Policyholders and their attorneys frequently experience insurance companies improperly investigating and documenting claims, in turn leading them to wrongfully deny claims that may be inconsistent with their obligations under the policy. Insurance companies often do not have processes in place to satisfactorily review the policy and decision, resulting in angry policyholders, bad publicity and litigation.

Yet Professor Jay Feinman, Professor of Law at Rutgers School of Law and noted scholar on insurance law, believes that claim executives and policyholders’ attorneys can work together to avoid any collisions in the claims process. At the America’s Claims Event 2013, he joins Edward Eshoo and Andrew Plunkett of the Childress Duffy law firm, who are expert policyholder attorneys, in a presentation entitled “How Claims Go Wrong: A Policyholders’ Perspective.” Their program will identify common mistakes that insurance companies make and suggests possible remedies.
Professor Feinman recently sat down with me for an interview to express his recommendations regarding the insurance industry. He explained that the ideal structuring in insurance companies would permit claims to be paid promptly and fairly. In order to meet these goals, insurance companies must invest time and resources to sufficiently train personnel. Also, insurance companies must approach claims with continuity so that claims are not shuffled around. Finally, insurance companies must consult with objective and independent experts to investigate claims.

Claims handlers also repeatedly make errors that adversely affect insurance companies as a whole. Professor Feinman opined that insurance personnel must adopt a standard of remaining adequately informed and knowledgeable. They should always have access to the policy in question as well as insights into how courts interpret the policy's language to avoid denying a claim based on just the individual insurance company’s authority.

In situations when insurance companies and their personnel act in bad faith, the policyholder often pursues litigation. This may occur when an insurance company blatantly acts in bad faith in denying a claim. However, even if they do not deliberately act in bad faith, insurance companies can create systems that lead to the same results. Professor Feinman points out that litigation can arise even when individuals within insurance companies are not intentionally acting in bad faith but rather when they do not conform generally to the law of claim practices.

Switching to the policyholders’ attorneys, Professor Feinman believes they hold a role in the claims process as well so that their clients’ potential losses can be covered. These attorneys should advise their client to remain open and forthcoming and provide as much information to insurance companies as reasonably demanded. Also, the policyholder’s counsel should work to comply with the terms of the policy. Further, in cases where the independent experts fail to perform their job, counsel may provide for replacement experts. According to Professor Feinman, insurers and policyholders’ attorneys should not act as adversaries but rather as partners to ensure that the claim process runs smoothly.

When this does not happen, policyholders suffer given the unique nature of insurance in that if an insurance company refuses to fulfill its obligation, a policyholder cannot purchase another insurance plan to cover its past loss. Professor Feinman raises the emotional toll on Hurricane Sandy survivors who lost their homes and businesses without insurance companies’ fulfilling their obligation to cover these losses. In turn, insurance companies suffer because they lose their client base and earn a bad reputation while facing liability. This liability may lead them to disgorge any economic benefits received from retaining a claim, pay the claim as requested, and in many cases, pay consequential and punitive damages. Therefore, insurance companies prosper when they pay the claims that the policy covers in the first place. Ultimately, insurance companies that do not fall into adversarial patterns with policyholders’ attorneys and live up to their obligations reap economic benefits.