



Terry Abeyta Uses Insurance Initiative to Get Client Medical Bills and Wage Loss Paid?

This is exactly how the Insurance Fair Conduct Act was designed to work, its advocates say. An insurance company cut off payments to a Selah man, and the man's attorney wielded the act like a hammer to get the company to pay up. "It gives consumers -- for a change -- some leverage to get what they paid for," the attorney, Terry Abeyta, of Abeyta Nelson said. The act was passed by the state legislature early last year but not enacted until after voters affirmed it with Referendum 67 in November. It substantially lowers the legal threshold for awarding punitive damages against insurance companies that wrongfully withhold payments to those they insure. It was hailed by plaintiff lawyers as a way to right wrongs and jeered by insurance companies and their lawyers as something that encourages long-shot lawsuits -- and ultimately will increase insurance rates for everyone. Nearly a year after its passage, those opinions haven't changed. "It was written in such a way by the trial lawyers that it was actually incentivizing lawsuits," said Dana Childers, executive director of the Washington Liability Reform Coalition and a leading opponent of last year's referendum.



As far as Abeyta knows, the case of the Selah man is the only Yakima County example of a lawsuit filed since the referendum was approved by voters last fall. Though Abeyta declined to name his client, court documents show that the man is 49-year-old Steve Risinger. Risinger, a retirement home maintenance worker who did not have health insurance, was injured in a car crash last October at the intersection of 40th Avenue and Fruitvale Boulevard and remains unable to work. The crash, involving an uninsured motorist who turned left in front of Risinger, was ruled the other driver's fault.

Risinger's Mutual of Enumclaw auto insurance policy included personal injury protection, so his medical costs and lost wages were paid by the insurance company.

Early this year, however, the company contracted some doctors to get a second opinion, and they disagreed with Risinger's own doctors. The company cut off payments to Risinger in February despite his complaints of continued pain and a January test by his doctors showing a herniated disc.

Under the old rules, an insurance company faced with such a case could proceed to trial knowing it only stood to lose the amount it would have paid the man under his original claim. The new rules enacted by R-67 meant Risinger could sue the insurance company for punitive damages three times his actual losses and for attorney fees.

Faced with that risk, Mutual of Enumclaw settled on Aug. 7 and reinstated payments to Risinger along with \$16,400 in back payments since it cut him off. It also agreed to pay about \$7,000 in attorney fees and court costs.

Most such cases don't even make it that far. The state Insurance Commissioner's Office has received 729 notices of intent to sue -- a prerequisite in Insurance Fair Conduct Act cases -- since the law went into effect last December.

Though the office does not track how many of those actually made it to court, it is believed to be only a small percentage. Abeyta said it is likely around 2 percent.

His office has filed several such notices, and only the Risinger case has required going forward with a lawsuit.

"Because of that threat (of punitive damages), our experience has been that many insurance companies are now resolving these short of a suit through negotiation," he said.

Bill Spencer, the Seattle lawyer who represented Mutual of Enumclaw in the Risinger case, doesn't disagree with that assessment. But he has a decidedly less sunny view of it.

Faced with such high financial stakes, insurance companies are likely to throw in the towel even when they have a good chance in a legal fight, he said. Mutual of Enumclaw, for instance, did not concede that it unreasonably withheld benefits from Risinger when it settled with him, Spencer said.

"There's no question any benefits to be gained were to be far outweighed by the risks in going forward," said Spencer, who emphasized that he was speaking for himself and not for the insurance company.

Like Childers, the vocal opponent of R-67, Spencer expects that the volume of claims brought on by the reform will increase insurance rates.

Insurance companies paying claims they don't believe have merit will be part of the cause, he said.

"There will be lots of instances where (payments for) treatment or time off from work would not be reasonable," Spencer said. "But a company wouldn't be willing to test that."

Abeyta dismissed that notion, saying that the people filing suit under the Insurance Fair Conduct Act generally are people who have legitimate injuries and need that "hammer" to get some justice. That was the case with Risinger, he said.

"The Insurance Fair Conduct Act was extremely useful in getting one of our clients what he paid for," Abeyta said.

Risinger declined to be interviewed for this story through Abeyta, his attorney.