

## Newly Implemented Law Permits Claimants to Sue Automobile Insurers for Delayed Payment of Uninsured and Underinsured Motorist Benefits

The New Jersey Insurance Fair Conduct Act (the "IFCA"), Senate Bill S1559, was recently signed into law by Governor Phil Murphy on January 18, 2022, and is ostensibly aimed at making sure that insurance companies act in good faith in connection with the payment of Uninsured Motorist ("UM") and Underinsured Motorist ("UIM") benefits. UM and UIM benefits are "first-party" insurance benefits selected by a policyholder that are designed to protect insureds, if they are involved in a motor vehicle accident with another at-fault driver, who is either uninsured or who does not have enough insurance coverage to pay for the damages or injuries that they caused.

The IFCA creates a statutory private bad faith cause of action, and allows claimants entitled to UM/UIM benefits who are injured in a motor vehicle accident to file suit directly against their automobile insurer for:

1. an unreasonable delay or unreasonable denial of a claim for payment of benefits under an insurance policy; or
2. any violation of the provisions of section 4 of P.L.1947, c.379 (C.17:29B-4) (which is known as the New Jersey Unfair Claims Settlement Practices Act ("UCSPA") and defines "unfair methods of competition and unfair and deceptive acts or practices in the business of insurance").

It creates a private cause of action for "unreasonable" delay or denial of UM/UIM benefits. It also affords claimants the ability to file suit against their automobile insurers under the UCSPA. The IFCA recognizes that the Commissioner of Banking and Insurance retains enforcement authority pursuant to the UCSPA (see, N.J.S.A. 17:29B-5), but, regardless of any enforcement action undertaken by the Commissioner, a claimant may file a private cause of action against his or her insurer. In connection with its enforcement authority, the UCSPA states that the Commissioner is required to find that certain violations occurred "with such frequency as to indicate a general business practice." See N.J.S.A. 17:29B-4(9). However, the IFCA appears to relax that requirement for private causes of action, stating that "the claimant shall not be required to prove that the insurer's action were of such a frequency as to indicate a general business practice."

Certain activities are identified by the UCSPA as "unfair methods of competition and unfair and deceptive acts or practices in the business of insurance," including, but not limited to, misrepresentation and false advertising of policy contracts, false information and advertising, defamation, boycott, coercion and intimidation, false financial statements, stock operations and advisory board contracts, unfair discrimination, rebates, unfair claim settlement practices and failure to maintain complaint handling procedures. See N.J.S.A. 17:29B-4. Private causes of action can now be brought against insurers under the IFCA with respect to this type of "unfair and deceptive" conduct. However, there are notable ambiguities caused by the language of the IFCA, which does not define what constitutes "unreasonable" delay or "unreasonable" denial of UM/UIM benefits. It is anticipated that the New Jersey Courts will ultimately be called upon to address the applicable standard as to what constitutes "unreasonable" and actionable conduct under the IFCA. The existing body of bad faith caselaw may or may not prove to be instructive. See, e.g., *Pickett v. Lloyds*, 131 N.J. 457 (1993) (holding that an insurance company may be liable to a policyholder for bad faith with respect to the payment of benefits by showing that "no debatable reasons existed for the denial of the benefits").

A successful claimant who is able to prove an IFCA violation may recover actual damages, including trial verdicts, up to three times the applicable coverage limit, plus pre- and post-judgment interest, attorney's fees and litigation expenses. New Jersey practitioners who defend against UM/UIM claims should become intimately familiar with the IFCA which presents an avenue of potential significant exposure for insurance carrier clients. The IFCA will need to be fleshed out in the Courts and will surely lead to protracted litigation.

The experienced insurance coverage & litigation attorneys at Kaufman Dolowich & Voluck, LLP are available to assist you with these matters.

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