INSURER EXPLOITATION OF CONSUMER PROTECTION LAWS HARMS CONSUMERS

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
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STATE CONSUMER PROTECTION LAWS

- Created in the 1970s to complement federal law in protection of consumer and consumer transactions
- “Consumer” and “consumer transaction” are purchases of goods and services by the ultimate end user for use in household activities
- Insurance and insurance transactions expressly excluded from application
Applies to Providers of Goods and Services for the End User

- Examples:
  - Roofers performing work and shingles installed on customer’s home
  - Dealership that sells and services consumer’s vehicle, and the vehicle
  - Carpet, carpet seller, and installer
  - Vehicle repairers and repair services
Purpose: Ensure Service Providers/Sellers Don’t take Advantage of Less Informed Consumer

- Defines specific actions service provider / goods seller must take for proper transaction (examples)
  - Get consumer’s signature on document
  - Provide copies of all documents to consumer
  - Allow consumer to cancel transaction within 72 hours
  - Make no false representations about nature or condition of house/car needing repair service when it does not
Mechanisms

- Sets forth all actions that must be taken or information provided to consumer
  - Documents
  - Timing
  - Consent (signature)

- Sets forth prohibited actions
  - No fearmongering
  - No false promises
  - No demands for payment of goods/services not expressly approved by consumer

- These are often defined for specific industries in regulations
Penalties for Non-Compliance

■ Actual damages incurred or minimum dollar recovery ($200)
■ Double or Treble actual damages
■ Preclude seller/service provider from obtaining payment for goods/services performed but not authorized
  - (varies by state)
■ Payment of consumer’s attorney fees
Attorney Fees

- Provide incentive to lawyers to take unprofitable cases
Intended for Consumer Use Only

- Not available for business-to-business activities
Insurers Now Using to Sue Insureds’ Service Providers

- P&C insurers look for any technical violation of consumer protection law to:
  - Avoid paying claim
  - Recover payment made
  - Seek attorney fees in litigation
Current case:
- One insurer suing
- One provider
- Recover or avoid payment
- On 1,700+ claims
- Not 1 consumer complaint
INSURER V. PROVIDER

No consumer involved
Reality and Result

- Consumer protection law not created to protect savvy business enterprises
  - Insurers have the knowledge, money, and power to sue
  - Do not need additional penalty provisions or payment of attorney fees to pursue litigation

- Destroy the very purpose of the law: Service providers will no longer serve consumers’ interests
  - Fear lawsuits from insurers
  - Create service class obeying only insurers
Recommendations

■ Issue Bulletin / Statement:
  - *Insurers are not consumers: Therefore, even in subrogation cannot use consumer protection law claims/legal avenues*

■ Legislators:
  - *Notify legislators that insurers are not considered eligible to use consumer protection law and to codify this position*

■ Require:
  - *Insurers to notify Insurance Department of any currently pending or considered litigation involving a consumer protection law to determine if consumer interests are at risk*
QUESTIONS?

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