Long-term care ordeal for elderly

Insurance denials create nightmares

BY TONY BARTELME
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Herman died in 2004, and his gray box passed to the couple's daughter, Kay Newman, and her husband, David AvRutick. About three years ago, Mattie's memory and strength began to fail. Kay took her to a doctor, who came back with a diagnosis 80,000 other South Carolinians share: Alzheimer's or dementia.

The next day, Mattie tripped and fractured her ankle; the medical bills piled up; Kay and David agonized over what to do. They decided to place her in an assisted living center and then Heartland. It was an emotional time, but from a financial standpoint, Mattie and her children thought everything would be OK, thanks to Herman's foresight and that long-term care policy stored in his gray box.


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What happened next is a lesson in frustration and persistence. Despite extensive records showing that Mattie had Alzheimer's and couldn't care for herself, Banker's Life denied Mattie's long-term insurance claims for nearly a year. The dispute ended up in federal court and led to admissions from the insurer's employees: In Mattie Poston's time of need, the company failed to live up to its promise to pay to take care of her.

It wasn't the first time Banker's Life and several other long-term insurance companies had been put in the spotlight. Angry policyholders across the country have sued insurers for improperly delaying or denying claims; regulators have fined and ordered some to improve their claims handling procedures. Meanwhile, the state Department of Insurance has received more than 50 complaints about Banker's Life since 2010, but when Mattie Poston's family filed a complaint, the agency punted it back to them. The agency's reason: It doesn't investigate complaints when customers go to court.

Park Circle Jewel

Kay Poston's eyes well with tears as she looks at the gray box and remembers her father. Herman was a veteran of World War II and Korea. After his military service, he worked as an engineer at the Naval Shipyard and then started a mechanical contracting company."At his funeral, everyone talked about what a gentleman he was," Kay said. Her family grew up in North Charleston's Park Circle, where her feisty mother "was like an icon" known to everyone in the neighborhood by her nickname "Jewel," and for her coconut cakes. When Kay was young, the "insurance man" came by to collect premiums, and the kids knew to be on their best behavior. "It was like a preacher was coming to the house." They watched their parents stuff a few dollars every week in an envelope, and tuck it away in the top drawer of the buffet.

In 2000, with the children gone and grandchildren coming along, her father took out a long-term care insurance policy with Banker's Life. Every year, Herman sent Banker's Life about $3,000, making a note of each payment and storing those records in the gray box. In 2004, he developed lung cancer. He lived at an assisted living facility for four months before he succumbed. Amid the family's grief, Kay submitted claims to Banker's Life, which weren't sorted out for two years. She vowed that if something happened to her mother, she would keep detailed records so the delay wouldn't happen again. "I'm my father's daughter."

Unlike home and auto insurance, long-term care insurance is a relatively new product. Insurers began offering coverage in the 1980s, mainly to help pay for rising nursing home costs. Soon, they expanded coverage to in-home care. "Today, long-term care insurance is primarily purchased so you don't have to go into a nursing home," said Jesse Slome, executive director of the American Association for Long-Term Care Insurance.

By the early 2000s, about 7 million people had coverage, but the industry also had growing pains. Thousands of policyholders started filing claims for care. Money paid out by insurers saved lives and protected the savings of many elderly people, but some insurers paid more than they charged for premiums. When insurers tried to raise rates, state regulators pushed back. About the same time, news organizations revealed other problems. A New York Times investigation in 2007 found large numbers of policyholders were victims of "unnecessary delays and overwhelming bureaucracies." In California, the newspaper found, one of every four claims was being denied.

Regulators in Florida, Illinois and several other states took hard looks at Conseco Inc. and its subsidiary Banker's Life. In 2008, insurance regulators found "a pattern of consumer harm in the company's long-term care insurance business." Conseco and Banker's Life neither admitted nor denied any problems but agreed in a settlement to a $2.3 million fine and $4 million in restitution to policyholders across the country. (Piggybacking on the settlement, South Carolina eventually received $15,000, which went to the state's general fund.)

The nationwide deal also called for the company to spend $26 million to upgrade its claims handling system, a requirement the company welcomed, said Barbara Ciesemier, senior director of corporate communications. The company "worked diligently with our state regulators to improve our sales, training and compliance practices," she told The Post and Courier.

Amid these investigations, many established insurance companies gave up writing long-term care insurance policies altogether. "Insurance companies don't want their names dragged through the media," said Slome, the industry spokesman. "That's why some have left the business. They were saying, 'Who needs this?' It tarnished their businesses that did make them money."

Kay said she didn't know about the investigations of Conseco and Banker's Life when her mother's health deteriorated in 2010. She had her hands full getting her mother settled, working full time and taking care of her two children, all while dealing with the emotional pain of seeing her strong-willed mother lose her independence.

On paper, she and her husband were well equipped to handle this life transition: She is a licensed clinical social worker who once co-founded a company that provided mental health services to residents in nursing homes. Her husband is a lawyer who until recently was president and chief executive officer of Folbot, a Charleston kayak manufacturer.

But as her mother settled into The Bridge at Charleston, an assisted living home near Ladson, and then Heartland of West Ashley, Kay worried about the costs. In her mind, she went back to when the friendly "insurance man" visited her parents' home in Park Circle. She called Banker's Life to help her sort things out.

Claim runaround

Grant Gardner, a local employee for Banker's Life, visited their home in downtown Charleston. They sat in the living room, and Gardner helped them fill out a claim form. Kay presented a stack of documents that was more than 8 inches thick, including the diagnosis of her mother's Alzheimer's. Kay said that Gardner chuckled when he saw all the documentation and said that most people

Storm of Money

For in-depth reports on insurance rates, the risks of being hit by a hurricane and other stories, visit postandcourier.com/storm-of-money.

never had such extensive records for a claim. (Gardner confirmed that he visited the house but declined to comment.)

The weeks passed; the bills kept coming. Mattie was rushed to the emergency room three times and hospitalized twice. Kay and her husband made phone calls to Banker's Life and were transferred from one person to the next. One day, they received a letter saying the company didn't have "complete proof of loss," despite the doctor's diagnosis and other documentation they had given Gardner. They sent more medical records and made more inquiries until Kay reached an employee in Chicago named Joanne Polleck, who told her that she was about to meet with a committee that decides whether to deny or accept claims.

As they talked, Kay learned that the insurance company had phoned a medical technician to learn more about Mattie's claim. The technician reportedly told the insurer that Mattie wasn't wearing an alarm bracelet, and Kay feared the company would use that as an excuse to deny coverage. She asked if Polleck had the doctor's diagnosis that Mattie had Alzheimer's. Polleck said they did not.

"I was in a panic when I heard that." She had sent the diagnosis weeks before, but told Polleck she would fax it to them again that day. "How could they make a decision without that?"

Kay didn't know until later that Polleck met with the committee anyway. The committee had 14 claims to discuss, and averaging four minutes per claim, denied all 14.

Kay and David made more phone calls without getting any answers. Then, three weeks later, Banker's Life sent Kay a letter saying they would deny Mattie long-term care coverage because she didn't require "substantial supervision" or present any threats to her health and safety because of a cognitive impairment.

Kay hired a lawyer.

'Not in good faith'

David Yarborough Jr., an attorney with Yarborough Applegate in Mount Pleasant, eventually filed a federal lawsuit in U.S. District Court alleging Banker's Life wrongly delayed and denied Mattie her claims.

As part of the lawsuit, Yarborough questioned several Banker's Life employees, including Joanne Polleck.

Polleck said she began her career in 1970, starting as a claims adjuster and eventually moving up to train other claims handlers. During a sworn deposition, Yarborough asked why she met with the claims committee despite knowing that Mattie Poston's file wasn't complete.

"You knew that information existed, and you didn't follow up on getting it before you made a decision to deny the claim, correct?"

Polleck replied, "Correct."

"And it was improper, wasn't it?"

"Correct."

Yarborough pressed: "It was a violation of the duty of good faith and fair dealing that Banker's Life owes to Ms. (Mattie) Poston, wasn't it?"

"Correct."

Yarborough pounded away about how insurance is at its essence a promise to pay someone in their time of need. "And when Ms. Poston got sick, when Ms. Poston was no longer able to care for herself and make decisions on her own … (Banker's Life) turned their back on her, didn't they?"

"Correct."

Later, Yarborough took sworn testimony from an assistant vice president, Janet Sittner, who agreed that the company had a duty to properly investigate this claim but didn't do it for a year. He asked Sittner: "It's a violation of the industry standards as it relates to processing, investigating, and handling claims? Correct?

"Correct," she said.

Banker's Life officials also testified that employees were measured by how many claims they "close out" each day, prompting Yarborough to argue in a motion that Banker's Life had a "corporate plan" to "frustrate and delay policyholders."

After the depositions, Banker's Life asked a judge to strike the employees' sworn testimony, arguing they weren't qualified to say what they had said. One motion noted that Polleck had only "a high school degree and a few junior college credits," but failed to mention that she had been with the company for more than 40 years and trained others.

A federal judge not only said no to Banker's Life's motion, he ruled that the company had breached its contract with Poston. The case never went before a jury. With its legal defense collapsing, Banker's Life settled this spring with Poston and her daughter for an undisclosed sum.

Kay remains uneasy about her decision to settle instead of taking the case to trial. Information and testimony in cases such as these are often sealed when they're settled out of court. But Kay agreed only on the condition that the testimony and other findings of the lawsuit remain open for public review.

'Different company'

Officials with Conseco and Banker's Life declined to discuss the case, other than to issue a brief statement saying that "strict confidentiality" terms prevent them from commenting on the nature of the settlement. (Yarborough countered that the confidentiality agreement involves only the amount of the settlement.)

Slome, the industry spokesman, was more candid, noting that his organization represents insurance agents, not the insurance companies themselves.

Slome said the vast majority of claims are paid on a timely basis, a fact that generates much less publicity than when "big bad insurance companies" harm "old ladies." He said these much rarer stories "make great headlines, but no one is writing that insurance companies are making $6 billion in long-term care insurance payments every year."

But he acknowledges that improper denials do happen, "and they shouldn't happen." Some claims are denied because of simple misunderstandings over policy language. Many policies, he said, require 90-day waiting periods before coverage kicks in. Other times, there's no good reason.

"Are there differences between companies? Absolutely," he said, adding that Banker's Life is "a very unusual and different company. They run independently, and they're one I absolutely can't comment about. But I can say other companies take a different outlook and approach to things."

He said that "consumers need to feel that they're going to be treated correctly when the time comes to make a claim. And if one insurance company isn't doing that, they deserve the punishment, to pay for that, and to be exposed."

Passing it on

Kay and her husband, David AvRutick, still have questions about what happened, and the emotional aftershocks of their legal battle can be heard in their voices. They wonder what happens to people who didn't have the wherewithal and support team that they had. "When I got too tired to paddle, David took over," Kay said. "Without this support, I would have given up." She suspects that "a lot of people get a denial letter and say, 'Oh well.'"

They also wonder whether South Carolina regulators could have done more.

Banker's Life has more complaints than many of its competitors.

Since 2010, people filed 52 complaints against Banker's Life, state insurance records show. That compares with seven for Genworth Life Insurance, which has triple the market share in South Carolina.

Kay's complaint isn't included in the department's statistics, however. That's because the department decided to close their case when it learned Kay had hired an attorney. In explaining the department's decision, an official wrote that the department "stands down to civil cases."

In a statement Friday, Ann Roberson, executive assistant for the insurance department, said the agency "is always concerned and acts when insurers do not pay valid claims timely," but that "in general, claims handling does not appear to be the primary concern for South Carolina consumers involving the long-term care insurance industry."

That wasn't the case for Mattie and her children, though. "The reality," David said, "is we didn't get any help from anyone (in state government) on this."

On a recent afternoon, Kay and David visited Mattie at Heartland, and Kay spread out three night gowns and a robe on her mother's bed. Mattie recently had surgery for colon cancer but is doing well there otherwise. In a way, her Alzheimer's has been a blessing, Kay and David said. It helped shelter her from some of the pain of her infirmities and the chaos triggered by the legal fight against Banker's Life. On the walls of her room are photos of children, grandchildren and stepgrandchildren, and sheets of paper with hand-drawn hearts.

Kay brought her father's gray box with her that afternoon. Amid the stress and uncertainty over her mother's health and the legal battles, it became a symbol of stability. "We thought, 'This box is going to do what it was meant to do.' In the end, it did, and because of that, someday she'll pass the box on to one of Mattie's and Herman's grandchildren.

Reach **Tony Bartelme** at 937-5554.

GRACE BEAHM/STAFF

Mattie Jewel Poston's husband, Herman, kept meticulous records of receipts and bills in a gray plastic box, including records for his long-term care insurance policy. When Herman died in 2004, the box passed to his children, including his daughter, Kay Newman, shown sorting through records.

Top 10 long-term care insurance companies in S.C.

Company	Lives insured	Premiums collected	Claims paid
Genworth Life Ins Co.	19,432	$35,191,095	$32,414,541
John Hancock Life Ins. Co.	15,026	$21,612,972	$13,819,178
Banker's Life	3,502	$8,806,084	$6,907,328
Metropolitan Life Ins.	6,270	$8,034,995	$3,080,863
Prudential Ins.	9,905	$7,773,959	$4,005,358
Transamerica Life	2,941	$5,450,830	$5,445,345
Massachusetts Mutual	1,375	$4,378,759	$1,033,814
Kanawha Ins.	3,394	$4,353,458	$1,963,671
Unum Life Ins.	8,510	$4,157,666	$1,503,831
Northwestern Long Term Care Ins.	1,792	$3,776,084	$1,009,493

— SOURCE: National Association of Insurance Commissioners, 2012