FEATURES

For the Insurance Industry, the Question is Which Way to Turn?

By Robert A. Stern

As the cost of insurance fraud continues to grow, the insurance industry is fast approaching a cross road, which, depending on the path chosen, may determine whether the industry cedes control over this vital issue to state and federal legislatures. Industry surveys indicate a widening gulf between the public's negative perception of the industry's ability to curtail insurance fraud and their belief that government intervention is necessary to ensure insurance companies commit sufficient resources to effectively prevent, detect and deter insurance crimes. If the latter becomes a reality, insurers may be victimized by the passage of onerous legislation that will deprive them of their right to operate their businesses in the manner they deem appropriate.

Rightly or wrongly, the cause of this chasm in public sentiment has apparently been created by the widespread belief that rather than spending money on fighting fraud, insurance companies are content with merely passing the costs to its policy holders in the form of higher premiums. Proponents of this view, consumers and consumer advocacy groups, point to various studies that attribute nearly 10 percent of all premiums paid by consumers to fraud.

In addition, consumers site to insurers unwillingness to adequately staff, fund and support their special investigation units as evidence of industry apathy. Consumers note that while many insurance companies have established anti-fraud units within their companies, they suspect that internal policies and overly cautious concerns about bad faith claims hinder meaningful investigations. Indeed, consumers question why insurers continue to tread carefully in states that have enacted immunity statutes that insulate them from bad faith claims, provided they act in accordance with the law. If the threat of bad faith claims and other torts have been eliminated, they reason, why do insurance companies continue to hide behind traditional theories for not aggressively pursuing suspicious fraudulent claims?

The foregoing has helped fuel the belief that the insurance industry's response to insurance fraud thus far has been little more than window dressing, an attempt to mollify their opposition while continuing to proceed with business as usual. In additional support of this proposition, they point to the factors noted above as well as to the various state legislative initiatives, such as in New York and New Jersey, in which the industry vehemently opposed the enactment of laws mandating the creation of special investigation units and the establishment of insurance fraud plans.

The public groundswell has given rise to a consumer revolt that begs a swift, counter response by the insurance industry. But before acting, the industry must identify the cross roads and be guided accordingly. That is, does it stay the course or does the

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industry pave a wider path that incorporates additional consumer concerns.

Considering the public's perception, a slight change in direction seems ripe at this time. Toward this end, the industry should set its sights on reclaiming the spotlight by, among other things, promoting the anti-fraud initiatives it has undertaken to prevent and detect fraud; publicizing insurance fraud convictions and building a strong alliance with consumers by advertising premium reductions that are commensurate with significant decreases in insurance fraud.

Importantly, if the industry underestimates the public's concern about the cost of premiums, it will find itself in a position where federal and state legislatures will act without its input. For instance, despite intense opposition by the insurance industry, proposition 103 was passed by voter referendum in California. Many believe its passage, which rolled back the state's automobile insurance premiums to mid 1980's levels, reflected voter skepticism. In other words, the populace felt premiums were unjustifiably high and passed a law contrary to the legitimate interests of the insurance industry. Other laws have and will follow.

For instance, despite the opposition of its insurers, New Jersey enacted insurance fraud legislation mandating the establishment of anti-fraud units and plans. New York now has similar legislation pending before its senate that is expected to pass, notwithstanding insurer opposition as well. In examining why legislative initiatives are being passed against the industry's will, insurers need to understand the forces at work.

Consumers groups are angry and their ranks are growing. Consequently, their voices are being heard in Congress and state legislatures throughout the country. When the industry fails to either initiate or support modest anti-fraud legislation on grounds not supported by the facts, it loses credibility. Accordingly, it risks becoming a fringe player in the debate on insurance fraud, with less ability to shape future legislation.

If the insurance industry is going to succeed in its efforts to brandish its image as an indifferent foe of insurance fraud, it must change the public's perception of its desire to combat insurance fraud. If the industry implements effective initiatives, by choosing the right path, it will regain the public trust and be able to persuasively argue that it can defeat insurance fraud without costly government interference.

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