

College of Business Book Review by Jayne Elizabeth Zanglein

Title: “Insult to Injury: Insurance, Fraud, and the Big Business of Bad Faith”

Author: Ray Bourhis

Publisher: Berrett-Koehler

Length: 263 pages

Price: \$24.95

Reading time: 4 hours

Reading rating: 9 (1 = very difficult; 10 = very easy)

Overall rating: 1 (1 = average; 4 = outstanding)

“Insult to Injury: Insurance, Fraud, and the Big Business of Bad Faith” chronicles Joan Hangarter’s battle against UnumProvident to reinstate her disability benefits. More importantly, the book describes the struggle of her lawyer, Ray Bourhis, to expose UnumProvident as an insurance company that systematically denies valid claims in a blatant effort to increase profits.

The book raises an important, but not-very-well-publicized public policy issue—that the federal law (ERISA) that governs health benefits does not provide any remedy for bad-faith denial of health claims but preempts state laws that do provide a remedy. Bourhis wrote this book to expose UnumProvident’s tactics, which although both egregious and unlawful, do not give rise to a remedy under federal or, in most cases, state law. As Bourhis points out in his introduction, he “has nothing against profits, but they are not supposed to be made by lying, cheating, and defrauding people—by destroying their lives.”

Joan Hangarter’s story is sad. She suffers an injury while performing a chiropractic manipulation on a patient. When her injury does not improve, she files a disability claim with her insurer, Paul Revere. She receives disability payments from Paul Revere for almost two years. Paul Revere is acquired by Provident. In an effort to reduce costs incurred as a result of the acquisition, Provident terminates Hangarter’s benefits. Joan can no longer work and she and her children end up on welfare. By the time Hangarter files suit, Provident has merged with Unum.

Although Joan’s story is sad, it is not the real story. Bourhis provides uncontroverted proof, in the form of copies of UnumProvident’s internal documents, which show UnumProvident’s well-orchestrated (and successful) efforts to reduce claim payments. Included in the appendix are memos in which managers stress Provident’s strategic move from a “claim payment to a claim management approach” and its decision to reduce claim payments by 6 –10% (\$30 – 60 million).

Internal documents also emphasize the potential savings that result because the federal law (ERISA) provides no remedies for bad faith delay or denial of benefits. One memo succinctly states: “The advantages of ERISA-coverage in litigious situations are enormous: state law is preempted by federal law, there are no jury trials, there are no compensatory or punitive damages [and] relief is usually limited to the amount of benefit in question.”

For example, managers point out that Provident settled twelve claims for \$7.8 million. If these claims had been covered by ERISA, Provident's "liability would have been between zero and \$0.5 million."

This is not simply a case of an insurance company taking advantage of a loophole in the law. UnumProvident denies legitimate claims because they know that many claimants will not fight the denial. Claimants who decide to sue are out-gunned by UnumProvident's financial and legal resources and are forced to settle for a fraction of the benefit owed. In the unlikely event that UnumProvident loses, the only available remedy is an order to pay the benefit that they should have paid in the first place. No punitive damages are available under ERISA. One judge coined the phrase "betrayal without a remedy" to describe this type of conduct.

"Insult to Injury" is a quick read on an important topic. It would be more compelling if it had more details like Jonathan Harr's "A Civil Action." Bourhis also lacks the objectivity that an independent author would bring to the book. But if you want to understand one of the most pressing issues in employee benefits today, it is an excellent place to start.

Jayne Elizabeth Zanglein is a Visiting Instructor of Business Law in the College of Business at Western Carolina University. She is a nationally recognized expert on ERISA and advocate for claimant rights. She has written five books on employee benefits including the second edition of "ERISA Litigation" which was released in December 2005. For previously reviewed books, visit our Website at www.wcu.edu/cob/.