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New York Assembly Reconsiders ‘Bad Faith’ Bill

BY: Copernicus T. Gaza, Craig Rokuson, Eric D. Suben

The New York State Assembly is considering A07285, which creates a private right of action for bad faith “if the insurer unreasonably refuses to pay or unreasonably delays payment without substantial justification.” The bill was first introduced in 2013 but was reintroduced on May 3, 2021 and has received some recent attention. According to the bill, an insurer acts unreasonably when it (among other things):

1. Fails to provide the claimant with accurate information regarding policy provisions relating to the coverage at issue; or
2. Fails to effectuate in good faith a prompt, fair, and equitable settlement of a claim or portion of a claim and where the insurer failed to reasonably accord at least equal or more favorable consideration to its insured's interests as it did to its own interests, and thereby exposed the insured to a judgment in excess of the policy limits or caused other damage to a claimant; or
3. Fails to provide a timely written denial of a claimant's claim, or portion thereof, with a full and complete explanation of such denial, including references to specific policy provisions wherever possible; or
4. Fails to act in good faith by compelling such claimant to initiate a lawsuit to recover under the policy by offering substantially less than the amounts ultimately recovered in such suit; or
5. Fails to timely provide, on request of the policy holder or the policy holder's representative, all reports or other documentation arising from the investigation of a claim; or
6. Refuses to pay a claim without conducting a reasonable investigation prior to such refusal.

Under A07285, a policyholder who establishes liability shall be entitled to recover amounts due under the policy, costs and disbursements, consequential damages, reasonable attorney's fees, interest from the time of the loss or failure to offer a fair and reasonable settlement, and punitive damages.

The bill appears to supersede all common law remedies available to policyholders and provides for harsh penalties in the face of “unreasonable” coverage denials and/or failing to provide specified information. The bill is currently in the New York State Assembly's Insurance Committee for consideration.