

**Proposed Legislation Would Create Statutory Right For Insured
To File A “Bad Faith” Claim Against Their Insurance Company And
Recover Attorney Fees.**

The New Jersey Senate has reintroduced the “Consumer Protection Act,” which would establish a private cause of action which would allow insureds (or their assignees) to allege “bad faith” against their insurance company. Currently, a cause of action for “bad faith” is not grounded in statute, but through the New Jersey Supreme Court’s ruling in Rova Farms Resorts Inc. v. Investors Insurance Company.

The proposed legislation provides that in addition to the enforcement authority provided to the Commissioner of Banking and Insurance (“Commissioner”), a claimant may, regardless of any action which has been filed by the Commissioner, file a civil action in court of competent jurisdiction against its insurer for any violation which could be deemed an unfair claims/settlement practice. What constitutes an “unfair practice” is defined in the New Jersey statute, but may only be pursued by the Commissioner. The unfair claims settlement practices are defined in N.J.S.A. 17:29B-4(9) as follows:

Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue;

Failing to acknowledge and act reasonably and promptly upon communications with respect to claims arising under insurance policies;

Failing to adopt and implement reasonable standards for prompt investigation of claims arising under insurance policies;

Refusing to pay claims without conducting a reasonable investigation based upon all available information;

Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately covered in actions brought by such insureds;

Attempting to settle a claim for less than the amount of which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

Attempting to settle claims on the basis of an application that was altered without notice to, or knowledge, or consent to the insured;

Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;

Making known to insureds or claimant the policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

Delaying the investigation or payment of claims by requiring the insured, claimant or physician to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

Failing to promptly settle claims where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

Failing to promptly provide a reasonable explanation of the basis of the insurance policy in relation to the facts for applicable law for denial of claim or for the offer of a compromised settlement;

Requiring insureds or claimants to institute or prosecute complaints regarding motor vehicle violations in the municipal court as a condition of paying private passenger automobile insurance claims.

Under this bill, if an insured can establish that an insurance company engaged in an unfair practice, they would be entitled to: (1) their monetary damages; (2) attorney fees; and (3) punitive damages if malice or a wanton/willful disregard for the insured's rights are proven by clear and convincing evidence.

A similar version of this bill has previously been introduced. However, it did not clear a committee. The current version is co-sponsored by Senator Nicholas Scutari (Democrat) and Senator Jennifer Beck (Republican).

In light of Super Storm Sandy, there is the possibility that this legislation will gain support by the legislature. At this time, no hearing has been scheduled for this bill at the committee level.