

My name is Marc Levy and it is an honor to appear here today on behalf of CTLA. And I want to talk about the failure to cooperate bill that is pending, but first I want to let you know a little bit about me.

I started in 1981, as an insurance lawyer. I've been an insurance lawyer ever since. For the first 36 years of my career, I primarily represented insurance companies: State Farm, Farmers, Shelter, you name it, a whole -- a couple of dozen of insurance companies, what is known as an insurance company lawyer.

In all courts, I've testified before this body on behalf of insurance companies, I've testified before the Division of Insurance, I've litigated before the Division of Insurance for insurance companies, and I have been an expert witness.

So the genesis of this bill and why this bill is necessary is particularly because of the inconsistent standards, because there are no standards with respect to this question of failure to cooperate.

Insurance companies follow what's known as the Golden Rule: He who has the gold, makes the rules. And throughout the last several decades, this body, as well as the Division of Insurance, has attempted to find different rules to say to an insurance company, you need to be fair, you need to be honest, and you need to be prompt in paying claims and not come up with excuses to not pay claims.

And why this bill is necessary is because this failure-to-cooperate defense has, for the last several years, been abused, and is being abused, for things like you failed to return a phone call, therefore there's a failure to cooperate. And the real nut that everybody needs to understand is once that finding is made, most judges will then say, you have now forfeited all of your insurance coverage.

So I deal mostly with personal injury, and there are questions of medical records. You need a medical records authorization. The insurance company will ask for a medical records authorization, may also ask for a wage authorization. So you give them the medical records authorization, they get all the medical records, they decide that you're entitled to a lot of money because of your injuries from the medical records, but then say, oh, but you didn't give us the wage loss authorization, and therefore we're going to deny your entire claim and you forfeit all of your benefits. And these are property rights that insurance have.

So the failure-to-cooperate defense conceptually is not a problem. It makes sense. You need to cooperate with the insurance company so they can investigate the claim.

Another example is they say to you, would you please send us a police report. Maybe you have one, maybe you don't. But if you send them a police report, then they say -- if you don't send them the police report, even though they can get it themselves as a public record, they can say failure to cooperate.

And it is being used as a threat to insureds that either you take the money that we're offering you prior to a lawsuit, and if you don't, once you file the lawsuit, we're going to claim that you have now threatened the -- that you are now going to forfeit all of your coverage.

Last time I did this research, one insurance company, for the years 2015 through 2018, had 83 -- 85, I'm sorry, different lawsuits on file in 50 -- anyway, 70 percent of them they claimed failure to cooperate. Statistically, that cannot be done. So we have seen failures to cooperate, which are supposed to be rare. In all of my years of doing insurance company work, I have probably pled failure to cooperate five times in the 36 years that I did work for insurance companies, including this kind of work.

I, of course, have much more to say, but I see my time is up. Thank you.

Good afternoon. My name is David Roth. I'm the managing partner of the law firm called Roth | Milne. We primarily represent homeowners for property damage claims against their insurance companies.

Just to piggyback a little bit off of what Mark was saying, I believe this bill is – is critically important. One, to provide clarity to the courts of Colorado, but then also to provide homeowners with the opportunity to cure any kind of alleged noncooperation on their part as part of the claims process.

And one specific example I have is a case we recently took to trial. We were representing the homeowner who had a property damage claim, files the claim with her insurance company. Insurance comes out, does an inspection, provides a pretty minimal estimate, as far as the damage. She provides multiple bids on her behalf that, you know, kind of justified the damage, but then she also takes the extra step of hiring an engineer that opines as far as the cause, extent, and then the repairs that would be necessary to her home. Despite all of this information, the insurance company doesn't change their position. And then she ends up having to come to me and we file a lawsuit. For the first time, in response to our lawsuit, the insurance company raised a noncooperation defense. We were pretty surprised by it because it had never come up as part of the claims process. And we couldn't identify anything that our client didn't provide or that, you know, was requested by the insurance company that wasn't provided.

When we asked the insurance company what their basis was, she said that -- or the insurance company said that she didn't fill out a sworn proof of loss. And a sworn proof of loss is just a document. It's a form that provides essentially the amount of damage my clients would be claiming and -- and really the extent of that damage, and -- and really a dollar amount. This had all been provided in the estimates she had been -- she had provided, as well as the opinions of her own expert, yet this wasn't raised by the insurance company.

They continued with this defense all through litigation and even into trial. And it wasn't until the eve of the last day of trial that we were finally able, with all the evidence in front of us, to ask the judge to strike that defense.

And the judge did, primarily focusing on the fact that they couldn't show really any prejudice. They couldn't show the fact that our client didn't fill out a sworn proof of loss somehow precluded them from properly investigating the claim or from properly paying the claim.

And I think that's what highlights the importance of this bill, is that without this kind of clarification in the bill, a different judge may come to a different result. And I think for consumers of Colorado, we need to provide that clarification. And then further, for homeowners, be able to provide them with the opportunity to cure any alleged noncooperation during the claims process, so that they're not ultimately having to come to me to file a lawsuit.