

Testimony in Support of Raised House Bill 5247
Theresa A. Guertin, Esq. of Saxe Doernberger & Vita, P.C.
March 11, 2014

My name is Theresa Guertin, and I am an attorney at the law firm of Saxe Doernberger and Vita, P.C. My firm focuses on insurance coverage litigation and exclusively represents policyholders in disputes with their insurers. I am here today in support of Raised House Bill 5247, titled "An Act Concerning the Award of Costs and Attorney's Fees in an Action Concerning a Homeowners Insurance Policy."

As an attorney representing policyholders, I have worked with many individuals facing denials of coverage under their homeowners insurance policies. Based on this experience, I believe that a law which awards attorney's fees to policyholders who successfully pursue coverage for denied homeowners insurance claims would be a great benefit to the people of this State. Such a law would encourage and enable homeowners to pursue reversals of wrongfully denied insurance claims, and would disincentivize insurers from denying claims where coverage is rightfully owed.

Generally speaking, the courts of this State do not award attorney's fees to the prevailing litigant unless statutorily or contractually authorized. However, in the context of disputes between the insurer and the insured, this rule prevents the insured from obtaining the full benefit of their insurance policy. In effect, an insured facing a wrongful denial of coverage is forced to pay not only the premiums for their policy, but also an additional amount for hiring an attorney to compel the insurer to honor its contractual obligations. Notably, about half of the states have enacted legislation which allows for an award of attorney's fees to successful policyholders in coverage litigation.

The insurer-insured relationship is one of uniquely unequal bargaining power. For the most part, and particularly in the context of homeowners insurance, policyholders are offered insurance coverage on a take-it-or-leave-it basis; there is no opportunity to bargain over what the policy says. Then, when coverage is needed most, the policyholder faces an often lengthy claims handling process that can leave them feeling bewildered, and which may result in an unwarranted denial of coverage.

For a variety of reasons, litigation is usually not an option for a homeowner facing a denied claim. First, insurance coverage litigation is complex and heavily dependent on discovery and motion practice; it is not the sort of litigation where an average individual could effectively represent themselves. Second, coverage litigation is often too expensive for the average homeowner to justify. In most cases I have handled, \$50,000 to \$100,000 in attorney's fees are incurred before the case is in a position to be resolved. The value of a typical homeowners insurance claim often makes the expenditure of such fees impractical at best. Additionally, the insurance company has a host of resources available to it that the average homeowner does not. In litigation, this often translates to the insurance company waging a war of attrition against its policyholders. These lengthy coverage battles often exhaust the resources of the policyholder long before a resolution is reached.

To illustrate, for the past two years I have been representing a homeowner in litigation against her insurance company. In January 2012, her home was gutted by a fire, and her insurer denied the claim based on an erroneous interpretation of ambiguous policy terms. Since that time, she has been forced to relocate her family to an apartment, although she still pays the mortgage and insurance premiums on her

now-unlivable home. Litigation with the insurer has dragged on for a year and a half, including a discovery dispute that lasted over six months. My client, who is a single working mother of three, has no ability to pursue the denied insurance claim on her own, short of my taking the case pro-bono.

In closing, I would like to point out that the Bill in its current form contemplates recovery of attorney's fees for a successful "plaintiff." It is important to note that insurance companies often file preemptive coverage actions against their policyholders. Presumably, the legislature does not intend to allow an insurance company to recoup attorney's fees from their policyholders. For all the reasons previously mentioned, such a law would be patently unfair and seriously detrimental to policyholders who are sued by their insurer. I would suggest that the Bill be amended to clarify that successful policyholders are allowed to recover attorney's fees, regardless of whether they are forced to defend themselves against their insurer's preemptive attack or are compelled to go on the offensive against their insurer.

Every wrongfully denied homeowners insurance claim deserves to be pursued, but with the current status quo this is nearly impossible. Bill 5247 would have a lasting beneficial impact on homeowners in this State who are faced not only with take-it-or-leave-it policies, but also, in essence, take-it-or-leave-it coverage determinations.