

April 21, 2014

Hon. James L. Seward  
Insurance Committee Chair, New York State Senate  
172 State Street, Room 430, Capitol  
Albany, NY 12247

Re: SB 2544 - SUPPORT

Dear Senator Seward,

We are writing to share relevant information and strong support for Senate Bill 2544 (DeFrancisco) and its Assembly counterpart, AB 3305 (Brennan). SB 2544 will provide insured individuals and businesses with basic legal recourse when an insurer refuses to pay a covered claim in full or on time without substantial justification. It will incentivize insurers to act in good faith and deter bad faith. It will bring New York up to the standards that exist in the vast majority of states.

“We” are United Policyholders, a non-profit that speaks for people and businesses in New York and across the nation who buy insurance and rely on their coverage to be a critical financial safety net in times of adversity. Through “Roadmap to Recovery™” and Roadmap to Preparedness programs, we are engaged in communities throughout the state with a focus on the coastal portions of Long Island.

Hurricane Irene, then Sandy, created extreme adversity for hundreds of thousands of New York home and business owners. For some, insurance safety nets did not perform as expected and contractual promises were broken. Yet claimants had no recourse because they could not afford to pay a local lawyer by the hour. That situation should be unacceptable to you and your colleagues in the legislature. Business and home owners must have the ability to hire a qualified New York lawyer to enforce insurance contract rights in the Empire State.

The fact that the business of insurance involves three primary sectors whose interests are not aligned makes it one that **particularly** needs legal safeguards: In addition to pursuing corporate profit objectives, the insurer sector serves two masters (shareholders and policyholders) whose interests are not aligned. The policyholder sector has a very substantial stake in the equation, (carrying

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insurance is both legally mandatory and essential to economic health), yet the least amount of enforcement resources of the three.

The insurer and shareholder sectors have ample access to use the legal system to advance their interests in New York State. Policyholders do not. SB2544 helps rectify this imbalance and its adoption is long overdue.

Though insurers are no doubt inflaming anti-trial lawyer passions to keep SB2544 from becoming law, the truth is the bill will fiscally strengthen New Yorkers and support the state's overall economic health. It will do this by creating an incentive for insurers to pay claims fairly and in full and on time and *avoid* putting the interests of their shareholders and profits ahead of the interests of policyholders.

Insurance has a unique role in our society: It spreads risk and makes it economically feasible for people and businesses to thrive. It has proven so essential in our modern world, Americans who want to drive cars, operate businesses, maintain their health, and borrow money to purchase a home are now legally required to buy insurance. Individuals and businesses in the state of New York and across the United States will readily confirm that insurance protection and coverage after an adverse event makes the difference between recovery and ruin. The economic and mental security it provides is uniquely important to people's lives and livelihoods.

But the perennial conflict between insurers' profit motives and interests of their insureds has heightened significantly since the 1990's. Court records, media coverage, and consumer responses to surveys conducted by UP indicate that insurers are increasingly succumbing to the temptation to use their resources (which include armies of lawyers) to underpay and delay claim settlements. A consumer's ability to hold an insurance company legally and financially accountable for failing to pay contractually owed benefits in full and/or on time is a critically important safeguard in the complex and profit-driven but still essential modern insurance system.

New York must keep its laws up to date and effective in preventing insurers from abusing their superior resources to the disadvantage of their captive customers. In a recent survey of insurance laws in all 50 states, it was revealed that policyholders in New York have fewer remedies for unfair insurance practices than in most other states. This survey is available for review at [www.uphelp.org](http://www.uphelp.org).

New York does not recognize an independent common law cause of action for insurance Bad Faith<sup>1</sup>, nor does the New York Insurance Law provide for a private right of action.<sup>2</sup>

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<sup>1</sup> See e.g. *Bi-Economy Market, Inc. v. Harleysville Ins. Co.*, 886 N.E. 2d 127 (N.Y. 2008).

<sup>2</sup> *Rocanova v. Equitable Life Assur. Soc'y*, 634 N.E.2d 940 (N.Y. 1994); N.Y. Ins. Law §2601;

Policyholders' only recourse is a suit for breach of contract, in which attorney's fees and other non-consequential damages are not recoverable.<sup>3</sup>

SB 2544 will solidify New York's reputation as a state that protects the interest of its business owners and individual residents by providing access to adequate remedies through the civil justice system for unfair insurance claim practices.

UP is a non-profit 501(c) (3) organization founded in California in 1991 that is a voice and an information resource for insurance consumers in all 50 states. Donations, foundation grants and volunteer attorneys and staff in all 50 states, support the organization's work. UP does not sell insurance or accept funding from insurance companies.

UP's work is divided into three program areas: *Roadmap to Recovery™* (disaster recovery and claim help), *Roadmap to Preparedness* (insurance and financial literacy and disaster preparedness), and *Advocacy and Action* (advancing pro-consumer laws and public policy through Amicus Briefs and legislative advocacy). UP hosts a library of previous Amicus Briefs, news, tips, sample forms and articles on commercial and personal lines insurance products, coverage, and the claims process at our website.

Thank you for time and consideration of both SB 2544 and our letter in support.

Sincerely

Amy Bach, Esq.  
Executive Director

cc: Hon. John DeFrancisco  
Alison Cooper

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<sup>3</sup> *Mighty Midgets, Inc. v. Centennial Ins. Co.*, 47 N.Y.2d 12, 21 (1979).