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When Insurance Law Meets Consumer Finance: Navigating Embedded Insurance Products

SPEAKERS

Chris Willis | Brian T. Casey | John N. Emmanuel

In this episode of *The Consumer Finance Podcast*, host Chris Willis is joined by insurance regulatory and transactions partners Brian Casey and John Emmanuel to introduce Troutman Pepper Locke's insurance regulatory practice and explore where insurance law and consumer finance regulation intersect.

Brian and John walk through the growing world of "embedded insurance," where insurance or insurance-like products (from credit life and gap waivers to service contracts and fixed indemnity health insurance policies) are bundled into noninsurance transactions like auto financing or credit cards, with creditors who usually lack the same familiarity with insurance laws that they have with consumer financial protection laws. Brian and John discuss the key compliance issues that arise in these arrangements, including unfair trade practices and anti-rebating and inducements restrictions, commission-sharing limits for unlicensed entities, proper attribution of insurance sales to state insurance department licensed parties, Gramm-Leach-Bliley privacy obligations, and the disclosure requirements tied to insurance transactions. Brian and John also share real-world examples from their practice, including structuring compliant sales incentives for embedded auto-related products and navigating the multistate complexities of group property and casualty and fixed indemnity insurance products in credit transactions.

The episode underscores how the 2025 merger of Locke Lord and Troutman Pepper expanded the firm's consumer financial services capabilities to include comprehensive, 50-state insurance regulatory experience.

Transcript

Podcast: *The Consumer Finance Podcast*
Episode: When Insurance Law Meets Consumer Finance: Navigating Embedded Insurance Products
Host: Chris Willis
Guests: Brian Casey and John Emmanuel
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Chris Willis (00:04):
Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper Locke's consumer financial services regulatory practice. And today is a great episode for me because I have the opportunity to introduce you to our insurance regulatory practice and talk about what it can do for consumer

financial services companies. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com. And don't forget about all of our other great podcasts: the *FCRA Focus*, the *Crypto Exchange*, *Payments Pros*, and *Moving the Metal*. Those are all available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and let us know how we're doing. Now, as I said, today we're going to be talking about our insurance regulatory practice. And longtime listeners to the podcast will know that one of my favorite things to do on this podcast is to show you the breadth of the financial services practice that we've built at Troutman Pepper Locke. And the insurance regulatory practice is a very critical component to that that came about as a result of the union between Locke Lord and Troutman Pepper about a year and a half ago at the beginning of 2025. Joining me to talk about this are two of my insurance regulatory partners, Brian Casey and John Emmanuel. Brian, John, thanks for being on the podcast today.

Brian Casey (01:24):
Our pleasure.

John Emmanuel (01:25):
Thanks for having me.

Chris Willis (01:26):
So gentlemen, I want to talk about the ways that the insurance world and the consumer finance world can come together when companies try to build or sell products that are governed by state insurance laws. But before we jump into that, let me just start by asking you guys to give some background about Troutman Pepper Locke's insurance regulatory practice. Brian, can I ask you to tell the audience a little bit about that?

Brian Casey (01:47):
Yeah, sure, Chris. Our practice is both transactional and regulatory in nature. So two sides to the practice. We help insurance companies and reinsurance companies raise capital, M&A market, and startups in the insurtech area. Regulatory side obviously includes insurance regulation. It's a multi-state practice because we're governed by 50 states' insurance codes and regulators. We practice before the regulators on a daily basis, cut across all product lines: commercial insurance, personal lines insurance, life insurance, property casualty insurance, and health insurance, and all kinds of regulated entities in the insurance world from reinsurance companies, insurance companies, third-party administrators, insurance agencies, and captive insurance companies. If it's got the I-word, we have a client and can help them in that area.

Chris Willis (02:12):
Yeah. And it's so parallel to our consumer finance regulatory practice where we have to know those state laws and practice in front of those regulators. And we represent a broad variety of industry participants too, which makes it a perfect match for what we do in consumer finance. But John, let's talk about how these two worlds can come together because there are a lot of instances where a consumer finance company may encounter insurance or insurance-related laws and regulators in connection with their product offerings. Can you give the audience some examples of when that can happen?

John Emmanuel (03:08):
Yeah, certainly. The area that we call it here in the insurance world is embedded insurance. It's when an

insurance product is bundled almost seamlessly with a non-insurance transaction. Sometimes the consumer might not even know that they're buying an insurance product or understand who the product provider is. For example, bundling an insurance product with auto financing. Financing a car, insurance is associated with it, might be one single transaction that is involved in that process. Other areas that we're seeing is, for example, warranties or something like that where you're buying a product in a store where you might be adding an insurance or even a service contract, which is also regulated by insurance laws in some states, associated with that purchase. And the reason why this is growing is the digital platform. A lot of these are done online almost seamlessly these days.

Chris Willis (03:55):
And John, you mentioned some true insurance products. And I think longtime members of the consumer finance world will recognize things like credit life insurance or credit disability or involuntary unemployment insurance. Those are true insurance and everybody knows those are covered by state insurance codes. But you also mentioned some products that aren't really insurance. They're not defined as insurance, but they nevertheless are governed by state insurance codes and regulators. You mentioned service contracts, but are there other examples of those too?

John Emmanuel (04:24):
It's a good question. Where you often see this is a company or someone might have an associated guarantee or a promise that the thing's going to operate the way it does, or if it doesn't, they're going to have some sort of backing to it. Sometimes you may not even think of that as an insurance product, but insurance is very broadly defined and you might find yourself in that world without realizing providing that supportive product to your transaction.

Chris Willis (04:47):
And Brian, one of the biggest examples, at least for the auto finance part of consumer finance, is gap waivers. A gap waiver isn't technically insurance, but it's still governed by state insurance laws, right?

Brian Casey (04:59):
It is. It can be a tricky area depending on the type of financial institution involved. For example, a credit union versus a national bank. In many insurance codes, there are regulations that govern gap waivers, particularly in the auto area. You might ask why do those laws exist in the insurance code? Because at some point there was an argument and a fight with an insurance department on whether that product was insurance. And similar to service contracts, the industry went with regulation light. Let's get a safe harbor essentially to declare that it's not insurance. Still regulated, but not insurance. So those are legislative approaches that you find where you have products that are what I'll call quasi-insurance products.

Chris Willis (05:38):
Yeah. And now that we've broached the idea of the state insurance and insurance-related laws and the state insurance commissioners that enforce and regulate under those laws, I'd love for you, Brian, to continue by giving the audience an example of the kinds of laws and regulations and issues that they have to contend with if they're going to offer or sell an insurance or insurance-related product in connection with a credit transaction.

Brian Casey (06:03):
There could be a lot of them depending on the scenario. To digress for a second, one question that we get almost

on a weekly basis is, is a product insurance or not? You would think that's a black and white type of question, but not so much. And if it's close to the line, we might try to help deconstruct it a little bit so it's not an insurance product. But to answer your question more directly, sales practice, UDAP. We have our own UDAP laws in the insurance code. We have an Unfair Trade Practices Act which prohibits, among other things, inducements and rebates. So if I'm bundling a product, many state insurance departments will take the position and interpret those inducement laws as potentially being violated if I'm saying, "Here's the insurance product, but you only can get it if you buy the underlying non-insurance product." Commission sharing is still a challenge in some states that prohibit or restrict severely the ability of, we call them insurance producers, to share compensation based on the sale of insurance. One of the basic questions where you have an embedded-like scenario is proper attribution of the insurance transaction to the licensed party, either a licensed insurance company or a licensed insurance producer. And that involves looking at the website and making sure that under a reasonable person test that the consumer would understand that they're dealing with a licensed insurance industry party and that that is the party conducting the sale. Privacy laws. We, the insurance industry, also subject to our own Gramm-Leach-Bliley privacy laws. So data sharing, you have to be careful to determine whether you need consent and whether the financial institution or whoever's selling the primary product can share data with the insurance-regulated entity and vice versa. John, you might want to add a couple of other items that we encounter.

John Emmanuel (07:53):
Yeah, I think the biggest areas that we've seen are, one, the licensing impact, because there is going to be an unlicensed entity that is at least tied to that transaction. And sometimes our clients say, "You know what, we're just going to go ahead and form and license a separate entity to be a licensed broker or agent." And we've done that before to eliminate any solicitation or sales activity issues. And the other one's a compensation arrangement. Obviously, you have an insurance company, for example, or insurance agent that might be unaffiliated, and you have the other non-licensed entity whose product is tied to that. How are they going to get paid? What's the compensation structure? You'd think even a referral fee structure would be very simple, but it's not. Again, we're a 50-state regulated industry, so you have to comply with 50 different sets of laws. And even a simple referral fee might be $20 or $50 or $100. Those are regulated. Some have caps, for example. Some say you can't have it tied to the purchase of insurance, it could be a click. So those are the two biggest areas that we've seen.

Chris Willis (08:52):
Well, and last but not least, here in the consumer finance world, we're big fans of disclosures. And my recollection is that state insurance laws and regulations also have a lot of disclosures associated with them as well that have to be factored into any sales presentation or sometimes contracting process as well, right?

John Emmanuel (09:09):
That's correct. There's a couple areas. One, as Brian just alluded to earlier, you have to know who you're dealing with. For example, if you're the one selling insurance, sometimes you have to disclose who you are, the name of the agency, that you're appropriately licensed. How you're getting paid sometimes. If the consumer is paying you, for example, and you're also getting a commission on the back end, you have to disclose that potential conflict of interest. So there are various disclosures that might be tied to that insurance transaction. That's very important.

Chris Willis (09:37):
Let's close out by talking about some actual real-world matters that the two of you have worked on for consumer

financial services clients. Because I've had the pleasure of working with both of you, and it's why I'm so excited to have your skill set to offer to our clients. John, why don't you start and give an example of something that you've worked on for a consumer finance company?

John Emmanuel (09:56):

Sure. We had a transaction where a company wanted to, again, it was an embedded product, it was an insurance product tied to auto financing. And in this situation, they wanted to provide some incentive for that purchase to happen. And again, as Brian alluded earlier, there are anti-rebating where you cannot provide a certain incentive to somebody to buy the insurance product, but there is a carve-out unless it's in the policy itself. So we assisted this client to make sure that that particular incentive for that sale transaction was appropriately filed and approved by the state regulators to allow that to happen.

Chris Willis (10:28):

Very interesting use case. Brian, how about you? What's an example of something you've worked on?

Brian Casey (10:32):

I'll give two, Chris. We oftentimes encounter clients that want to offer a group-type insurance product as opposed to an individual product. And there are limitations, in some cases prohibitions, on group property and casualty as opposed to life and health products. So designing a national multi-state group property and casualty product can be a challenge in some states. The second example, we've helped financial institutions that offer fixed indemnity health-like policies where you go to the hospital and you get a fixed indemnity. And that's a group-type product in most cases for cardholders or bank or other financial institution customers. So those can be a little tricky because you have multi-state laws and regulations that may not always rhyme and reason with majority of the states, and you've got to deal with outlier states sometimes that have their own twists and turns from a product development perspective.

Chris Willis (11:31):

Those are great examples, and thank you both for sharing those. The point that I want to close by letting the audience know is Brian and John have this incredible, very comprehensive expertise about insurance and insurance-related products, and it's part of the mosaic of services that we here at Troutman Pepper have built out to serve the financial services industry. And I'm really proud, I have to tell you, of the way that we've done that and the contribution that our merger a year and a half ago made to that effort to have this very comprehensive suite of services. And so it's been my pleasure to have both Brian and John on the podcast today. Thank you both for being here. And of course, thanks to our audience for listening in as well. Don't forget to visit and subscribe to our blogs, troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com. And while you're at it, why not visit us on the web at troutman.com and add yourself to our consumer financial services email list? That way we can send you copies of the alerts and advisories that we release from time to time, as well as invitations to our occasional industry-only webinars. And of course, stay tuned to your podcast feed every Thursday afternoon for a great new episode of this podcast. Thank you all for listening.

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