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Business

Fallout from fire leads to creation of lobbying group to challenge insurance industry

Watch out, insurers

By Barbara Woller
Staff Writer

On Dec. 28 1994, Martin Goldstein's four-bed-room wood-frame, home located on two acres at 18 Mianus Drive in North Castle burned to the ground.

Goldstein, his wife, Linda, and their son, Jarrett, now 23, were in the home when the fire broke out at 7:50a.m. They escaped -- devastated, but physically unharmed.

Martin Goldstein said he figured his family would pull through the ordeal because it had a homeowner's policy of almost a half-million dollars with Allstate Insurance Co. -- \$331,000 for the home and \$166,000 for its contents.

Goldstein expected to simply collect the money and the family members could rebuild their home and lives.

Instead, what has happened is an all-out battle between Goldstein - who says he is an example of consumers across New York who are routinely strong-armed out of just settlements by insurance companies acting in "bad faith" - and Allstate, which says the fire was deliberately set and is refusing to pay.

The case also highlights a larger issue: Whether consumers and the state's strong insurance lobby are on an equal footing when it comes to resolving disputes.

Lawsuit pending

Goldstein says the answer is a clear "no," despite the fact that New York state has an insurance department charged with overseeing the industry.

Goldstein is suing Allstate to recover the money he says it owes him. But that's not all:

Goldstein has turned his anger and frustration into the formation of Citizens Against Unfair Insurance Practices, a consumer lobbying group to take on the insurance giants. He is principal lobbyist and president of the group.

"(When people) buy Insurance, they buy it for peace of mind." said Goldstein, who is living temporarily in Mount Kisco and is a partner in Bedford Management Group Inc. in Katonah. "But it isn't a reality. It's a total illusion ... Insurance companies in New York state can practice unfair claims settlement practices with impunity."

The New York Temporary State Commission on Lobbying said Goldstein is the only registered lobbyist representing citizen's interests against the insurance industry, which is represented by some 96 lobbyists.

Goldstein said that since late January he has been speaking before civic, trade and service groups to drum up interest, and so far has collected 71 signed lobbyist retainer agreements from 102 people.

'Bad-faith' cases stressed

"I get nothing from this," Goldstein said. "This is a nonprofit corporation."

Goldstein said his lobbying group will specifically focus its efforts to help pass a bill pending in the state Legislature that would permit individuals to pursue legal action they cannot take now: sue their insurance companies for "bad faith."

A bad faith case occurs when a policyholder says an insurer unreasonably denies a claim, and that's what Goldstein says Allstate has done to him. Allstate spokeswoman Kathleen Hogan said "our goal is to deal fairly and in good faith with every customer."

Under such a "private right of action," policyholders could sue their insurers for the amount of their coverage plus attorney fees, other expenses, and, in some cases, punitive damages, if they can prove bad faith exists.

The bill has been passed by the Assembly several times, including, most recently last week by a 124 to 22 vote.

"(Existing) law gives insurance companies an incentive to treat claimants badly," said Assemblyman Daniel Feldman, D-Brooklyn, the main sponsor of the bill. "The worst that can happen is they pay what they should have paid in the first place ... It's what we call in the vernacular 'Stonewalling.'"

As might be expected, the insurance industry is fighting back.

Bernard Bourdeau, president of the New York State Insurance Association, said that if such law suits are permitted, premium rates would go up because carriers would have to protect themselves against the possibility of higher claims.

"There's no free lunch," Bourdeau said. "Someone is paying for this, and it's you and me."

Bad faith lawsuits are basically actions for punitive damages, Bourdeau said, and would probably be filed by consumers who see them as a "lottery ticket" to get rich quick. But he does not see consumers as the ones pushing for such a bill.

"The trial lawyers are the ones behind it," he said. "They don't care who plays the lottery because they get one-third of (any settlement)."

About half the states in the country permit bad faith lawsuits, said J. Robert Hunter, director of insurance for the Consumer Federation of America.

Technically, New York law permits individuals to sue an insurer for bad faith. But to do so they must show a carrier has a pattern of unreasonably denying claims and that that pattern affects them, said Jonathan Wilkofsky of Manhattan, who is Goldstein's attorney. But virtually no one takes such action, Wilkofsky said, because few people have the time, money or long-term fortitude to pursue such action.

Wilkofsky said a court ordered an insurance company to pay punitive damages and attorney fees only one time in New York State. Wilkofsky was the attorney in that case, which happened to involve a New Castle couple whose home was destroyed by fire in 1989.

William Shernoff, an attorney from Claremont, Calif., and a nationally recognized authority on bad faith cases, said most insurers do try to settle claims fairly. But about 10 percent of the cases involve bad faith.

"Insurance companies insist they sell protection," Shernoff wrote in "Payment Refused," a book he co-authored. "But as soon as a policyholder files a claim, an adversarial attitude sets in. That attitude is that a policyholder is automatically wrong and the insurance company automatically right ... Many policyholders settle a claim for less than is due them as a way of life."

Shernoff also wrote that he hears daily "horror stories" from policyholders who were denied justified benefits.

"I hear of families hounded by collection agencies to pay medical bills that insurance companies should have paid," Shernoff writes. "I hear of disabled people who are forced to go on welfare instead of collecting disability benefits due them under an Insurance policy."

Goldstein said the problem is worse in New York because the New York State Insurance Department - which regulates the carriers and handles consumer complaints against them - fails to protect consumers. The department disagrees, saying it settles hundreds of such complaints in consumers' favor each year.

In cases where it upholds the action of the insurance company it may be because the policyholder did not fully understand their policy provisions, said Salvatore Castiglione, chief of the department's consumer services bureau.

But Castiglione said if the department finds that one company is generating many complaints, It could trigger a special investigation.

That's what happened with Empire Blue Cross and Blue Shield, which was fined \$1.1 million earlier this month by the department for various violations, Castiglione said. Among them: Empire's rejecting claims by some policyholders for particular treatments while paying claims to others for the same procedure. The department also ordered financial relief to some individuals.

Over the years, a bad faith insurance bill has never gotten out of the Senate Insurance Committee, let alone reached the Senate floor.

Sen. Guy Veleva, R-Bronx, who also represents parts of southern Westchester, is a sponsor of that Senate measure. Last week he said he expects committee approval in late April with passage by the full Senate to follow.

Veleva said the insurance committee staff is working with carriers to iron out some issues the industry considers vague. He said the industry also wants to be able to take action against attorneys who act in bad faith and "represent clients that maybe broke their pinky and ask for \$2 million," though he does not expect that issue to be part of the bill.

"I don't believe instances of attorneys exaggerating cases is as bad as stalling tactics of insurance companies," he said. "But we have an obligation to look at that."

Gov. Pataki's position on the bill could not be learned. His press office did not return two calls seeking comment last week.

As for Goldstein's battle with Allstate, the matter is still clearly up in the air.

Goldstein vehemently denies Allstate's statement that the fire was an arson. Rather, he says, its cause was never determined.

North Castle police said the fire resulted from "unnatural causes, and the case was forwarded to the Westchester County District Attorney's office. Following its policy, the office declined to either confirm or deny the status or existence of any investigation.

Once a case goes to the D.A.'s office, a grand jury investigation and criminal charges are possibilities. But Goldstein and his attorneys say that will not happen. One reason why: a letter written by the New York State Insurance Department to Goldstein's attorney dated Sept. 14, 1995, that reads, in part, "we have verified that the (D.A.'s office) has closed their file."

Still, Goldstein pursues his twin goals: collecting the \$497,000, which he says he is entitled from Allstate (the insurer already paid \$15,000 for living expenses after the fire) and fighting bad faith insurance cases.

Hunter of the consumer federation group hopes that such a law will benefit policyholders.

"There's no question that states with bad faith (laws) are better for consumers to get claims settled faster and fairer," Hunter said. "Companies that routinely go out of their way to delay and deny claims don't do that in states (with such laws)."