

MANIPULATION OF THE MARKET How the Insurance Industry Has Gamed All Three Branches of State Government

Executive Summary

The insurance industry in Texas has successfully used all three branches of government to strip away protections for its customers, keep rates high, and implement unfair rating and underwriting practices. This manipulation of our market has left consumers with expensive bare bones insurance coverage that fails to provide meaningful protection for many homeowners.

For more than five years Texans have trusted the insurance industry to assure that its prices are affordable and that its products are available. The industry has rewarded this trust with astronomically high rates that have produced staggering overcharges at the expense of Texas policyholders.

Texans need a system that protects them with smart regulation – not one that simply trusts the insurance industry to do the right thing with deregulation. We have seen on the national level in the past year that letting industries police themselves fails to provide stable markets and protect consumers. It is time for Texans to receive better protection through smart, effective oversight of the insurance industry because affordable, available insurance is critical for the success of our state.

Consumers are required by law (e.g. auto insurance) or lending practice (e.g. homeowners insurance) to purchase insurance products. Therefore, insurance is unlike other products in the market as the demand for the product does not change. The market can only function when both supply and demand are variable. Thus demand for insurance cannot determine that the price is fair. When purchase of a product is required, consumers must have effective regulation to determine fair rates.

Yet for the past five years, Texans have faced a marketplace with illusory regulation that has resulted in bloated insurance rates on policies that have been starved of meaningful coverage. While it's clear the role that the insurers themselves have played in this situation, most Texans are unaware of how the insurers have used all three branches of their state government to further its anti-consumer agenda.

For the last decade, the industry has put consistent pressure on the state legislature to pass legislation further deregulating the insurance market. Despite its promises to the Legislature that deregulation would lead to decreased rates, the insurance industry has instead used these laws to game the system, forging homeowners to pay significant overcharges. The Department of Insurance – part of the executive branch – has passed rules that heavily favor insurers over consumers, allowing companies to severely reduce coverage available to customers without lowering rates. Further, the Texas Supreme Court has repeatedly chosen to interpret insurance laws as favoring the industry, even when the evidence plainly supports the fact that the laws were intended to protect policyholders.

The insurance industry has had more than five years of pulling the wool over the eyes of Texas legislators and twisting the arm of the Department of Insurance. It's time for Texas to stop trusting empty industry promises.

We need smart, effective regulation of the insurance market in Texas that protects consumers from unwarranted rate hikes and unscrupulous insurance practices while still maintaining a healthy, competitive marketplace. Insurers must be required to justify any rate before they begin charging it, they must be banned from considering credit scores in calculating premiums, and they must be prevented from engaging in the unfair practices that have become so pervasive.

A Brief Summary of the Insurance Market in Texas

Prior to 2003, the insurance commissioner established rates and insurers had to seek approval of a rate by the commissioner if the proposed rate fell outside of a specified range. This system of regulation was known as the flex-band system. But the insurance industry took advantage of a serious legal loophole known as the Lloyd's loophole in order to escape regulation for 95% of its market.¹ This massive loophole created an insurance crisis in Texas in which insurers were largely unsupervised and free to overcharge policyholders at will.

In the years leading up to 2003, homeowners insurance rates in Texas skyrocketed, purportedly as a result of a dramatic increase in the discovery of mold in Texas homes.² During this period, insurers were required to offer a number of standardized policies, and most homeowners carried what is called an HO-B policy – a policy that covered most claims to a home, including mold remediation. Because insurers were largely unregulated, however, they were able to sell these policies without ever being financially prepared to cover claims for mold. Because of this lack of preparation, the dramatic uptick in mold claims threatened the industry's fat profits and gave it the necessary cover to hike up its rates even further. In part because of the increase in mold claims, the Department of Insurance (TDI) adopted a rule that began allowing insurers to dramatically reduce the coverage in the policies they were offering.³

Even though the industry persuaded TDI to pass this massive deregulatory rule, it still lobbied hard in the 2003 legislative session for even more deregulation. Insurers asked the Legislature to lessen regulation on rates by doing away with the flex-band system and moving instead to the "file and use" system. Under the file and use system, an insurer must simply inform TDI of any rates it intends to charge, then may begin immediately charging that rate. In exchange for this pro-industry giveaway, the industry agreed to close the Lloyd's loophole and promised that it would submit to rate regulation, such as it is.

¹ TEXAS DEPARTMENT OF INSURANCE, 127TH ANNUAL REPORT, PART 1: REPORT OF PROGRAM ACTIVITIES 1 (Nov. 18, 2002), <http://www.tdi.state.tx.us/reports/documents/02annual1.pdf>; TEXAS DEPARTMENT OF INSURANCE, 128TH ANNUAL REPORT, PART 1: REPORT OF PROGRAM ACTIVITIES 3; (Nov. 20, 2003), <http://www.tdi.state.tx.us/reports/documents/03annual1.pdf>

² TEXAS DEPARTMENT OF INSURANCE, SENATE BILL 310 SUMMARY REPORT FOR THE 78TH LEGISLATURE 7 (Mar. 28, 2003), <http://www.tdi.state.tx.us/reports/documents/sb310rpt.pdf>

³ TEXAS DEPARTMENT OF INSURANCE, 127TH ANNUAL REPORT, PART 1: REPORT OF PROGRAM ACTIVITIES 1 (Nov. 18, 2002); TEXAS DEPARTMENT OF INSURANCE, 128TH ANNUAL REPORT, PART 1: REPORT OF PROGRAM ACTIVITIES 4 (Nov. 20, 2003).

Thus the industry persuaded TDI by rule in 2002 and the Legislature through SB 14 in 2003 to completely deregulate standardized forms and allow insurers to assess rate increases immediately and without approval. Additionally, with SB 14 insurers obtained permission to begin using policyholders' credit scores to determine their insurance premiums. Prior to SB 14, only certain types of insurers (known as mutual companies) that sold policies to people considered high risk could use credit scores in setting premiums.⁴

This massive overhaul of industry regulation has been a boon to the insurance industry. In the years following SB 14, insurers changed their homeowners forms to exclude coverage for mold and many other claims that had previously been covered.⁵ According to TDI, the coverage in policies dropped up to 45%,⁶ meaning that insurers had decreased the amount of claims they covered by about half. Despite this significant drop in coverage, consumers saw only minute decreases in the cost of policies.

The Result for Policyholders

Since 2003 when forms were deregulated, consumers have been paying more money for less coverage. Texans are paying the highest homeowners rates in the nation;⁷ higher even than California, Louisiana, and Florida – all states with notoriously dangerous weather-related risks. According to the most recent data as compiled by the National Association of Insurance Commissioners, the national average for homeowners insurance is \$764.⁸ In Texas, the average homeowner pays \$1372 – 80% above the national average – for the same coverage.⁹ And insurers in Texas – despite all of their talk about the dangerous weather conditions in our state – have been beating the average national profit by a significant margin.

Insurance profits are measured by what is called the loss ratio. Industry experts widely agree that a healthy loss ratio should fall in the 57% to 59% range.¹⁰ This means that for every dollar collected, the industry should be paying out between 57¢ and 59¢ for claims. Since passage of SB 14 more than five years ago, Texas insurers have seen profits every year that either meet or far exceed this level, even the year that Hurricane Rita struck the Texas coast.

⁴ TEXAS DEPARTMENT OF INSURANCE, *supra* note 2 at 14.

⁵ *Id.* at 7.

⁶ *Id.*

⁷ Insurance Information Institute, Facts and Statistics <http://www.iii.org/media/facts/statsbyissue/homeowners/>

⁸ NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, DWELLING FIRE, HOMEOWNERS OWNER-OCCUPIED, AND HOMEOWNERS TENANT AND CONDOMINIUM/COOPERATIVE UNIT OWNER'S INSURANCE STATISTICAL REPORT (2005).

⁹ *Id.* NAIC state averages are calculated using the most common homeowners policy in the country, the HO-3. In order to obtain a meaningful average, the number must be calculated using the same policy even though not every homeowner in the country uses this policy. More than 80% of homeowners nationally carry this form (*id.* at pg. 33). Half of the homeowners in Texas carry this policy (*id.* at 121). The average calculated by TDI uses the actual policies held by homeowners even though the policies offer significantly different levels of coverage. For comparison to other states, however, it is essential to calculate the average using the same policy.

¹⁰ Press Release, Texas Department of Insurance, "New Data Shows Improvement in Homeowners Insurance Market" (Mar. 15, 2004) ("The 58 percent figure is within a percentage point of the figure that the Texas Department of Insurance has used in setting the benchmark rates in the past"); 1 TDINSIGHT 4, 12 (2004), <http://www.tdi.state.tx.us/pubs/insight/200404.pdf>

Insurers nationally have not seen this level of extreme profit.¹¹ The five year average loss ratio – since passage of SB 14 – is a mere 42.7%, meaning that insurers have paid out on average less than 43¢ in claims for every dollar they’ve collected from Texas policyholders. During this same period, insurers have paid out an average of about 55¢ nationally for every dollar collected in premiums.

Insurance Claim Payouts: Texas v. National

Year	Texas Loss Ratio	National Loss Ratio
2007	36.4	51.5
2006	34.0	46.0
2005	56.9	70.7
2004	27.8	50.2
2003	58.6	60.0
Average	42.74	55.68

To put that in perspective, on the average national homeowner’s policy, which costs about \$764, the insurance industry is keeping \$344 of each policy for profit and overhead after paying out claims. In Texas, where the average homeowners policy costs \$1372, the industry is keeping \$796 – more than twice the national average.

Texasans also have not seen rates decline appreciably since the market was deregulated in 2003. Rates since 2003 have decreased a mere 3.5%. When one considers that rates had spiked more than 40%¹² in the three years before SB 14, it becomes clear that rates have *not* gone down. And because of the additional fact that TDI has deregulated forms, and thus homeowners aren’t getting the same levels of coverage they were before 2003, homeowners are actually *paying more for less*.

Average Premiums in Texas, 1997-2007¹³

Year	Average Statewide Premium	% Change over Prior Year
1997	865	N/A
1998	888	2.7%
1999	879	-1.0%
2000	876	-0.3%
2001	951	8.6%
2002	1,232	29.5%
2003	1,249	1.4%
2004	1,244	-0.4%
2005	1,222	-1.8%

¹¹ TEXAS DEPARTMENT OF INSURANCE, QUARTERLY LEGISLATIVE REPORT ON MARKET CONDITIONS 23 (2008).

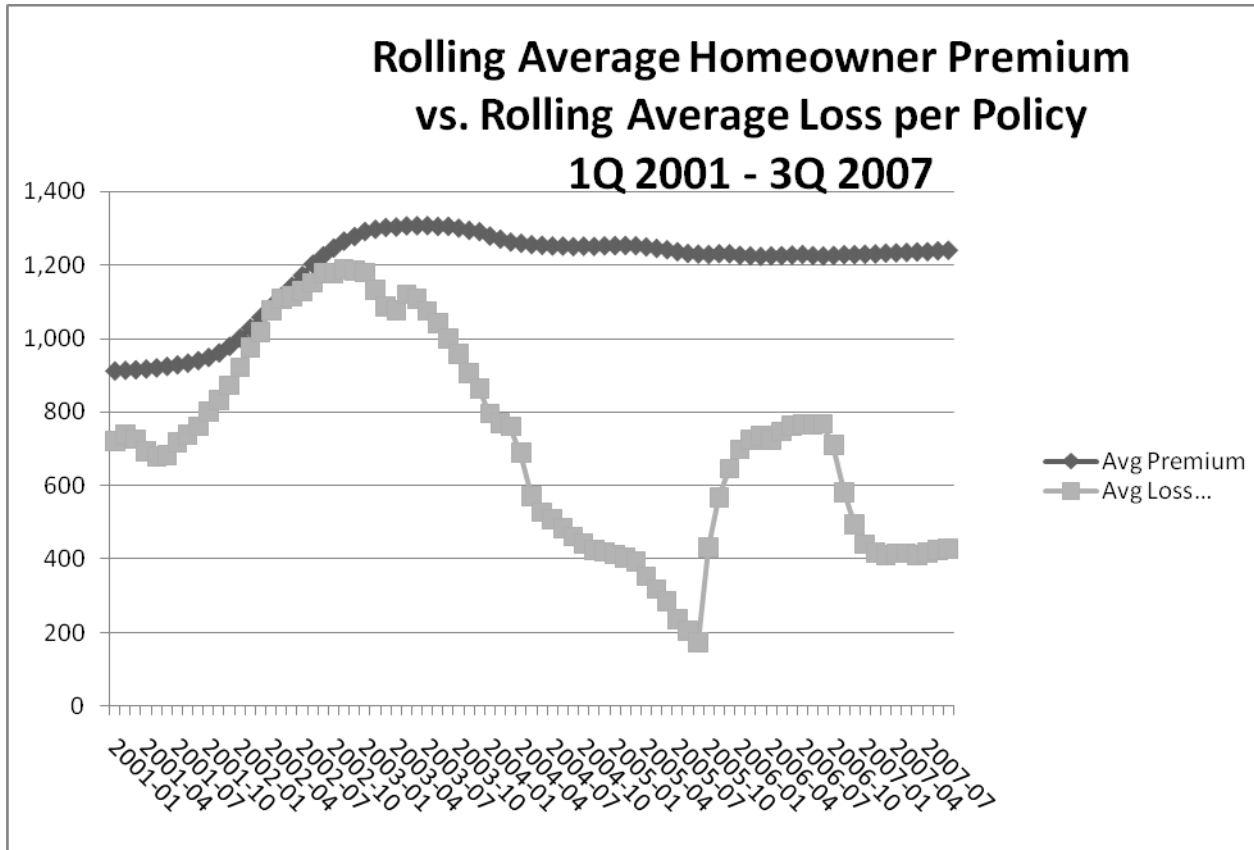
TDI’s information is based on information obtained through the NAIC,

<http://www.tdi.state.tx.us/reports/pc/documents/pcqlr08q3.pdf> and TEXAS DEPARTMENT OF INSURANCE, INSURANCE EXPENSE EXHIBITS: COUNTRYWIDE RESULTS OF ALL COMPANIES WRITING BUSINESS IN TEXAS (2003-2007), <http://www.tdi.state.tx.us/reports/report4.html>

¹² TEXAS DEPARTMENT OF INSURANCE, *supra* note 2; TEXAS DEPARTMENT OF INSURANCE, 128TH ANNUAL REPORT, PART 1: REPORT OF PROGRAM ACTIVITIES 3 (Nov. 20, 2003).

¹³ Data compiled by the Office of Public Insurance Counsel.

2006	1,214	-.7%
2007	1,205	-.7%
1997-2007		39.3%

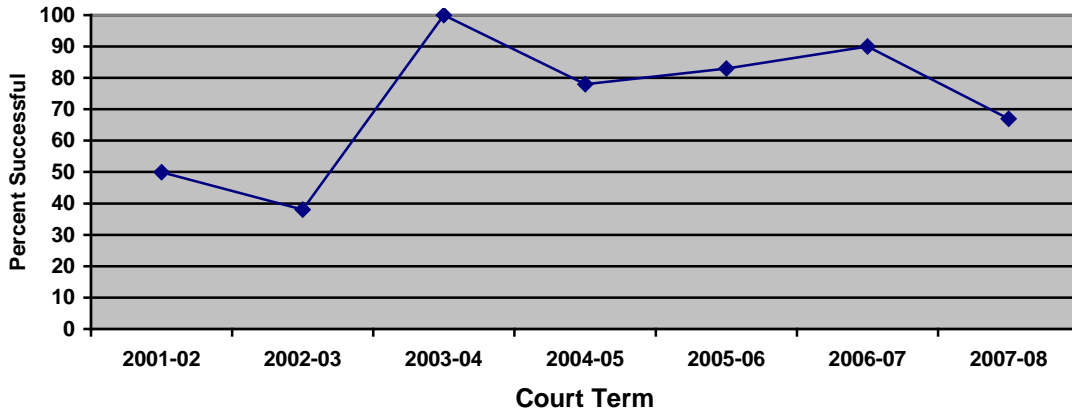


The Texas Supreme Court and the Insurance Industry

The insurance industry has not just been assisted by the legislative and executive branches, however. Over the past five years the Texas Supreme Court has consistently left consumers holding the bag while sending insurers on their way with their pockets bulging.

Since 2003, six new justices have assumed positions at the Court. For a court with only nine justices that is a great deal of change. Not coincidentally, also since 2003, the success rate of the insurance industry at the Court has risen while the success rate for consumers has fallen.

**Insurance Industry Win Rates at the Texas Supreme Court:
2001-2008** ¹⁴



In the two court terms preceding the influx of justices in 2003, the insurance industry had win rates at the Court of 50% (2001-02 term) and 38% (2002-03). Once the influx of new insurance-friendly justices began, however, the industry saw its success rate skyrocket.

As mentioned above, there are nine justices on the Court, and none of them has a record of standing up for consumers. Over the past five court terms (since the 2003-04 term when the new justices began arriving), the consumer success rate at the Court for insurance cases has been a dismal 18%.¹⁵

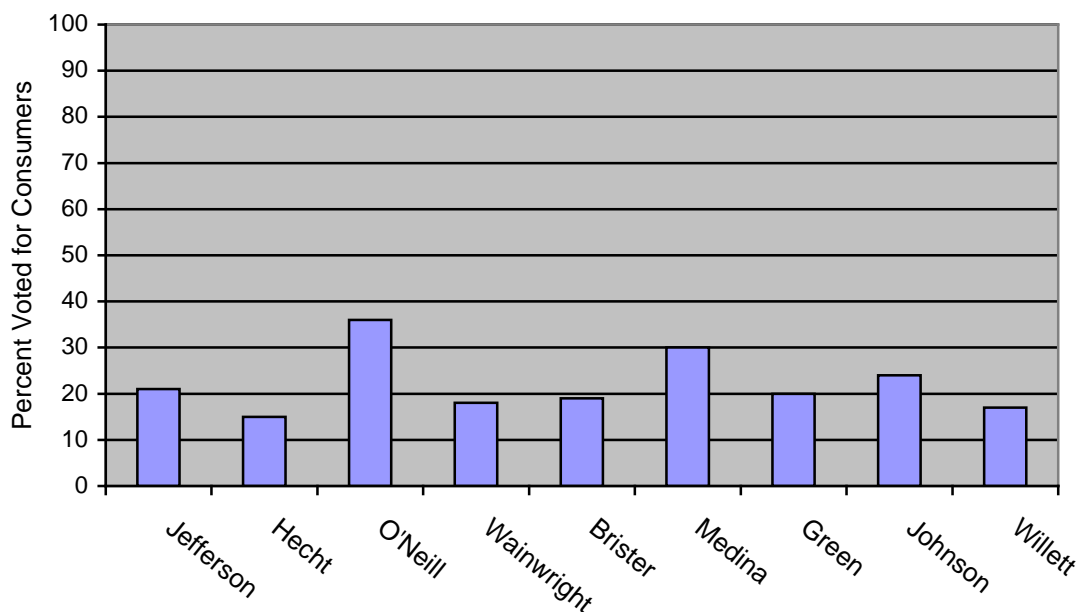
When the unsigned (per curiam) opinions are taken out, each justice can be evaluated based only on cases in which he or she cast a record vote. Of all the justices, Justice O’Neill has the most consumer-friendly voting record for consumers in insurance cases with a record of 36%. The least consumer-friendly justice – Justice Hecht – voted on the record for policyholders a mere 15% of the time.¹⁶

¹⁴ Texas Watch’s Annual Court Watch reports: <http://www.txwfoundation.org/TWF/index.cfm?event=showPage&pg=courtwatcharchive> and see Appendix 1.

¹⁵ See Appendix 1.

¹⁶ The voting records for the justices were as follows: Chief Justice Jefferson voted in 28 consumer-related insurance cases, and in 6 of those cases he voted on the consumer side. Justice Hecht voted in 27 consumer-related insurance cases, and in 4 of those cases he voted on the consumer side. Justice O’Neill voted in 25 consumer-related insurance cases, and in 9 of those cases she voted on the consumer side. Justice Wainwright voted in 28 consumer-related insurance cases, and in 5 of those cases he voted on the consumer side. Justice Brister voted in 26 consumer-related insurance cases, and in 5 of those cases he voted on the consumer side. Justice Medina voted in 20 consumer-related insurance cases, and in 6 of those cases he voted on the consumer side. Justice Green voted in 20 consumer-related insurance cases, and in 4 of those cases he voted on the consumer side. Justice Johnson voted in 17 consumer-related insurance cases, and in 4 of those cases he voted on the consumer side. Justice Willett voted in 18 consumer-related insurance cases, and in 3 of those cases he voted on the consumer side.

**5 Year Average Pro-Consumer Voting Record of the
Texas Supreme Court Justices
(2003-2004 term through 2007-2008 term)**



In calculating these voting records, we considered 28 signed insurance cases decided since the 2003-04 term whose outcomes have affected consumers. While some of these cases have “merely” whittled away at consumer protections, many of them have substantially eroded protections the Legislature provided. Eight of these cases have made it into our annual Terrible Ten list – a list of the most harmful cases to consumers during the term.¹⁷

Over the past five years, the Court has consistently restricted the interpretation of insurance policies such that consumers are getting even less coverage than they paid for. Of the many insurance cases that have been harmful to consumers over this period, two of them particularly deserve to be singled out for individual attention.

In *Fortis Benefits v. Cantu* (2007), the Court overturned 25 years of precedent that required policyholders to be “made whole” prior to reimbursing insurance company payments.¹⁸ In *Fortis*, Vanessa Cantu was seriously injured in an automotive accident. Her insurance only covered a portion of her medical costs, so she took multiple parties to court in order to recover her medical expenses. The settlement she received only covered a portion of her future medical expenses.

For over 25 years, settlement awards to policyholders have been governed by the following doctrine: “when ‘either the insurer or the insured must to some extent go unpaid, the loss should be borne by

¹⁷ See Appendix 2. The Terrible Ten list for the 2007-08 term has not yet been finalized, but the insurance cases from that term are listed in Appendix 2 and included in all calculations in this report.

¹⁸ Docket No. 05-0791.

the insurer for that is the risk the insured has paid it to assume.”¹⁹ The Supreme Court departed from this sensible and fair policy and ruled that insurance policy language will now trump an insured’s interest in being made whole. The practical effect for consumers is that they can now be left with inadequate compensation to cover their basic medical needs.

In *Brainard v. Trinity Universal Insurance Co.* (2006), the Court extended the deadline for an insurance company to pay uninsured/under-insured motorist (UM/UIM) benefits.²⁰ UM/UIM benefits are mandated by law and are designed to protect insured motorists who are injured by uninsured or underinsured drivers. Once a policyholder submits a claim an insurance company has 30 days to pay before the insurer may be responsible for the policyholder’s legal fees if he or she must take the insurer to court to force it to honor the coverage. Prior to *Brainard*, this 30-day timeline started when the policyholder filed a claim for UM/UIM coverage with the insurer. Now the timeline does not begin until after the policyholder takes the insurer to court and obtains a judgment that that the insurer must pay.

This new policy gives insurers a strong incentive to deny claims for UM/UIM coverage as policyholders will no longer be able to recover their legal fees if they are forced to take their insurer to court. Thus even if a policyholder does win a judgment that the insurer must pay the UM/UIM benefits, the insurer will have to pay no more than if it had paid the claim when it was originally filed. The practical result is that insurers are less likely to pay valid claims.

The trend toward arbitrary protections for insurers is especially disturbing in light of insurers’ continued encroachment on consumers’ rights in their handling of everyday insurance claims. Policyholders expect that when they are faced with having to file a legitimate claim with their insurance company they will be fairly compensated; however, as a result of the Court’s decision-making that is no longer a safe assumption. Predictably, insurers are seeking relief through the courts because the anti-consumer, pro-insurance industry nature of the high court is well known to industry insiders, and much more often than not the Court supports the aggressive anti-claimant behavior of insurance companies in this state.

Conclusion

Texans have faced a five year assault on their insurance rights not only by the insurance industry, but by their own state government. After near complete deregulation, the industry has utterly failed to police itself as promised, and has instead chosen to run rough shod over Texas policyholders. Insurers have cut their levels of coverage while charging consumers more money. The Texas Supreme Court has put the icing on this moldy cake by hacking up what little consumer protections remain.

Deregulation of the banking and mortgage industry has led to a crisis on the national level. Deregulation of the insurance industry in Texas has led to skyrocketing rates with less coverage. Deregulation clearly is *not* the answer to greater consumer protection or to a healthy marketplace – *effective* regulation *is*.

¹⁹ *Ortiz v. Great Southern Fire and Cas. Ins. Co.*, 597 S.W.2d 342, 344 (Tex. 1980) (quoting *Garrity v. Rural Mut. Ins. Co.*, 253 N.W.2d 512, 514 (1977)).

²⁰ Docket No. 04-0537.

Solutions

Texas Watch has proposed seven reforms the Legislature can make that will help to return protections to consumers and reign in the industry.

Require Real Rate Oversight by Implementing a Prior Approval System

Without vigorous oversight of rates by TDI, there is no way of achieving the balance necessary for a vigorous market. Given that many insurance products are required by law or lending practice and others are necessary to ensure a healthy population, it is crucial that TDI weigh in to ensure that rates are fair for consumers and profits are reasonable for industry.

Require Standardized Homeowners Policies

After the insurance reform of 2003, insurers were allowed to deviate from standard policies and to offer an unlimited number of policies with different levels of coverage. The result, however, is that consumers can no longer shop on price alone as coverage varies widely from policy to policy. In order to return power to the hands of consumers to pick the best policy, TDI must require insurers to offer standard forms that offer uniform coverage.

Ban Credit Scoring

The insurance industry has increasingly been using credit scores to determine policyholders' rates. Credit scores are determined based on a person's payment history, amounts owed, length of credit history, new credit, and types of credit. None of these criteria directly relate to a policyholder's insurance risk. In fact, many consumers who have never filed an insurance claim find their insurance rates rising based solely on their credit score.

Make the Insurance Commissioner an Elected Position

The commissioner's duty is to ensure fair treatment for homeowners, drivers, patients and small business owners. Even though the commissioner's decisions touch every Texan, he is held accountable by only one person: the governor who appointed him.

Limit the Use of Rating Territories

Under current law, insurance companies are able to vary rates within a county by any amount they can actuarially justify. This has led to a large disparity in the amount that people within a single county – even people on the same block – must pay for insurance. The result is that insurers are carving up counties and charging rates that vary by ZIP code. To prevent this, there should be a maximum 15% rating variance allowed per county.

Limit the Use of Rating Categories in Auto Insurance

Insurers divide consumers into categories and sub-categories to determine what rates they will pay. There is currently no limit on the number of times a person may be sub-categorized. The result is that there are so many categories, that, for example, 17 year old males in a particular ZIP code with a particular credit score driving a particular model of car make up a single category. This extensive use of categorization negates the point of insurance – that risk be shared.

Require TDI to Penalize State-wide Pullouts by Imposing a 5-Year Ban on Re-entry

Insurers carry an enormous amount of power in our state. If TDI threatens to disapprove a rate or a form, insurers can pull out of the state entirely with no penalty, only to re-enter it within months.

Appendix 1: List of consumer-related insurance cases by term from the 2002-03 term through the 2007-08 term

2007-08

67% success rate for the insurance industry v. 33% success rate for consumers

- *National Union Fire Ins. Co. v. Crocker* (06-0868) (2008) (consumer loss)
- *Texas Mutual Ins. Co. v. Ledbetter* (06-0814) (2008) (consumer loss)
- *Excess Underwriters v. Frank's Casing*²¹ (02-0730) (2008) (consumer win)
- *Nationwide Ins. Co. v. Elchehimi* (06-0106) (2008) (consumer loss)
- *Fairfield Ins. Co. v. Stephens Martin Paving, LP* (04-0728) (2008) (consumer win)
- *Morales v. Liberty Mutual Ins. Co.* (05-0754) (2007) (consumer win)
- *Mid-Century Ins. Co. of Texas v. Ademaj* (05-0016) (2007) (consumer loss)
- *Stonebridge Life Ins. Co. v. Pitts* (06-0655) (2007) (consumer loss)
- *In re Merrill Lynch Trust Co.* (04-0865) (2007) (consumer loss)

2006-07

90% success rate for the insurance industry v. 10% success rate for consumers

- *Citizens Ins. Co. v. Daccach* (03-0505) (2007) (consumer loss)
- *Farmers Group Inc. v. Lubin* (05-0169) (2007) (consumer loss)
- *In re Allstate County Mut. Ins. Co.* (06-0878) (2007) (consumer loss)
- *Fortis Benefits v. Cantu* (05-0791) (2007) (consumer loss)
- *Ben Bolt-Palito Consolidated I.S.D. v. Texas Political Subdivisions Property/Casualty Joint Self-Ins. Fund* (05-0340) (2006) (consumer win)
- *Blue Cross Blue Shield of Texas v. Duenez* (05-0521) (2006) (consumer loss)
- *Fieess v. State Farm Lloyds* (04-1104) (2006) (consumer loss)
- *Brainard v. Trinity Universal Ins. Co.* (04-0537) (2006) (consumer loss)
- *State Farm Mut. Automobile Ins. Co. v. Nickerson* (04-0427) (2006) (consumer loss)
- *State Farm Mut. Automobile Ins. Co. v. Norris* (04-0514) (2006) (consumer loss)

2005-06

83% success rate for the insurance industry v. 17% success rate for consumers

- *In re Vesta Insurance Group, Inc.* (04-0141) (2006) (consumer loss)
- *Minnesota Life Insurance Co. v. Vasquez* (04-0477) (2006) (consumer loss)
- *Allstate Indemnity Co. v. Forth* (05-0057) (2006) (consumer loss)
- *Fidelity & Guaranty v. Drewery* (05-0295) (2006) (consumer loss)
- *GuideOne v. Fielder Road Baptist* (04-0692) (2006) (consumer win)
- *Progressive v. Boyd* (04-0055) (2005) (consumer loss)

²¹ The first opinion for *Excess Underwriters v. Frank's Casing* was delivered in 2005. Upon request, however, the Court reconsidered the case and issued a new opinion in 2008. Both cases are counted toward the total number of insurance cases and in the justices' consumer score as each justice was given the opportunity to vote in each case and could have changed his or her mind.

2004-05

78% success rate for the insurance industry v. 22% success rate for consumers

- *Excess Underwriters v. Frank's Casing* (02-0730) (2005) (consumer loss)
- *Allstate Insurance Company v. Hallman* (03-0957) (2005) (consumer loss)
- *National Western Life Insurance Co. v. Rowe* (02-1010) (2005) (consumer loss)
- *Republic Underwriters Insurance Co. v. Mex-Tex, Inc.* (03-0662) (2004) (consumer loss)
- *Northern County Mutual Insurance Co. v. Dawalos* (02-1007) (2004) (consumer loss)
- *Texas Farm Bureau Mutual Ins. Co. v. Sturrock* (02-0069) (2004) (consumer win)
- *Old American County Mutual Fire Ins. Co. v. Sanchez* (02-0843) (2004) (consumer loss)
- *State Farm Mutual Automobile Insurance Co. v. Lopez*²² (01-0540) (2004) (consumer loss)
- *Utica National Ins. Co. of Texas v. American Indemnity Co.* (02-0090) (2004) (consumer win)²³

2003-04

100% success rate for the insurance industry v. 0% success rate for consumers

- *Progressive County Mutual Ins. Company v. Bailey* (02-0778) (2004) (consumer loss)
- *State and County Mutual Fire Ins. Co. v. Macias* (02-0833) (2004) (consumer loss)
- *Old American County Mutual Fire Ins. Co. v. Renfrow* (02-1087) (2004) (consumer loss)
- *American Manufacturers Mutual Ins. Co. v. Schaefer* (02-0295) (2003) (consumer loss)
- *Provident Life and Accident Ins. Co. v. Knott* (02-0485) (2003) (consumer loss)

2002-03

38% success rate for the insurance industry v. 63% success rate for consumers

- *Progressive County Mutual Ins. Co. v. Sink* (01-0534) (2003) (consumer loss)
- *Utica National Ins. Co. of Texas v. American Indemnity Co.* (02-0090) (2003) (consumer win)
- *Valley Forge Ins. Co. v. Austin* (02-0100) (2003) (consumer win)
- *Ray Ins. Agency v. Jones* (02-0009) (2002) (consumer win)
- *State Farm Mut. Auto. Ins. Co. v. Lopez* (01-0540) (2002) (consumer win)
- *Texas Farm Bureau Mutual Ins. Co. v. Sears* (01-0851) (2002) (consumer loss)
- *King v. Dallas Ins. Co.* (00-1152) (2002) (consumer win)
- *In re Allstate County Mutual Ins. Co.* (00-1301) (2002) (consumer loss)

2001-02

50% success rate for the insurance industry v. 50% success rate for consumers

- *Continental Casualty Co. v. Downs* (00-1309) (consumer win)
- *King v. Dallas Fire Ins. Co.* (00-1152) (2002) (consumer win)
- *Rocor International, Inc. v. National Union Fire Ins. Co.* (99-0063) (2002) (consumer win)

²² The first opinion for *State Farm Mutual Automobile Ins. Co. v. Lopez* was delivered in 2002. Upon request, however, the Court reconsidered the case and issued a new opinion in 2004. Both cases are counted toward the total number of insurance cases and in the justices' consumer score as each justice was given the opportunity to vote in each case and could have changed his or her mind.

²³ The first opinion for *Utica National Ins. Co. of Texas v. American Indemnity Co.* was delivered in 2002. Upon request, however, the Court reconsidered the case and issued a new opinion in 2004. Both cases are counted toward the total number of insurance cases and in the justices' consumer score as each justice was given the opportunity to vote in each case and could have changed his or her mind.

- *Argonaut Ins. Co. v. Baker* (01-0287) (2002) (consumer loss)
- *Mid-Century Ins. Co. of Texas v. Boyte* (01-0523) (2002) (consumer loss)
- *American Motorists Ins. Co. v. Fodge* (00-0547) (2001) (consumer loss)

Appendix 2: Terrible Ten Insurance Cases

There have been 39 insurance opinions decided since the 2003-04 term that have had implications for consumers. Eight of these cases have made our annual list as being cases with the most negative impact on consumers. A brief statement of the impact of each of these cases follows.

Fortis Benefits v. Cantu (Willett 9-0) (2007)

Impact: Injured consumers now must reimburse insurance company payments before they can recover full medical expenses

Brainard v. Trinity Universal Insurance Co. (Jefferson 7-0) (2006)

Impact: Incentivizes the denial of uninsured/underinsured motorist claims by insurance companies

Fliess v. State Farm Lloyds (Brister 7-2) (2006)

Impact: Undermines insurance policyholders by finding that contracts with unclear language favor insurance companies

Excess Underwriters v. Frank's Casing (Owen 7-0) (2005)

Impact: Adopts California law and creates an implied right of reimbursement for insurance carriers.

Republic Underwriters Insurance Co. v. Mex-Tex, Inc. (Hecht 5-2) (2004)

Impact: Gives insurance companies an unfair advantage in settlement negotiations with policyholders

Northern County Mutual Insurance Co. v. Davalos (Phillips 9-0) (2004)

Impact: Broadens the scope of the insurance industry's control over litigation involving a policyholder

Old American County Mutual Fire Insurance Co. v. Renfrow (Per curiam) (2004)

Impact: Enables insurance companies to arbitrarily deny coverage for permitted use of insured company vehicles

American Manufacturers Mutual Insurance Co. v. Schaefer (O'Neill 9-0) (2003)

Impact: Establishes a precedent that reduces insurance companies' responsibility to policyholders for loss of value in repaired vehicles