THE NEW JERSEY INSURANCE FAIR CONDUCT ACT: ONE STEP CLOSER TO ACCOUNTABILITY

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New Jersey policyholders finally have a statutory cause of action for bad faith for certain claims against their insurance companies thanks to the enactment of the New Jersey Insurance Fair Conduct Act (the Act). The duty of good faith and fair dealing is inherent in every contract, including insurance policies, and New Jersey has long recognized a common law cause of action for bad faith. But when and how an insurance company may breach it has been a hotly contested issue between insurance companies and their policyholders. With the passage of the Act, the New Jersey Legislature has joined the majority of jurisdictions countering unfair insurer advantage. Signed into law on January 18, 2022, by New Jersey Governor Phil Murphy, the Act is an important step towards holding insurance companies accountable for unreasonable delays and denials in their processing claims involving uninsured and underinsured motorist (UM/UIM) coverage. While this particular law may only benefit a narrow subset of policyholders, it is part of a larger effort by the New Jersey legislature to enact broader protections to consumers against bad faith claims processing.

The Act affords a "claimant"[1] seeking UM/UIM coverage, who is either (1) "unreasonably denied a claim for coverage or payment of benefit" or (2) "who experiences an unreasonable delay for coverage or payment of benefits," a civil cause of action in court against the responsible insurance company.[2] The Act further authorizes a claimant to seek redress for related violations to the New Jersey Unfair Claims Settlement Practices Act.[3] Such violations include, among others, a carrier failing to promptly communicate and investigate a claim, failing to issue a coverage determination within a reasonable time, refusing to pay claims without conducting a reasonable investigation based upon all available information, and compelling policyholders to institute litigation in pursuit of their claims.[4] In addition to actual damages up to three times the coverage limit, the Act entitles claimants to "reasonable" attorney's fees and "reasonable" litigation expenses.[5]

This is not the first time the New Jersey legislature considered an insurance bad faith law. In 2018, the New Jersey Senate passed S.B. 2144.[6] That bill did not limit its applicability to UM/UIM coverage or motor vehicle accidents. Instead, S.B. 2144 would have entitled claimants "under an insurance policy" to seek damages, including treble damages, and attorney's fees, for "unreasonable" delays or denials.[7] S.B. 2144 drew vocal opposition from insurance companies who argued that the Act would doom New Jersey's insurance market with across-the-board rate increases in response.[8] The bill ultimately stalled in the New Jersey Assembly, which took another three years before it was able to pass the current, narrower version of the Act.

Perhaps in response to insurance companies' criticism of S.B. 2144 as inevitably increasing the costs of insurance in New Jersey, the Act specifically prohibits carriers from imposing rate increases on policyholders as a result of the Act.[9] Likewise, the Act further authorizes the commissioner of banking and insurance to "determine

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whether an insurer's rates are constitutionally adequate" and, if not, "determine an appropriate rate adjustment."[10]

The Act, however, is not without shortcomings. Although the Act seeks to prevent insurers from imposing "unreasonable" delays or denials, the Act fails to define what would constitute an "unreasonable" delay or denial. Without a more concrete definition, the Act may ultimately force policyholders into litigating the bounds of acceptable claims-handling practices. Policyholders can expect accused carriers to vigorously advocate applying a standard akin to the "fairly debatable" standard set forth in *Pickett v. Lloyds,* 131 N.J. 457 (1993).

In *Pickett*, the New Jersey Supreme Court held that bad faith claims against insurers are subject to a standard "not to be equated with simple negligence."[11] As the court summarized it, "[i]f a claim is 'fairly debatable,' no liability in tort will arise."[12] With regard to denial of benefits claims, *Pickett* requires policyholders to establish that "no debatable reasons existed for denial of the benefits."[13] With regard to claims for processing delays, *Pickett* requires policyholders to establish that "[(1)] no valid reasons existed to delay processing the claim and [(2)] the insurance company knew or recklessly disregarded the fact that no valid reasons supported the delay."[14] As the court put it, "[u]nder the 'fairly debatable' standard, a claimant who could not have established as a matter of law a right to summary judgment on the substantive claim would not be entitled to assert a claim for an insurer's bad-faith refusal to pay [or delay in paying] the claim."[15] Unlike *Pickett*, however, the Act does not require a policyholder to establish a carrier's state-of-mind to prevail on a bad faith claim. To the contrary, all that the Act requires is that the carrier has engaged in unreasonable delays or denials.

Notwithstanding that the prior bill did not garner a legislative majority, the passage of the Act is a sign that New Jersey is progressing to greater policyholder protections. Policyholders should keep abreast of developments in this area and be prepared to take advantage of any helpful case law, or subsequent legislation, that may arise.

FOOTNOTES

[1] The Act defines a "claimant" as "an individual injured in a motor vehicle accident and entitled to the uninsured or underinsured motorist coverage of an insurance policy[.]" The Act, (2).

[2] The Act, (3)(a)(1).

[3] *Id.*

[4] N.J.S.A. § 17:29B-4. Previously, policyholders could only rely on the Unfair Claims Settlement Practices Act as evidence of a carrier's bad faith. *See, e.g.*, Miglicio v. HCM Claim Mgmt. Corp., 282 N.J. Super. 331, 341 (Law Div. 1995) ("The statute and regulations set forth a standard of conduct for insurers as to the settlement of claims with, or on behalf of, their insured. Dependent upon the underlying reasons for noncompliance, any deviation from the standards may be considered as evidence of bad faith.").

[5] The Act, (3)(d).

[6] S.B. 2144, 218th Leg. (N.J. 2018).

[7] *Id.* at (2).

[8] *See,* e.g., NJM Group 2019 Letter, (last accessed Jan. 2, 2022).

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[9] The Act, (3)(c).

[10] *Id.*

[11] *See* Pickett v. Lloyds, 131 N.J. 457, 481 (1993).

[12] *Id.* at 473 (internal citations omitted).

[13] *Id.*

[14] *Id.*

[15] *Id.*

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