Delay Deny Defend: Why Insurance Companies Don't Pay Claims and What You Can Do about It

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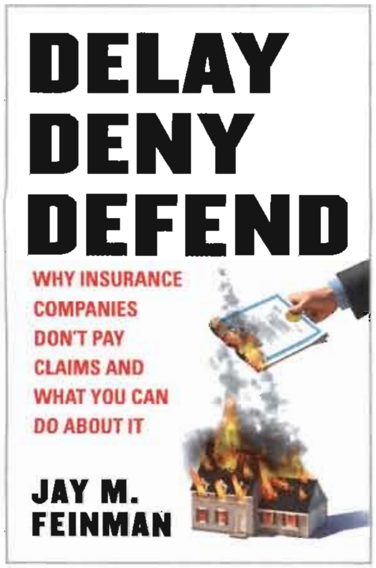
Broken Promises



"Although policyholders are an insurance company's customers, they buy a promise rather than a product. When this promise is broken, the policyholder suffers significant harm."

"Insurance is the great protector of the standard of living of the American middle class, but only when it works." So begins Jay Feinman's book *Delay Deny Defend: Why Insurance Companies Don't Pay Claims and What You Can Do about It*, an exposé of the devastating and pervasive effects of the insurance industry's switch from underwriting-based revenues to claim-based revenues.

With sweeping measures, many major insurance companies shifted the focus of the claims department from claims processing to revenue generation. As Feinman explains, "An insurance company's greatest expense is what it pays out in claims. If it pays out less in claims, it keeps more in profits. Therefore, the claims department became a profit center rather than the place that kept the company's promise."

Feinman, a distinguished professor of law at Rutgers, consulted with several well-known attorneys who have extensive knowledge and understanding of current insurance litigation trends, tactics, and schemes. The book cites cases and gives concrete examples of scams the insurance industry has perpetrated and their consequences for consumers. The result is an easily readable—if somewhat horrifying—account of the current state of the industry and its intentional failure to honor its promises to claimants.

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Feinman explains:

> When insurance doesn't work, the consequences are more severe than when any other kind of company fails to keep its promise. If a homeowner hires someone to paint his house and the painter never shows up, the homeowner can take his money and hire someone else. However, if the insurance company refuses to pay a claim, it is too late to go elsewhere for another policy; no company will write a policy that will pay for fire damage that has already occurred.

Feinman's thesis is that insurance companies are not our friends (or our good neighbors), but they're not our enemies either. They're businesses whose purpose is to make a profit. But they take that goal too far when they hold back money they should pay claimants. Insurance companies increasingly delay payment of justified claims, deny payment entirely, and defend these actions by forcing claimants into litigation.

The beauty of Feinman's book is its scholarly

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approach and in-depth explanation of the history of insurance, how it is supposed to work, and how it worked before the industry changed. Only within this context can the industry's current condition be properly appreciated—and feared. Although the book initially focuses on auto insurance, it includes a lengthy section on homeowner's insurance and its many shortcomings, exemplified by the wide-scale failure to pay claims related to Hurricane Katrina.

Beginning in the 1990s, Allstate and other companies hired McKinsey & Co., a giant consulting firm, to overhaul their claims-handling processes and increase their revenues. Computer systems were put into place to artificially lower claim values, remove discretion from experienced adjusters, discourage claimants from hiring attorneys, and force litigation with a "take it or leave it" approach to claims resolution.

At the same time, the focus for insurance sales was on reduced costs instead of customer service. In today's market, consumers are just as likely to purchase their insurance online, at Costco, or in response to a mailer from AARP as they are to buy it from their local State Farm agent. The only thing that matters is price, and consumers are discouraged from asking questions about what types of insurance policies and coverage limits might best meet their needs.

Policyholders who incur a loss often have no idea what types of coverage they actually have, whether it will cover their loss, how they should be compensated, or how to obtain all the benefits they are entitled to. This makes it much easier for the insurance company to delay, deny, and defend.

Feinman also explains how the industry uses "social marketing"—which he describes as "the use of the techniques of marketing, advertising, and public relations to sell an idea or a behavior rather than a product"—to artificially reduce payouts on claims. He equates this practice to campaigns to stop smoking or littering or to prevent forest fires. However, unlike those campaigns, the social marketing of insurance fraud generates direct benefits for its sponsors, and its goal is to boost the insurance industry's bottom line. By labeling more claims as fraudulent, those claims (and potential payouts) go away, either because criminal charges are filed or because claimants find the claims process too daunting or threatening to endure.

Although detecting and punishing insurance fraud is a worthy and necessary goal, the industry took it too far in the early 1990s and incorporated it into the drive to reduce claim payouts. McKinsey recommended encouraging adjusters to treat more claims as potentially fraudulent and referring more claims to special investigation units.

In this context, the industry began its war on minor-impact, soft-tissue (MIST) cases. Everyday events that policyholders experienced became evidence of criminality that was used to discourage accident victims from pursuing the compensation they were entitled to. The insurance industry also stepped up its cooperation with fire and police departments, became increasingly suspicious of arson claims, and convinced Congress to make insurance fraud affecting interstate commerce a federal crime. Feinman cites a study from the Massachusetts Insurance Fraud Bureau showing that, over a 10-year period, only 368 of 17,274 fraud referrals actually involved criminal fraud.

Although the book is described as a guide for consumers, it has broad appeal for lawmakers and attorneys as well. It is neither too technical nor too simplistic. There is something for everyone—and everyone should read it.

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