



**Consumer Federation of America**

Testimony of Rachel Weintraub,  
Legislative Director and General Counsel  
Consumer Federation of America

Before the

United States Senate Committee on Commerce, Science, and  
Transportation  
Subcommittee on Consumer Protection, Product Safety,  
Insurance, and Data Security

Hearing

Insurance Fraud in America: Current Issues Facing Industry and  
Consumers

August 3, 2017

Chairman Moran, Ranking Member Blumenthal and other members of the Consumer Protection, Product Safety, Insurance, and Data Security Subcommittee. I appreciate the opportunity to provide testimony on Consumer Federation of America's (CFA) perspectives on Insurance Fraud in America. I am Rachel Weintraub, Legislative Director and General Counsel at CFA. CFA is a non-profit association of approximately 280 pro-consumer groups that was founded in 1968 to advance the consumer interest through advocacy and education.

CFA is concerned about insurance fraud and is working to contain it as well as document and identify it. We were a founding member of the Coalition Against Insurance Fraud and continue even today to serve on its Board of Directors and we conduct research to document inequality in the insurance market, especially the auto insurance market.

CFA is concerned about both kinds of fraud: that is, fraud by the insurance industry against consumers and fraud by consumers against the industry. Both cost consumers dearly.

## **I. Fraud by the Insurance Industry Against Consumers**

I will first focus on fraud by the insurance industry against consumers. Although most insurance companies and agents/brokers are honest and ethical, fraud by the insurance industry against consumers is a serious problem. It costs consumers when they pay premiums for coverage they do not need; when they pay excessive and actuarially unjustifiable rates for coverages they are required to buy; when they buy insurance priced in an unfairly discriminatory manner; and it costs them when they are presented with inadequate and misleading policy language that is constructed to make them believe they are purchasing protection they will never, in fact, receive. And, of course, fraud by insurers also costs consumers who face unfairly denied claims, underpaid claims and claims that take far too long to be paid.

Examples abound, and here are just a few of many:

- Insurers, as Congress knows, have used faked engineering reports to deny flood insurance claims after Superstorm Sandy. This was documented by *60 Minutes* in "The Storm After the Storm."<sup>1</sup>
- At times insurers participate in the sale of unnecessary policies. A recent example is the placing of unnecessary auto insurance onto the auto loan payments of borrowers who were not advised of such action by Wells Fargo. This was documented just last week by numerous news outlets.<sup>2</sup>

---

<sup>1</sup> <https://www.youtube.com/watch?v=11VjWZvA0Ig>

<sup>2</sup> <https://www.nytimes.com/2017/07/27/business/wells-fargo-unwanted-auto-insurance.html>;  
<https://www.reuters.com/article/us-wells-fargo-insurance-idUSKBN1AG20Q>;  
[https://www.washingtonpost.com/news/business/wp/2017/07/28/wells-fargo-charged-570000-customers-for-auto-insurance-they-didnt-need-potentially-forced-some-to-have-cars-repossessed/?utm\\_term=.9073ef7bfeff](https://www.washingtonpost.com/news/business/wp/2017/07/28/wells-fargo-charged-570000-customers-for-auto-insurance-they-didnt-need-potentially-forced-some-to-have-cars-repossessed/?utm_term=.9073ef7bfeff)

- A Medicare Advantage Insurer settled a whistleblower case for \$32 million, in a case where the insurer exaggerated how sick patients were.<sup>3</sup>
- Two top executives of AIG settled an accounting fraud case, agreeing to return almost \$10 million in salary.<sup>4</sup>
- In just the last few years, insurers have begun to raise rates on people who do not shop around, a process called “price optimization.” In this scam, insurers use information from non-driving related sources such as third-party consumer databases, grocery store shopping records, and social media analysis to determine if a person does or does not shop when prices go up. They use this information to raise the rate above the actuarially sound price on the non-shopping consumer. This is illegal in every state, since state laws require prices to be based on driving risk, not shopping tendency. Since CFA raised the issue three years ago, 20 states have banned the practice, but we believe this fraudulent pricing system is still being deployed or introduced in several states.

A quick search over the last month or so of headlines from *Insurance Business Magazine* identifies some other examples of the consistent drumbeat of insurer/agent fraud against consumers:

- A San Diego insurance agent was charged in connection with allegedly scamming five people – three of them seniors – out of a total of more than \$1.1 million.<sup>5</sup> (July 24, 2017)
- A Connecticut man presented himself as an insurance agent after the state pulled his license and is headed to prison for nearly four years. The insurance agent pleaded guilty to wire fraud, according to the *San Francisco Chronicle*. Prosecutors say he scammed people out of more than \$874,000.<sup>6</sup> (July 21, 2017)
- Farmers Insurance Exchange will refund \$315,000 to more than 1,600 Minnesota drivers, after authorities found that the firm wrongfully charged the drivers with higher auto insurance rates. The state’s Commerce Department said the insurer charged drivers with higher rates solely because they were home renters rather than homeowners. Minnesota law prohibits firms from setting auto insurance rates or benefits, or denying coverage, based on a driver’s status as a residential tenant.<sup>7</sup> (July 19, 2017)
- A U.S. District Court has approved the \$32.5 million settlement of a racial discrimination case against MetLife filed by a class of African-American former MetLife financial

---

<sup>3</sup> <http://www.npr.org/sections/health-shots/2017/05/31/530868367/medicare-advantage-insurers-settle-whistleblower-suit-for-32-million>

<sup>4</sup> [https://www.nytimes.com/2017/02/10/business/dealbook/former-aig-executives-reach-settlement-in-accounting-fraud-case.html?\\_r=0](https://www.nytimes.com/2017/02/10/business/dealbook/former-aig-executives-reach-settlement-in-accounting-fraud-case.html?_r=0)

<sup>5</sup> <http://www.insurancebusinessmag.com/us/news/breaking-news/insurance-agent-charged-in-1-1-million-scam-73861.aspx>

<sup>6</sup> <http://www.insurancebusinessmag.com/us/news/breaking-news/fake-insurance-agent-gets-nearly-four-years-73739.aspx>

<sup>7</sup> <http://www.insurancebusinessmag.com/us/news/breaking-news/farmers-insurance-exchange-must-make-refunds-to-1600-drivers-73452.aspx>

services representatives. The former employees filed the case against the insurer in 2015. They accused the firm of maintaining “a racially biased corporate culture and stereotypical views about the skills, abilities, and potential of African-Americans that affect personnel,” a court docket said.<sup>8</sup> (July 12, 2017)

- A health care system suing Chubb paid itself “excessive” amounts from employee retirement programs and “unjustly enriched itself,” the insurer claims.<sup>9</sup> (July 7, 2017)
- A Colorado insurance broker was sentenced to 12 years in state prison on Monday after he pleaded guilty to several counts of forgery, insurance fraud, and theft. The insurance broker pocketed some \$130,000 in workers’ compensation premiums that he wrote while his license was revoked. Previously, this broker had been sentenced to two years of probation and had his license revoked in 2014 after pleading guilty to forgery in what was described as a similar case.<sup>10</sup> (June 28, 2017)
- A recommended federal class-action lawsuit against Allstate has been approved by the Pennsylvania Supreme Court. The class-action is in relation to Allstate’s policy that mandates claimants undergo medical exams by a doctor of the carrier’s preference before they can receive benefits.<sup>11</sup> (June 21, 2017)
- The owners of a California insurance agency have been indicted by a federal grand jury for allegedly sending more than a million pieces of mail without paying the postage.<sup>12</sup> (June 13, 2017)

### **A. Auto Insurance Pricing**

CFA has undertaken a series of reports on the plight of good-driving, lower-income Americans. These consumers are unable to afford state-required auto insurance due to the use of unfair rating factors related to income. Our research has identified that good-driving low-income people often pay more for auto insurance than wealthier people with accidents and tickets. It is, unquestionably, a defrauding of American consumers when insurers charge safe drivers more than unsafe drivers for the same coverage.

CFA’s research addresses several different aspects of auto insurance rates, premiums and the market, but all point to a few key findings:

---

<sup>8</sup> <http://www.insurancebusinessmag.com/us/news/breaking-news/judge-approves-metlifes-32-5-million-race-bias-class-action-settlement-72878.aspx>

<sup>9</sup> <http://www.insurancebusinessmag.com/us/news/breaking-news/insurer-claims-health-system-unjustly-enriched-itself-72483.aspx>

<sup>10</sup> <http://www.insurancebusinessmag.com/us/news/workers-comp/insurance-broker-gets-long-custodial-sentence-after-fraud-71698.aspx>

<sup>11</sup> <http://www.insurancebusinessmag.com/us/news/breaking-news/allstate-hit-by-another-potential-class-action-71111.aspx>

<sup>12</sup> <http://www.insurancebusinessmag.com/us/news/breaking-news/insurance-agents-indicted-for-300000-mail-fraud-70249.aspx>

- The cost of state-mandated basic liability insurance is higher than many lower-income Americans can afford and the number of uninsured citizens in this category is higher than the national average as a result;
- Insurers use a variety of socio-economic rating factors unrelated to driving that push auto premiums up for lower-income Americans despite good driving records; and
- Stronger state consumer protections related to auto insurance rate setting leads to greater access to and more stability in auto insurance markets.

A description of each of the reports that CFA has issued since 2012 is available in the attached appendix. This is followed by a summary of the key recommendations from the reports. Our research documents that states require good-driving, lower-income Americans to purchase auto insurance to drive and harshly penalize them for driving without that insurance. But most states do not regulate the use of factors that raise rates on widows, renters, low-wage workers, people with less education and other factors that adversely discriminate against the poor.

## **B. Actions Against Insurers for Bad Faith**

There are hundreds of legal actions against insurers for bad faith. Consumers pay money for premiums, often for many years, prior to an event occurring or a claim being filed. Consumers believe that insurers will do right by them if they file a claim. Once a claim is filed, the insurer owes the consumer a duty of utmost good faith in handling the claim. If the insurer improperly denies or delays payment of the claim, it is possible that the insurer has not acted in good faith. It is likely that the number of times consumers are defrauded by insurer bad faith is orders of magnitude larger than the number of times insurers are sued for this kind of fraud. For many consumers, this fraud comes in the form of an insurer's low-ball offer – on a total loss claim on a car insurance policy, for example – that may short the consumer by \$1,500, which is devastating to a consumer but not a viable legal action against the insurance company either because the cost of litigation is too high or because many states prohibit such suits.

## **C. Fraud Against Consumers by Other Entities Involved in the Insurance Market**

### **1. Storm Chasers**

CFA warns consumers about “storm chasers,” which are repair firms that come in after a storm and offer to repair structures. Often, they have no local connections, may not have proper insurance for their workers, and do subpar repairs. They have opportunities to do work, particularly after catastrophic weather events, because there are so many repairs that need to be done in a relatively short time. Insurers want to settle claims from storms as quickly as possible. However, insurers should work with reliable contractors to make sure that there are sufficient workers and supplies in the catastrophe area as repairs must be done in a timely way. State government action could assist in making sure that there are sufficient resources available to complete repairs promptly.

As bad as storm chasers can be, those that do acceptable work do help to get necessary work completed. The market demands an increase of contractors after a storm, and there would be

value in helping communities identify those who will not cut corners in the repairs and can meet standards of quality that will equal the promises contained in the insurance contract. Consumers would be served by better tools to help distinguish between the fraudulent storm chasers and those contractors who arrive in the wake of a catastrophe not just looking for a quick buck but to provide a quality service.

Regardless of what additional resources might be made available in the future, CFA always advises consumers to make sure that the people they contract with for repairs after a storm are (1) capable of doing the work well, (2) properly credentialed, and (3) have references. We urge consumers to check with their insurance company if they have questions about a contractor who approaches them.

## **2. Opioids**

Insurers have the data to monitor opioid prescription levels and should be a force for good in finding ways to tackle this mounting problem. We encourage insurers' full cooperation in working with government and others seeking solutions. However, insurers can also be part of the problem in a number of ways. First and most importantly, some insurers will not pay for alternatives to opioids such as steroid injections, physical therapy and nerve blocks.<sup>13</sup> Second, insurers try to do the right thing by limiting the amount of opioids to a person but sometimes are not sophisticated in doing so, since some patients have been on the specific drug for a long time and need more of the drug to get the necessary relief. In these cases, the patients often turn to street drugs, exacerbating the problem.

We could list many other examples of frauds against consumers by insurers. The point that CFA wants to make clear is that fraud against consumers by insurers needs Congressional attention.

## **II. Fraud Against the Insurance Industry by Consumers**

Fraud against the insurance industry by consumers is a serious issue. There are two types of such insurance fraud: hard fraud and soft fraud.

Hard fraud entails someone deliberately planning or inventing a loss, such as a collision, auto theft, or fire that is covered by their insurance policy in order to receive a claim payment. Criminal rings are sometimes involved in hard fraud schemes that can steal millions of dollars. The data on hard fraud are fairly reliable, since such data can be collected from criminal case records.<sup>14</sup>

Soft fraud consists of policyholders exaggerating otherwise legitimate claims. For example, when involved in an automotive collision an insured person might claim more damage than actually occurred.

---

<sup>13</sup> <http://addictionblog.org/treatment/health-insurance-and-its-influence-on-the-opioid-epidemic/>

<sup>14</sup> <http://www.insurance.ca.gov/0400-news/0200-studies-reports/0700-commissioner-report/upload/AnnualReport2013.pdf>, at page 39.

The statistics on the extent of such soft fraud are very squishy and the insurers seem to have some incentives to over-report it. Congress should be very cautious about claims of soft fraud exceeding more than a few percent of premium dollars.

Some consumers believe that it is acceptable to increase insurance claims to make up for deductibles or because they believe their insurer has been unfair to them in some way. The Coalition Against Insurance Fraud found these disturbing attitudes among consumers;<sup>15</sup>

- 24 percent say it's acceptable to pad an insurance claim to make up for the deductible — that's a drop since 33 percent said it was acceptable in 2002;
- 18 percent believe it's acceptable to pad a claim to make up for premiums paid in the past;
- Younger males were much more likely to condone claim padding, and 23 percent of 18 to 34-year-old males say it's alright to increase claims to make up for earlier premiums. This compares with 5 percent of older males and 8 percent of females of the same age;
- More than half (55 percent) of U.S. consumers say poor service from an insurance company is more likely to cause a person to defraud that insurer;
- More than three-quarters (76 percent) say they're more likely commit insurance fraud during an economic downturn than during normal times (up from 66 percent in 2003)

A specific consumer's likelihood to commit soft fraud appears to be impacted by how the consumer sees the insurance industry's treatment of them to be. The public's perception of insurers is very negative. The 2015 Harris Poll on consumer attitudes towards various industries rates Insurance as 35% positive (only Financial Services, Tobacco and Government rank lower).<sup>16</sup> If the industry can repair its image, that could positively impact the degree of fraud against it.

CFA supports insurer attempts to control fraud, including the creation of Special Investigative Units (SIUs) to look into suspicious claims. However, SIUs and other attempts to control fraud must be reasonable. There are examples of such investigations going on for extensive periods of time while, for example, people are not able to return to their home because of the investigation into alleged arson until the damage is repaired. Frequently, these delays go on for an excessive period only to conclude with the finding that there was no fraud. Steps must be taken to assure that insurer fraud investigations are completed in a timely way so innocent people are not left hanging, for example, without a place to live for month after month.

### **III. Conclusion**

In conclusion, CFA is concerned about insurance fraud; we are aware of numerous types of fraudulent activity by a few insurers and by a few consumers using the insurance market, both of which harm the vast majority of consumers who are honest and ethical. We would welcome Congress undertaking research to document and to minimize these types of harmful actions that put consumers at great economic disadvantage, so long as the effort is deployed in such a way

---

<sup>15</sup> <http://www.insurancefraud.org/statistics.htm>

<sup>16</sup> [https://skift.com/wp-content/uploads/2015/02/2015-RQ-Media-Release-Report\\_020415.pdf](https://skift.com/wp-content/uploads/2015/02/2015-RQ-Media-Release-Report_020415.pdf) at page 13.

that considers the whole range of frauds being committed in the insurance market, as we have outlined here. We support efforts to control these types of fraud, with the important warning that the prospect of fraud should not be used as a device to justify an unscrupulous attack on innocent consumers seeking claims payments.