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COMMENTARY

Op-ed: A crisis of (bad) faith

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Insurance companies should never put their interests ahead of their policyholders. Too often, insurance companies engage in this bad faith behavior by routinely delaying, denying and defending against legitimate claims in order to grind down policyholders and intentionally and improperly underpay legitimate claims.

In Michigan, it has become clear that insurers prioritize profit by denying claims and treating their claims departments as profit centers, further incentivizing bad behavior. But there is hope on the horizon for the families of the catastrophically injured in auto accidents, who have suffered far too long from insurance company wrongdoing.

The confusion created by the legislature's amendments to the Michigan No-Fault Automobile Insurance Act resulted in many insurance companies taking advantage of their

policyholders – until the Michigan Supreme Court clarified the scope of the amendments in *Andary v. USAA*.

While this case was a step in the right direction, further protections are still needed. Which is why we urge passage of the Insurance Policyholder Bill of Rights (Senate Bill 329 and House Bill 4681) in Michigan that would protect policyholders by implementing financial penalties for insurance companies that refuse to engage in good faith practices.

A MICHIGAN BAD FAITH CRISIS

As too many Michigan residents have discovered, insurance companies prioritizing their bottom line ahead of the interests of policyholders is far too common, and all too easy. There are only eight states nationally without legal protections for bad faith insurance practices, and Michigan is one of them.

Without any real means to hold insurance companies accountable, there is essentially nothing to stop insurers from continuing to deny or underpay claims – at least outside of an expensive and time-consuming

litigation process. And because the vast majority of families, individuals, and small businesses don't have the resources or the luxury of time to engage in what can be and often is a costly, years-long legal battle, they generally get away with it.

A JAW-DROPPING DOUBLE STANDARD

This unfortunate dynamic in Michigan is made even worse because of a truly appalling legal double standard. While policyholders who commit insurance fraud can be charged with a felony, with correspondingly significant legal penalties ranging from large fines to jail time if found guilty, insurance companies who have committed even the most egregiously fraudulent actions face virtually no significant legal consequences. Consider just how incredible it is that a multi-billion-dollar industry can operate in Michigan with what amounts to legal immunity from any serious repercussions, while individuals and small businesses are held to the highest standards – and face serious punishment.

THE PUSH FOR REFORM

The good news is that some advocacy groups are promoting much needed changes that would help correct this imbalance and hold insurance companies accountable for bad faith behavior.

In Michigan, one such potential reform is the Insurance Policyholder Bill of Rights (SB 329 and HB 4681), which is proposed legislation designed specifically to *protect* policyholders. The bill would establish financial penalties for insurance companies that refuse to engage in good faith practices or deny and delay payment of claims without a reasonable basis, placing their interests ahead of the policyholders. This represents the kind of change that would be a critical step toward empowering Michigan residents and small businesses and deterring fraudulent behavior. Most importantly, it would incentivize insurance companies to fulfill their obligation to treat customers fairly and pay what they owe.

A RENEWED VISION FOR INSURANCE FAIRNESS

Insurance companies like to use scare tactics about how insurance reforms would raise premiums or lead to irresponsible litigation, but there is no evidence to support those claims. Bad faith laws are less about punishing bad behavior than they are about avoiding that behavior in the first place. By holding insurance

companies to the same standard as their policyholders, this type of legislation would help balance what is currently an unbalanced system. When you consider that this industry has been experiencing record profit margins for many years, the idea that being held to reasonable standards of fairness would lead to higher premiums is really an indictment on the industry. When insurance companies make those kinds of claims, they are essentially acknowledging that they believe their skyrocketing profits are based on a pattern of bad faith behavior.

Given that this system has been largely consequence-free for bad actors for a long time now, the introduction of meaningful consequences for bad behavior might seem like a big change. But the reality is, laws like those proposed in SB 329 and HB 4681 would only apply to insurance companies that act in bad faith. Ethical insurance companies not only have nothing to fear, but they should be glad to see bad faith laws in action. Bad faith legislation would encourage fairer market competition and a level playing field.

Companies operating in good faith should never have to raise their premiums because other companies engage in misconduct. And as 42 U.S. states have already discovered, sensible bad faith laws are actually good for business. Most importantly, of course, they would help achieve the laudable goal of protecting Michi-

gan's citizens and businesses and encouraging fair insurance practices.

A WINDOW OF OPPORTUNITY FOR AUTO ACCIDENT SURVIVORS

While the fate of SB 329 and HB 4681 remains in limbo, there are still opportunities right now for Michigan families of the catastrophically injured to fight for their rights, based on the Supreme Court's decision in *Andary v. USAA*.

Thousands of Michigan policyholders were forced into unfair and unconscionable contracts with their insurance companies, who took advantage of the confusion surrounding the 2019 amendments to the No-Fault Automobile Insurance Act. Many of these contracts relating to family-provided attendant care for the catastrophically injured are coming to an end. Their insurance companies took advantage of them, and now is the time to review these contracts and request fair payment.

As we remain hopeful for the implementation of bad faith protections, our dedication persists in empowering auto accident survivors and their families to take action, and we will continue to advocate for their justice.

Nick Andrews, Partner, and Meagan O'Donnell, Attorney at Liss & Andrews law firm represent catastrophically injured clients and their families, helping them navigate the complexities of Michigan's automobile No-Fault insurance law.