

# DAILY NEWS

NEW YORK'S HOMETOWN NEWSPAPER

July 20, 1997

MORTIMER B. ZUCKERMAN, *Chairman & Co-Publisher*

FRED DRASNER, *Chief Executive Officer & Co-Publisher*

PETE HAMIL, *Editor In Chief*

BILL BOYLE *Sunday Editor* MICHAEL GOODWIN, *Editorial Page Editor*

## Not what it seems

**The Albany hall of mirrors never ceases to distort - or amaze. Take the claim that many insurance companies are getting away with not honoring customers' policies. By the time the charge emerged from the funhouse, you could almost believe it-Almost, that is, if you bought Martin Goldstein's story.**

**When his insurance company refused to pay after his house burned down, Goldstein formed Citizens Against Unfair Insurance Practices and began to push the Fair Insurance Claims Settlement Act. The bill's purpose is to make it easier for people to sue their insurance company for legal fees and punitive damages. Although the bill promises otherwise, it will almost certainly boost insurance premiums.**

**When the bill passed the Assembly, but not the state Senate, Goldstein responded with radio commercials claiming that Majority Leader Joe Bruno has been bought by Big Insurance.**

**Yes, Bruno gets contributions from insurance companies. But Goldstein's hands are hardly clean. He acknowledged that the primary funding for his commercials comes from trial lawyers - the people who would benefit most from more lawsuits.**

**Goldstein, in fact, is a registered lobbyist, paid by the Manhattan law firm of Wilkofsky, Friedman, Karel & Cummins, to lobby Albany on this very issue. The firm, according to a receptionist, specializes in insurance litigation and personal injury cases."**

**Stripped of its fig leaf, the bill stands naked for what it is - an unnecessary and expensive sop to special interests. Consumers already have the right to sue insurance companies that don't pay up. Last year, the state levied more than \$9 million in fines against 52 insurance companies. Of the 12,110 complaints relating to property and casualty insurers, 3,112 were won by consumers. And complaints were down from the previous year.**

**While there is certainly room for more consumer protection against crooked insurers, raising premiums to make ambulance chasers rich isn't the solution. Even in Albany's funhouse.**

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**Citizens Against Unfair Insurance Practices  
16 Mianus Drive - Bedford, NY 10606  
(914) 252-1066**

**VIA FAX**

**July 22, 1997**

**Mr. Pete Hamill, Editor in Chief  
Daily News  
450 W. 33d Street  
New York, NY 10001**

**Re: Response to Sunday July 20, 1997 editorial "Not What It Seems"**

**Dear Mr. Hamill:**

**I am outraged that your paper printed an editorial based on misconceptions, half-truths and out-and-out lies ("Not What It Seems, " 3 July 20, 1997). In maligning me and assailing legislation that would allow New Yorkers to hold their insurance companies accountable for unfair and dilatory claims practices, in one fell swoop your paper has violated every principle of journalistic integrity.**

**While it is inconceivable that you can undo the damage to my reputation and to the progress of this important legislation to protect New York's policyholders, I demand that you provide an opportunity for me to have promptly published an op-ed piece in your paper.**

**On June 26, 1997 a letter was written to the editorial editor to secure editorial support for a reform bill to protect NYS insurance policyholders. We believe the request was substantially documented to support our request.**

Clearly the paper's editorial position of July 20 was to kill the pending legislation. The irony is that the editorial title "Not What It Seems" represents the content of the paper's editorial. We can respect the paper taking an opposite position. However, it seems only fair that the paper's position should be based on facts and if facts are presented to the readership they should be clear and complete. Again, the editorial states incorrect facts, distorts and omits facts to lead the readership to an erroneous conclusion.

The article incorrectly states that I am a registered lobbyist paid by Wilkofsky, Friedman, Karel & Cummins. I am a registered lobbyist paid by Citizens Against Unfair Insurance Practices at the nominal fee of \$ 100.00 per week. The records are available at the New York State Lobby Commission. The law firm represents my family in our litigation against Allstate Insurance and Jonathan Wilkofsky is General Counsel and on the Board of Directors of CAUIP. However, I am not paid or supported by that firm. Furthermore, I did not acknowledge and it is not true that the primary funding for our radio commercials came from trial lawyers; however we have received small donations from a number of law firms.

Your editorial took the initial position that the bill would almost certainly boost insurance premiums and concluded with a statement that implied raising premiums was a certainty. The fact that the bill specifically prohibits increases in insurance premiums due to payments of damages and attorneys fees was glossed over.

We seriously question whether you were provided with any data that had any foundation for your conclusion. Late Friday, July 18 we faxed over data that clearly indicated that there was no definitive relationship on premium increases in those states providing policyholder protection versus states not providing protection regarding insurance covered under the bill. We noted the information was not totally complete at time of transmission.

The editorial comment "When the bill passed the Assembly, but not the state Senate." provides the impression to your readership it was voted down in the Senate. The fact is Bruno is blocking the bill from coming to the Senate floor for a vote, which has the backing of virtually the entire democratic contingent, the six Republican sponsors and at least seven other senate Republicans. Senator Guy Veleva, Chairman of the Insurance Committee, a co-sponsor of the bill publicly spoke out in support of the legislation. It was conveniently left out the bill passed the assembly "131 to 13".

The editorial stated "Last year, the state levied more than \$ 9 million in fines against 52 insurance companies.

This information is not only incorrect but is also misleading and omitted facts. Fines against insurance carriers by the New York State Insurance Department was \$ 3,194,000 against 50 companies in 1996 according to the documents provided by the insurance department. Of the fines issued none were against insurance companies

for violations of homeowners insurance (property/casualty) as provided for in the bill (unfair claims settlement practices). The fact is not one market conduct study concerning homeowners insurance has been implemented since the market conduct study of Nationwide in 1992.

Of the \$ 3 million in fines \$ 1,006,740 was imposed on 13 auto insurance companies. The remainder of the fines were not pertinent to any aspect of the bill. In fact, of the \$ I million in fines, only a portion of those fines were pertinent to the bill.

Your readership was told 3,112 complaints regarding property/casualty was found in favor of the consumer. You conveniently forgot to mention that the New York State Insurance Department can not resolve complaints regarding questions of fact and their only recourse is to hire an attorney whose fees they can't recover. In many cases regarding auto insurance the claim is less than the legal fees.

It was stated in the editorial "Consumers already have the right to sue insurance companies that don't pay up." The statement on the surface is correct, but left your readership with a false sense of security and was a disservice by omitting facts to kill the legislation. Your readership does not realize they can not recover legal fees or be awarded punitive damages now, regardless how egregious the insurance company acts in its denial of all or part of their claim. Their individual pain and suffering means nothing under current New York statutes and common law.

Once again, notions of common decency and journalistic professionalism warrant that you provide me with the chance to speak directly to your readership through an op-ed column. While I cannot "unring the bell," at a minimum, your readership deserve the opportunity to read an accurate statement of the current law and pertinent facts and make up their own minds.

Looking forward to your response.

Sincerely,  
Martin Goldstein, President MG/lg

cc: Michael Goodwin, Editorial Page Editor

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**Wilkofsky, Friedman, Karel & Cummins**  
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July 23, 1997

**Via Facsimile (212) 643-7831 and Regular Mail**

**Mr. Pete Hamill, Editor in Chief  
Daily News  
450 West 33rd Street  
New York, New York 10001**

**Dear Mr. Hamill:**

**This letter is written in response to your editorial of July 20, 1997 entitled "Not What it Seems." The editorial contains numerous inaccuracies and untruths. The editorial also reflects a lack of objective research and it is apparent that no effort was made to confirm whatever sources of information were utilized if only in drawing the conclusions made in the editorial.**

**To the extent that the editorial mischaracterizes and misstates the case to be made against the Fair Insurance Claims Settlement Act we will attempt to set the record straight. However, to the extent that you have mischaracterized and misstated the facts with respect to the contribution of my firm in support of the Bill, and further, to the extent you have attempted to characterize the firm of Wilkofsky, Friedman, Karel & Cummins as "ambulance chasers", we believe that your editorial is actionable.**

**The law firm of Wilkofsky, Friedman, Karel & Cummins has represented Martin Goldstein's family with respect to his lawsuit in which he is attempting to recover insurance proceeds due him as a result of the fire that occurred at his home. I am also a member of the Board of Directors and General Counsel to the group Citizens Against Unfair Insurance Practices. It is the first consumer oriented insurance lobby in the history of the State of New York and was formed by Martin Goldstein as a result of the absence of any consumer protection laws to protect a homeowner in the situation Mr. Goldstein found himself in when his insurance carrier heartlessly refused to pay his claim.**

**Mr. Goldstein is in fact a registered lobbyist but is paid \$100.00 per week by Citizens Against Unfair Insurance Practices. While this law firm has been paid the nominal sum of \$100.00 per year by Citizens to be its counsel, and thus have contributed my time and effort to the cause of getting consumer friendly legislation passed, and the firm has contributed approximately \$1,000.00 over the past two years, your statement that Goldstein is paid by this firm is false, and shockingly, no effort whatsoever was made to confirm this stated fact despite the fact that you did go to the trouble of calling our receptionist to verify the type of cases handled by the firm.**

**Furthermore, the statement that Mr. Goldstein has acknowledged the primary funding for the group's radio commercials comes from trial lawyers, is again untrue and unverified. The fact is that of the money raised in this grass roots effort over the**

**last two years, an overwhelming majority has come from contributions in the amount of \$25.00 per person and other contributions made by citizens and businesses interested in having better consumer protection laws with respect to the insurance industry.**

**I have been representing victims of insurance company misconduct for over 16 years, take a great deal of pride in our accomplishments in asserting the rights of the consumer against insurance companies who are often callous and irresponsible when it comes to the rights of their policyholders and regularly act in bad faith when administering legitimate claims. This situation exists because there is no legislated motive encouraging them to process claims in a manner consistent with their fiduciary responsibilities to the public.**

**I hereby challenge you to either support your comments or correct them forthwith in a manner calculated to be as visible as the offending editorial.**

**Other errors abound in your editorial as well. The Bill does not promise to avoid boosting premiums as stated, but specifically and explicitly prohibits insurance companies from passing along increased costs as a result of awards made pursuant to the Bill. In short, research has disclosed that there is no correlation whatsoever between the existence of similar consumer-oriented legislation in other states and increases in premium rates. What research have you done to confirm your statement that the passage of the Bill will "almost certainly boost insurance premiums?"**

**Once again you are inaccurate when you state that Mr. Goldstein responded with radio commercials when the Bill passed the Assembly but not the Senate. The fact is that the Bill did pass the Assembly in a vote of 113-31 and has passed the Assembly every year for the past 10 years. It is also a fact that Senator Bruno has never allowed the Bill to reach the floor of the Senate for a vote. So in fact, the Bill did not fail to pass the Senate but the Senate was deprived of the opportunity of deliberating on the Bill and either voting it in or voting it out. The facts further disclose that virtually every Democratic senator has committed to voting for the Bill and the Bill has 6 Republican sponsors and 7 additional Republican Senators, all of whom have committed to voting for the Bill reflecting the needed majority of 32 votes required to pass the Bill. Once again it would seem that the democratic process in the New York Legislature stops at the door of Senator Bruno. It was these facts that motivated the publicity campaign accurately disclosing the fact that Majority Leader Bruno has received over \$70,000.00 in contributions directly from the insurance industry in the last two years. In addition, the Republican committees have also received over \$160,000.00 in that period of time.**

**Instead of castigating Senator Bruno for the contributions he receives from special interests which have obviously affected his judgment and prevented the Bill from being subjected to the democratic process, you assert that "Goldstein's hands are hardly clean." Martin Goldstein is merely a citizen homeowner whose rights have**

**been trampled by a huge corporation which Mr. Goldstein feels is insufficiently regulated by the state. He has established a grass roots effort, the first of its kind in the State of New York, to get the word out as to this Bill which has been languishing in the legislature for over 10 years during which time insurance company lobbyists have had the Bill under their thumb without any input from a consumer-oriented lobby. The last time we looked, in a democratic society, where the votes exist in the Senate and Assembly to pass consumer-oriented legislation, one man should not have the ability to prevent its passage. Your conclusory comment that the Bill represents an "unnecessary and expensive sop to special interests" itself stands naked for what it is. The Daily News is the only newspaper in the State of New York to come out against this Bill. The insurance industry has run out of ammunition to defend its opposition and Senator Bruno has refused to confront the detailed and persuasive arguments rallied against his often made statement that the Bill will raise premiums.**

**The fact that consumers already have the right to sue insurance companies is as much a part of the problem as it is a solution. The fact is that consumers must pay attorneys to handle such cases, whereupon the attorneys often become a partner in the property damaged as a result of contingency fees. Most consumers who have suffered some major casualty or disaster are unable to afford to pay lawyers on an hourly basis to represent their interests and are compelled to hire those attorneys on a contingency basis. Insurance companies, fully aware of this circumstance, have made a practice for many years of taking advantage of this reality to offer insureds less than they are entitled to under the terms of their contract in light of the reality that the insured will have to give away a substantial portion of his claim merely to litigate the matter. This has resulted in a practice whereby insurance companies often understate the value of losses incurred and brazenly dare their customer to hire counsel and sue, full in the knowledge that a fully successfully litigant will merely recover back his claim and then have to share the proceeds with his attorney. This Bill attempts to reign in this practice by requiring the insurance carrier to pay the attorney's fee in the event they are guilty of egregious conduct which falls under the legislation. In addition, in order to avoid the possibility of large and extravagant punitive damage awards awarded by runaway juries, the Bill caps punitive damages at one time the amount of physical damage incurred which will prevent some of the problems seen elsewhere around the country with huge punitive awards.**

**The goal of the Bill is litigation avoidance, not increased litigation.**

**I believe you were also factually inaccurate when you pointed to \$9 million in fines to 52 insurance companies in 1996. Our information reflects that the fines were less substantial. The editorial also seemed to take comfort at the fact that there were only 3,112 successful consumer complaints filed with the Insurance Department last year, as if this was an acceptable state of affairs. You have failed to consider the thousands of consumers across the State of New York who have been forced to start law suits against their insurance company to recover legitimate amounts owed and**

**the countless others who have accepted the insurance company's treatment without challenge, either out of ignorance, apathy or by resignation. There is a tremendous need for consumer protection legislation against crooked insurance companies as you recognize. However, to conclude that this Bill is about raising premiums to make ambulance chasers rich is a failure on the part of the Daily News to due justice to this important issue and treats complex and significant issues with trite phrases which mislead the Daily News' reading public.**

**You have an obligation to set the record straight and either confirm the facts or retract them. It is indeed a sad day when, with the swipe of a pen, you can condemn a worthwhile consumer cause such as this, as well as a law firm committed to representing consumers victimized by two disasters, one natural and one perpetrated by their insurance company.**

**Absent an acceptable response to the foregoing we will have no alternative but to consider further actions.**

**Very truly yours,**

**WILKOFISKY, FRIEDMAN,  
KAREL & CUMMINS**

**By: JONATHAN J. WILKOFISKY**

**cc: Michael Goodwin, Editorial Page Editor  
Daily News - Via Fax (212) 643 7831 and Regular Mail  
Martin Goldstein - Citizens Against Unfair Insurance Practices**