

Request for editorial support for ERISA Preemption reform.

From: Ray Bourhis, Author, *Insult to Injury*

The AIG bailout and subsequent abuse of funds, though outrageous, is far from the biggest scam in the insurance business. While Congress looks the other way, major health and disability insurers are increasing revenues by billions of dollars by intentionally and systematically denying and terminating disability and medical claims to people who obtained their insurance in the workplace. This Congressionally sanctioned immunity for fraudulent claims denials is driving countless insureds into bankruptcy and foreclosure, depriving them of the right to recover for their losses and pushing many of them to the brink of suicide.

This situation, described in my book: *Insult to Injury* (endorsed by Senator Ted Kennedy, former Insurance Commissioner John Garamendi and numerous members of Congress) is made possible by a complicated-sounding, little known legal slight of hand called ERISA Preemption.

Here's how it works. ERISA (the Employment Retirement Income Security Act) is a federal law that was passed in 1974 to protect employee retirement benefits from mergers and acquisitions. Decades later, the insurance industry got the Supreme Court to hold that this law (ERISA) should displace all state law protections regulating workplace-obtained insurance. replacing all state insurance regulations with federal law. The problem was that there were NO federal protections to replace the state protections. WHY? Because since 1945, the federal government pursuant to the McCarran Ferguson Act, has been prohibited from regulating insurance. That was why all fifty states enacted Unfair Claims Practice Acts in the first place.

As a result of this (ERISA Preemption) today, there are no fraudulent or unfair claims practice regulations governing the tens of millions of insurance policies sold in the workplace. If you get a health or disability policy at work all of your state unfair insurance practice laws are eliminated. This was never intended by Congress when it enacted ERISA, but it was a side-effect well-understood by the insurance lobbyists.

Consequently, an insurer can - literally - use phony in-house medical opinions, biased claims investigations, fraudulent policy interpretations and flat-out lies to deny targeted disabled and sick policyholders out of all of their benefits. Benefits they have paid for over decades. Insurers CAN do this, and they DO do it. When I brought the claims described in *Insult to Injury* to the attention of 60 Minutes and Dateline several years ago investigative reporters from both found countless victims, including people in wheelchairs, whose disability claims had been denied.

The most recent example of this was just reported by the L.A. Times on April 16, 2009 and on April 17, 2009 by Good Morning America.

This situation involved tens of thousands of blinded/paralyzed and severely injured employees of defense contractors disabled in Iraq.

AIG, which insures 90 % of these individuals through their workplace, has been failing or refusing to pay legitimate claims. Nevertheless, these victims have no leverage against their insurers and no ability to recover for the financial consequences of these denials. This most recent situation, though outrageous, is merely another in a long line of examples of the ERISA preemption problem. Because the insurers carefully target the tens of thousands of fraudulent claims denials in question, they are able to stay under the proverbial radar screen. A single disability claim valued, for example, at \$4300 per month, with a cost of living adjustment and with a remaining life of ten years, is worth \$500,000. Two thousand such claims have a "present value" of over a billion dollars. All of the major disability insurers receive hundreds of thousands of such claims per year. By denying benefits to a small percentage of these claimants, an insurer, over the course of years of claims, has the ability to reap tens of billions of dollars in what, under state laws, would be illegal profits.

In 2006 Carol Hamilton and I met with (then) Senator Barrack Obama in his DC office about this problem. My goal was to seek enactment a simple measure by Congress by which ERISA would *defer* to state laws rather than *displacing* them. Though he agreed with me, Senator Obama's response was that given the control of the White House and Congress at that time, reform simply was not in the cards.

Now that things have changed, I am returning to my agenda of 2006. Starting with an attempt to interest the editorial boards of the nation's most influential and highly respected newspapers in this issue.

I am enclosing a copy of the proposed Congressional Bill on this subject, of my letter to President Obama, of the Los Angeles Times story of April 16, and of my book (please refer to ERISA in the Index.)

I would greatly appreciate it if you would consider addressing this issue.

Thank you.
Ray Bourhis
37 Redwood Drive
Ross, California
415 407 2162