

She refused to just go away

by Frank N. Darras

<http://www.justice.org/publications/trial/0707/symposium.aspx>

Long-term care insurance is a big business. Carriers try to hook our parents and grandparents by dangling the promise of peace and security in slick four-color brochures, chock-full of catchy phrases: "Protecting everything you work for," "Our long-term care insurance preserves your financial assets, while providing you choice and flexibility," "We're here to help."

Insurers also tout their financial prowess with branded mottos: "We're the Biggest," "We're the Best," "Rest Easy," "Sleep Tight," "Trust Us," "Count on Us."

Lulled into a false sense of security by these promises of protection and hoping to avoid burdening their loved ones with the cost of their care, senior citizens have lined up to pay hard-earned premium dollars to purchase long-term care policies. Unfortunately, the policies they pay dearly for may not be worth the paper they're printed on.

Take, for example, the policy at the center of a case my firm handled for an 87-year-old grandmother. Born in 1919, Vera Smith moved to Los Angeles from Tennessee in her 20s with \$1 in her pocket. She found work as a cleaning lady and school cook, eventually earning enough to buy a house and raise a family.

In 1998, at the age of 78, Smith purchased a home health care policy from Penn Treaty to ensure that her long-term medical care would be covered and her family would be protected from rising medical costs as she aged. The policy defined "home" as "your personal residence, whether it be in a private dwelling, a home for the retired or aged, or a residential care facility."

In 2000, she "upgraded" her policy to an "independent living" home health care policy. It increased Smith's premium by about 33 percent; provided the same maximum benefit; dropped certain benefits, including waiver of premium; and added more restrictions to the policy definitions.

The sales brochures for the independent-living policy promised that Smith would receive "health care at home, because when you're sick, there is no place like home." Penn Treaty further promised to "pay for [Smith] to receive quality care in the comfort of her home, [which] would allow her to preserve her independence and quality of life, and give her the freedom to be herself." It said that "this care can be provided by family members."

This marketing appealed to senior citizens who wished to receive care at home, but Penn Treaty did not disclose that the upgraded policy contained a requirement that your "home" must be "owned or leased by you." The big print drew seniors in, while the little print in the policy erased its ostensibly generous policy provisions. Policyholders were

tricked into believing they were buying an "upgraded" policy when, in fact, it provided less coverage at a higher premium.

Smith began receiving home care benefits in 2001 because of debilitating medical conditions, including Alzheimer's disease. By January 2005, she was unable to care for herself and had to move in with her daughter.

Like many baby boomers taking on responsibility for aging parents, Smith's daughter did everything to ensure her mother's care would be covered under the long-term care policy. She took out a loan to add a room to her home that was equipped with grab bars and a wheelchair ramp to accommodate her mother's disabilities. She also notified Penn Treaty of her mother's change of address and informed them that her mother would be leasing the room for \$100 a month.

A month later, Penn Treaty denied Smith's claim for coverage, explaining only that "your current residence does not meet the policy definition of your 'home.'" Smith's daughter appealed the denial and sent Penn Treaty copies of the rental agreement, pictures of the addition, the building permit from the city, and daily care-giving notes. Penn Treaty repeated the denial, saying it was "unable to consider 'cash receipts' as proof of a monthly rental fee" and requesting "canceled checks or money orders used to pay the monthly rent."

In response, Smith's daughter explained that her mother was unable to write and that the rent was paid in cash. But Penn Treaty held firm, stating that "the information received as proof of [the] lease [did] not verify that there [was] an actual lease agreement and money exchanges for this lease." Even after Smith's daughter submitted copies of the rent checks (which, since she had power of attorney, she wrote for her mother), Penn Treaty still refused to pay the claim.

The company's interpretation of "home" did not comply with the plain language of its policy. It said that a house is not a home, that a lease is not a lease, and that only canceled checks or money orders would suffice as proof that rent had been paid-but the company's policy said none of this.

Penn Treaty continued to deny benefits, betting that Smith and her daughter wouldn't have the stamina to fight for the coverage that had been promised. The company was hoping they'd just go away. But they filed a bad-faith complaint in state court, and the insurer eventually settled.

Companies like Penn Treaty often wrongfully deny coverage promised to senior citizens, wagering that most elderly insureds won't put up a fight and that those who do won't be able to find competent counsel. Our job is to show those companies that their bets are misplaced.

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