

THE CLAIMS GAME: When Insurers Just Won't Pay

Lowballed, accused; policyholders lose

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Front-page articles on Dec. 27 and 28 about claims-handling practices by insurance companies in Michigan should have said the Michigan Office of Financial and Insurance Services allows access to complaints filed by consumers, but will not release names, addresses or other details that would identify a person.

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Across Michigan, people who have dutifully paid premiums for years are learning a hard lesson about the insurance industry when their home or business is damaged: Companies can pretty much pay claims at their leisure, if they pay at all.

And they can loosely accuse policyholders of arson or fraud, even with scant evidence to support such claims.

Because in Michigan -- where property insurance is a \$2.3-billion-a-year industry -- companies face virtually no serious punishment for such tactics. Not in the courts. Not at the state agency that regulates the industry.

A Free Press investigation has found that some insurers delay or refuse to pay property claims with little justification; skirt the truth in court; or wrongfully offer less than they know a claim to be worth to customers desperate for cash.

A full accounting of these tactics remains difficult because the Michigan Office of Financial and Insurance Services will not grant public access to the thousands of complaints it receives annually.

Industry officials counter that despite the complaints, misconduct by companies is rare. They say claims are generally denied because the policy clearly excluded coverage, or because fraud is suspected. And they say that proposed laws making it easier to sue insurers would force them to settle bad claims, costs that would be passed on to other policyholders in higher premiums.

"For the millions of people who are happy with their insurers, we don't think they want to pay more for insurance," said Doug Cruce, president of the Michigan Insurance Federation, an industry group. "And the few people who are unhappy, for the most part, are unjustified in their position."

Consumers with legitimate claims have little protection under state law. Michigan is one of only a handful of states where insurance companies are shielded from serious financial penalties when a court finds they have not fairly settled a claim. Policyholders can't even recover their lawyer's fees. And recent legislative efforts to impose harsher penalties, including punitive damages, have gone nowhere.

State insurance regulators offer little help. They rarely conduct formal investigations into consumer complaints, the Free Press has found.

"The insurance companies are holding all the cards," said Sen. Dianne Byrum, D-Onondaga, who has listened to scores of consumers complain about company practices and lax government oversight at hearings across Michigan.

"There is no downside to them contesting payment of a legitimate claim because the most they're on the hook for is the cost of the claim," she said. "No other damages are assessed, and they can drag these cases out for years so people are forced in desperation to accept less than they are due."

Michigan Insurance Commissioner Frank Fitzgerald denied his office goes easy on insurers.

"I don't think there is a message out there that insurance companies feel they can act with impunity and be insulated from any consequences," he said.

But lawsuit records and more than a half-dozen legislative hearings offer a window into industry tactics consumer groups call routine: a reluctance to settle valid claims and a tendency among some insurers to turn the heat on policyholders, making accusations when they should be making payment.
Into the fire

When an electrical fire engulfed Alvin Taylor's Detroit custom-wheel shop in 1998, he had no idea he'd need a lawyer.

In fact, he felt lucky. At the urging of his agent, Taylor had upped his coverage from \$40,000 to \$200,000 a few years earlier.

"I just thought I'd let the insurance company take care of me and see how quickly I could be back in business," Taylor recalled.

Taylor hired an adjuster, who put the fire damage at \$181,000.

His insurer, Auto Owners Insurance Co., had a more conservative estimate: \$27,000.

Auto Owners would not discuss Taylor's claim. There was no suggestion the fire was arson. In court papers, Auto Owners said its offer reflected the store's market value in Detroit.

Taylor was incredulous. He wondered why he was urged to buy a \$200,000 policy when Auto Owners had no intention of paying more than \$27,000.

Last year, a Wayne County mediation panel awarded Taylor \$168,000 -- six times what Auto Owners originally offered. Auto Owners agreed to pay in September 2000, more than two years after the fire.

The money barely covered the building's repair, he said. And \$60,000 of it went to pay legal expenses. The result was crippling.

In February, Taylor sold the business for \$150,000, he said. "I'm so glad I got rid of that place," he sighed. "It got so I couldn't pay the bills."

Waiting for payment

Consumer advocates complain of a double standard in insurance disputes. While policyholders who inflate their losses are routinely prosecuted for fraud, companies can lowball customers with little

repercussion. Last year, state probes led to 2,123 insurance fraud convictions nationally, according to the Coalition Against Insurance Fraud, a Washington-based industry group.

But criminal probes of insurance companies that shortchange customers are virtually nonexistent, said Stuart Sklar, a Farmington Hills attorney who specializes in suing insurers. "And so the companies end up holding the money -- you're not -- and they're earning interest on it," Sklar said. "They have such leverage to inflict economic pressure, and to decide if and when you get paid."

When a fire destroyed the Flint home of Lisa Harris in January 1998, she -- like Taylor -- waited years for payment.

Paul Deimling, an Allstate Insurance Co. claims representative, initially ruled the damage exceeded Harris' \$47,000 policy.

But his boss said that estimate was too high. So Deimling reduced it over the next five months to \$42,600, then to \$26,600, internal Allstate memos show.

So what was his first settlement offer to Harris? It was \$14,000 -- later upped to \$18,600.

When Harris sued the following year, Deimling admitted Allstate offered her less than he knew the claim to be worth.

"So, you saved your company money by negotiating a loss at less than the value you knew it was worth. Is that correct?"

"Correct," Deimling admitted in a deposition.

"I do it all the time, yes," he added. "That is a negotiation."

But that is not how insurance is supposed to work. In most states, knowingly offering less than a claim is worth violates an insurance company's legal duty to treat customers fairly, said Grace Tonner, a University of Michigan law professor and expert on insurance law.

"That might be considered bad faith and might very well lead to punitive damages," Tonner said. Noting that Michigan does not allow punitive damages, she added, "When you don't have punitives, this kind of behavior doesn't get checked very well." Michigan does have an unfair trade practices law which forbids insurers from knowingly lowballing customers. But under the law, only state regulators can take action against a company, consumers can't. And while the law allows the state to strip an insurer of its license, it has never done so on a property claim.

While Allstate spokesman John Goldwater would not discuss Harris' case, he said Allstate does not underpay claims.

"There will always be individual cases that are not handled as efficiently as we would like," Goldwater wrote in an e-mail. But Allstate "approaches each claim with fairness and objectivity in order to pay the right amount."

In Harris' case, Allstate looked into linking her to the blaze, which fire department officials called "suspicious," but Allstate definitively called arson. Ultimately, Allstate found no evidence tying her to the fire.

In his deposition, Deimling, who declined to speak to the Free Press, detailed Allstate's efforts to "pin" the fire on Harris. In one internal memo, Deimling, in discussing ways for Allstate to avoid paying the claim, wrote: "I don't feel we can implicate the insured in any way to the arson. Only way we could would be if someone rolled over and said she told them to do it. I don't think this will happen." In May, Allstate privately settled her claim before trial -- more than three years after the blaze.

Arson charge unproven

Harris is among dozens of people who've complained -- at public hearings or in lawsuits -- of being falsely accused of arson.

One of the accused was William Abu-Farha, whose party store in a high-crime area of Flint burned to the ground on Feb. 21, 1997.

There is no doubt someone set the blaze -- gasoline was everywhere. But there was no evidence Abu-Farha was the culprit.

Still, Colony Insurance Co. blamed Abu-Farha. Its proof?

According to its files, the company had little. Abu-Farha had no debt. And he'd recently bought a home in the neighborhood.

"I worked, I lived by the store, and I supported my children," Abu-Farha said.

In May 1997, three months after the fire, a Colony investigator wrote: "We have no real evidence to implicate the insured. Let's go ahead and pay this claim."

Then, in June 1997, this memo: "We can find no obvious motive which would encourage the insured to commit arson. Based on a preponderance of the evidence, we cannot argue the defense of this case to a jury."

By November 1997 -- nine months after the fire -- Colony still hadn't paid the claim despite another internal memo that said: "We can find no apparent motive by the insured to commit arson that can be proven."

Still, no money.

By the following year, Abu-Farha was furious. On July 1, 1998 -- 17 months after the fire -- an adjuster for the insurance company reported that Abu-Farha entered his office demanding payment. "He was somewhat threatening, and I had to request that he leave," the adjuster wrote.

In January 1999, the company denied the claim, citing insufficient documentation of his losses, among other things.

Abu-Farha filed suit to recover on his \$115,000 policy. Colony accused him of arson and fraud.

By March 2000 -- three years after the fire -- Colony's adjuster still could not prove arson.

"I have no evidence," the adjuster said in a deposition.

The case was settled last year for \$90,000. Colony's attorney, Scott Feuer of Bloomfield Hills, defended the delay, saying it takes time to properly investigate an arson, interview witnesses, and litigate a dispute once it goes to court.

While Feuer conceded there was no "smoking gun" tying Abu-Farha to the fire, there were red flags. Abu-Farha's store revenues were in decline, Feuer said, and there'd been four previous fires, fires Abu-Farha said were not uncommon in the drug-infested neighborhood. Moreover, Abu-Farha was the last person seen at the store in the hours before the blaze, and there was no sign of forced entry.

Colony settled, Feuer said, because it "didn't want to throw good money after bad" at a trial.

For Abu-Farha, the delay was ruinous. Even now, he said, he has yet to turn a profit at a new store. And much of the settlement -- about \$37,000 -- went to legal bills, leaving Abu-Farha with \$52,500 to rebuild.

He has tried to remain positive, however. "Thank God," Abu-Farha said, knocking on a shelf, "I'm living."

But Abu-Farha said the accusations stung, even when they proved groundless. And he was helpless to combat them.

Under a 1996 law, even when a company's accusation of arson or fraud proves baseless, Michigan insurance companies cannot be prosecuted if they acted "without malice," a standard that is difficult to prove. That same law also makes it difficult for consumers to remove the allegations from their insurance files.

Insinuating questions

Another policyholder who felt the sting of suspicion was the Rev. Lamar Clark, of Detroit's United Congregational Christian Church.

When his storefront church burned on May 29, 1997, the church filed a claim with Michigan Basic Property Insurance Association, a government-created agency that sells insurance statewide to low-income people.

He waited for months.

Eventually, a company attorney ordered Clark to give a sworn statement, and asked insinuating questions about his credit history.

"He probably thought I was some itinerant preacher who was just out to make a buck," said Clark, a Harvard-educated minister.

"That's when I decided I had to get an attorney," he recalled.

In July 1997, Daniel Terski, a fire investigator hired by Michigan Basic, filed a report listing the fire's cause as "undetermined."

A company claims examiner reviewed that report and wrote "we are behind the eight ball" in having to pay.

Two months later, Terski changed his ruling to arson.

Asked to explain the change, Terski said in a deposition that a firefighter told him he smelled gasoline at the scene, remarks the firefighter flatly denied under oath.

The church's lawyer, Jo Robin Davis of Farmington Hills, sued Michigan Basic in 1998 and won a \$105,000 jury verdict in late 1999 -- the full amount of the policy.

The jury rejected the arson and fraud charges raised by Michigan Basic.

In an interview, Terski said he did not immediately rule the fire arson because much of the church had been cleaned by the time he visited. It was not until he saw scene photos and talked to firefighters that he became convinced the fire was set intentionally.

He also insisted that the firefighter told him privately the scene smelled of gasoline.

"He basically lost his memory," he said of the firefighter's deposition testimony.

For Clark, the hurt remains.

"There should be a law that insurance companies can't arbitrarily say, 'You started the fire,' without any recourse to the person accused," Clark said. "It seems like that's against all the core values this country was founded upon."

More than four years later, the case remains on appeal, the verdict unpaid. The ordeal has exhausted church coffers, and Clark's. He said the church owes contractors more than \$95,000 for repairs. "I told them they get paid when I get paid."

Clark said he wonders why Michigan law doesn't allow him to seek punitive damages, or recover for the emotional toll as the appeal lingers.

Robert Hunter, director of insurance for the Consumer Federation of America and a former Texas Insurance Commissioner, said he too was stunned by Michigan's insurance law. He was especially surprised consumers can no longer recover their legal costs when they sue. "Why should a consumer who proves he got ripped off not get fully re-compensated? It doesn't make sense."
Truth comes out

Other lawsuits have exposed suspect tactics by insurance company representatives.

In one fire case in western Michigan, an investigator for Pioneer State Mutual Insurance Co. was caught testifying at trial from altered notes.

The investigator, it turned out, secretly "updated" his notes years after interviewing the home owner. The changes made it appear that home owner Donna Kirwin was trying to collect on personal items that actually survived the fire.

The changes, discovered at trial, even stunned Pioneer's own lawyers. "I think our reaction was one of surprise," recalled defense lawyer Henry Emrich of Grand Rapids. "It was not something we were happy about."

Emrich added that Pioneer doesn't condone such tactics. Within hours, the Oceana Circuit Court jury awarded Kirwin the \$123,000 owed under the policy.

Donald Anderson, the investigator, said he did not intend to deceive jurors, he merely "updated" his notes during the lawsuit. "It was a mountain made of a mole hill, and it made me look bad," he said.
Playing for time

Some industry critics say companies intentionally delay paying claims to force desperate families to accept settlements.

In Dalton Township, Bill and Angela Phillipos and their four young children were forced to live for months in a tiny trailer with no bath, then in an unheated garage after a house fire in January 1997 that their insurer deemed suspicious.

"Everybody was on top of everybody," said Angela, whose last name is now Martin. "The kids didn't have room to do anything."

Months after they hired a lawyer, an insurance adjuster for Michigan Basic went directly to the family -- bypassing the lawyer -- to offer \$65,000, the Phillipos and their lawyer said.

The amount was near the policy limits, but the company's offer forbade the family from seeking other damages, or from recovering legal fees. By the time they paid those expenses, the Phillipos received only \$30,000.

They nevertheless accepted.

"If we had sued, it would have taken another year or two before we saw any money," Bill Phillipos said. "We'd be looking at living in a garage for the next two years. It wasn't worth it. We would have gone crazy."

The Phillipos' lawyer, Curt Benson of Grand Rapids, said the company preyed on his clients' financial crisis, and on Angela in particular, who the insurer knew suffered from severe depression.

"When an insurance company adjuster contacts my borderline bankrupt, uninsured, mentally ill client to settle the case, I think that's terribly unethical," Benson said. "This family was miserable, it was desperate, and the insurance company knew that."

Jane Howard, a Michigan Basic claims manager in Detroit, said the company no longer has Phillipos' claim file for reasons she said were unclear. But she denied the company would settle a case directly with policyholders when they were represented by counsel.

"If they had retained an attorney, we would have dealt directly with that attorney," she said. To do otherwise, she said, would have been unethical.

Source: Detroit Free Press