

Superstorm Sandy Is Causing New York and New Jersey Legislators to Reconsider Passing Legislation that Would Establish a Private Right of Action for Bad Faith Claim Handling

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Policyholders in New York and New Jersey presently have no private right of action against insurance companies for alleged violations of each state's respective statutory claim handling guidelines – New York's Unfair Claim Settlement Practices Act, N.Y. Ins. Law § 2601, and New Jersey's Unfair Claim Settlement Practices Act, N.J. Admin. Code tit. 11, §§ 2-17.6 and 2-17.7. Although the New York and New Jersey statutes each prohibit insurers from engaging in unfair claim settlement practices, neither allows insureds the right to enforce the laws or seek damages for a violation by filing a lawsuit against the insurer. Rather, the Insurance Department for each state are vested with the exclusive power of enforcement, and then only when an insurer engages in a pattern of violations demonstrating that the mishandling of claims is a general business practice. That may soon change, however.

On January 8, 2013 and January 28, 2013, a pair of bills was re-introduced in the New Jersey Senate and Assembly, respectively, authorizing a private right of action by any insured directly against its insurer for a violation of New Jersey's claim handling guidelines, regardless of any action by the Insurance Department and notwithstanding that the insurer did not violate the guidelines with enough frequency to constitute a general business practice. Senate Bill 2460, introduced by Senators Nicholas P. Scutari (D-Middlesex) and Jennifer Beck (R-Monmouth), and Assembly Bill 3710, introduced by Assemblywoman Linda Stender (D-Middlesex), are identical in text and seek to codify New Jersey case law recognizing private causes-of-action for first- and third-party bad faith

claims handling, as set out in *Pickett v. Lloyd's*, 131 N.J. 457 (1993) and *Rova Farms Resort, Inc. v. Investors Ins. Co.*, 65 N.J. 474 (1974). Under the bills, an insured may recover: (1) the full amount of damages – without regard to policy limits; (2) prejudgment interest, reasonable attorney's fees and litigation expenses; and (3) punitive damages on a showing of actual malice or willful and wanton disregard by clear and convincing evidence. If passed, the bills would take effect immediately, and apply to all claims filed after October 1, 2012 – thus ensuring application to Superstorm Sandy insurance claims.

Similarly, on March 6, 2013, New York Assemblywoman Helene Weinstein (D-Brooklyn) proposed Bill A05780, which would amend Section 2601 by establishing a private right of action for insureds who allege unfair claim settlement practices by insurance companies. The New York bill, as written, is not as comprehensive as the New Jersey propositions. The New York measure would apply only to catastrophic events like Superstorm Sandy, *i.e.*, a person who suffers a loss related to an insurance claim for property damage in an area encompassed by an executive order declaring disaster emergency. An insured who meets the bill's requirements would be permitted to bring an action to enjoin an insurer's allegedly unlawful practices, and to recover actual damages. In addition to actual damages, the bill also permits a court, in its discretion, to award reasonable attorney's fees and punitive damages for violations. However, punitive damages could only be awarded upon a finding that the insurer willfully or knowingly violated Section 2601.

In order for the New Jersey and New York bills to become law, they must first make it through Senate and/or Assembly committees. The committees will review and discuss the proposed bills, then consider any necessary revisions. If the bills pass through the committees, they will be debated for a floor vote. New York Assembly Bill A05780 has been pending before the Assembly Insurance Committee since March 6, 2013. New Jersey Senate Bill 2460 has been pending before the Senate Commerce Committee since January 8, 2013. New Jersey Assembly Bill 3710 has been pending before the Assembly Financial Institutions and Insurance Committee since January 28, 2013.

No hearings on the bills have yet been scheduled. Cozen O'Connor will continue to track the progress of the bills and report on all pertinent developments. Also, please check Cozen O'Connor's newest blog, www.nobadfaith.com, for immediate updates.

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Melissa Brill in New York at 212.908.1257 or mbrill@cozen.com and Kellyn J. W. Muller in New Jersey at 856.910.5063 or kmuller@cozen.com.

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