

## Justice seekers or turncoats? How former agents play a hidden role in life insurance lawsuits

By Mark Cybulski

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These days, the best weapon a lawyer has against an insurance company isn't documents, paper trails, or good testimony. It's inside information on insurance companies and fraudulent sales practices. And more and more, attorneys are looking to perhaps the best source of inside information: former agents.

These agents-turned-consultants help attorneys understand the life insurance industry and how illegal practices work. They also help law firms drum up business. Many consultants who review cases for policyholders steer folks to attorneys who can file lawsuits against a company. In turn, the consultants are hired by the attorneys to work on these cases to help build a formidable legal attack.

"They help me understand what the obligations of an insurance agent are," says Michael Meadows, a lawyer from Walnut Creek, Calif., who has worked with consultant Mark Colbert, a former agent with Metropolitan Life Insurance Co. "People just don't understand the insurance industry. The sales practices that seem plausible on the surface in fact bring more money to the insurance company and damage the policyholder."

### Why lawyers need help

If you're a policyholder who feels you've been cheated by your insurance company, you may view your lawyer as the savior who will help you slay the giant corporate monster. But many attorneys are unfamiliar with the intricacies of insurance law and know little more about illegal sales practices than you do.

Some attorneys feel justifiably threatened by the deep pockets and legal expertise of insurance companies. While big corporations have resources to fight a case until the bitter end, a long expensive trial may bankrupt some smaller law firms. The complexity of insurance law also overwhelms some attorneys, prompting them to seek help from a number of nontraditional sources, says Norse Blazzard, a Florida attorney who specializes in insurance law and who is former counsel for California Western Life Insurance Co. and Swiss Re Life Insurance Co.

### "Hammering" away at the big guy

While some lawyers are looking to former insurance agents, others are looking at nontraditional ways to get help in courtroom battles with insurance companies. One particular seminar growing in popularity is "How to Hammer Allstate."

The forum, sponsored by state trial lawyers' associations across the country, shows attorneys how to build a courtroom strategy against Allstate Insurance Co. The content of the seminars, which does not include inside information from whistle blowing agents, is carefully guarded and usually only practicing lawyers are allowed to attend.

In October 1999, the Association of Trial Lawyers of America (ATLA) sponsored a "How to Hammer Allstate" phone conference with 700 lawyers. It was the first time the ATLA targeted a specific company. The first seminar was so popular they scheduled another one for February. Carlton Carl, a spokesperson for the group, says the seminars are popular because they give an insider's view on how to attack a major insurer. Carl says he is not aware of any other seminar that targets one company.

Christine Hennessey, a spokesperson for Allstate, says the company believes the seminars are in response to Allstate's tough stance on insurance litigation. Allstate did an analysis of its claims practices in 1993 and found it was significantly overpaying claims in cases where the company was challenged in court. Since then, Allstate has taken a tougher stance and is more willing to fight cases in court. "We were seen in the past as an easy target," she says. "But we're not an easy target anymore."

## Two words of advice: Opt out

In the course of their consultations, these former agents often see the results of certain choices made by policyholders in a settlement. If a settlement like Prudential's class action settlement were to happen today, what would these former agents recommend to policyholders? In most cases, opt out.

It's not just the nature of Prudential's Alternative Dispute Resolution process that has left many policyholders feeling doubly wronged (for more on this, see [Readers tell about their Prudential settlement experience](#)), but it's also the nature of the class action process that often leaves policyholders feeling that justice has not been done, they say.

Colbert frowns on the class action system because lawyers in the system are concerned only with getting their cut of the settlement, with little consideration for policyholders. "There needs to be less in the class action arena and more in the individual lawsuit arena," he says. "Nobody makes money in a class action lawsuit, except lawyers."

Young says he would advise people to opt out of a class if their losses are greater than \$5,000, as policyholders may have trouble finding a lawyer who will take on a case for less than that. If their case is weak, he'll recommend they stay in and take what they can get.

Weaver advises that policyholders with legitimate complaints and strong facts to opt out and pursue an individual suit.

Not surprisingly, the advice to opt out does not sit well with attorneys representing class members. Brad Friedman, an attorney with Milberg Weiss Bershad Hynes & Lerach of New York, one of the biggest law firms in the country that specializes in class action lawsuits and that led the class action against Prudential, says there are numerous reasons why class members should stay in a suit, such as a statute of limitations on bringing an individual case that a class member may not know about. If someone decides to opt out and file their own suit, it could be thrown out if too many years have passed since the offense, he says. Also, plaintiffs in individual cases may only get small punitive damages that may not be much more than their attorney's legal fees, he argues.

Friedman contends these consultants are essentially practicing law without a license. He urges class members to consult lawyers — not former insurance agents — for legal advice. "To rely on the work of an insurance agent is nuts," he says. "You wouldn't ask your insurance agent about a medical problem. You'd ask a doctor."

"Insurance law is not a subject that is taught in most law schools," says Blazzard. "Very few lawyers have been exposed to it. Many of them are intimidated by it."

## From whistle blowing to lucrative consulting

For their attorney clients, these agents-turned-fraud-consultants will often review everything in a case — from the actual life insurance contract in question to Post It notes the agent wrote for the policyholder during the sales pitch — and tell the lawyers what kind of case can be built. The former agents are also hired by law firms to give presentations to the firm's attorneys on how life insurance works and how to detect fraudulent sales practices. They can even be hired to appear as expert witnesses. Their inside knowledge of the insurance process can expose insurance companies' weak spots, ripe for litigation.

While they work all over the country, these consultants have some common qualities: They were whistleblowers and were fired by their former employers, or say they left because they were disgusted with fraudulent sales practices they saw around them. Consider the following backgrounds of the four best known agent/consultants:

- Mark Colbert of Merced, Calif., a former agent with Metropolitan Life Insurance Co., was fired in April 1994 after he encouraged MetLife policyholders who claimed they were defrauded to complain to the California Department of Insurance (DOI). He later reported over 500 instances of MetLife insurance fraud to the DOI, which resulted in a raid of his former MetLife agent office in Modesto, Calif. Colbert settled a wrongful termination suit with MetLife in 1995 for \$75,000. After he broke a gag order that was part of the settlement, MetLife filed a federal lawsuit against him for breaching the agreement. MetLife won \$85,000 from Colbert in the case, but he and the company later agreed that if he stops consulting on lawsuits

against MetLife, the company will not pursue the \$85,000. Colbert has consulted in cases against John Hancock Financial Services, MetLife, New York Life Insurance Co., Prudential Insurance Co. of America, and State Farm Life Insurance Co.

- Richard Sabo of Gibsonia, Pa., was fired from his sales management job at Metropolitan Life Insurance Co. in 1992 after he encouraged MetLife policyholders who claimed they were being defrauded to complain to the Pennsylvania DOI. Sabo then handed over evidence to the DOI that helped spark an investigation of MetLife that resulted in a \$1.5 million fine. He filed a racketeering suit against MetLife in 1994 that is still pending in U.S. District Court. He has worked on cases targeting John Hancock, Life USA, MetLife, Nationwide, Prudential, and State Farm. In addition to consulting, Sabo runs a financial planning firm with his brother.
- Michael Weaver of Godfrey, Ill., was an agent with Prudential Insurance Co. of America from July 1991 to September 1994. He was fired by the company for "low production" after he failed to use Prudential sales techniques that he felt were dishonest. As a consultant, his network of lawyers and cases has resulted in a collection of volumes of inside information, including internal memos, videotapes, and claim relief forms. Weaver filed a wrongful termination suit against Prudential in 1995 that is now awaiting arbitration before the National Association of Securities Dealers (NASD). He has worked on cases against Franklin Life Insurance Co., American General Life and Accident Insurance Co., Guardian Life Insurance Co. of America, MetLife, and Prudential.
- Kenneth Young of Palm Harbor, Fla., was an agent for Prudential for nearly 30 years before he was "goaded" into an early retirement in 1992 when the company pressured him as an agent and sales manager to "churn" customers, which means encouraging people to use the cash value in their life insurance to buy more life insurance they don't necessarily need. Young filed a federal lawsuit in 1994 against Prudential after the company allegedly failed to honor his "agent emeritus" contract, which would have enabled him to sell insurance as a retiree. The case is now in arbitration before the NASD. Young has been hired to do consultations with attorneys about many companies, including Equitable Life Insurance Co., MetLife, New York Life Insurance Co., Northwestern Mutual Life Insurance Co., and Prudential.

These consultants charge lawyers for their services, but counsel policyholders for free. Sabo charges lawyers \$200 an hour for his services. Young, who says he charges lawyers \$50 an hour, has been making about \$7,000 annually on his consulting business, but expects to make an additional \$25,000 to \$30,000 thanks to work he's done around the recent \$1.7 billion class action settlement announced against MetLife. Colbert and Weaver would not discuss their rates. It is difficult to determine how many consultants are out there, but interviews suggest there is only a handful of former agents in the country doing this kind of work.

### **Turning a docile crowd into a "lynch mob"**

Along with helping lawyers decipher the complexities of insurance fraud, these consultants serve a business purpose: They help round up potential plaintiffs for lawsuits. Some of them have Web sites that advertise their services, where you'll often find lists of lawyers that specialize in insurance litigation. In turn, these consultants are frequently hired by lawyers to advise on cases.

Some of them are called to speak at lawyer-sponsored seminars on insurance fraud, which often target older people with large life insurance investments. These seminars, held at hotel conference rooms or a local Masons Lodge or Elks club, are advertised on the radio or newspapers during the prior week and can draw more than 200 people. Coffee and refreshments are served, and fraud consultants speak for anywhere from a half hour to an hour and a half. "Most of [the seminars] are just prospecting tools," contends insurance lawyer Blazzard. "They're designed basically for litigation lawyers to get potential clients."

And many seminars are very effective. Colbert says that at a recent seminar he spoke at in Scottsdale, Ariz., attended by about 200 people, he was able to find 60 people who were interested in filing lawsuits against their insurance company. Colbert recalls seeing faces full of horror in the mostly elderly audience as he explained how a life insurance policy is churned. "I've had an older woman burst into tears and say, 'What should I do?'" he says.

Weaver is frequently hired by lawyers to speak at seminars for policyholders who have received notices on class action suits just after a settlement is announced. He'll sometimes speak at 20 to 30 such seminars around the country that target a specific company. He'll then hold meetings with policyholders in the following days to discuss their cases and recommend options. Sometimes he meets with policyholders from 8 a.m. to 10 p.m.

It's not unusual for the audience to get riled up at these seminars, especially as the former agents reveal the systematic ways policies are misrepresented and the policyholders begin to believe they were intentionally misled by their agents. For example, Weaver recalls one particularly emotional seminar in Springfield, Ill., on Franklin Life Insurance Co. He pointed out that Franklin Life generally recruits teachers and coaches to be agents, allegedly because they are viewed as trusted members of the community and therefore are effective salespeople. Audience members started grumbling about how the insurance agent who ripped *them* off was a former teacher or coach, with anger mounting over the way they were manipulated. "It was like a lynch mob, and I'm not exaggerating," Weaver says. "Seminars become a very effective way to motivate [policyholders] to do something. The [class action] notices don't motivate them to do something."

Colbert recalls a seminar in Buena Vista, Calif., where there were groups of audience members huddled to talk about how the same agent ripped them off. "People didn't even know each other, and they were victimized by the same agent," he says.

## What does the future of insurance litigation hold?

Here's what lawyers, legal experts, and insurance fraud consultants say insurance litigation will revolve around in the future:

**Demutualization.** As more insurance companies go public, it's a sure bet they'll be faced with lawsuits by policyholders who think they're not getting their fair share.

**Continued insurance fraud.** Unfortunately, increased attention and lawsuits won't deter life insurance agents from making misleading sales pitches. "Market conduct lawsuits are here to stay," says Norse Blazzard, an attorney specializing in insurance law.

**Securities disputes.** Insurers will start offering more variable investment products, predicts Kenneth Young, an insurance fraud consultant. As a result, disputes will end up before the Securities and Exchange Commission or the National Association of Securities Dealers instead of the courts.

## Former agents on the Web

[Mark Colbert](#)

[Richard Sabo](#)

[Michael Weaver](#)  
(Weaver also runs a  
site at  
[www.expertshelp.org](http://www.expertshelp.org))

[Kenneth Young](#)

### Can you count on their credibility?

Defense lawyers, class action lawyers, and insurance companies have little respect for former agents' consulting work, and many contend the agents have no credibility because of their checkered past with their former employers.

"I find that their credibility is minimized because of the axe they have to grind. Even though they have a knowledge of the inside of the business, you have to question their motive," says Lewis Collins, an attorney with Butler Burnette Pappas of Tampa, Fla., a firm that defends insurance and financial services companies in lawsuits. "Clearly, I think they are viewed by the defense and by juries as turncoats."

Brad Friedman, an attorney with Milberg Weiss Bershad Hynes & Lerach of New York, which specializes in class action lawsuits, says the consultants try to undermine the class action process in order to benefit themselves. By encouraging people to opt out, they are creating more litigation that will in turn prompt lawyers to hire them to work on cases. "Most of these so-called 'fraud examiners' . . . are people who have their own private disputes and litigations with their former employer, and therefore have their own agendas," he says.

Victoria Fimea, senior counsel for the American Council of Life Insurers, says consultants' credibility can be hurt if they exaggerate illegal company practices in order to line their own pockets. "We're not saying it's wrong for somebody to open a consulting business like this," she says. "But you have to look at the individual credibility of these people."

MetLife and Prudential declined to comment on the former agents' activities.

The consultants defend their work by arguing that they are trying to bring justice to insurance fraud cases.

"I didn't manufacture this problem. I'm helping to solve the problem," Weaver says. "Saying bad things about me doesn't make up for the powers that be that did these things to these people. From what I've seen, [the evidence] is so outrageous that the only thing they can do to minimize the impact is to kill the messenger."

Sabo notes that if a policyholder's case is strong enough, he will advise them to go to the company directly for a settlement rather than pursue litigation. Thus he has no motive to steer people to attorneys. Unlike Colbert and Young, Sabo does not have attorneys listed on his Web site. Nor does he speak at seminars sponsored by lawyers. He says that handling policyholder inquiries fairly and objectively helps his credibility. "If you do it ethically and properly, [insurance companies and defense attorneys] can't discredit you," he says.

As for the financial gains of the business, Young says he lives mostly on his Prudential pension, Social Security, and other sources of income, and thus he is not in it for the money. He views his consulting work as a "hobby" and does it because he enjoys it. "It's not a moneymaker as far as I'm concerned. I spend more money than what I take in," he says.

Colbert describes his job as more of an ego booster than as a way to make a profit or advance his own agenda. "I don't have a vendetta against anyone or any company," he says. "I just don't like the fact that millions of elderly people are being systematically damaged by unscrupulous insurance agents."

### **The personal impact**

Since the number of former agents doing regular consulting is so small, few people feel their work has a major impact on insurance litigation. Friedman says the impact is "exceedingly minimal" because in most class actions they may only convince "tens or hundreds" of people to opt out, leaving the bulk of the class members in the class action. But on an individual basis, he warns their advice could be damaging. "It has a huge impact on an individual class member who listens to one of these guys and has his or her claim dismissed by a court," he says.

Fimea speculates that many policyholders who get opt-out advice may still decide to go with the class. Litigation can be expensive and long, and many people do not have the money to pursue their complaint in court. "They're going to weigh those options out on their own" rather than go solely by the advice of a consultant, she says.

Even the fraud consultants themselves feel their work will not bring any earth-shattering changes to insurance litigation. Many say that sweeping reforms in both the ways insurance companies do business and class action lawsuits are needed to correct the system. Weaver says an investigation by the U.S. Justice Department is in order for judges and attorneys involved in class action lawsuits. Young recommends the appointment of a sort of "insurance czar" to oversee the entire industry with an ethical eye. Colbert says insurance companies won't stop cheating customers "as long as politicians are on their payroll."

Regardless of their impact, these consultants will continue to be a vocal presence — even if their numbers are small. As Colbert says, "As long as there's a crooked insurance agent out there, there's a job for us."

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