



***Homeowners Insurance in New York:***

**As Insurers Make Outsize Profits, Policyholders Have Little Legal  
Recourse to Challenge Unfair Claims Settlement Practices**

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### **As Insurers Make Outsize Profits, Policyholders Have Little Legal Recourse to Challenge Unfair Claims Settlement Practices**

Even with hurricanes and a record-breaking super storm, insurance companies continue to earn high profits selling home insurance in New York and have for a quarter of a century. In all but two years between 1989 and 2013, homeowners insurance was more profitable in New York than in the US overall.

Yet the customers who pay the premiums that generate those profits in New York remain disenfranchised. Unlike the residents of almost every other state, New York policyholders are virtually powerless to use the legal system to recover in full from a recalcitrant insurance company unless they're wealthy enough to pay a lawyer by the hour.

These findings come from United Policyholders' review of two key indicators of insurance company profitability published in the annual Profitability Report of the National Association of Insurance Commissioners, and our work with disaster survivors in New York. The first, loss ratio, is the percentage of each premium dollar that goes to claims<sup>1</sup>; the rest of the premium dollar is available to pay expenses and taxes and to augment the insurance company's reserves, surplus and net income. The second, return on net worth, is the ratio of the insurer's net income after taxes to total end of the year net worth. It takes into account all of the expenses an insurer incurs, including the cost of reinsurance.<sup>2</sup> (The 2014 NAIC Profitability Report will be released in late 2015.)

As this paper shows, insurer profits from the sale of homeowners insurance in New York have been much greater than the rest of the nation, even in the aftermath of devastating property damage from recent weather events. For instance:

- From 2004 to 2013, a period during which New York was hit by Superstorm Sandy and Hurricane Irene; New York's average annual loss ratio still averaged only 49.3 percent compared to 62.4 percent countrywide.
- Return on net worth of 15.3 percent in New York during this period was more than twice the 6.0 percent countrywide.

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<sup>1</sup> NAIC uses incurred losses as a percent of direct premiums earned. Incurred losses are sustained losses, paid or not, during a specified time period.

<sup>2</sup>According to the NAIC, return on net worth "is calculated to help regulators and others evaluate the profits earned in a particular market in relation to the net worth committed to that market." It is used, for instance, in New York State Insurance Law Sec. 2329 in determining whether a motor vehicle insurance rate would result in "excess profits."

## **New York's perennially low homeowners multi-peril insurance loss ratio:**

In the property and casualty insurance industry, a loss ratio of 55 percent to 65 percent is considered normal.<sup>3</sup> Yet a 2008 analysis by the Consumer Federation of America, Consumers Union and the New York Public Interest Research Group found that the loss ratio for homeowners insurance in New York for the five years ending in December 2006 was “an astonishingly low 46 percent, 16 points lower than the historically low national average.”<sup>4</sup> They concluded that New Yorkers were being “systematically” overcharged for homeowners insurance.

After this analysis was released, the loss ratio for homeowners insurance in New York fell even lower. As shown in the table on page 7, in 2007 it was only 41.1 percent, in 2008 it was only 39.8 percent, and in 2009 only 40.7 percent.

In 2011 it rose to 57.8 percent because of Hurricane Irene, and Superstorm Sandy drove it to an unprecedented (for New York) 80.4 percent in 2012. **But in 2013, the loss ratio was back down to only 35.2 percent, more than ten points less than the loss ratio which the CFA-Consumers Union-NYPIRG analysis said indicated systematic overcharging.**<sup>5</sup> The 2013 loss ratio was the lowest in New York in at least a quarter century. In other states that have suffered severe weather events and damage, insurer loss ratios were much higher, even above 100. This suggests that New York policyholders disenfranchisement and inability to hold insurers accountable, is putting more money in insurers and investors pockets and less money into the pockets of those whose premiums support the system. In good years and bad...

## **Insurers relatively low loss ratios – even post-Sandy - suggest that New York policyholders may be being shortchanged generally:**

Given the severity of Sandy (which occurred in late 2012) and even with the flood exclusion in home policies, we should have seen claim ratios at 80 and above for more than just one year after the superstorm. According to the 2013 NAIC Profitability Report, for the period 2004 to 2013, despite Irene and Sandy, New York's loss ratio averaged 49.3 percent, only three points above the level said to indicate systemic overcharging.

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<sup>3</sup> Between 2004 and 2013, the average countrywide loss ratio for all property and casualty insurance was 61.2 percent, according to the 2013 NAIC Profitability Report.

<sup>4</sup> Consumer Federation of America, Consumers Union, New York Public Interest Research Group, “New York Insurers Overprice Policies and Underpay Claims, Leading to Record Profits,” March 6, 2008.

<sup>5</sup> Another 7.0 percent of direct premiums earned went to loss adjustment expenses (8.4 percent countrywide), 22.7 percent went to selling expenses (20.8 percent countrywide), 10.7 percent to tax on insurance transactions (6.7 percent in New York), 4.7 percent went to general expense (4.7 percent countrywide). Profit on insurance transactions in New York was 20.6 percent of direct premiums earned, 13.0 percent countrywide. Profit on insurance transactions is underwriting profits plus investment gain minus estimated federal taxes. For the 2004 to 2013 period, the average annual profit on insurance transactions was 11.9 percent in New York, 3.1 percent countrywide.

If New York's 2013 loss ratio of 35.2 percent had instead matched the average 2004 to 2013 countrywide loss ratio of 62.4 percent, New York's insurers would have retained for other purposes only \$1.8 billion instead of \$3.1 billion.<sup>6</sup>

Moreover, when compared to loss ratios in natural disaster years in other states, the 80.4 percent Sandy-related loss ratio in New York 2012 was quite moderate. In fact, in most years over the last quarter century the loss ratio has exceeded 100 percent in several states. The 2010 experience illustrates. The loss ratio was 139.2 percent in Arizona, 102.8 percent in Colorado, 150.3 percent in Montana, and 161.4 percent in Oklahoma and there were five additional states where it exceeded New York's 80.4 percent in 2012.

To be sure, in the last two decades the loss ratio in several states fell to as low as 25 percent. But such years were invariably followed by years when loss ratios rebounded past 60 percent and often much higher. For example:

- In Florida, in most years since 1989 the loss ratio was between 30 percent and 40 percent. But the loss ratio soared to 154 percent in 2005, 303 percent in 2004, 127 percent in 1997, 100.6 percent in 1993 and 990.3 percent in 1992, the year of Hurricane Andrew.
- In Texas, the loss ratio was less than 40 percent in 2007, 2006 and 2004 but exceeded 100 percent in 2008, 2002 and 1989. In some of the other years it was between 80 percent and 100 percent.
- In Virginia, the loss ratio was between 30 percent and 40 percent from 2004 to 2006, but it was 121.5 percent in 2003, 140.2 percent in 1999 and 93.5 percent in 1996. In most other years it ranged between 60 percent and 80 percent.
- In Louisiana, the loss ratio was only 24.5 percent in 2010 but 832.5 percent in 2005, the year of Hurricane Katrina, 98.6 percent in 2002, and 119.1 percent in 2000.

What Florida, Texas, Virginia and Louisiana residents all have that New York residents do not have, is the practical ability to challenge an unfair claim practice through the legal system. Connecting the dots, one can draw the conclusion that claim payouts are higher in states that allow policyholders the option of seeking help through the legal system.

New York suffers fewer catastrophic forest fires, tornadoes, floods and hurricanes than many states. So for the last quarter century, with only a few exceptions, New York loss ratios remained in a band between 40 percent and 55 percent, with moderate volatility. As seen in the table on page 5, the highest loss ratios since 1989 were 76.7 percent in 1994 and 80.4 percent in 2012 and the next highest ratio was 65.4 percent in 1992.

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<sup>6</sup> The NAIC Profitability Report reported that homeowners multi-peril insurance direct premiums earned totaled \$4,819,911 in New York in 2013.

## **New York’s much larger return on net worth versus countrywide:**

The table on Page 7 shows that homeowners insurance return on net worth in New York surpassed the countrywide return every year from 1990 to 2013, with the exceptions of 1994 and 2012. The amount by which New York surpassed the nation has been very wide – 13.0 percentage points, if one averages the annual gaps for the period 1990 to 2013.

According to the industry’s Insurance Information Institute, profitable years in insurance offset unprofitable years. But in New York, virtually every year was profitable. As seen on Page 5, even in years when countrywide return on net worth was negative -- 1989, 1992, 1996, 2001, 2005, 2008 and 2011-- it was still positive in New York.

## **Declining homeowners insurance loss ratios nationally have helped boost profits**

A downward trend can be seen if one averages annual homeowners insurance countrywide loss ratios over five-year periods:

2009 to 2013	60.08 percent
2004 to 2008	62.16 percent
1999 to 2003	66.45 percent
1994 to 1998	66.88 percent
1989 to 1993	83.58 percent

This trend helps explain why the US property and casualty insurance industry had very robust profits in the last few years - \$63.8 billion 2013, and \$55.5 billion in 2014. According to the Property and Casualty Insurers of America, in 2014 “the industry’s profitability, premium growth, and underwriting ratios all performed better than long-term historical averages.”<sup>7</sup> In 2014, the property and casualty insurance industry’s surplus of \$674.7 billion broke the all-time record.<sup>8</sup>

## **Conclusion: New York policyholders need a fair claims settlement law now**

New York homeowners’ insurance policyholders have been paying among the higher premiums in the nation. According to the Insurance Information Institute, in 2012 New York had the nation’s tenth highest homeowners insurance premiums, \$1,158 on average.

Where have the excess premiums been going? J. Robert Hunter, long time UP adviser, Insurance Director for the Consumer Federation of America and former Texas Superintendent of Insurance, explains that they are “used to build the company’s surplus, which can be used to

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<sup>7</sup> News release, May 26, 2015.

<sup>8</sup> Surplus is the amount over and above what state law requires an insurer to hold in reserve. The Insurance Information Institute calls it “the financial cushion that protects policyholders in case of unexpectedly high claims.”

pay claims when a hurricane hits Texas or tornadoes sweep across Kansas,” adding, “The dollars also flow into profit and can be paid out in dividends to stockholders or lost if the insurer fails.”

In 2012, premium dollars finally flowed back to New York policyholders hit by Superstorm Sandy. But New Yorkers’ turn to collect was long coming, the 2012 loss ratio was not high compared to loss ratios in natural disaster years in other states, and the loss ratio in New York plummeted 45 points the following year.

Too often, insurers in New York have engaged in unfair homeowners insurance claims settlement practices resulting in denial, underpayment or extensive delays in payment of legitimate claims. Current New York law makes it difficult for policyholders to use the legal system to challenge such practices and to collect the payments to which they are entitled. New York is one of the few states where the claimant generally is powerless to fight back.

Enacting legislation to put New Yorkers on a more level playing field with insurers will remedy this legal deficit. As United Policyholders wrote in support of 2015 New York Senate bills S4049A and S29A and Assembly bill 257, “As things stand now, the only New Yorkers that can challenge wrongful conduct by an insurer are those who are so morally outraged that they’re willing to lose money fighting for the benefits they paid for, and those who are affluent enough to pay a lawyer by the hour. Reform would restore fairness and balance to the insurer/insured relationship, and allow insurers to earn fair profits while delivering on their sales promises. The legal reforms we support will help policyholders obtain the full value of the policies for which they paid premiums. And incentivize insurers to treat policyholders fairly.

As former Governor Martin O’Malley stated in support of similar reforms in the state of Maryland in 2007, leveling the field for policyholders “will reduce litigation, as it will encourage insurers to make fair offers, in good faith, and not force policyholders to pursue litigation to collect what is due to them”.

United Policyholders has been assisting New York residents for over twenty years, and coordinating with Sandy long term recovery advocates since 2012 under a grant from the Long Island Community Foundation. We thank and acknowledge the Consumer Federation of America for research contributions to this report.

The information presented in this report is for general informational purposes, and should not be taken as legal advice. United Policyholders is a non-profit 501(c)(3) organization founded in 1991 that is a voice and an information resource for insurance consumers in all 50 states. Donations and foundation grants support the organization’s work. UP does not sell insurance or accept funding from insurance companies.

<b>Homeowners multiple peril insurance</b>				
<b>Source: Annual NAIC Profitability Reports</b>				
	<b>Loss ratio, NY/US</b>	<b>NY difference from US</b>	<b>Return on net worth, NY/US</b>	<b>NY difference from US</b>
2013	35.2/46.4	-11.2	21.1/15.7	+5.4
2012	80.4/58.8	+21.6	(7.8)/8.1	-15.9
2011	57.8/75.4	-17.6	8.0/(3.8)	+11.8
2010	48.4/60.5	-12.1	14.8/7.2	+7.6
2009	40.7/59.3	-18.6	19.3/6.2	+13.1
2008	39.8/70.7	-30.9	20.1/(2.6)	+22.7
2007	41.1/50.4	-9.3	21.3/16.0	+5.3
2006	42.7/48.2	-5.5	21.5/18.5	+3.0
2005	43.3/75.2	-31.9	22.3/(2.8)	+25.1
2004	47.7/66.0	-18.3	17.9/3.6	+14.3
2003	51.5/59.2	-7.7	15.2/9.7	+5.5
2002	47.8/65.8	-18.0	17.7/1.4	+16.3
2001	55.6/77.2	-21.6	11.2/(7.2)	+18.4
2000	46.8/66.4	-19.6	18.2/3.8	+14.4
1999	51.0/63.7	-12.7	14.6/5.4	+9.2
1998	50.1/63.6	-13.5	15.4/5.4	+10.0
1997	45.3/55.5	-10.2	19.6/12.4	+7.2
1996	61.8/76.4	-14.6	9.4/(4.2)	+13.6
1995	50.6/67.2	-16.6	19.7/3.6	+16.1
1994	76.7/71.7	+5.0	(5.6)/(1.7)	-3.9
1993	57.3/69.5	-12.2	14.5/2.5	+12.0
1992	65.4/124.6	-59.2	11.2/(54.3)	+65.5
1991	63.0/75.9	-12.9	9.6/(6.6)	+16.2
1990	54.2/71.1	-16.9	20.2/(0.9)	+21.1
1989	53.0/76.8	-23.8	na	na