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Alert

New Jersey Insurance Fair Conduct Act Establishes Private Right of Action for UM/UIM Claimants

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On January 18, 2022, Governor Phil Murphy signed into law the New Jersey Insurance Fair Conduct Act (the "Act"), effective as of that date. The Act represents a significant change in the law governing the conduct of automobile insurers in New Jersey.

The Act allows claimants who are injured in motor vehicle accidents and entitled to uninsured (UM) or underinsured motorist (UIM) coverage – benefits due where there is either no bodily injury coverage on the vehicle responsible for the accident, or where that vehicle's policy limit is insufficient to cover all of the claimant's injuries – to file a lawsuit against their insurer for "1) unreasonable delay or unreasonable denial of a claim for coverage or payment of benefits; or 2) any violation of the provisions of section 4" of the New Jersey Unfair Claims Settlement Practices Act (UCSPA), N.J.S.A. § 17:29B-4, which governs "unfair methods of competition and unfair and deceptive acts or practices in the business of insurance."

Importantly, "deceptive acts or practices in the business of insurance" under the UCSPA include "unfair claim settlement practices." Section 17:29B-4 sets forth various examples of such prohibited practices, including misrepresenting available policy limits, failing to promptly investigate a claim, failing to make a good faith effort to settle a claim when liability becomes reasonably clear, and compelling insureds to institute litigation to recover benefits.

The Act not only establishes a private right of action under the UCSPA to UM/UIM claimants, but also expressly provides that "the claimant shall not be required to prove that the insurer's actions were of such frequency as to indicate a general business practice." Claimants who establish a violation of the Act are entitled to recover actual damages, including trial verdicts, up to three times the applicable coverage amount, as well as pre- and post-judgment interest, reasonable attorney's fees, and reasonable litigation expenses.

Perhaps the most notable impact of the Act is the questions it leaves unanswered, which we anticipate will lead to a significant amount of litigation. For example, the Act does not define what

constitutes “unreasonable delay” in paying benefits, or what constitutes “unreasonable denial” of a claim for coverage, or whether this standard mirrors the “fairly debatable” standard established by the Supreme Court in *Pickett v. Lloyd’s*, 131 N.J. 457 (1993), as applied to UM/UIM claims. Nor does the Act specify the claimant’s burden of proof or whether the Act will apply retroactively to claims made prior to the Act’s effective date. It remains to be seen how courts will interpret the statute and whether they will look to decisions from states with similar laws, such a Pennsylvania or Colorado, for guidance.

The Act provides claimants with a new avenue of recourse against insurers that will significantly impact the exposure presented by UM/UIM claims. Insurers should consider educating their UM/UIM adjusters on the new law and ensure there is a process in place for handling these types of claims. Coughlin Midlige & Garland can assist insurers in the assessment process and development of practices to reduce exposure to claims under the Act.