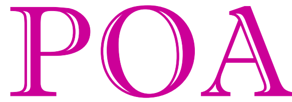

Policyholders of America 888-648-8823

February 12, 2003

Commissioner Janie Miller
Commissioner John Morrison
Co-chairs of the Consumer Protections Working Group
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108-2604

Dear Commissioners:

Thank you for the opportunity to submit this written testimony on behalf of the membership of Policyholders of America, a nonprofit association with more than 460,000 American families in its membership. While I would have preferred to testify in person, a previous commitment to a Congressman on a Bill he is introducing has precluded me from doing so.

It is greatly appreciated by the membership of Policyholders of America that such a distinguished group is reviewing the alternative dispute resolution mechanisms, specifically the Appraisal Process, presently contained in policies sold to homeowners.

Policyholders of America's primary mission is to navigate policyholders through the claims process. As such, our membership is actively encouraged to pursue all avenues of dispute resolution, including the Appraisal Process, rather than proceed directly to costly and time consuming litigation. Although we are not supporters of litigation, we recognize that sometimes that is the only reasonable recourse left to the policyholder. Yet, while we advise our membership to explore all alternatives to litigation, when it comes to the Appraisal Process, we have deep misgivings.

The Appraisal Process, while providing an alternative dispute resolution to litigation, presents the policyholder with an extremely unlevel playing field. It can be a process fraught with bias because of something we call, "repeat business syndrome". Additionally, the Appraisal Process is a static solution to a dynamic problem; while a homeowner anxiously awaits the conclusion of the Appraisal, additional damage is being done to the property (especially in cases of water damage) and there is no such thing as "supplemental payments" in Appraisal, irrespective of the additional damage discovered.

During the last several years, Policyholders of America has seen a surge in the number of claims that have been wrongly delayed, denied or lowballed. Usually the most egregious offenses occur when claims are in excess of $20,000.

Using a $20,000 claim, let me give you an example of the typical Appraisal tracked and chronicled by Policyholders of America. A homeowner submits a claim and the insurer agrees the claim is covered and issues payment based on a $20,000 estimate provided by its "preferred vendor". However, when the homeowner attempts to hire the "preferred vendor" who provided the estimate to the insurance company, the vendor refuses to do the job for that price. Rather, the "preferred vendor" tells the homeowner he was only engaged by the insurance company to "bid" on the job, not to necessarily perform the work. The homeowner then secures other bids, but those bids come in at five times that of the "preferred vendor" or $100,000.

The insurer refuses to pay on the legitimate bids and digs its heels in with the bid supplied by its "preferred vendor". The homeowner can do nothing but return the $20,000 to the insurer as the homeowner cannot get the work done for that amount. At this point, the insurer demands the Appraisal Process and the homeowner must comply in accordance with the terms and conditions of the policy.

Under the terms and conditions of the policy, the insurer and the homeowner each choose an "Appraiser", who according to policy provisions must be independent and unbiased. Once the Appraisal Process begins, the homeowner is at a distinct disadvantage and quickly learns the meaning of the phrase "not independent". The insurer most certainly has lists of preferred Appraisers it knows will look out for its interests; in contrast, the policyholder doesn't even know what an Appraiser does, let alone where to find one. Furthermore, the Appraiser engaged by the homeowner charges an average rate of $100 per hour and the homeowner is responsible for paying the Appraiser. The homeowner cannot arrive at a contingency fee-based arrangement with an Appraiser because fees based on dollars collected would take the Appraiser out of the "independent" category.

Each Appraiser then submits the name (or names) of persons to serve as the "Umpire". Typically, the Appraisers cannot agree on the Umpire. Again, the homeowner is at a disadvantage since the homeowner does not want to engage a costly attorney to go through a courtroom hearing whereby a judge appoints the Umpire. The homeowner, all the while watching the meter run on fees, is faced with the prospect of having to hire an attorney to go to court and still is no closer to repairs. Finally, the homeowner succumbs to the financial pressures and agrees to one of alleged "independent" Umpires proposed by the insurer. It is on this basis an Umpire is finally selected. Unlike arbitration, the Umpire is not required to disclose his financial relationships and other information necessary to avoid allegations of "evident partiality".

By this time, the homeowner has racked up $10,000 in Appraisal fees and repairs have yet to begin. The damage to the home has continued because the policy requires only "temporary repairs" be made and the home is in desperate need of "permanent repairs".

The homeowner obtains three new bids for the damage and those bids range from $125,000 to $150,000. Policy limits are $300,000.

Finally, a date is set for the two Appraisers to meet and review their findings. They meet but, of course, cannot agree. The difference between the two sides is approximately $107,000. The Umpire rules in favor of the insurance company and awards the homeowner $30,000 – only $10,000 more than the original payment made months before – for a problem that requires far more repairs than originally anticipated.

After all is said and done, the homeowner has spent $15,000 on the Appraisal Process (Appraisal AND Umpire fees) and is left with $15,000 to correct a problem that costs at least $125,000 to fix. A week later, the distraught homeowner goes to visit with an attorney who tells him that in order to dispute the Appraisal Process, the homeowner must file suit and demonstrate that the insurer failed to appoint an independent, competent Appraiser or that the decision is the result of fraud, accident or mistake. When asked by the homeowner about the costs required to pursue litigation, the attorney pegs the out of pocket costs (excluding attorney's fees of 35%) to be $75,000 or more. Translated, this means more money and more delays – just to force the insurer to honor the terms of its own policy.

The attorney also informs the homeowner that the Umpire used in his Appraisal Process is a "preferred mediator" for the insurance company.

Keep in mind, the insurer, months before, gave express assurances that all Umpires proposed by the insurer were independent and no special relationship existed between the insurer and any of the proposed Umpires. And, in the Appraisal Process, unlike arbitration, the Umpire is not required to disclose his relationship with the insurer. The homeowner, on the other hand, has never hired a mediator before and probably never will therefore the homeowner is not in a position to have a stable of loyal mediators over which he can dangle the carrot of future business.

This is a long and detailed account that we hear on a daily basis at Policyholders of America.

Basically, it underscores the fact that in most Appraisals, the Umpire hired is frequently hired by the insurance company as a mediator. The Umpire would not be hired as a mediator if he or she ruled against the insurer. The insurer would also not appoint any

Appraisers who have the interests of the policyholder in mind. The very nature of the Appraisal Process is one that is fraught with a bias against the homeowner because of a common and insidious disease known as "repeat business syndrome".

The process has been so fraught with bias that we are now tracking Umpires and, much to the embarrassment of these mediators, have compiled a list of those not to use and are publishing the data that supports our position.

Given the lopsided nature of the Appraisal Process and cost, we urge each Commissioner to consider expanding a program that has been used in Texas for disputed health claims, but thus far, has not been used to settle property disputes. Under Commissioner Montemayor, the Department of Insurance has created a panel of three truly independent people who hear and resolve healthcare disputes. In almost 50% of the cases, the panel finds in favor of the policyholder, which indicates it's a system that is fair.

We propose that every State Department of Insurance assess insurers operating in the State a nominal fee to establish and maintain an independent panel of three to serve on a similar panel to hear and resolve homeowner disputes at no charge to the homeowner. The panel should retain the authority to ferret out cases of fraud, bad faith, negligence and/or other egregious behavior, committed by either party, and allow those cases to proceed to trial if necessary. Awards should be made public so that daylight shines on the panel. Awards should also be monitored by the Commissioners to ensure the panel continues to operate independently.

This would stop the logjam in the courts and also work to the benefit of the homeowner who otherwise would have to spend enormous sums of money to attempt to enforce coverage for which they've paid. It also empowers all of the Commissioners with ***real*** power to help the public in a meaningful way. In a nutshell, you would all become heroes to homeowners in your State.

Should the NAIC wish to implement this program, Policyholders of America stands ready, willing and able to fully endorse it, help educate the public about it and will work with each Department of Insurance to select a truly independent panel.

I welcome your input and hope to hear from each of you.

Sincerely yours,

Melinda Ballard

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