

***Claim Optimization and the Insurance Promise***  
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# The Insurance Promise

## Security, Peace of Mind, and Paying Claims

- The Insurance Promise includes insurers paying the full value of covered claims, not exceeding the policy limits. This duty differs from contractual relationships in many areas of commerce and insurers do not have an arm's length relationship with their policyholders, especially in evaluating and paying claims.
- Despite the tremendous disparities in knowledge and economic power between insurers and most insureds/claimants, insurers cannot utilize the claim adjustment process to rewrite the insurance policy and attempt to leverage lower payments than the claim is worth.

# The Insurance Promise

## Security, Peace of Mind, and Paying Claims

*“Insurance as an economic device is justified because it creates certainty about the financial burden of losses and because it spreads the losses that do occur. In providing a mechanism through which losses can be shared and uncertainty reduced, insurance brings peace of mind to society’s members and makes costs more certain.”*

Emmett J. Vaughan and Therese M. Vaughan, *Fundamentals of Risk and Insurance*, pp. 41-42 (Wiley, 11th edition, 2014).

*“The second objective is the fair and prompt payment of claims. If a valid claim is denied, the fundamental social and contractual purpose of protecting the insured is defeated. Also the insurer’s reputation may be harmed, and the sales of new policies may be adversely affected.”*

George E. Rejda, *Principles of Risk Management and Insurance*, p. 113 (Pearson, 12th Ed. 2014). The “first objective” is verifying coverage and the third is “personal assistance to the insured.” *Id.*

*“Claim Handling is the insurer’s moment of truth. It’s the time when they fulfill the fiduciary promise of the policy and where customer loyalty is won or lost.”* Verisk (ISO)

<https://www.verisk.com/insurance/visualize/the-future-of-claims-delivering-at-the-moment-of-truth/>

# Adjusting Claims: Big Data, Predictive Analytics, and “Claim Optimization”

- Big Data and AI can offer significant policyholder and consumer benefits, including greater efficiency in claim notification, coverage and damage evaluations, and claim payments. This potential is prominently referenced by InsurTech entities, insurers, and related media. And for good reasons.
- *However*, the same methodologies utilized in pricing and underwriting could be used to “optimize” settlement offers based on predictive models that evaluate the policyholder/claimant’s willingness to accept the offer, rather than on the fair value of the claim itself. Similarly, factoring in - modeling - the likelihood of a consumer complaining to a state insurance regulator or filing a lawsuit. “Low-balling” has always occurred, but now underpayment strategies can be modeled and applied more precisely to specific policyholders on an insurer-wide basis.
- Doing so would violate the Unfair Claims Settlement Practices Act, and common law and statutory claim handling standards throughout the country.

# Unfair Claims Settlement Practices Act

NAIC Model 900 (adopted in virtually every jurisdiction)

Section 3.B *It [the unfair act] has been committed with such frequency to indicate a general business practice to engage in that type of conduct*

Section 4 Prohibitions include:

C. *Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;*

D. *Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;*

# Is Claim Optimization Occurring?

**Very short answer: ?** I don't think "we" know. But we do know that:

- (1) Similar modeling is utilized in other consumer transactions,
- (2) it has been (or is) utilized in underwriting insurance - "Price Optimization,"
- (3) InsurTech vendors' descriptions of their claim adjustment products suggest it. When does "optimizing claim processes" and greater "operational efficiency" include paying covered claims at less than their actual value? Such as:

"Settlement propensity models can be built using claims- and negotiation-related attributes such as "nature of the injury," "settlement demand-offer gap" and "demand- offer timeline" to predict the probability of a claim eventually settling without the plaintiff attorney's involvement and the claims with high scores can be prioritized for settlement."

Article from Carrier Management, February 10, 2021

<https://www.carriermanagement.com/features/2021/02/10/216871.htm>

# Is Claim Optimization Occurring?

- Forbes Advisor, August 4, 2021:

“In many cases it’s artificial intelligence—rather than your lawyer—that could determine how much your injury, pain, suffering and, perhaps, disability is worth. And unlike your sympathetic attorney, AI is a merciless yardstick. Think of AI as a miner who tunnels through billions of pieces of litigation data in all the major courts of the nation for gold: relevant information about decisions, motions, lawyers, judges, the parties filing suits and the subject of the cases themselves. It then tells how to use that information to win cases or—more likely—what kind of settlement is likely.” [Injured In A Car Accident? Your Legal Adversary Is Artificial Intelligence – Forbes Advisor](#)

- Inform’s *RiskShield*: Intelligent Claim Assessment:

“Enable supervised self-learning risk assessments by utilizing a unique combination of advanced risk assessment technology such as pattern recognition, customer profiling and fuzzy logic”

“How does it work? An insurance claim automatically classified by RiskShield as inconspicuous can be settled faster and is more cost-effective, thus strengthening customer loyalty. The solution incorporates proven technologies such as fuzzy logic, pattern recognition, dynamic profiles and also supports external lists and databases to score claims quickly and effectively.” <https://www.inform-software.com/riskshield/claims-handling-optimization>

# Is Claim Optimization Occurring?

So, the questions become:

- (A) Do new entrants, including InsurTech companies, recognize the unique aspects of Insurance and the obligations and duties between insurers and policyholders,
- (B) How are insurers evaluating and using these models - and their own - in adjusting claims,  
*And most important:*
- (C) Do regulators know the claim adjusting models being used in their jurisdictions, can access them, and are able to fully evaluate the models for compliance with state laws?



## Regulators and Regulatory Standards

- Unfair Claims Settlement Practices Act and related statutes
- Most states have a well-developed body of case law related to claim handling obligations and conduct.

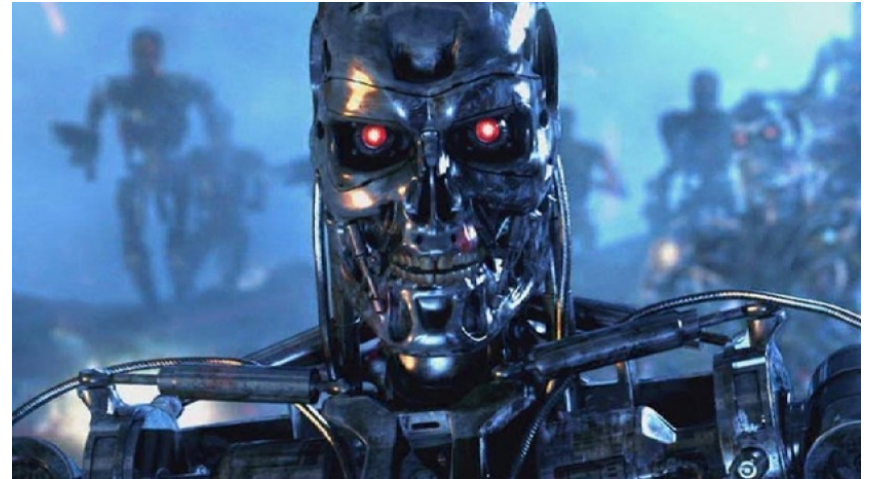
*and*

- NAIC's AI Principles:
  - “AI actors should respect the rule of law throughout the AI life cycle. This includes ... insurance laws and regulations, such as those relating to ... claim practices ...” (Fair and Ethical, section a.)
  - “AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers ...” (Fair and Ethical, section b.)

# The Insurance Promise and Regulatory Review

- Policyholders and Claimants cannot determine how and to what extent insurers are utilizing predictive models to determine claim offers and settlement values by evaluating non-claim factors such as willingness to bargain, likelihood of filing a complaint or contacting an attorney (claim optimization).
- State insurance regulators can, by:
  - Requiring insurers to regularly report on the algorithmic models they utilize in adjusting claims (similar to proposals to MCAS on obtaining information on “digital claim settlements”) and their use, if any, of non-claim related data,
  - Evaluating these models to determine if this data is being used to establish claim settlement values and offers based on factors other than the claim’s actual or full value (assuming coverage and accounting for policy limits).

# Big Data, AI and Claims



# Thank You!