



IMPACT

Summer 2002

Volume 2, Issue 3

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE
& DEMOCRACY
NEWS

IN THIS ISSUE: FOCUS ON THE INSURANCE INDUSTRY

Dear Friend,

This summer, the Center for Justice & Democracy is proud to announce the formation of a new project, Americans for Insurance Reform (AIR).

AIR is a coalition of more than 60 consumer and public interest groups around the country that support real reforms to end the insurance industry's price-gouging of policyholders. Our new staff member, Rebecca Hoffman, has been working tirelessly to bring a variety of organizations into this coalition.

Insurance companies are spending big money and exerting all their influence on state and national legislators to change our legal system rather than focusing on real reforms of the insurance industry.

AIR's first project is sending letters to each of our nation's insurance commissioners asking that they investigate, audit and institute regulatory reforms of the insurance industry.

AIR believes that it is imperative that insurance regulators take immediate steps to freeze rates and impose a new regime of corporate responsibility and accountability on this industry whose business practices are wreaking havoc on the American economy.

For more information on AIR, visit our web site www.insurance-reform.org or email us at info@insurance-reform.org.

Sincerely,

Joanne Doroshow
Executive Director

A Deadly Cabal - The Insurance Industry and Organized Medicine

In March 2002, the American Medical Association (AMA) announced plans for a major lobbying and advertising campaign in at least 25 states to push for restrictions on the rights of injured patients to sue for malpractice. In explaining the AMA's position, President Richard Corlin insisted that such restrictions were needed because "[m]any practitioners, both generalists and specialists, just can't afford the liability premiums." Three months later, at the AMA's annual meeting, the Association revealed their expected budget for the campaign - \$15 million over the next few months, with \$12

million allocated for national advertising.

Doctors around the country are being hit with skyrocketing insurance premiums. Is the AMA trying to solve this problem? Or have they decided instead, to the detriment of patients, simply to join forces with an insurance industry that holds such vast economic clout that it can impose astronomical rate hikes on policyholders with very little scrutiny by lawmakers, the media or the public at large?

Today, the property/casualty insurance industry, with the help of organized medicine, is

driving a nationwide campaign to change U.S. civil liability laws. This is nothing new. Health care providers whose medical mistakes result in deaths and injuries do not like to be sued. The health care industry looks for excuses to pressure lawmakers to restrict such lawsuits. When the insurance industry manufactures insurance "crises," making insurance unaffordable or, in some cases, unavailable at any price, organized medicine always moves in to exploit the "crisis" to their own advantage.

They join with insurers by falsely telling lawmakers that the only way to solve this

(continued on page 3)

Tort Law Limits - A Prescription for Disaster

For the last 17 years, doctors and hospitals nationwide had experienced a relatively stable medical malpractice insurance market. Insurance was available and affordable. Rate increases were modest. In fact, over the last 10 years, average premiums increased by only 1.9 percent nationwide, far below medical inflation. Meanwhile, profits for medical malpractice insurers soared, generated by high investment income.

Medical malpractice insurance companies are now experiencing a downturn and they are raising premiums and canceling coverage for doctors, or at

least threatening to do so, in virtually every state in the country. This is not a state-specific or even a country-specific phenomenon. It's also happening in places like Australia and Canada, in provinces that do not have jury trials in civil cases.

This so-called insurance "crisis" is a virtual repeat of the last insurance "crisis" that hit the United States in the mid-1980s and an earlier one in the mid-1970s. A June 24, 2002, front-page *Wall Street Journal* investigative story reported that mismanaged pricing and accounting practices by medical malpractice insurers are

responsible for huge premium increases for doctors and the withdrawal from the market of certain insurance carriers. The story also challenged the credibility of jury verdict statistics that insurers cite, published by Jury Verdict Research, as a reason for needing rate increases.

On July 2, 2002, ten Democratic members of Congress, led by Reps. John Conyers (Mich.), John Dingell (Mich.) and John LaFalce (N.Y.), the ranking members of three House Committees, asked Congress' General Accounting Office (GAO) to

(continued on page 2)

In Pursuit of Justice . . .



**CENTER FOR JUSTICE &
DEMOCRACY**

P.O. Box 3326
Church Street Station
New York, NY 10008-3326
Phone: 212.267.2801
Fax: 212.764.4298
E-mail: centerjd@centerjd.org
Web: centerjd.org

IMPACT
Editor: Nikki Zeichner
Contributors:
Joanne Doroshow
Emily Gottlieb

© Copyright 2002 Center for
Justice & Democracy. All rights
reserved.

When asked why he works so hard representing some of New York's most horribly injured consumers, attorney **James R. Duffy** has a succinct response: "We won't get the truth from wrongdoers. If we don't do it, we'll never get the truth."

For 30 years, Jim Duffy has represented injured consumers in cases involving complex medical malpractice and catastrophic injuries. He is now the senior trial partner at Duffy, Duffy & Burdo in Uniondale, New York.

He speaks passionately about his clients. Last year, he represented a family whose child was born brain-damaged due to the medical negligence of two doctors. These doctors, he said,

"fell in love with modern technology," but they ignored important information about the pregnancy and clear signs of trouble.

Jim is a tireless advocate for injured consumers. Jay Halfon, former executive director of the New York State Trial Lawyers Association, says, "I've known Jim since the medical malpractice insurance crisis of 1985. No trial lawyer in New York State has worked harder and been more selfless in the fight to preserve the civil justice system than Jim has."

In addition to being an accomplished attorney, advocate and author of numerous legal articles and columns, Jim has also published a book on Lee

Harvey Oswald, which has been newly reissued under the title *Conspiracy: Who Killed JFK*.

Jim has said this about the Center for Justice & Democracy: "The Center for Justice & Democracy is doing tremendous work educating the public about the importance of the civil justice system and the work of trial lawyers. With threats to the civil justice system looming at every turn, we need the Center for Justice & Democracy in the trenches, fighting those who are trying to block injured victims from access to the courts. This is a truly outstanding organization, deserving of our admiration and support."

We can't thank him enough.

Tort Law Limits - A Prescription for Disaster continued . . .

investigate how the insurers' declining investment income and "insurance industry practices" have contributed to skyrocketing insurance rates for doctors over the last few months. Consumers Union, the Consumer Federation of America, U.S. Public Interest Research Group and the Center for Justice & Democracy released statements praising these members of Congress in calling for the GAO investigation.

Indeed, all credible evidence shows that the "crisis" in the affordability and availability of insurance has nothing to do with the legal system, and that enacting laws that restrict patients' rights to go to court will not lower insurance costs or rates. This was the finding of a 1999 Center for Justice & Democracy study entitled, *Premium Deceit - the Failure of "Tort Reform" to Cut Insurance Prices*, which provided the first-

ever look at 14 years of property/casualty insurance price trends nationwide. After testing the impact on liability insurance rates of "tort reforms" enacted in reaction to the liability insurance crisis of the mid-1980s and in the years since, *Premium Deceit* co-author, J. Robert Hunter, Director of Insurance for the Consumer Federation of America, concluded, "States with little or no tort law restrictions experienced approximately the same changes in insurance rates as those states that enacted severe limitations on victims' rights."

Despite the fact that tort law limits do not lower insurance premiums, many states, in addition to Congress, have been considering proposals that restrict the rights of patients to sue doctors and hospitals for medical errors. On March 14, 2002, Pennsylvania became the first state this year to approve such

a bill. At least 20 other states, including Florida, Nevada, New York, New Jersey, Mississippi, Ohio, Texas and West Virginia, now face heavy lobbying from the insurance industry and its allies, who are campaigning to spread California's draconian medical malpractice law, the Medical Injury Compensation Reform Act of 1975 (MICRA), around the country. Among other things, MICRA caps non-economic compensation at \$250,000 and imposes restrictions on patients' attorney fees.

On the federal level, Congress is now considering the HEALTH Act of 2002 (H.R. 4600), which would be as egregious for patients and the quality of health care in America as it would be ineffective in bringing insurance rates under control. The federal bill, modeled on California's cruel medical malpractice restrictions, pre-empted state law provisions that

protect patients, places a \$250,000 cap on non-economic damages, abolishes joint and several liability, repeals the collateral source rule, places limits on plaintiffs' attorney fees, authorizes structured settlements, reduces the statute of limitations and restricts punitive damages both by imposing a heightened evidentiary standard and by capping punitive awards to the greater of two times the amount of economic damages or \$250,000.

Like its predecessors, today's medical malpractice insurance "crisis" has absolutely nothing to do with the American legal system, tort laws, lawyers or juries. It is driven by the insurance underwriting cycle and remedies that do not specifically address this phenomenon will fail to stop these wild price gyrations, as they have in the past.

A Deadly Cabal - The Insurance Industry and Organized Medicine continued ...

insurance problem is to further restrict patients' rights to bring civil actions.

Three times in the last 30 years, the insurance industry has created liability insurance "crises." A crisis happened in the mid-1970s, precipitating the first wave of "tort reform" in medical malpractice insurance and product liability insurance, particularly. A more severe crisis took place in the mid-1980s, when manufacturers, municipalities, doctors, nurse-midwives, day-care centers, non-profit groups and many other commercial customers of liability insurance were faced with insurance rate increases of 300 percent or more.

Now, once again in 2002, the entire country is experiencing what has become known as the "hard market" part of the cycle, this time impacting property as well as liability coverage, with medical malpractice lines of insurance seeing rates going up 100% or more.

What precipitates these crises is

always the same. Insurers make their money from investment income. During years of high interest rates and/or excellent insurer profits, insurance companies engage in fierce competition for premium dollars to invest for maximum return. Insurers engage in severe under-

Three times in the last 30 years, the insurance industry has created liability insurance "crises."

pricing and insure very poor risks just to get premium dollars to invest. But when investment income decreases because interest rates drop, the stock market plummets and/or cumulative price cuts make profits become unbearably low, the industry responds by sharply increasing premiums and reducing coverage, creating a "liability insurance crisis."

Each time this happens and the market turns "hard," the insur-

ance industry tries to cover up its pricing errors by blaming lawyers and the legal system for the liability insurance price jump. Like clockwork, there are frenetic calls for legislative limits on victims' rights to sue, with state lawmakers viewing the "crisis" as an isolated problem rather than indicative of a broader national problem caused by the cyclical nature of the insurance business. Lawmakers panic with fear that insurers will abandon their state and hurt the state economy unless tort restrictions are passed.

Just as liability rules are traditionally governed by state laws, as opposed to federal laws, the job of regulating insurance companies is up to state governments. Yet most state insurance departments have weak or non-existent authority over insurance rates through prior approval or rejection of requests for rate increases. State insurance departments universally lack adequate investigators, auditors and other professionals, preventing them from rec-

ommending appropriate insurance rates and coverage. In other words, with few exceptions, state insurance departments have neither the authority nor the funding to exercise proper control over insurance industry pricing, much to the advantage of insurance companies.

This is no accident. Data from the Center for Public Integrity, an organization that studies the influence of money on government policy and politics, show that the "insurance industry boasts the most industry representation in the halls of statehouses across the country with 2,269 businesses and associations registered." The industry also benefits from easy access obtained from high levels of political giving to federal and state lawmakers. According to the Center for Responsive Politics, a non-partisan campaign finance watchdog group, the insurance industry has given more than \$57 million to federal political races since 2000. At the state level, things are no different. The Center for Responsive Politics reports that in the year 1998 alone, insurers contributed over \$24 million to state political campaigns in 33 states.

Today, the insurance industry is once again using its economic power to drive a nationwide campaign to change U.S. civil liability laws. Only stronger regulation of the insurance industry will end these practices and stop the industry from abusing its enormous economic influence, which it uses to promote a legislative agenda that bilks the taxpayer and severely hurts the American public.

Some Important Facts About Medical Malpractice

- Insurance companies are paying victims of medical negligence on average approximately \$30,000. Average payouts have stayed virtually flat for the last decade.
- Medical malpractice costs, as a percentage of national health care expenditures, are at an all time low, 0.55 percent.
- Up to 98,000 people are killed each year by medical errors in hospitals – far more than die from car accidents, breast cancer or AIDS.
- Total national costs (lost income, lost household production, disability and health care costs) of negligence in hospitals are estimated to be between \$17 billion and \$29 billion each year.
- Eight times as many patients are injured by medical malpractice as ever file a claim; 16 times as many suffer injuries as receive any compensation.
- There has been no change in the volume of medical malpractice cases in the last five years.
- Injured medical malpractice patients win before juries in only 23 percent of cases.
- Only 1.1 percent of medical malpractice plaintiffs who prevail at trial are awarded punitive damages.

Terrorism Coverage - Insurance Blackmail

History shows that property / casualty insurance companies have repeatedly threatened to pull the rug out from under the U.S. economy to get what they want. Whether it be a bailout or limits on people's rights to sue, insurance companies freely intimidate lawmakers and create an atmosphere of "crisis" to promote their legislative agenda while at the same time escaping any meaningful public scrutiny or regulatory control. The insurance industry's tactics in the wake of the September 11, 2001 terrorist attacks are a case in point.

Less than two weeks after the attacks on the World Trade Center, a delegation of 15 insurance executives met privately with President Bush and Commerce Secretary Donald Evans at the White House in an effort to limit insurance companies' liability exposure for future acts of terrorism. A few days later, Jacques E. DuBois, an executive from Swiss Re, the world's second largest reinsurance company, walked into the White House and told officials that his company would stop providing terrorism coverage to property and casualty insurers, raising fears of a nationwide economic collapse.

These executives were demanding a multi-billion-dollar insurance "backstop," essentially capping the liability of the property/casualty insurance industry, an industry worth hundreds of billions of dollars, in the event of future terrorist attacks. Without a program in place by the end of 2001, the executives warned, reinsurers would stop providing coverage to property and casualty insurance companies for future attacks. Without reinsurance, they argued, insurance companies could no longer

offer policies with terrorism coverage. And without terrorism insurance, they said, banks would stop lending money, new construction would grind to a halt and businesses would collapse. The blow to the U.S. economy would be crushing.

Through aggressive lobbying and print media, they made this clear in no uncertain terms. Other industries and business trade associations were brought in to help. For example, the National Association of Manufacturers, the U.S. Chamber of Commerce and nearly 50 of Washington's biggest trade associations formed a lobbying group created specifically to push for a federal bailout of the insurance industry.

In response to this campaign, on November 29, 2001, the U.S. House of Representatives approved legislation on a mostly party-line vote that not only had the government underwriting potential losses from acts of terrorism but also included severe restrictions on victims' rights to sue in the event of future terrorist attacks. However, it immediately stalled in the Senate primarily because the House chose to pack it with restrictions on victims' rights.

Despite dire predictions and threats from insurers, December 31, 2001 came and went without a federal insurance bailout and the economy did not crumble. In fact, by January 23, 2002, the Consumer Federation of America was reporting that the insurance industry was "more strongly capitalized than it was even before September 11," that "banks were lending money to most businesses" and that while certain large businesses and

potential targets like skyscrapers and sports arenas were having difficulty getting terrorism coverage (problems that could be solved with alternatives to traditional terrorism coverage), there were "no widespread economic problems related to terrorism insurance."

Insurers seized upon September 11 as an opportunity to price-gouge customers and boost profits. According to the November 15, 2001 issue of the *Wall Street Journal*, within days of the attacks on the World Trade Center, Marsh & McLennan Cos., the world's largest insurance broker, "began planning to form a subsidiary to sell insurance to corporate customers at sharply higher rates than were common before Sept. 11. Marsh also accelerated plans to launch a new consulting unit to capitalize on heightened fears of terrorism." Similarly, Lloyd's of London told its members in a newsletter that the September 11th terrorist attacks were a "historic opportunity" to make money, adding that premiums "had shot up to a level where very large profits are possible." And as reported in the October 21, 2001 *Los Angeles Times*, Maurice R. Greenberg, chairman of American International Group, one of the world's largest insurers, "told investment analysts recently that opportunities for his 82-year-old company have never been greater."

Despite the fact that an economic crisis has simply not materialized, President Bush and members of Congress continue to push for a federal terrorism insurance backup. As of publication, the Senate had passed the Terrorism Risk Insurance Act (S. 2600), creat-

ing a two-year program that caps the insurance industry's liability at \$10 billion each year, with the government paying 90 percent of losses between \$10 billion and \$100 billion. Its passage has been held up by House Republicans and the White House, who insist that the bill eliminate the ability of future terrorism victims to seek punitive damages from insurers and other businesses in court.

While the doomsday predictions of September 2001 have not come to pass, the ease with which insurance executives have been able to command the nation's attention with promises about the economy's imminent collapse says a great deal about the vast power and economic control that the insurance industry exercises in the United States.

JOIN CJ&D . . .

DON'T MISS THESE GREAT BENEFITS:

Breakthrough fact sheets, topical alerts.



Groundbreaking bi-monthly White Papers



Access to CJ&D's library



IMPACT, CJ&D's quarterly newsletter

MEMBERSHIP INQUIRIES:

EMAIL US AT
INFO@CENTERJD.ORG

OR CALL TOLL FREE
1.888.450.5545