

**Written Testimony in Support of Illinois Department of Insurance
Proposed Rule 941.20 (50 Ill. Admin Code 941.20)**

The proposed rule goes a long way toward resolving a problem long faced by Illinois auto insurance purchasers and by other members of the public who suffer personal injury or property damage in motor vehicle accidents. The problem is post-claim underwriting, where the insurance company waits to investigate an insurance application until after the insurance is issued and a claim is made on the policy. Then, discovering a misrepresentation or misstatement in the application, the insurance company rescinds the policy. Although the insured receives a premium refund, there is no coverage for either first party or third party injury or damage occurring while the policy was in force. Moreover, the insurance company has unfairly benefited from an interest-free loan from the insured, because it has had the use of the insured's premium but returns it without interest after the rescission.

I have seen this scenario hundreds of times. I am an Illinois attorney, licensed since 1979, and primarily practicing in the area of insurance law; my curriculum vitae is attached. I receive several calls each month from persons complaining about unfair auto insurance rescissions. Typically, the caller tells me that the insurance company is rescinding the policy based on answers to application questions that were not asked by the producer when the application was taken orally over the phone, and even sometimes when the application is taken by the producer in person, usually at an auto dealership. If I am receiving so many calls about rescissions, and I am only a solo practitioner, the problem of rescissions must be fairly widespread. I understand from the Department of Insurance that consumer complaints based on rescissions indeed are numerous.

In most instances, the problem would be solved if the producer or insurance company were required to return to the insured a printed version of the application with the answers to the questions. When this is not done, the insured cannot see the answers that the producer has submitted and cannot make corrections. If a completed, printed application were returned to the insured, it would be completely fair to hold the insured responsible for misrepresentations or omissions on the application or for correcting them and notifying the insurer. This was the statutory policy that existed prior to a 1996 amendment to Section 154 of the Illinois Insurance Code, which governs rescissions. The 1996 amendment (P.A. 89—413, eff. June 1, 1996) removed the requirement that the application be returned to the insured.

My proposal for addressing the rescission problem would be to restore Section 154 to how it read prior to the 1996 amendment or even strengthening it to prohibit all post-claim underwriting. Nevertheless, I think the Insurance Department's proposed rule will go a long way toward resolving the rescission problem in the area

of auto insurance policies. At the time of an insured's application, if the insurance company opts not to perform underwriting by obtaining the applicant's Motor Vehicle Record from the Secretary of State or a Lexis/Nexis C.L.U.E. Auto Report, then the company will be prohibited from later rescinding the policy based on information shown in such reports. Under the Department's proposal, the insurance company would still be allowed to rescind based on information not shown in such reports, even if the company did no underwriting at the time of the application. In my opinion, any sort of post-claim underwriting is unfair, but the Department's proposed rule does go a long way toward resolving the problem of unfair rescissions.

Without the proposed rule, there will remain on our roads thousands of autos with only phantom insurance, paid for by real money, but subject to rescission when there is any claim. This is unfair to both the insureds and to third parties who suffer personal injury or property damage through the insured's negligence. It is also unfair to the insurers of those third parties who may have subrogation claims.

The cost of obtaining the MVR or C.L.U.E. report is nominal, and the insurance company can still choose to forego that cost. However, under the proposed rule, the company will be prevented from rescinding the policy based on information in such reports that it could have obtained. The choice is up to the insurance company.

There is plenty of money being made in the insurance industry. See article in Chicago Tribune, December 11, 2016, "Lincoln Park mansion [of Richard Parrillo] for sale at record \$50 million."

Under penalty of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, James T. Nyeste, certifies that the foregoing Written Testimony is true and correct.

A handwritten signature in black ink, appearing to read "James T. Nyeste". The signature is written in a cursive, flowing style.

James T. Nyeste

Mr. Nyeste has practiced law since 1979 and has over 37 years of experience in insurance law and coverage, as well as in personal injury, disability, ERISA benefits, commercial litigation, contracts, and civil litigation generally.

Since August 1, 1999, Mr. Nyeste has had his own firm engaged in insurance law and coverage. Mr Nyeste principally represents claimants and policyholders, but he is also national coverage counsel for two insurance companies. Additionally, a substantial part of his practice is advising other lawyers on matters of insurance.

Mr. Nyeste serves as a neutral arbitrator in the court-annexed arbitration programs of the Circuit Courts of Cook County, Lake County, and DuPage County, Illinois.

He is a frequent author and speaker on matters of insurance law and coverage. Since 2009, he has been the editor of *The Policy*, the quarterly publication of the Insurance Law Section of the Illinois State Bar Association, which is read by nearly over 1,000 member lawyers and judges.

Career history:

Law offices of James T. Nyeste, Evanston, IL (August 1999 to present)

Wildman, Harrold, Allen & Dixon, Chicago, IL (1980 to August 1999): partner (1987 to 1999), associate (1980-1987), Insurance Practice Group, Commercial Litigation Practice Group, Trial Practice Group, Appellate Practice Group

Peterson, Ross, Schloerb & Seidel, Chicago, IL (1979-1980): associate; monitored U.S. litigation and recommended reserves for Lloyd's, London and other insurers; miscellaneous tort and commercial litigation

Publications:

Books/chapters:

Twelve-Year Index to The Policy (1999 – 2010) (May 2011), a subject matter index to the articles and over 500 cases summarized in *The Policy*, the newsletter of the ISBA Insurance Law Section

Bad Faith, chapter in *Illinois Automobile Insurance Law*, Thomson/West (2007)

Manual for Complex Insurance Coverage Litigation, Prentice Hall Law & Business (1993), ABA Task Force on Complex Insurance Coverage Litigation (coauthor)

Articles:

“A Note Concerning Legacy (pre-1992) Medicare Supplement Policies,” *The Policy* (October 2013) ISBA Insurance Section

“Recovery of Consequential Damages for Insurer's Breach of Contract,” *The Policy* (September 2012) ISBA Insurance Section

“The Exclusive or Captive Agent of an Insurance Company is a ‘Producer’ and by Statute and Case Law Owes Duties to the Insured,” *The Policy* (October 2011), ISBA Insurance Law Section

“A Separate Coverage Limit for the Loss of Consortium Claim?,” *The Policy* (October 2010), ISBA Insurance Law Section

“Selected Insurance Provisions in the 2010 Health Care Reform Legislation,” *The Policy* (June 2010), ISBA Insurance Law Section

“ERISA Health Care Plan Reimbursement from the Beneficiary’s Personal Injury Recovery,” *Illinois Bar Journal* (May 2007), Illinois State Bar Association

“UIM Arbitration and the Trial de Novo Provision,” *The Policy* (May 2006), ISBA Insurance Law Section

“Construction Defect Coverage: Another Court Gets It Wrong,” *The Policy* (January 2006), ISBA Insurance Law Section

“Questions and Answers About Illinois Automobile Insurance and Accidents,” 2003 pamphlet, ISBA Insurance Law Section

“The Section 155 Remedy,” *The Policy* (April 2001), ISBA Insurance Law Section

Presentations:

“Insurance Litigation” presented at “Hot Topics for Your Litigation Practice,” a CLE seminar by the Illinois State Bar Association, Civil Practice and Procedure Section, Chicago, IL (November 17, 2014)

“A Case Study: Separate ‘Per Person’ Limit for Loss of Consortium and Other Issues Raised in Recent Case” presented at meeting of the Chicago Bar Association, Young Lawyer Section, Insurance Coverage Committee, Chicago, IL (December 14, 2010)

“Claims for Insurance Company Bad Faith” presented at meeting of the Lake County Bar Association (May 27, 2010)

“Illinois Coverage Decisions 2009 – A Policyholder Perspective” presented at meeting of the Chicago Bar Association, Young Lawyer Section, Insurance Coverage Committee, Chicago, IL (March 9, 2010)

“Bad Faith Litigation: Claims for Unreasonable Claim Practices, Penalties and Attorney Fees” presented at “Insurance Law Update – 2009,” a CLE seminar by the Illinois State Bar Association, Insurance Law Section, Chicago, IL (November 13, 2009)

“Claims for Insurance Company Bad Faith” presented at “Hot Topics in Insurance Law,” a CLE seminar by the Illinois State Bar Association Insurance Law Section, St. Louis, MO (June 7, 2008)

“ERISA Health Care Plan Reimbursement from the Beneficiary’s Personal Injury Recovery” presented at “Insurance Law - Everything You Want to Know – and Should Ask,” a CLE seminar by the Illinois State Bar Association Insurance Law Section, Chicago, IL (October 9, 2006) and Collinsville, IL (November 10, 2006)

Professional memberships:

American Bar Association, Litigation Section and Tort and Insurance Practice Section

Illinois State Bar Association, Insurance Law Section

Admitted to Practice:

Illinois Supreme Court (1979)

United States District Court for the Northern District of Illinois (1979), Trial Bar (1984)

United States Court of Appeals for the Seventh Circuit (1983)

United States Claims Court (1987)

United States Supreme Court (1992)

United States District Court for the Southern District of Illinois (1994)

United States District Court for the Eastern District of Wisconsin (1995)

Admitted *pro hac vice* for various cases in state and federal courts in Indiana, Michigan, Ohio, Pennsylvania, New York, California, and Arizona

Education:

J.D. University of Chicago Law School (1979)

B.S. Michigan State University (1976) (Highest honors, Mathematics); Honors College;
National Merit Scholar; Phi Beta Kappa