

ALERT

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COZEN
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BILL ALLOWING PUNITIVE DAMAGES FOR INSURER'S BAD FAITH CONDUCT INTRODUCED IN NEW JERSEY SENATE

Thomas McKay • 856.910.5012 • tmckay@cozen.com

On August 25, 2011, a New Jersey state senator introduced Senate Bill 3036, purportedly to reverse the New Jersey Supreme Court's holding in *Wood v. New Jersey Manufacturers Ins. Co.*, 206 N.J. 562, 21 A.3d 1131 (June 14, 2011). The bill goes far beyond a simple reversal, however, and could have significant financial implications for insurers that breach their duty of good faith and fair dealing with their insureds.

In our June 30 alert earlier this year, we reported on the *Wood* decision, which held that a right to a jury trial attaches to a *Rova Farms* claim (alleging the bad-faith failure of a liability insurer to settle an underlying tort action within policy limits). Prior to *Wood*, such claims were routinely decided by judges.

If enacted into law, Senate Bill 3036 would establish a statutory private cause of action in first-party and third-party claims where the claimant can "prove that the insurer acted unreasonably in the investigation, evaluation, processing, payment or settlement of the claimant's claim for coverage under the policy or without a reasonable basis in denying coverage." The bill specifies that the cause of action would be tried by a judge.

The bill would allow a successful claimant to recover "the full amount of [claimant's] damages as determined by the judge, regardless of the coverage limits of the policy," as well as prejudgment interest, reasonable attorney's fees and costs. Punitive damages would also be recoverable if the insurer's conduct demonstrates actual malice or "wanton and willful disregard of any person who foreseeably might be harmed by the insurer's acts or omission." A punitive damage claim would require proof by clear and convincing evidence.

The bill's sole sponsor is Senator Nicholas Scutari, D-Union. He is a lawyer and chairs the Senate Judiciary Committee. No hearings on the bill have yet been scheduled. We will track the progress of this bill in the legislature and advise of pertinent developments.

To discuss any questions you may have regarding the opinion discussed in this Alert!, or how it may apply to your particular circumstances, please contact Thomas McKay at tmckay@cozen.com or 856.910.5012.

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