

In the Wake of Superstorm Sandy, Insurance Carriers are Well-Advised to Review New Jersey Insurance Bad Faith Law

Superstorm Sandy's devastating landfall in October 2012 caused property damage and income loss in New Jersey that early estimates suggest will exceed \$50 billion. Commercial and personal lines property insurers have been inundated with claims. As some of these claims progress, the term "bad faith" may be hurled by policyholder representatives - public adjusters and attorneys - who may have little familiarity with New Jersey law governing such assertions.

As this surge of claims wends its way through the system, insurance carriers are well-advised to reacquaint themselves with New Jersey's law regarding claims of insurer bad faith. Post & Schell's Rich McMonigle, a Principal in the Firm's Insurance Law Department (and the author of *Insurance Bad Faith in New Jersey*, published by ALM in 2012), addresses this issue in the New Jersey Law Journal in the recently published article, "[Sandy Claims May Have Lawyers Consulting Bad-Faith Law.](#)"

For the policyholder, the insurance bad faith remedy in New Jersey is more restrictive than that permitted in numerous other states. Specifically:

- Unlike several states, New Jersey does **not** have a statutory bad faith remedy. New Jersey's bad faith law is court-created, and affords the insured more limited remedies with regard to first-party insurance claims.
- Under the leading *Pickett v. Loyds* decision, bad faith may be found where an insurer fails to process a first-party claim in a timely fashion, but only if the insured proves that "no valid reasons existed to delay processing the claim and the insurance company knew or recklessly disregarded the fact that no valid reasons supported the delay."
- To prove bad faith in the context of a denial of first-party benefits under *Pickett*, the insured must prove that "no debatable reasons existed for denial of the benefits." This standard can be difficult for an insured to meet, as the insured must arguably establish that he or she is entitled to *summary judgment* on the contract claim before a bad faith claim will lie.
- *Pickett* further admonishes that "courts should carefully scrutinize the proofs of extra-contractual damages to insure that juries are not given potentially misleading items of evidence."
- In order to recover punitive damages or damages for emotional distress, a plaintiff must demonstrate "egregious circumstances"- such as "aggravation, insult, cruelty, vindictiveness or malice."
- Policyholders cannot typically recover counsel fees in actions against insurers on first-party claims, even if successful; recovery of attorneys' fees under the New Jersey Court Rules is generally restricted to suits for coverage for third-party claims.

A final note: a proposed bad faith statute (S-2460) has been submitted before the New Jersey State Senate, but predictions are that it is unlikely to be enacted in this session (and would likely not affect Sandy claims even were it passed).

Richard McMonigle is a Principal with the Princeton and Philadelphia offices of Post & Schell, P.C., where he advises and defends insurance carriers on coverage and claims-handling issues. He is the author of *Insurance Bad Faith in New Jersey* (ALM 2012), and *Insurance Bad Faith in Pennsylvania* (13th Ed., ALM 2012). He may be reached at rmcmonigle@postschell.com or (215) 587-1019.

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