From Good Hands to Boxing Gloves

How Allstate Changed Casualty Insurance in America

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From Good Hands to Boxing Gloves

How Allstate Changed Casualty Insurance in America

By
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Foreword by Eugene R. Anderson, J.D.

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Acknowledgements and Dedications

David Berardinelli

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Michael Freeman

My section of the book is for the tens of thousands of Allstate insureds who have been harmed by Allstate's MIST scheme, in hopes that this will provide them future justice.

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The internet addresses included as references in this book are accurate as of its first printing in February, 2006.

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Foreword

By Eugene R. Anderson, J.D.

GOOD BOOKS are like candy; this good book is bittersweet. This book has two stories; the design and operation of Allstate's Claims Core Process Redesign (CCPR) and an embedded story about the consultant, McKinsey & Co., and its perversion of insurance. This good book is about an American "religion"—insurance. The insurance religion has been perverted because it has been corrupted by unmitigated greed.

In the 19th century, insurance was a profession on par with medicine, religion and the law. In about 1900 there were annual insurance lectures at Yale.[1] The leading treatise at the time was JOYCE ON INSURANCE.[2] The basic form of insurance in the United States was property insurance.[3] Standards for insurance profession-

1 See, for example, YALE INSURANCE LECTURES, Volume 1, The Tuttle, Morehouse & Taylor Press (1903–1904). Available at The Insurance Library, Boston, Massachusetts. (P.S. In case readers do not know it, that was a big deal.)

2 Joseph A. Joyce, A TREATISE ON THE LAW OF INSURANCE OF EVERY KIND, The Lawyers Co-Operative Publishing Co. (1917-1918). Available at the University of Connecticut Insurance Law Center, http://uconl.law.uconn.edu/search/.

als were high. High standards with ethical conduct probably carried into the second half of the 20^{th} century during which time liability insurance was introduced.

The oath of chartered property and casualty underwriters was (and strangely still is) "I shall strive to ascertain and understand the needs of others and place their interests above my own."[4] That is a **powerful promise**.

The 1966 standard form comprehensive general liability insurance propelled the growth of insurance. Property insurance was mandated by mortgage lending institutions. Automobile insurance was mandated by state authorities. Thus, the insurance product is a compulsory consumer item.

A basic, fundamental principle of insurance economics and of contracts in general is that breach of contract is profitable. Break your word and you win! A successful breach of contract claim brings the victim of the breach only the benefit of the original bargain. The victim of the breach is out the time, trouble and costs (including legal expenses) of pursuing the perpetrator of the breach. With the decline of professionalism came the full realization that American contract law favored those who breached their agreements (not a very religious concept) also known as "The Greenberg Principle."

"Just say no" has an especially sweet sound to parties (including insurance companies) who do not want to live up to their word. This is dubbed "efficient breach." This bedrock economic principle is set forth by E. Allan Farnsworth, who discusses the legal system's lack of protection for the victims of broken contracts.[5]

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3 Marine insurance is not Allstate's bag and therefore not part of this book.

4 *See The CPCU Professional Commitment*, AICPCU/IIA CATALOG 1999-2000 at 66 (AICPCU/IIA).

Making matters worse for policyholders, insurance companies frequently combine "efficient" breaches with potent litigation abilities. Again, traditional notions of contract law nearly guarantee an insurance company victory. For policyholders making a claim for insurance coverage, the cooperation to be expected from a fiduciary entrusted with a duty of good faith and fair dealing is often simply not there. Instead, the policyholder may be confronted by a financial colossus with unmatched expertise and resources in insurance coverage litigation. As Liberty Mutual Insurance Company recognized:

> [the policyholder] is likely not as familiar with litigation and claims evaluation and disposition as is the insurance company.
>
> [T]he insurer is a professional defender of law suits. . . . Unlike the insured, an [insurance company] is not a novice as to matters involving litigation.[6]

WOW!

Lawyer Berardinelli has provided an enormous public and professional service by exposing—on an incredibly detailed basis—Allstate's corruption of insurance under the able tutelage of McKinsey & Co. An unstated, but possibly the most important,

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5 *See* Farnsworth, E.A., *Legal Remedies for Breach of Contract*, 70 COLUMBIA L. REV. 1145 (1970). The Farnsworth article is very hard to read. The essence can be found in the first two pages and the last three pages. There has been a backlash against the doctrine of "efficient breach of contract" but it still exists in the insurance world.

6 Liberty Mutual Insurance Company's Memorandum in Support of Motion for Partial Summary Judgment, at 7, filed July 5, 1988, *National Union Ins. Co. v. Liberty Mut. Ins. Co.*, 696 F. Supp. 1099 (E.D. La. 1988) (No. 86-2000). Liberty Mutual has been sanctioned for being a "major league team" in the game of "hardball litigation." *See Adolph Coors Co. v. American Ins. Co.*, 164 F.R.D. 507, 509 (D. Colo. 1993).

theme is that McKinsey & Co. recruits the "best and the brightest" graduates from American business schools and law schools to go into the "chisel and cheat" business and not into honest endeavor. The McKinsey & Co. lesson in the Allstate case is clear—do not prepare and sell honest food at an honest price when you can short-weigh and then short-change the customer. It is all about money, but not money injured parties can eat or use to pay for medical care.

The McKinsey & Co. website states that its mission is to help its clients "make lasting and substantial improvements in their performance." For Allstate, McKinsey did the opposite. It helped Allstate deliver less and made the delivery more difficult for the customer.

Almost no lawyers spend the time to lay out—on a step by step basis—what they have done and how. Favorable decisions are badges of honor (and Mr. Berardinelli has many). In this book, he tells of the corruption of insurance on a massive scale; largely silent and unseen. Red file folders may contain gold, but not if they contain yellowing paper that never sees the light of day. Mr. Berardinelli's red folders show the picture of highway robbers in grey flannel suits.

The Allstate "you do not need a lawyer" campaign was just plain false advertising. At the time, Allstate's own files showed that represented claimants received more *after* paying legal fees than unrepresented claimants. This false campaign was stopped by the authorities—one of the few effective governmental actions.

Speaking of lawyers, Mr. Berardinelli shows from Allstate documents that McKinsey & Co. and Allstate planned (one might say *schemed*) to impose greater litigation on claimants, the court system and the taxpayers. Consider first the fact that the insurance industry has a taxpayer-supported claim resolution system. To get an electric toaster working you do not need to take Macy's to court. Accept the amount Allstate offers, or go to court.[7] Why you and I should pay taxes to support a judiciary to resolve insurance claims is not clear. The multiple impacts of this burden on judges is not clear.

The McKinsey & Co. side of the story in the book tells the saga of an extraordinarily talented organization that turned its talents to ghoulism; that is, pay injured persons less and less. The best and the brightest from U.S. business schools and U.S. law schools join McKinsey & Co. and have turned their insurance talents to teaching Allstate how it could profit most by delivering less—and get away with it. McKinsey & Co. first worked for other insurance companies.[8] When Allstate retained them, they knew the insurance trade. Some of the McKinsey & Co.'s consulting advice would stand lawyers in good stead. "Always promise less than you know you can deliver." "Structure client meetings so that there are no surprises." "Both the good news and the bad are signaled before formal presentations." Rather than teach Allstate how to make insurance work and work better, McKinsey & Co. taught Allstate how to deliver less and less.

At about the same time McKinsey & Co. was working for Allstate, it was working for The American College in Bryn Mawr, Pennsylvania, a leader in financial services education founded in 1927 by Solomon S. Huebener. The American College teaches how to make the insurance product better and better. See The American College website regarding ethics. The McKinsey & Co. study for The American College is not publicly available.

A mystery remains as to why Allstate needed McKinsey & Co. to tell it how to chisel and cheat. Its shoddy claims practices were, for the most part, in effect at least as long as the 1970s when they

7 "So sue me, sue me, What can you do me?" Loesser, Frank, lyrics from "Sue Me," (Frank Music Corp.) from original Broadway production of *Guys and Dolls* (1950). See also *Riordan v. Nationwide Mut. Fire Ins. Co.*, 977 F.2d 47, 50 (2d Cir. 1992) (noting that the response of the New York Superintendent of Insurance to the policyholder's complaint was to advise the policyholder to "retain an attorney and *sue*").

8 USAA and State Farm.

were exposed by an Allstate employee.[9] Possibly it is because the corrupt practices are so distasteful that Allstate employees must be told they are "blessed" before the employees will begin to work on the crud.

Secret Societies and Code Words

A major side effect described in Mr. Berardinelli's book is the exposé of the role of McKinsey & Co. in the destruction of insurance. McKinsey & Co. is the Opus Dei[10] of insurance—effective but unseen—and unregulated. Rather than enhance the insurance product in America, McKinsey & Co. has taught Allstate and other insurance companies how to deliver less and less. McKinsey & Co. teaches that highway robbery using Rambo litigation is both acceptable and profitable if called "Best Practices."

Before one sheds tears for homeowners and private auto owners realize that large commercial entities get the same savage treatment. A former employee of a Fortune 500 company observed "Any company with an insurance claim for more than $10,000,000 should just forget it—throw the insurance policy away." Mom and Pop personally, and Mom and Pop businesses are both cheated. Exxon beware!

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9 See *Cannata v. Allstate*, Calif. Superior Ct., City and County of San Francisco, No. 603 623, September 10, 1974 and article entitled *Allstate's Claims Practices*, THE INSURANCE FORUM, Vol. 4, No. 11, November 1977. Why McKinsey & Co. was able to play the significant role it did when much of what it counseled was apparent long before it was retained is another story for another time. Maybe it is time that an expert is someone from out of town.

10 A semi-secret society of supporters of the Catholic Church. Definition from Wikipedia, a free encyclopedia, http://en.wikipedia.org/wiki/Opus_Dei.

Sow's Ears to Silk Purses

Every major disaster brings two things from Allstate.[11] The first is crocodile tears and the second is a premium increase. Allstate's major markets are automobile insurance and homeowners insurance. These are NOT voluntary purchases. Without automobile insurance, we cannot drive cars. The government provides highways, but not insurance. Banks require homeowners' insurance —they are not choosy about which insurance company writes it and do not look to the claims-paying reputation of the insurance company.

The United States provides a taxpayer-supported court system to resolve insurance claims. "[T]he insurance industry has been called the banker of the tort system."[12] Why should the taxpayers provide a free adjunct to the claims department of Allstate (or the other insurance companies)? This is an enormous governmental subsidy to the insurance industry. Taxpayers may pay for the system but Mr. Berardinelli shows that neither the taxpayers nor the policyholder claimants get their money's worth. McKinsey & Co. touts the litigation system to reduce and deny claims. An insurance company can short weight and short change by forcing claimants to their knees with the help of an expensive and overworked judiciary. Insurance is the darling of the judiciary because the judicial system is to a large extent funded by insurance.

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11 "Sweet are the uses of adversity, Which, like the toad, ugly and venomous, Wears yet a precious jewel in his head." William Shakespeare, *As You Like It* (Duke Senior at II, i).

12 Brief of the American Insurance Association, The National Association of Independent Insurers, Farmers Insurance Exchange, Fire Insurance Exchange, The State Farm Insurance Companies, and Truck Insurance Exchange as Amici Curiae in Support of Appellant, at 3, fn.1, filed August 2, 1985, *Aetna Life Insurance Co. v. Lavoie*, (U.S. 1985) (No. 84-1601).

Going two ways on a one way street does not seem to discomfort Allstate. Insurance companies and their lawyers consider themselves to be above the law.[13] While insurance companies often assert a right to be wrong, policyholders have no such rights. Insurance company lawyers, too, contend that they have a right to be wrong.[14]

There is no industry other than the insurance industry that would even dare argue for a "right to be wrong."[15] Policyholders and claimants have no comparable right to be wrong.

—Eugene R. Anderson, J.D.

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13 *See* Houser, *Good Faith As A Matter of Law: The Insurance Company's Right to Be Wrong*, 27 TORT TRIAL & INS. L.J. 665 (1992).

14 Zampino, Edward, and Coleman, M. Farrett, *Turning the Other Cheek: Can Insurers' Defense of Coverage Suits Constitute Grounds for Bad Faith Litigation?*," 38 TORT TRIAL & PRAC. L.J. 103 (2002) (contending that "[t]he federal courts have uniformly rejected attempts to create a bad faith remedy based upon alleged insurer litigation misconduct").

15 The level of corruption within the insurance industry is beyond belief. For example, when New York Attorney General Spitzer stopped contingent kickbacks, Marsh & McLennan—the world's largest broker—laid off 5,000 employees.

Part I

False Promises

Allstate, McKinsey, and the Zero Sum Game

By David Berardinelli

Prologue

By David Berardinelli, J.D.

MY PORTION of this book, and the concepts contained in it, were conceived and written before the criminal verdicts were entered against former Enron executives Jeffrey Skilling and Kenneth Lay on May 26, 2006. In light of those convictions, I should point out that in coining the phrases *Enron principle* and *Enron paradigm*, and in applying them to the claim handling system McKinsey created for Allstate, it was never my intent to imply that any Allstate executive, employee or consultant has ever engaged in criminal activity. This includes any criminal acts of fraud, false accounting, misrepresenting financial matters to Allstate's shareholders or SEC regulators, or insider trading—of the type for which Mr. Skilling, Mr. Lay, and some of their other Enron associates have been convicted. Nor do I wish the reader to conclude from anything written here that McKinsey & Company, or any of its employees while employed by McKinsey, ever engaged in any criminal conduct either at Enron or at Allstate or in any other context.

My purpose in coining these phrases using Enron's name was to capture the essence of a modern ethical approach to business practices which seems to have become pervasive in American corporate culture. This ethical approach holds that the only legitimate measure of corporate success is increased profits and shareholder value. It encourages corporations to pursue profits ruthlessly, albeit legally, under a "do whatever it takes" or zero sum game approach. This approach treats business relations as a competition and instills a total disregard for any adverse collateral consequences to competitors or others.

I express no opinion about the propriety, or even the advisability, of using such an ethical paradigm in the non-insurance corporate world. However, it is my opinion, based on my many years of experience and research in insurance law, that it is unethical to do so in the business of insurance. Insurers have traditionally been charged with the responsibilities and duties of a trustee administering a quasi-public trust. For over 100 years, traditional insurance law has prohibited insurers from placing their interest in profit above the interests of their policyholders during their administration of premiums held in trust for legitimate claims.

Based on the all the documents I have reviewed, including the ones summarized in this book, I believe this is precisely what has happened at Allstate. It is this radical departure from the traditional principles of public trust and fiduciary responsibility with which I find great fault and culpable civil wrongdoing. Allstate has wronged its policyholders, its claimants, and the general public. It was in an effort to explain the root causes and contradictions of this radical departure that I coined the phrases *Enron principle* and *Enron paradigm*.

My intent in using these terms is merely to illustrate that an ethical approach to business which makes increased shareholder value the sole measure of both a company's success and the amount of its executives' compensation package, is inappropriate when applied to the insurance industry. I do not wish to be understood as saying that insurance should be a non-profit business or that insurers are not entitled to make a legitimate profit. I support the concept of casualty insurance and the casualty insurance industry. Casualty insurers provide a vital public service. They could not provide this service unless they were able to make a legitimate profit sufficient to allow them to remain solvent and provide a reasonable return to their shareholders. Premiums are already calculated to allow insurers to accomplish both of these goals.

Therefore, I believe it should not be necessary for any insurer to radically depart from the traditional rules and ethical principles of the insurance industry to remain solvent or provide a reasonable rate of return to shareholders. My purpose in writing this book is to advocate for a return to these traditional rules and ethical principles which have served and supported this industry so well for so many years.

February, 2008

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Casualty Insurance

A Financial Safety Net for Middle America

PROPERTY/CASUALTY INSURANCE, which I will call casualty insurance, plays an indispensable role in modern American society. It provides a vital financial safety net for America's middle class. Without it, most Americans would be in constant jeopardy of financial hardship—or outright ruin—caused by losses they could not afford to absorb. The accumulated wealth of a middle-class lifetime could be unexpectedly wiped out by a single casualty loss.

Traditional insurance law holds that casualty insurance is designed to pay the full cost of the casualty losses—whether property loss or bodily injury—suffered in a covered event. This is called the *indemnity principle* of casualty insurance. Under the indemnity principle, the "objective [of casualty insurance] is to restore an insured to the same financial position after the loss that he or she was in prior to the loss."[1] When casualty insurance works properly it achieves this socially vital objective—and our lives can proceed relatively unimpaired by the financial hardship of an unexpected

1 *See* Rubin, Harvey W., DICTIONARY OF INSURANCE TERMS, at 218 (3rd ed. Barron's 1995), herinafter referenced as "Rubin."

casualty loss. When casualty insurance fails and leaves us in a worse financial position after a covered loss, the indemnity principle is defeated and we all suffer the consequences.

For example, when casualty insurance fails to pay the full cost of replacing lost property, our standard of living suffers—we are forced to do without or to buy lower quality goods. Casualty insurance has failed in its objective. Workers must work longer to reacquire their lost goods, perhaps never catching up to their previous standard of living. At the same time, the manufacturers and retailers of those higher quality goods—especially American-made goods—also suffer.

The same thing happens when casualty insurance fails to pay the full cost of necessary medical treatment caused by covered losses. Everyone suffers. The victim's quality of life suffers. Medical providers are forced to absorb losses the insurer had contracted to pay. As a result, we all pay more for already expensive private medical services to make up for these losses.

Taxpayers also suffer. When casualty insurance fails to fully cover medical costs, people are more likely to defer needed medical treatment. Eventually, the cost of deferred medical treatment—usually at a much higher price—is passed on to the taxpayers through programs like Medicaid and Medicare. Work-life expectancy may also be shortened by untreated casualty injuries. In such cases, the insured loses more time from work, resulting in a corresponding decline in worker productivity. Lower productivity means employers must then pay more for labor. In turn, we all pay more for the products and services labor produces. Again, we all suffer the consequences when the casualty insurance system fails to achieve the indemnity principle.

Home ownership is both the promise and the financial foundation of the American middle-class lifestyle. Thus, the consequences for middle-class Americans are even more devastating when insurers deliberately break their promises to provide full payment under homeowners' policies, especially when entire communities and regions are hit by large scale natural disasters.

Casualty insurers who deliberately set out to boost profits by systematically delaying, denying, and underpaying legitimate homeowners' claims arising from natural disasters like hurricanes Katrina and Rita do more harm to the American middle class than any terrorist group could ever hope to inflict. Insurers like Allstate have sought to fraudulently shift their obligation to pay billions of dollars in legitimate claims onto the federal government and onto the backs of American taxpayers.

Despite these unprecedented natural catastrophes and losses, the industry as a whole, led by Allstate, reported record profits and bonuses for shareholders and chief executives in 2006. These spectacular profits and rewards for Allstate's shareholders and executives came at the direct expense of Gulf state policyholders and American taxpayers. As a result of these tactics, recovery in the Gulf region now will take many more years than it should have if these insurers had honestly and faithfully kept their promises. Not only will full recovery take longer—if it happens at all in our lifetimes—it will be many times more expensive and will cost every American in higher taxes and even higher premiums for homeowners who can even find homeowner coverage in these areas.

No wonder then, there is a growing schism today between corporate America and middle-class America. The scale and scope of misconduct by chief executives at some of America's largest corporations—such as Enron, Worldcom and Tyco—is unprecedented. In an NBC News/Wall Street Journal Poll conducted on July 19-20, 2002, 61% of the Americans polled agreed that wrongdoing by chief executives of major businesses represents "a widespread problem in which many business executives are taking advantage of a system that is failing."[2] In another poll, 75% of Americans said they believed that the top executives in charge of major American

2 *See* NBC NEWS/WALL STREET JOURNAL poll, July 19-20, 2002, http://www.pollingreport.com/business.htm (accessed February, 2006).

corporations can be trusted to do what is right hardly ever or only some of the time.[3]

The key strategist and principal designer of a number of the corporate business strategies giving rise to this widespread perception of corporate wrongdoing is McKinsey & Company, the most powerful corporate consulting firm in the world. McKinsey has "the greatest global reach of any advisor to management in the world."[4] It serves as the chief advisor and key architect of strategic thinking for "147 of the world's 200 largest corporations, including 80 of the top 120 financial-services firms, 9 of the 11 largest chemical companies, and 15 of the 22 biggest health-care and pharmaceutical concerns."[5] McKinsey's clients pay from $10 million to $60 million per year for advice on how to manage their business operations to increase profitability.

So, middle-class Americans might well be concerned about McKinsey's role as the principal strategist and chief architect for a secret project at Allstate which redesigned the system Allstate uses to handle casualty insurance claims. It might cause even greater concern to also know McKinsey used Enron as a business model for Allstate's new claim system—and that the phenomenal success of McKinsey's "Enron approach" to casualty insurance at Allstate now threatens to force other casualty insurers to adopt these same tactics in order to remain competitive in the marketplace.

Allstate was founded in 1931 as the mail-order insurance division of Sears, Roebuck & Co. After the 1933 Chicago World's Fair, where an Allstate agent sitting at a card table in the Sears exhibit was mobbed by customers, Sears began putting agents in booths in its stores—usually under the escalator, the least valuable space on

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3 *See* the LOS ANGELES TIMES poll, March 27-30, 2004, http://www.pollingreport.com/business.htm (accessed February, 2006).

4 *See* Byrne, John, *Inside McKinsey*, BUSINESSWEEK-ONLINE, July 8, 2002, http://www.businessweek.com/magazine/content/02_27/b3790001.htm (accessed February, 2006), hereinafter cited as "Byrne."

5 *Id.*

the sales floor. Allstate's core customer base has traditionally been considered to be the same middle-class market as its parent company, Sears.

McKinsey's name for its strategic redesign of Allstate's casualty claim system is Claims Core Process Redesign or simply CCPR. Since its implementation in 1995, CCPR has been one of the most controversial—and profitable—claim handling systems in insurance industry history. To date, CCPR appears to have generated anywhere between $6 to $15 billion in excess profits for Allstate and its shareholders and now threatens to forever change the way casualty insurers do business in America.[6] It has also sparked a national firestorm of bad faith litigation against Allstate.

This is the previously untold story of how McKinsey advised and guided Allstate into breaking faith with its largest customer—the American middle class. It is a story of how McKinsey eagerly encouraged Allstate to secretly adopt an Enron-style business strategy aimed at promoting the interests of Allstate's shareholders at the direct expense of its policyholders. It is a story told in McKinsey's own words as taken from a collection of approximately 12,500 PowerPoint™ slides created by McKinsey to illustrate its many presentations and discussions with Allstate's management during the CCPR project.

During the Allstate CCPR research and design project, McKinsey teams made numerous presentations on the progress and findings to Allstate management groups using PowerPoint slide shows to accompany its oral presentations. Allstate distributed the slides

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6 This estimate is based on Allstate's annual statements and private passenger auto schedules, BEST'S KEY RATING GUIDES, and Allstate financial presentations given in 2004 and 2005, discussed in Chapter 2, "Insurance and the Can of Mother's Peas," starting on page 17. Allstate has consistently refused to state how much additional profit CCPR has generated for the company. However, in 2004 Allstate states its net income rose to a "record" $3.1 billion, despite four hurricanes in the Southeastern United States, due in large part to "Superior Claim Management." http://www.allstate.com/investor/annual_report/2004/financial.asp (accessed February, 2006).

to each attendee as a presentation summary—and then apparently collected and saved them at the end of each presentation. The exact number of McKinsey slides is also something of a mystery. Allstate produced 12,506 McKinsey slides to this author in the case described below. However, in court hearings since that production, Allstate has stated that there are more than 14,000 McKinsey slides. Regardless of the total number, it is clear that due to the multiple copies collected after presentation meetings, anywhere from 30-60% of the McKinsey documents are actually duplicates with no new material. In bad faith litigation circles, this collection of PowerPoint slides has come to be known simply as *The McKinsey Slides*. The author's transcription of these slides is available in this book, in Part IV, "The McKinsey Slides," starting on page 219.

The McKinsey slides came to light during one of the many policyholder bad faith cases sparked by Allstate's adoption of CCPR. The case is *Pincheira v. Allstate Insurance Company*.[7] In that case, I am lead counsel for the plaintiffs, José and Olivia Pincheira. The battle for public disclosure of the story told in the McKinsey slides—a battle that would ultimately transform the Pincheira's case into one of national significance—began with a discovery hearing on our motion to compel production of the McKinsey slides, held on October 30, 2001, at the judicial complex in Santa Fe, New Mexico.

At the time, there was considerable national speculation among the plaintiffs' bad faith bar about what the McKinsey slides might reveal. I didn't know then what was in the McKinsey slides, but I could hardly have imagined that in obtaining the McKinsey slides I would uncover what may prove to be the most explosive evidence of an insurer's institutional plan to commit bad faith ever discovered.

In October 2001, most plaintiffs' attorneys prosecuting CCPR bad faith cases were well acquainted with the machinery of CCPR—its actual procedures and protocols. These had been public knowledge since 1997 when the Washington Court of Appeals

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7 *Pincheira et al. v. Allstate Insurance Company, et al.,* D-0101-CV-2000-2894

ordered Allstate to publicly produce all of the CCPR training manuals prepared by McKinsey during the CCPR redesign project.[8]

Thus, the plaintiffs' bar had a good deal of evidence showing *how* McKinsey built CCPR—what its component parts were. What we didn't have was evidence showing *why* McKinsey built CCPR—what were McKinsey's underlying intentions and goals in designing CCPR as it did. Allstate was resolutely determined to see that the plaintiffs' bar would never get this information—or, if we did, that it would never be publicly disclosed.

The October 30, 2001 hearing on our motion to compel would prove to be a turning point in the battle to bring the McKinsey story to the attention of the public, the judiciary, and the plaintiffs' bar. It would still take several years, thousands of attorney hours, three trips to the appellate courts, and enough trial pleadings to fill 25 volumes in the district court's file—but the McKinsey story can now be publicly told. Nevertheless, this book would never have been written had it not been for José and Olivia Pincheira's steadfast support for a purpose larger than their own personal gain—their desire to inform an unsuspecting public about an unconscionable betrayal of faith by a company they trusted for over 20 years.

Allstate produced the McKinsey slides on January 3, 2002, under an interim protective order set to expire 14 days after Allstate lost its appeal. Over the next two years, I spent over a thousand hours personally reading, reviewing and summarizing the McKinsey slides, page by page. As part of this process, I created an extensive summary of the information I found in the McKinsey

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8 *See Tastad v. Allstate Ins. Co.*, 86 Wash.App. 1118, 1997 WL 428065 (Wash.App.1997). Since *Tastad*, the ATLA bad faith section has offered copies of Allstate's CCPR training manuals to any interested member for the price of the copy charges. Comparison of the CCPR training manuals to the McKinsey slides reveals that the CCPR manuals are actually "Reader's Digest" versions of the McKinsey slides. Today, the original documents produced in *Tastad* belong to Seattle attorney Karen Koehler, co-author of Koehler & Freeman, LITIGATING MINOR IMPACT SOFT TISSUE CASES (ATLA Press 2004).

slides mostly using direct quotes from almost every slide in the collection.

On January 30, 2004, Allstate lost its appeal, and the interim protective order prohibiting public dissemination of the information in the McKinsey slides expired 14 days later. I then returned my copy of the McKinsey slides to Allstate because each page bore a restrictive overlay forbidding public dissemination. This made the slides difficult to read and impossible to blow up. So, I demanded Allstate provide me with a clean copy of the slides to use as evidence at trial as ordered by the judge.

Allstate refused to produce a clean copy of the McKinsey slides and even usurped our copy with the restrictive overlay in order to keep the McKinsey story a secret. Allstate's defiance of the judge's order eventually led to the entry of a default judgment for its disobedience.[9] Allstate did not, however, succeed in keeping the information in the McKinsey slides a secret. Allstate failed to account for my extensive summary notes made during the years the McKinsey slides were in my possession. The trial court denied Allstate's request for a protective order to prevent me from writing about or publicly disclosing the information gathered from my extended study of the McKinsey slides—including public dissemination of my summary notes.[10]

In this book, I have attempted to give the reader an explanation of the methodology and findings McKinsey by during the CCPR engagement as recorded in the slides. In some cases, I have attempted to re-create the actual appearance and content of some of the most remarkable and damaging McKinsey slides in the collection.

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9 The trial court struck Allstate's defenses and entered a Default Judgment as a sanction against Allstate for its refusal to produce a clean copy of the McKinsey slides in *Pincheira* on July 8, 2004.

10 The trial court in *Pincheira* entered its order denying Allstate's request for sanctions and a protective order preventing publication of this book on February 22, 2006.

The reader should always understand, however, that depictions of the slides shown in Part IV, "The McKinsey Slides," starting on page 219, and Part V, "The McKinsey Slide Pictures," starting on page 657, are my own re-creations, based on my notes and memory. They are not photocopies of the original slides and I do not wish the reader to regard or use them as such. They are included for illustrative purposes only. Therefore, as may be the case with any attempt to re-create the content and appearance of a document no longer in the author's possession, there may be some minor errors or omissions in these re-creations. However, I do believe any possible errors are minor and do not change the essential meaning or appearance of the original slides.

Was the McKinsey story worth the thousands of hours it took to bring it into the public domain? Do the McKinsey slides reveal a corporate scheme to convert casualty insurance from a financial safety net for America into a slot machine rigged to underpay claims and pay billions to Allstate's shareholders?

I have written this book, and attached a copy of my summary of the McKinsey slides, in order to allow the readers to answer these questions for themselves—free from interference or censorship by Allstate. Likewise, the use that should be made of this information, now that it is out in the public domain, will also be up to the readers to decide. My purpose here is to provide the information to make possible such decisions—or at least further inquiries—by those interested in doing so.