

New Jersey Senate Introduces Bill No. 3036 Providing A Private Cause Of Action In The Settlement Of Insurance Claims

By: Kevin Coughlin, Michael Hrinewski

September 23, 2011

On Tuesday, September 19, 2011, New Jersey State Senator Nicholas Scutari introduced State Senate Bill No. 3036 (the "Bill") which "establishes a private cause of action for insured's or their assignees regarding bad faith settlement practices. . . of claims involving insurance coverage."

The principal purpose of the Bill is to reverse a recent New Jersey Supreme Court decision that held that a right to a jury trial exists in bad-faith failure to settle actions. Senator Scutari represents the 22nd district, including parts of Middlesex, Somerset and Union counties and is the co-chair of the Senate Judiciary Committee.

The Bill would allow a "claimant", defined as someone with a direct right to payment under a policy or an "assigned right," to file a cause of action against an insurer for the failure to effectuate a prompt, fair and equitable settlement of a claim when liability is reasonably clear. The Bill provides that in order to prevail, the claimant must show that the insurer acted unreasonably in the investigation, evaluation, processing, payment, or settlement of the claim or without a reasonable basis to deny coverage.

Additionally, the Bill would reverse the recent New Jersey Supreme Court decision in Wood v. New Jersey Manufacturers Ins. Co., 206 N.J. 562 (2011), which held that a right to a jury trial attaches for bad faith breach of contract claims against insurers, and mandate that such claims be "heard and decided by a judge of competent jurisdiction."

Additionally, the Bill would allow for an award of punitive damages based on clear and convincing evidence of an insurer's "wanton and willful disregard **of any person** who foreseeably might be harmed by the insurer's acts or omissions." (emphasis added). It is unclear as to who would be included within the meaning of "any person" in this context since the defined term "claimant" is used elsewhere throughout the Bill. The cause of action the Bill would create is only available to persons coming within the definition of "claimants," and consequently clarification on this issue may be needed if the Bill is passed.

In order to become law, the Bill must first go before the Judiciary Committee, prior to being voted on by the full Senate. Moreover, if it passes in the Senate, the State Assembly must also vote and approve it before it goes to the Governor for signature or veto. If passed, the Bill could be challenged on constitutional grounds based on an argument that the Bill deprives a party of the right to a jury trial in cases in which the Constitution allows for one.

Should you have any questions regarding this legislation or any related topics, please contact Kevin E. Wolff or Vincent E. Reilly.