“...a fair and balanced approach”

THE PURPOSE AND EFFECT OF THE NEW YORK UNFAIR CLAIM PRACTICES ACT

Policyholders who pay insurance premiums should expect insurers to live up to their policy obligations. Currently, insurance companies routinely deny consumers the benefits of the policy they purchased, misrepresent policy coverage, and undervalue claims. It has also been widely reported that some insurance company experts' opinions and reports have been falsified and conclusions changed to favor a claim denial to the prejudice of the premium paying public on a massive scale. This activity is so widespread it resulted in reopening 144,000 Sandy claims. Insurers can now deny or undervalue claims with impunity.

The purpose of the Act is to protect New York policyholders by holding their insurance companies responsible for refusing to pay or unreasonably delaying or undervaluing property damage claims. The Act uses a fair and balanced approach while discouraging expensive litigation.

WHAT'S NEW?

The Act will allow a policyholder who meets the standards provided under the Act to recover (in addition to their claim payment):

Compensatory Damages

Consequential Damages

Reasonable Attorneys' Fees

Punitive Damages
(Capped at three time the value of the covered loss)

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With respect to property damage claims, the consumer can recover under the Act if he or she can prove that the insurance companies’ refusal to pay or unreasonable delay in payment is not substantially justified. The insurer is not substantially justified under the Act when it:

1. Failed to provide the policyholder with accurate information concerning policy provisions relating to the coverage at issue;
2. Failed to provide a timely written denial of a policyholder’s claim with a full and complete explanation of such denial, including references to specific policy provisions wherever possible;
3. Failed to make a final determination and notify the policyholder in writing of its position on both liability for and the insurer’s valuation of a claim within a reasonable time not to exceed six months of the date on which it received actual or constructive notice of the loss upon which the claim is based;
4. Failed to act in good faith by compelling a policyholder to institute suit or compel appraisal to recover amounts due under its policy by offering substantially less than the amounts ultimately recovered in suit or by appraisal;
5. Failed to provide, on request of the policyholder or their representative, all reports, letters or other documentation arising from the investigation of a claim and evaluating liability for or valuation of such claim;
6. Refused to pay a claim without conducting a reasonable investigation;
7. Negotiated or settled a claim directly with a policyholder known to be represented by an attorney without the attorney’s knowledge or consent. The provisions of this paragraph shall not be deemed to prohibit routine inquiries to a policyholder to obtain details concerning the claim; or
8. Negotiated or settled a claim directly with a policyholder known to be represented by a licensed public adjuster; or
9. Negotiated or settled a claim directly with a contractor or unlicensed public adjuster; or
10. Acted in violation of section two thousand six hundred one of this article or any regulation promulgated pursuant thereto;
11. Required a policyholder to submit duplicate or repetitive information already submitted;

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With respect to the protection of consumers in the event of liability claims against the policyholder, the Act offers strong new safeguards in addition to those above when the insurer:

1. Failed to advise a policyholder that a claim may exceed policy limits, that counsel assigned by the insurer may be subject to a conflict of interest, or that the policy holder may retain independent counsel.

2. Failed to effectuate a prompt and fair settlement of a claim or any portion thereof, in that 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;

3. An action may also be maintained by any injured person or representative against an insurer to recover damages including costs and disbursements, consequential damages, reasonable attorney's fees, interest from the time of failure to offer a fair and reasonable settlement in accordance with this section, and punitive damages as determined by the finder of fact or court, not limited to the policy limits, where a preponderance of the evidence establishes that the insurer failed to effectuate a prompt and fair settlement of a claim or any portion thereof, in that under the totality of the facts and circumstances related to the claim, 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.

4. Required an Insured claimant to submit duplicate or repetitive information previously submitted.

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THE NEW YORK UNFAIR CLAIM PRACTICES ACT IS FAIR AND BALANCED TO BOTH CONSUMERS AND THE INSURANCE INDUSTRY

- The Act allows punitive damages and attorneys’ fees providing financial incentives for fair claims practices. Punitive damages shall be determined by the finder of factor the court, and not limited by the Policy limits. (Capped at three time the value of the covered loss)

- The Act requires the consumer to give the insurance company notice of the consumer’s complaint(s) 30 days prior to the commencement of litigation as a condition of recovery. This will guarantee an opportunity for the insurance company to correct the problem by a tender of payment without litigation or bad faith exposure. This “civil remedy notice” has worked very successfully in other states. The tender of payment may be asserted as a defense in any action.

- The Act discourages costly and time-consuming litigation by encouraging the use of the insurance policy’s “Appraisal” process.

- The Act prohibits the insurance industry from raising premiums as a result of awards for damages provided for in the Act forcing shareholders to take responsibility for the misdeeds of the insurer.

- The Act incorporates other procedural and evidentiary safeguards to avoid abuse by either side, such as:

  - Bifurcating trials to avoid prejudice to the insurers.
  - Defining rules of the admissibility of evidence regarding claims practices to ensure a fair and complete record. Evidence of settlement discussions and details of the claims process shall be admissible.
  - Upon demand of the policyholder the carrier shall produce its entire claims file within 30 days of demand.

THE INSURANCE INDUSTRY’S OPPOSITION - WHAT THEY ARE SAYING...AND WHAT IS THE TRUTH

The Insurance Industry Argues: *“If the Act becomes law, premiums will go up costing consumers millions.”*

The Truth: Section 2601(e) of the Act states: “All amounts recovered from an insurer...in any action authorized by this section shall be excluded by the insurer in its determination of the premiums it will charge all policyholders...”

The Insurance Industry Argues: *“If the Act becomes law, the industry will flee the market in New York.”*

The Truth: First, current law prohibits an insurance company from not renewing more than 5% of its policies in one year. So even if an insurer chose to leave the New York marketplace it would take many years for the carrier to do this. Experience tells us that in the states where such laws exist, the insurance market is healthy and thriving.

The Insurance Industry Argues: *“Consumers can already recover attorneys’ fees based upon current law so no change is necessary.”*

The Truth: Unfortunately, the courts that have considered the issue in New York have held that the right to attorneys’ fees due to bad faith claims practices does NOT exist. Sukup v. New York State, 19 N.Y.2d 519 (1967); New York University v. Continental Insurance Company, 87 N.Y.2d 308 (1995); Rockonova v. Equitable Life Ins. Society of the United States, 83 N.Y. 2d 603 (1994). There are but one or two examples of attorneys’ fees being recovered in the long history of New York State. The industry’s argument is also disingenuous as insurers routinely argue the contrary position in all litigation where it is raised.

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THE INSURANCE INDUSTRY’S OPPOSITION - WHAT THEY ARE SAYING...AND WHAT IS THE TRUTH-continued

The Insurance Industry Argues: *“Consumers have the Department of Financial Services to protect them.”*

The Truth: First, as illustrated by the stories told by victimized consumers, current protections have proven entirely inadequate and have allowed the problem of bad faith claims practices to flourish.

Second, in an annual detailed study done by R Street entitled “2022 Insurance Regulation Report Card (Study No. 216)” (December, 2022), New York’s Department of Financial Services and the other state insurance departments were evaluated to determine which states do the best job of regulating the business of insurance and protecting consumers.

Sadly, New York’s Department of Financial Services received a grade of “D” for 2022 “F” for 2020, and “D” for 2019. New York ranked the 47th worse state out of the 50 states for protecting consumers in 2022. The DFS has received the ranking of “D” or “F” for the last decade or more.

The Department routinely responds to consumer complaints by stating “...the complaint appears to raise questions of fact and law and such matters can only be decided by a court of law,” and these consumers are rendered defenseless as they are unable to enforce the current law. The truth is the DFS cannot protect consumers, and consumers cannot protect themselves.

The Insurance Industry Argues: *“Should the Act become law, it will increase litigation and is a boon to the ‘trial lawyers.’”*

The Truth: Section 2601-(a)(5) of the Act makes it illegal for carriers to force needless litigation. Section 2601-(j) of the Act guarantees the insurer one month to correct the problem and do the right thing and limit the insured’s recovery to the amount tendered. Reports from around the country establish that similar bad faith legislation has resulted in reduced litigation as claims tend to be paid more fairly.