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C A S E A L E R T

M&W PARTNER GINA STANZIALE CALLED TO TESTIFY BEFORE THE NEW JERSEY COMMERCE COMMITTEE ON SENATE BILL 2144

[Gina Stanziale](#), a partner at Methfessel & Werbel, testified last week on behalf of the insurance industry in opposition to Senate Bill 2144. The bill, christened by the plaintiffs' attorney who sponsored it as the "New Jersey Insurance Fair Conduct Act," would permit a claimant to file a civil action against an insurer for 1) unreasonable delay or unreasonable denial of a claim for payment of benefits under an insurance policy; or 2) any act or omission in violation of the Unfair Claims Settlement Practices Act, regardless of whether such act or omission demonstrates a general business practice prohibited by the UCSPA. Upon establishing a violation of the "Insurance Fair Conduct Act," the plaintiff would be entitled to not only actual damages, but also treble damages, attorney fees and costs.

If enacted, this legislation would not only create a new cause of action for consumers to assert against insurance carriers; it would threaten to impose steep penalties on insurance carriers for simple negligence that causes little if any injury beyond inconvenience to a claimant.

Ms. Stanziale, on behalf of the insurance industry, appeared before the Senate

Commerce Committee on April 5, 2018, to voice the industry's strong opposition to passage of this misguided and potentially counterproductive legislation. She noted that passage of the act as written would impose a penalty – treble damages – historically reserved for defendants found to have engaged in intentional wrongdoing. Substantively, the bill's ambiguous "reasonableness" standard would create a clear question of fact, requiring a jury trial in nearly every case that could not be settled. The bill in its present form does not define "unreasonable" delay or denial; thus nearly every claim of unreasonable delay or denial under the law would carry the right to a jury trial, with a claimant's attorney banking on a negative public perception of insurers and fee-shifting for even modestly successful claimants to exponentially increase claim value.

Gina argued to the legislators -- including the bill's sponsor -- that passage of the bill would have grave implications for both the industry and New Jersey courts. Jurors would receive little guidance on the standards governing whether or not a carrier's delay and/or denial of a claim was unreasonable. The availability of attorney fees would escalate demands and render trial preferable to reasonable

settlements based on a claimant's actual loss, creating a real risk of disproportionate jury verdicts.

Gina noted that under the bill in its current format, a simple disagreement in timing or claim value would open the door to bad faith damages. The lowering of standards for first-party bad faith would increase the incentive for the filing of fraudulent claims and would prompt higher settlement demands. Settlement negotiations would be unavailing as plaintiffs and their attorneys seek a large payout over a modest claim, increasing the backlog of civil cases and delaying the disposition of a wide variety of cases in which plaintiffs may have experienced substantial damages.

What happens when proponents of legislation seek to enhance private causes of action against insurers and increase penalties? Consumers pay the price. This bill would not only dramatically expand

the remedies available to claimants who contend that a claim was paid late or adjusted unfairly; it would also greatly increase litigation costs, which ultimately would be borne by the consumers whom the bill purports to protect.

Gina and Methfessel & Werbel mobilized with the insurance industry in opposition to the passage of this dangerous bill. Also present at the hearing were representatives of the Insurance Council of New Jersey and several other interest groups and insurance carriers. Unfortunately the bill was moved out of committee and will be put to a full vote by the State Senate on Thursday, April 12th.

We will keep you closely apprised of all developments as this bill moves through the legislature. Should you have any questions in the interim, feel free to contact [Gina Stanziale](#) directly at (732)650-6523.

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Methfessel & Werbel

2025 Lincoln Highway · Suite 200 · P.O. Box 3012 · Edison, NJ 08818 · (732) 248-4200
450 Seventh Avenue · Suite 1400 · New York, NY 10123 · (212) 947-1999
1500 Market Street · 12th Floor East Tower · Philadelphia, PA · (215) 665-5622