conditions that enable or prevent them from purchasing an appropriate level of insurance. At the societal level, what is economically beneficial for an individual purchaser of insurance may not capture all of the costs and benefits for society as a whole.

More broadly:

**The protection gap is the difference between the amount of insurance that is in place and the amount of insurance that should be in place.**

Under that definition, how much insurance “should be” in place?

First, the insurance must be of the kind that is or reasonably could be available. In homeowners insurance, for example, property damage and loss of use are insurable; emotional harm is not.

Second, the risks must be insurable: calculable, non-correlated, and offered at a price that covers all costs and produces adequate demand.

Third, the insurance must avoid moral hazard and adverse selection that would undermine the viability of the insurance pool.

Fourth, the insurance should accord with policyholders' reasonable expectations. Policyholders have general expectations, often indistinct, about the protection and security their insurance provides, expectations shaped in significant part by insurance company advertising. Actual expectations are not the whole point; expectations must be and are entitled to be reasonable as well, which involves many of the other factors about what insurance should be provided. It also includes typical requirements of mortgage guarantors such as Fannie Mae, which specify the kind and amount of insurance that must be in place for a property subject to a guaranteed mortgage.

Fifth, the insurance must provide positive social effects. In the case of a natural disaster, for example, whether homeowners in a community have adequate insurance to rebuild has important consequences for local businesses and the community as a whole. Similarly, whether their insurance has been priced to provide incentives for risk mitigation before the disaster occurs will influence the level of economic consequences for the community.

The concept of a protection gap is complicated. There are easy examples: The paradigm case of a protection gap arises when a policyholder does not have insurance that is readily available, reasonably priced, easily understood, economically rational, and socially beneficial; low take-up rates for flood insurance in high-risk areas and the purchase of inadequate policy limits under replacement cost homeowners insurance policies are common examples. But beyond those examples, the definition of the concept cannot be separated from the causes and consequences of protection gaps, and those causes and consequences need to be considered in describing instances of protection gaps and cures for them.

## Where Do Protection Gaps Occur?

The protection gap takes several forms.

- *Entirely uninsured.* The property owner lacks insurance for all risks.
- *The underinsurance gap.* The policyholder has coverage, but in an amount that is less than the extent of actual or potential losses.
- *The risk protection gap.* The policyholder is insured, but certain risks are not covered.
- *The coverage gap.* The policyholder is insured, a risk is covered, but coverage is subject to other limitations. Limitations or restrictions in the insurance

policy other than the exclusion of risks prevent full coverage for actual or potential losses.

- *The claiming gap.* The insurance in place potentially covers risks and losses, but factors in the claim process result in a failure to pay fully.

Because the protection gap is best defined as the difference between the amount of insurance that is in place and the amount of insurance that should be in place, not every gap in coverage constitutes a protection gap. But there are familiar examples that illustrate the different types of protection gaps.

### **Entirely uninsured**

This category includes instances in which a property owner lacks insurance coverage for all risks related to the property, even though homeowners insurance is available.

Much of the protection gap literature addresses the protection gap in developing economies, where a large portion of the gap may arise because of the lack of insurance available for risks. The situation in developed economies with mature insurance markets is different. The US property insurance market in general is available to property owners, so a protection gap because a potential class of policyholders is entirely uninsured does not exist.

As a result, about only about 5 percent of US homes are uninsured.<sup>2</sup> In part this is driven by the requirements of mortgage lenders and the federal mortgage programs, which require insurance. Presumably most of the uninsured homes are older homes for which there is no present mortgage and, especially for older residents, the cost of insurance may be a significant factor in failing to insure.

In some cases, however, insurance may be unavailable for some property owners. Risk factors such as a history of frequent, high-value claims or unusual hazards, for example, may make an individual home uninsurable.<sup>3</sup> Increasingly location may make all homes in an area uninsurable; after the California wildfires of 2015-2017, insurers have been less willing to write new policies or offer renewals in areas prone to wildfire.<sup>4</sup> In many cases, a property that is uninsurable in the ordinary private market may be eligible for insurance under a state's residual market mechanism, such as a FAIR plan, or in the surplus lines market.

### **The underinsurance gap**

Often a policyholder has coverage but in a dollar amount that is less than the extent of actual or potential losses. The underinsurance gap may be one of the largest instances of the protection gap. Until the 1990s, guaranteed replacement cost coverage was common, ensuring that coverage would be available for the entire cost of rebuilding even in the case of a total loss; now it is the exception. As a result, most homes are insured for less

than the cost to rebuild, because even replacement cost coverage is subject to policy limits that are likely to be too low.

One source of the underinsurance gap is the failure of insurers to provide accurate and up-to-date estimates of replacement cost. Homeowners almost always rely on insurers' estimates, and because of inadequacies in the software used to estimate costs and incentives for insurers and agents, underinsurance often occurs.<sup>5</sup>

Some examples:

- Three of every five homes in America are underinsured by an average of 20 percent less than full value, according to analytics firm CoreLogic, whose software is a widely used tool for estimating replacement cost.<sup>6</sup>
- A year after the North Bay wildfires in California, 66% of survey respondents who knew if they had enough insurance to cover the cost of repairing, replacing or rebuilding their home, reported being underinsured, according to a United Policyholders survey.<sup>7</sup>
- Following the 2007 wildfires, the California Department of Insurance found that even though many homeowners bought coverage higher than the policy limit recommended by their insurer, more than half still were underinsured.<sup>8</sup>

The under-insurance gap is even more likely to occur following natural disasters or other occasions of widespread loss, for two reasons.

First, policies in risk-prone areas increasingly contain special deductibles or policy limits that reduce the coverage limits available. Hurricane deductibles or windstorm or wind/hail deductibles often are included, increasing the deductible for such losses from 1 percent of a home's insured value to 5 percent or higher.<sup>9</sup> In extreme cases, an endorsement limits coverage for wildfire losses to \$5,000.<sup>10</sup>

Second, following a disaster such as a hurricane or wildfire, the cost of repair or rebuilding usually rises dramatically because of demand surge—increased demand for a limited supply of labor and materials.

### **The risk protection gap**

The risk protection gap arises when insurance in place does not cover certain risks. Most homeowners insurance policies are all-risk policies, with a basic promise to cover all risks but with many risks actually excluded, which is why the industry prefers to call the policy “open perils” rather than “all risk.”

The best-known examples are risks from natural disasters such as floods, earthquakes, or windstorms. Such risks are regarded as uninsurable under ordinary coverage because they are correlated and potentially very large, so they are excluded from homeowners policies. Residual market mechanisms to fill the resulting gaps are created by public or public-private entities such as the National Flood Insurance Program and the California

Earthquake Authority. But relatively few consumers take advantage of the residual policies because they do not know the policies are needed or available, because of poor decision making that underestimates the risk of catastrophe, or because they consider the policies too expensive, leaving a significant gap. In hurricane-prone south Florida, for example, penetration of NFIP flood insurance is only 34 percent in Miami-Dade County, 26 percent in Broward County, and 22 percent in Palm Beach County.<sup>11</sup> In areas most affected by recent Category 4 hurricanes Harvey, Irma and Maria, as many as 80 percent of homeowners in Texas, 60 percent in Florida, and 99 percent in Puerto Rico lacked flood insurance.<sup>12</sup> And about 85 percent of California homes lack earthquake insurance.<sup>13</sup>

In other cases risk protection gaps arise because of policy exclusions that cover narrower classes of risks, sometimes with alternative coverage available by endorsement and sometimes not. Water damage is a common example. The water damage exclusion in a typical homeowners policy such as the HO-3 begins by excluding flood in a way that suggests a focus on correlated risk arising from natural disasters: “Flood, surface water, waves, including tidal wave and tsunami, tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind, including storm surge.” It then goes on to exclude a variety of non-correlated water losses, including sewer backup, overflows from sump pumps, and subsurface water from both natural causes and broken pipes. Coverage by endorsement is available for some of these losses, such as sewer backup, but the result of the basic policy term and the failure to purchase the endorsement creates a significant risk protection gap for many homeowners.

A different kind of policy term creating a risk protection gap is the anti-concurrent causation clause. In their current, expanded forms, most anti-concurrent causation clauses bar coverage if an excluded cause contributes to a loss “directly or indirectly ... regardless of any other cause or event contributing concurrently or in any sequence to the loss ... whether or not the loss event results in widespread damage or affects a substantial area.” (HO-5) As a result, an event that is caused in part by a covered risk is not covered if an excluded risk contributes in any way to the loss. Hurricane damage caused by wind (covered) and water (excluded) is the obvious example. The result is a gap in coverage even for losses caused by risks that otherwise are within the policy.

### **The coverage gap**

The coverage gap arises when a policyholder is insured for a proper amount and a risk that causes a loss is covered, but coverage is subject to limitations or restrictions in the policy that prevent full coverage for actual losses.

Any exclusion, limitation, or restriction in a policy can result in a coverage gap, and many of them arise from limitations on payment for a loss.

- Particularly in Midwestern states where wind and hail damage is common, insurers may not offer replacement cost coverage on roofs, instead requiring actual cash value coverage or roof depreciation schedules.
- Similarly, “cosmetic damage endorsements” exclude or limit coverage from damage that arguably affects the appearance but not the function of the property or a specific portion of it.
- Matching disputes have been frequent, in which a part of a building component is damaged (such as part of a roof) and the issue is whether the insurer can pay only to replace the damaged portion or must pay to replace the entire component so the damaged portion matches the undamaged portion. Insurers have broadened policy language to make clear that they “will not pay to repair or replace undamaged property due to mismatch between undamaged and new material used to repair or replace damaged material.”<sup>14</sup>
- Many policies contain terms barring or limiting in amount the expense in the frequent event that an ordinance or law, such as an updated building code, increases the cost of repairing or rebuilding a house.

### The claiming gap

Under any of the definitions of the protection gap, the assumption is that the amount of insured losses is relatively fixed, and that coverage equates to payment. But even where coverage is in place, there are factors in the claim process that can result in the failure to pay and therefore a gap in protection.

On the policyholder side, the factors are captured in the well-known concept of the dispute pyramid. Of all covered losses (the base of the pyramid), only some are actually paid, due to filters that cause the pyramid to narrow as losses proceed through the process to eventual payment of a smaller number of claims at the top of the pyramid.

- Policyholders first must recognize they have a covered claim.
- If they contact their insurer and the insurer responds that the claim is not covered, or if the insurer offers an amount in settlement, they may defer to the insurer’s expertise.
- Policyholders may not seek professional help, they may find the transaction costs of doing so are unjustified in small claims, or they may be willing to resolve claims for less than full value because of the financial and emotional toll of delay.

On the company side, failure to pay claims at less than full value may be due to bureaucracy, claims personnel’s lack of knowledge of the terms of policies, or worse. The “worse” is the potential mismatch of incentives in an organization; customer service that aids reputation and retention are important, but so is the need to limit claim costs. If the claim process is perceived as a profit center, claims can be underpaid in ways large and small, incidental and institutional.<sup>15</sup>

## What Causes Protection Gaps?

The pioneering work on protection gaps by the Geneva Association included study of insurance in developing and mature economies around the world. The causes of protection gaps differ greatly in different nations.

In developing and emerging markets in particular, underinsurance reflects the still-low levels of risk awareness and risk culture, also attributable to institutional legacies and inherent cultural peculiarities such as decades of state monopolies (e.g. in China and India) and cultural or religious reservations towards the very concept of insurance (such as in the Islamic world). . . Affordability is another major reason for underinsurance. . . In developing and emerging markets, especially, immature regulatory and legal frameworks are an important impediment to insurance market development.<sup>16</sup>

The focus here is on homeowners insurance in the United States, so these broad social and economic factors are not particularly relevant. Instead, the causes of and cures for protection gaps can be thought of as arising from two very general factors.

First, insurance primarily is bought and sold on the private market, so protection gaps arise when potential purchasers are unable or unwilling to buy available insurance that is adequate to their needs, or when imperfections in the market limit the optimal, effective distribution or purchase of such insurance.<sup>17</sup>

Second, the insurance market, like all markets in developed economies, is constituted and regulated by government. Protection gaps arise when government regulation fails to correct for market failures and to supplement the operation of the market in the service of nonmarket goals.

### Market failures

In some cases risks are simply uninsurable, or uninsurable at a price that produces effective demand, typically because they are potentially large and correlated, as with damage from earthquakes. In those cases, the private market will produce gaps that must be filled, if at all, by government.

For risks that are potentially insurable, a principal cause of protection gaps is insurers' failure to provide adequate information about risks and insurance and consumers' inability or difficulty to access and process the information. Traditionally, analysis of this category has focused on the different levels of knowledge between consumer and insurer and on consumers' ability and willingness to invest in search costs. Homeowners insurance is complex and technical, insurers provide limited information prior to purchase, and most policyholders are unable or unwilling to obtain all the information



needed to make a considered judgment about purchase or to process that information if they do obtain it.

More recently there has been a focus on behavioral factors that affect purchase. Consumers are likely to focus on small, salient risks and discount infrequent but potentially catastrophic risks, so they may over-invest in protecting against small losses. As a result, many consumers spend their insurance dollars on guarding against small risks by having a low-deductible policy, for example, while creating a significant protection gap by failing to insure for large risks, such as failing to buy flood insurance or broad replacement cost coverage.

A reflection of these market failures is that consumers' purchasing decisions in the market for personal lines insurance such as homeowners insurance is dominated by price, with much less attention paid to coverage and quality. Because of the focus on price rather than coverage, insurers are driven to compete on price by offering policies that create underinsurance gaps, risk protection gaps, and coverage gaps.

### **Regulatory failures**

Although insurance is a market good, its provision and operation only is possible because of government intervention. At a basic level government intervention establishes the market, for example by providing for the enforceability of agreements and the institutional forms through which insurance is sold.

One form of regulation aims to improve the operation of the market; a common example includes steps to improve the information available to consumers who are purchasing insurance. Where regulation fails to mandate, structure, or provide the relevant information in a form that consumers can absorb and use, protection gaps are likely to be exacerbated.

Another form of regulation accepts that the market for insurance never will produce optimal results, so it aims both to substitute for the market in providing economically rational results and to achieve goals not captured in the market. Mandating coverage that an economically rational consumer would buy, but which many consumers fail to buy, is an example of a market-correcting function of regulation. Important among nonmarket goals are protecting the legitimate expectations of policyholders and advancing the positive social benefits of insurance. Where regulation fails to substitute for or supplement the market, protection gaps such as the risk protection gap or the coverage gap that the market produces are at least not corrected and likely to be made worse.

Regulation is essential to the creation and operation of insurance markets. But regulation that is too lax, too rigorous, or improperly directed produces protection gaps. The failure to effectively police market conduct erodes trust and creates gaps in coverage that has been purchased but is not given effect. Conversely, excessive regulation, such as through improperly mandating terms, increases the cost of insurance, potentially decreasing

demand and producing protection gaps. Where regulation fails in its market-correcting and market-supplementing functions, protection gaps occur.

## **What are the Cures for Protection Gaps?**

The causes of protection gaps suggest their cures. The market for insurance needs to be improved, through regulation or otherwise, and the market needs to be supplemented, so that nonmarket values are served.

A first step in curing protection gaps that result from factors impeding an effective market is to improve information available to consumers. For the market to achieve optimal results, when consumers shop for and purchase insurance they must have access to good information about the extent of coverage provided by different policies, the price of that coverage, and the quality of insurance companies offering the coverage. Useful information includes the terms of a well-organized, plain-language policy, accessible summaries of the terms that are most important to consumers, and policy comparison tools that enable consumers easily to compare key terms of policies. Currently consumers have adequate information only about price, which causes them to make buying decisions that result in a protection gap. Better information also affects policyholders' decisions about risk after they have purchased policies and it empowers them in the event of a claim, potentially reducing the claiming gap.

These corrections to the market could come from market forces themselves. Some insurers may improve consumer information about coverage and quality because they see a competitive advantage in doing so. Elements of the much-touted rise of insurtech in underwriting and distribution aim to address the shortcoming of legacy systems. But more likely cures come from market-correcting and market-supplementing actions by state regulators.

In one of its most important functions, government regulation cures protection gaps that result from lack of public trust by regulation that establishes the solidity of the private market. Licensing of insurance companies, rate regulation, solvency regulation, and guaranty funds are essential to the operation of the market and avoid a protection gap that would arise from insolvent insurers.

Government also encourages or mandates participation in the market, such as requiring insurance for federally insured mortgages and in high-risk flood zones. In residential property insurance generally and in the catastrophe area in particular, government often is the insurer of last resort where the market fails, through residual market mechanisms such as FAIR plans, the National Flood Insurance Program, the Texas Windstorm Insurance Association, and the California Earthquake Authority.

Regulation also can improve the operation of the market. The market does not provide adequate information about coverage for consumers to make informed choices, but

government can mandate disclosure and prescribe its forms in ways that can improve consumer decision making. Mandating well-organized, plain-language policies, providing summaries of policy terms and comparison tools, and publishing claims data that provide realistic measures of insurer quality, are possible and in some cases in effect by state insurance departments.<sup>18</sup>

Regulation also addresses protection gaps by responding to the inability of the market to provide adequate coverage. Because of consumers' limitations in processing information about the complexities of insurance, the market for insurance, like other consumer markets, cannot be perfected by providing more information to consumers. Therefore, many protection gaps only can be filled by direct regulation of insurance policy terms. Not every coverage shortfall is a protection gap; insureds differ in what kind of insurance they need, want, or are willing to pay for. But, for example, for homeowners insurance to serve its purpose of providing basic financial security, all homeowners need certain basic coverage, which regulators mandate through such devices as setting minimum coverage standards, of which the New York Standard Fire Policy is the most famous example, or by more specific mandates. Examples of specific mandates that avoid protection gaps include, among many others:<sup>19</sup>

- Law and ordinance coverage as a required element in a replacement cost policy.
- Required minimum limits for additional living expense.
- Standards for calculating policy limits to preclude an underinsurance gap in replacement cost policies.

Finally, regulation potentially limits the claiming gap by establishing reasonable claims handling standards and providing effective remedies for improper claims handling practices.<sup>20</sup> For example, regulation can mandate the information insurance companies must provide to policyholders when a claim is filed, reasonable time limits for filing claims and, in case of a dispute, for filing litigation against the insurance company, and effective remedies where an insurer acts unreasonably in the claims process.

## Conclusion

The concept of a protection gap has become widespread in discussions about insurance. Addressing gaps and improving insurance requires clarity—clarity about what is a protection gap, where protection gaps occur, and what are the causes and cures of protection gaps. This paper frames the discussion of those issues.

One of the potentially significant features of discussion of protection gaps is that it may reshape debates about insurance and the positions of participants in those debates. Often discussion of insurance issues has resulted in predictable positions—consumer advocates versus insurance companies, insurer-side coverage lawyers versus

policyholder-side lawyers, and so on. A common thread in the protection gap discussion is that insurance consumers need to be better informed about their insurance, and if they are better informed, they will buy more insurance and better insurance, with “more” and “better” likely coming at higher prices. In that way, the interests of policyholders and insurers converge for the greater social good.

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<sup>1</sup> See Geneva Ass’n, Understanding and Addressing Global Insurance Protection Gaps (2018); Lloyd’s, A World at Risk: Closing the Insurance Gap (n.d.); Bermuda:Re/insurance+ILS, The Protection Gap (2017).

<sup>2</sup> <https://www.iii.org/insuranceindustryblog/how-many-homes-are-insured-how-many-are-uninsured/>

<sup>3</sup> <http://www.homeinsurance.org/home-insurance-guide/chapter-8-what-can-make-you-ineligible-for-homeowners-insurance/>

<sup>4</sup> Calif. Dep’t of Insurance, The Availability and Affordability of Coverage for Wildfire Loss in Residential Property Insurance in the Wildland-Urban Interface and Other High-Risk Areas of California (2018).

<sup>5</sup> See Kenneth S. Klein, Minding the Protection Gap: Resolving Unintended, Pervasive, Profound Homeowner Underinsurance, 25 Ct. Ins. L. J. 35, 60-80 (2018-19).

<sup>6</sup> <https://www.sun-sentinel.com/business/fl-bz-do-you-have-enough-property-insurance-20180711-story.html> ; Klein, Minding the Protection Gap, 42-43

<sup>7</sup> <https://www.uphelp.org/data-collection-surveys>

<sup>8</sup> Klein, Minding the Protection Gap, 40-41.

<sup>9</sup> III, Background on: Hurricane and windstorm deductibles, available at <https://www.iii.org/article/background-on-hurricane-and-windstorm-deductibles>

<sup>10</sup> Farmers Insurance Policy Endorsement J6965A.

<sup>11</sup> <https://www.iii.org/fact-statistic/facts-statistics-flood-insurance>

<sup>12</sup> <https://www.mckinsey.com/industries/financial-services/our-insights/insuring-hurricanes-perspectives-gaps-and-opportunities-after-2017>

<sup>13</sup> <https://www.insurance.ca.gov/0400-news/0200-studies-reports/0300-earthquake-study/upload/EOEXP2018SummaryWA.pdf>

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<sup>14</sup> Cited in American Family Mutual, cited in *Trudel v. Am. Family Mut. Ins. Co.*, No. CV-12-1208-PHX-SMM, 2014 WL 4053405, at \*2 (D. Ariz. Aug. 15, 2014)

<sup>15</sup> See generally Jay M. Feinman, *Delay, Deny, Defend: Why Insurance Companies Don't Pay Claims and What You Can Do About It* 56-120 (2010).

<sup>16</sup> Geneva Ass'n, *The Global Insurance Protection Gap* 8 (2014).

<sup>17</sup> The Geneva Association has analyzed supply-side and demand-side factors, *Understanding and Addressing Global Insurance Protection Gaps, and the "pentagon" of insurance demand, Underinsurance in Mature Economics* (2019).

<sup>18</sup> See Essential Protections for Policyholders, *Essential Protections When Buying Insurance*, <https://epp.law.rutgers.edu/node/15>

<sup>19</sup> See Essential Protections for Policyholders, *Essential Protections for Coverage*, <https://epp.law.rutgers.edu/node/23> <https://epp.law.rutgers.edu/node/17#overlay-context=home>

<sup>20</sup> See Essential Protections for Policyholders, *Essential Protections in the Claims Process*, <https://epp.law.rutgers.edu/node/23>