



METHFESSEL & WERBEL

A Professional Corporation

The Leading Insurance and Claims Attorneys

C A S E A L E R T

UM/UIM Bad Faith Legislation Poised for Passage

On January 10, 2022, the New Jersey State Legislature passed the [“New Jersey Insurance Fair Conduct Act.”](#) As Governor Murphy is likely to sign the Act in the near future, prudence dictates attention from all carriers who write auto insurance in New Jersey.

The crux of this legislation is that an uninsured/underinsured motorist claimant may assert a “bad faith” cause of action against an automobile insurer for (1) “unreasonable delay or unreasonable denial of a claim for payment of benefits;” or (2) any one-time violation of N.J.S.A. 17:29B-4 (the Unfair Claims Settlement Practices Act). Upon establishing a violation, the claimant would be entitled to “actual damages caused by the violation of this act which shall include, but need not be limited to actual trial verdicts that shall not exceed three times the applicable coverage amount.” Additionally, a claimant would be entitled to “pre- and post-judgment interest, reasonable attorney’s fees, and all reasonable litigation costs.” The legislation also prohibits insurers from increasing their rates to ensure compliance with the law or from circulating “inaccurate or misleading information to policyholders or consumers” concerning the law.

In January 2020 [Bill Bloom](#) of M&W testified before the State Assembly

Financial Institutions and Insurance Committee regarding an earlier version of the bill. In opposing the legislation on behalf the Insurance Council of New Jersey (ICNJ), Bill noted that first party claimants already have sufficient legal recourse under the 1993 Supreme Court decision in [Pickett v. Lloyds](#), litigated by M&W, which affords an insured the right to recover consequential damages where the basis of a delay or denial of a claim is not “fairly debatable.” Bill expressed deep concern about allowing UM/UIM claimants to pursue a claim for a one-time violation of the Unfair Claims Settlement Practice Act, which was always intended as a means of regulatory enforcement by professional, experienced, and unbiased auditors who were intent on precluding repeated, systemic conduct. Instead, the bill as proposed would deputize plaintiff attorneys as agency regulators, incentivizing them to litigate technical violations that cause no damage because they would be awarded fees, even for the pursuit of claims involving no damage to their clients.

While the advocacy of Bill and others before the Senate Committee resulted in some changes, ultimately the legislation passed last week effectively invites additional litigation with vague language. The Act essentially creates a “Rova Farms” cause of action for

uninsured and underinsured motorist claimants, allowing them to recover from the insurer a verdict that exceeds the policy limits - with a cap of three times the limit - if the insurer is found to have “unreasonably” delayed or denied a claim. It does not define the term “unreasonably.”

It would seem that trial courts will have two possible frameworks from which to choose in defining reasonableness in this context. One would be the “good faith” standard found in Rova Farms and its progeny. The other would be the Pickett “fairly debatable” standard. As the language of the statute mirrors Pickett more so than Rova Farms, we suspect that courts are more likely to follow the Pickett analysis.

Additionally, the provision regarding damages seems to be internally inconsistent in that it equates damage “caused by the delay” with an excess verdict – a verdict in excess of the available UM/UIM coverage. A verdict beyond the policy limit certainly is not alone evidence of unreasonableness of the carrier in failing to pay the full limit, so we expect a robust debate in the bar over when and how an excess verdict would qualify as “damage caused by the delay.”

Equally troubling is the statutory language which, read literally, seems to permit - and to incentivize with an award of fees - the filing of suit based upon a delay in receiving a responding phone call. Insurance adjusters are human; insurance carriers, like all businesses, have voicemail systems that are not infallible. Permitting suit over a delayed

communication that could be remedied with a follow-up call would seem to be an unintended consequence of legislation which appears primarily designed to extend Rova Farms to first party uninsured/underinsured motorist claims. As such, a compelling argument could be made that the legislature did not intend this as a stand-alone enforcement mechanism, but rather as a vehicle for asserting a substantive Rova Farms claim for unreasonable delay or denial of a claim which actually damages a claimant.

The take away from this arguably unnecessary legislation is that carriers should evaluate, adjust and defend UM and UIM claims in just as timely and fair a manner as they evaluate, adjust and defend third party claims. If the claimant has a strong liability claim, a serious injury and a small policy, for example, carriers should not hold firm at an offer that seeks to save a few thousand dollars due to the absence of “bad faith” exposure beyond the policy limits. The New Jersey Insurance Fair Conduct Act imports Rova Farms exposure from the third party to the first party realm of UM/UIM claims; it also arguably weaponizes the Unfair Claims Settlement Practices Act via a private cause of action which awards successful claimants with attorney fees. As such, we recommend strong oversight of the processing and adjustment of UM/UIM claims and involvement of defense counsel to guide you at pivotal decision points during the life of your UM/UIM claims.

Feel free to contact [Bill Bloom](#) or any of [our partners](#) with any questions about the impact of the IFCA on your auto claims.

Methfessel & Werbel

2025 Lincoln Highway • Suite 200 • P.O. Box 3012 • Edison, NJ 08818 • (732) 248-4200 • FAX (732) 248-2355
112 West 34th Street • 17th Floor • New York, NY 10120 • (212) 947-1999 • FAX (212) 947-3332
One Liberty Place • 1650 Market St., 36th Floor • Philadelphia, PA 19103 • (215) 665-5622 • FAX (215) 665-5623
101 Federal Street • Suite 1900 • Boston, MA 02110 • (617) 204-5630 • FAX (617) 977-9398

The Methfessel & Werbel Case Alert is published solely for the interest of friends and clients of Methfessel & Werbel and should in no way be relied upon or construed as legal advice or counsel. For specific information on recent developments or advice regarding particular factual situations, the opinion of legal counsel should be sought.

Methfessel & Werbel

2025 Lincoln Highway • Suite 200 • P.O. Box 3012 • Edison, NJ 08818 • (732) 248-4200 • FAX (732) 248-2355
112 West 34th Street • 17th Floor • New York, NY 10120 • (212) 947-1999 • FAX (212) 947-3332
One Liberty Place • 1650 Market St., 36th Floor • Philadelphia, PA 19103 • (215) 665-5622 • FAX (215) 665-5623
101 Federal Street • Suite 1900 • Boston, MA 02110 • (617) 204-5630 • FAX (617) 977-9398