Associated Press

May 7, 1997

DATE;0507
TIME;0027
CATEGORY: SRAP
TITLE: PM-NY -Insurance-LegalFe 05/07/97 12:27 am
CONTENTS: PM-NY--Insurance-Legal Fees, Bjt,0682< R

Bill would encourage insurance carriers to settle in good faith

EDS: Moving in news and financial wires<

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ALBANY, N.Y. (AP) - Insurance companies are dragging their feet on settlements with policy-holders because there is no stringent penalty for delay, a consumer group charged.

The failure to make insurers pay legal fees or punitive damages when they lose cases to policyholders is a built-in incentive for the companies to put off settlements, said Martin Goldstein, president of the Citizens Against Unfair Insurance Practices.

"Insurers can deny all or part of a claim with impunity," Goldstein said. "We basically buy insurance for peace of mind and protection, but we're buying an illusion."

Goldstein wants lawmakers to pass a bill this session to require automobile and homeowner insurance carriers to pay legal fees, and in some cases punitive damages.

The Assembly sponsor of the measure, Democrat Daniel Feldman of Brooklyn, said it makes sense for insurance companies in some cases to drag their feet paying claims, under the current law.

"The worst-case scenario is they pay what they should have paid in the first place," Feldman said. "The best case for them is they pay a fraction of that."

Often, consumers do not have the money to go through with suing insurance carriers to collect, Goldstein said. Those that do, often find themselves paying a good portion of their claim to their lawyer when they win their case, he added.

He cited the case of Mary and Daniel Franklin of Chenango County as an example. When the couple's South New Berlin home burned down and local firefighters ruled the cause accidental, Nationwide Insurance refused to pay the Franklins' $120,900 claim. The company said it was investigating the fire itself.

After months passed, the couple hired an attorney. Nationwide offered to settle for $71,729. Anxious to put the matter behind them, the Franklin family agreed. After paying legal fees, they were left with only $47,090.

"They were despicable to us," Mary Franklin said at the news conference Tuesday. "We have allowed insurance companies to become far too powerful."

Charles Burhan, a spokesman for the Columbus, Ohio-based Nationwide Insurance, said he did not know specifics about the Franklin case but said providing for attorney fees could be an incentive for more people to file frivolous lawsuits.

"If we have a public policy concern here, we should cap lawyers fees," Burhan said. *""This* is not a moral issue. They're trying to drum up business."

Because insurance law does not specifically provide for the payment of legal fees to insurance carriers, they do not need to be paid, said Rues Haven, legislative counsel for the New York Public Interest Research Group.

The bill sponsored by Feldman and, in the Senate, by Republican John DeFrancisco of Syracuse, would apply only to automobile and home insurers. Goldstein said he would like to see it extended to health insurers as well.

The bill has passed the Democratic-controlled Assembly for several years. Last year, DeFrancisco's bill failed to make it to the floor of the Senate for a vote, but it has the support of Insurance Committee Chairman Guy Velella, who is co-sponsor.

Advocates said the amount spent by the insurance industry lobbying lawmakers is one stumbling block to getting legislation passed. In 1996, the insurance industry spent more than $4.5 million dollars on lobbying, the fourth biggest spender in the state, according to figures released by WYPIRG.

Goldstein said the Insurance Department has neither the manpower or the willingness to go after insurance carriers for abuses, so customers are often forced to resort to attorneys.

But state Insurance Department spokesman John Calagna said the department handles about 40,000 complaints annually. In 1996, the department issued $9.1 million in fines. Two of those are very large fines - $4.3 million against Prudential and $1.1 million against Empire Blue Cross Blue Shield.

Goldstein, who is from Bedford, described the Citizens Against Unfair Insurance Practices as a not-for-profit consumer group.