



INSURER EXPLOITATION OF CONSUMER PROTECTION LAWS HARMS CONSUMERS

**NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
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Erica. L. Eversman, J.D.

Automotive Education & Policy Institute

STATE CONSUMER PROTECTION LAWS

- Created in the 1970s to complement federal law in protection of consumer and consumer transactions
- “Consumer” and “consumer transaction” are purchases of goods and services by the ultimate end user for use in household activities
- Insurance and insurance transactions expressly excluded from application

Applies to Providers of Goods and Services for the End User

- Examples:
- Roofers performing work and shingles installed on customer's home
- Dealership that sells and services consumer's vehicle, and the vehicle
- Carpet, carpet seller, and installer
- Vehicle repairers and repair services

Purpose: Ensure Service Providers/Sellers Don't take Advantage of Less Informed Consumer

- Defines specific actions service provider / goods seller must take for proper transaction (examples)
 - *Get consumer's signature on document*
 - *Provide copies of all documents to consumer*
 - *Allow consumer to cancel transaction within 72 hours*
 - *Make no false representations about nature or condition of house/car needing repair service when it does not*

Mechanisms

- Sets forth all actions that must be taken or information provided to consumer
 - *Documents*
 - *Timing*
 - *Consent (signature)*
- Sets forth prohibited actions
 - *No fearmongering*
 - *No false promises*
 - *No demands for payment of goods/services not expressly approved by consumer*
- These are often defined for specific industries in regulations

Penalties for Non-Compliance

- Actual damages incurred or minimum dollar recovery (\$200)
- Double or Treble actual damages
- Preclude seller/service provider from obtaining payment for goods/services performed but not authorized
 - *(varies by state)*
- Payment of consumer's attorney fees

Attorney Fees

- Provide incentive to lawyers to take unprofitable cases



Intended for Consumer Use Only

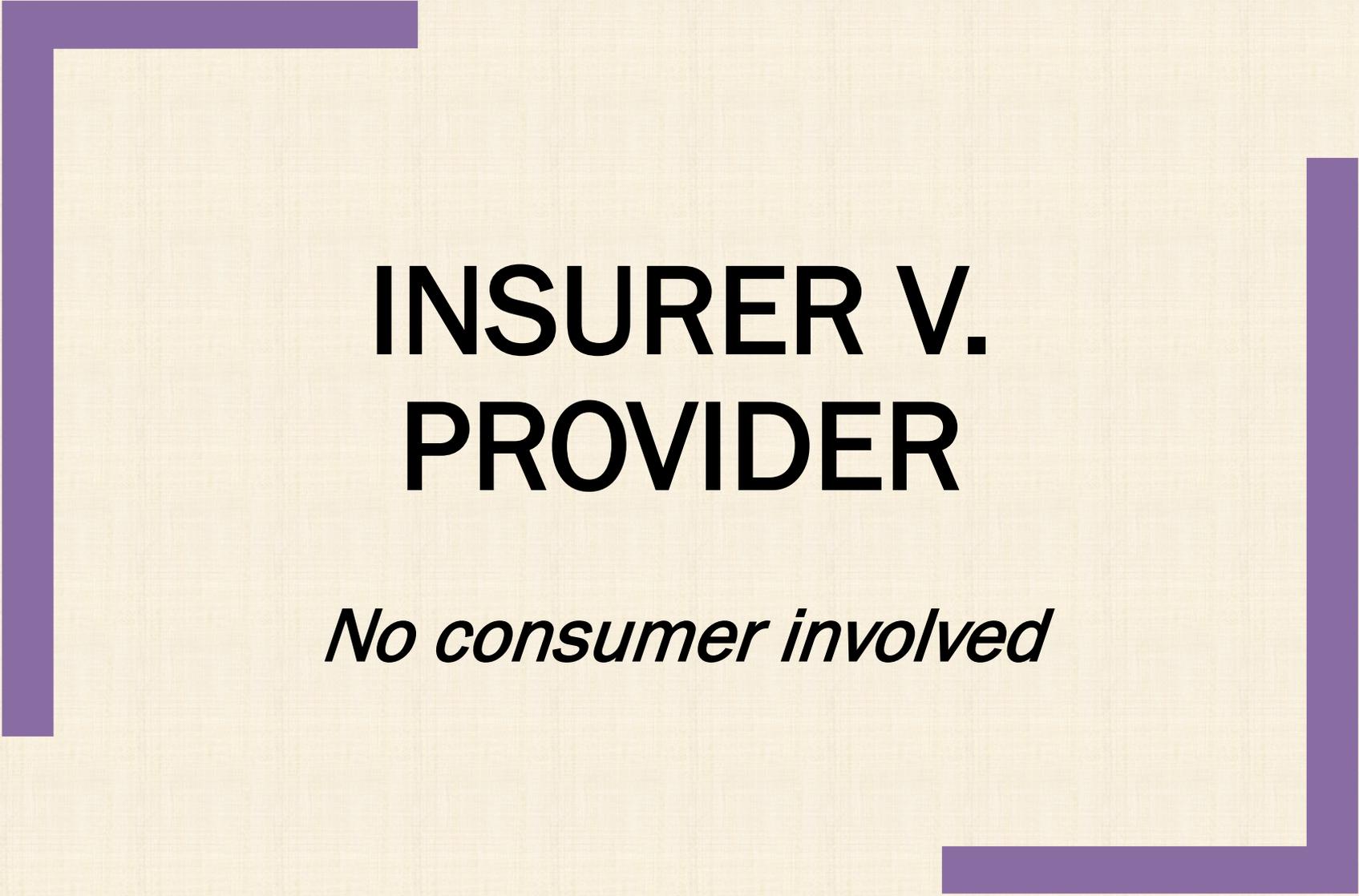
- Not available for business-to-business activities

Insurers Now Using to Sue Insureds' Service Providers

- P&C insurers look for any technical violation of consumer protection law to:
 - *Avoid paying claim*
 - *Recover payment made*
 - *Seek attorney fees in litigation*



- Current case:
 - *One insurer suing*
 - *One provider*
 - *Recover or avoid payment*
 - *On 1,700+ claims*
 - *Not 1 consumer complaint*



INSURER V. PROVIDER

No consumer involved

Reality and Result

- Consumer protection law not created to protect savvy business enterprises
 - *Insurers have the knowledge, money, and power to sue*
 - *Do not need additional penalty provisions or payment of attorney fees to pursue litigation*
- Destroy the very purpose of the law: Service providers will no longer serve consumers' interests
 - *Fear lawsuits from insurers*
 - *Create service class obeying only insurers*

Recommendations

■ Issue Bulletin / Statement:

- *Insurers are not consumers: Therefore, even in subrogation cannot use consumer protection law claims/legal avenues*

■ Legislators:

- *Notify legislators that insurers are not considered eligible to use consumer protection law and to codify this position*

■ Require:

- *Insurers to notify Insurance Department of any currently pending or considered litigation involving a consumer protection law to determine if consumer interests are at risk*

QUESTIONS?

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