



Dedicated to protecting access to quality healthcare for automobile accident victims

You've seen and heard their commercials on television, radio and in print: New York auto insurers citing the same report from an Industry-funded organization, whining about "insurance fraud". New York consumers pay \$10 BILLION PER YEAR in a captive insurance market (by law we are forced to buy minimum auto insurance) and the industry wails that fraudsters are fleecing the Industry of \$230 million per year, making it impossible for them to be profitable. And yet, all the while, the same Industry spends tens of millions of dollars in advertising, competing with each other to corner the market of the allegedly unprofitable New York auto insurance business. Why?

To be sure, insurance fraud – like fraud against any compensation system – exists, and efforts should be expended to root out and punish those who attempt to game the system. However, policymakers must independently assess the severity of the stated crisis rather than simply accept as gospel the word of profit-motivated, self-interested insurance companies. Why hasn't the industry presented two simple pieces of data to prove its point: Premiums collected from New Yorkers verses claims dollars paid out, called the loss ratio?

According to the most recent data available from the National Association of Insurance Commissioners (NAIC), the organization of insurance regulators from the 50 states, the auto insurance Industry in New York is more profitable than the national average, and their loss ratio in New York is lower than the national average. Indeed, of \$9.8 billion in auto insurance premiums collected, losses incurred were only 63.5 cents per premium dollar, better than the national average of 63.6 cents per premium dollar. Likewise, in New York the Industry profit on insurance transactions was 2.1%, better than the national average of 2.0%. Finally, over the last 10 years, the return on net worth for New York auto insurers was 8.9%, better than the national average of 7.5%.

New York City's former Public Advocate Mark Green's 1998 report, "*Auto Insurers are Taking New Yorkers on an Expensive Ride,*" scrutinized the Industry's profits and loss ratios. Green's conclusion was simple: New legislation should not be passed, as the Industry was making a killing off of New Yorkers, despite their claim that legislative action was necessary to save them. Green called for the creation of an Office of Public Insurance Counsel, an independent agency empowered to vigorously challenge auto insurers, and an independent evaluation of the Insurance Department's oversight of the Industry.

Green's warning was ignored. Instead, the State Insurance Department – charged with regulating carriers – promulgated new rules (Regulation 68) that dramatically cut the time period for injured consumers to file claims against carriers, from 90 days to a mere 30 – the shortest statute of limitations in the country. Regulation 68 also slashed the time period for health care providers to submit bills to insurers from 180 days to just 45. And Regulation 68 gave carriers sweeping new

power to compel consumers and providers to submit to Examinations Under Oath (EUOs) and demands for verification, all in the name of “fighting fraud.”

What was the effect of Regulation 68? In 2006, New York City’s former Comptroller William Thompson, Jr., issued a report entitled “*Highway Robbery: The High Cost of Automobile Insurance in New York.*” Thompson noted that New York’s auto insurance Industry was reaping unprecedented profits. Insurers increased premiums, while the Industry paid out far less in claims. Indeed, the Industry’s loss ratio of 48.4% was the lowest in the entire country! (Insurers collected twice as much in premiums as they paid out in claims!) Thompson, like Green, called for an Office of the Insurance Consumer Advocate, and for the Industry to make public its loss ratios as a means to track real claim costs. The Industry had been caught again with their hands in New Yorkers’ pockets.

And here we are again, not four years after the Thompson report, still without an Insurance Consumer Advocate, still without public disclosure of loss ratios, and the Industry is shamelessly back, again seeking legislation under the guise once more of controlling fraud.

To be clear, NYFAIR supports intelligent, targeted action to root out fraud and punish those gaming the system. But the Industry’s allegations concerning a new fraud crisis must be inspected critically. Over at least the past 15 years, the Industry has used fraud as the “boogeyman” to push for various “reforms.” In 1998, no-fault fraud was said to cost about \$1 billion annually. Now the Industry claims that New Yorkers pay some \$230 million in no-fault fraud each year – notably substantially less than 25% of the claims of fraud made twelve years ago.

Fraud cannot be a pretext for stripping New Yorkers of their rights. The claim of fraud in the insurance context is a self-reporting, self-fulfilling prophecy: Statistics of fraud are based on Industry suspicion, not on any independent determination that a fraud was perpetrated. How often have the Industry’s complaints of fraud been confirmed by judges or arbitrators?

Insurers are demanding that claimants be denied the right to their day in court, and instead be forced to submit to binding arbitration. But how does mandatory arbitration fight fraud? Are arbiters somehow better able to detect fraudulent claims than judges?

Insurers want to take away the right to cross-examine medical experts. How does it serve the search for truth if the parties are unable to use the crucible of cross-examination to ferret out who is distorting the medical evidence?

Insurers want to allow lay persons (read: claims adjusters) to make determinations that medical treatment is not necessary. This is about denying claims, not fighting fraud.

It is crystal clear that the insurers are far less interested in addressing their initial fraud allegations than they are in lowering their claim costs to increase their profits. It is 1998 and 2006 all over again.

Before the Legislature enacts ANY so-called “reform”, NYFAIR urges policymakers to ask insurers how much of every premium dollar they collect they pay out in claims. Just two weeks ago, New York required health insurers to maintain a loss ratio of 82%. If auto insurers were required to meet that same standard, NYFAIR believes premiums would drop by nearly 20%.

And IF the Legislature takes any action, NYFAIR urges that an INDEPENDENT INSURANCE CONSUMER ADVOCATE be created, to act as a watchdog, and ensure that policymakers get accurate, unbiased data on which decisions can be based. It’s time to stop INSURER FRAUD.