



MEMORANDUM IN OPPOSITION

S5201 (Skoufis)/A2078 (Stern)

AN ACT to amend the insurance law, in relation to standards for prompt investigation and settlement of claims arising from states of emergency

The New York Insurance Association (NYIA), the state trade association that has represented the property and casualty insurance industry in New York for more than 140 years, is OPPOSED to the above-captioned bill.

This bill, by its terms, would impose unreasonable and unnecessary requirements on the claim adjustment process.

The bill's provisions would apply whenever the local, state or federal government declares a state of emergency pursuant to applicable state or federal law. It would further require an insurer who wishes to conduct a property damage inspection, to conduct that inspection, in accordance with regulations promulgated by the Department of Financial Services (DFS).

Under this bill, the insurer must inform the policyholder within 15 business days (after receiving all the information requested from the policyholder) if the claim is accepted or rejected, with the insurer given one 15-day extension. Additionally, under this bill, an insurer must pay any such claim within three business days from its settlement.

It is crucial to understand, that New York's coastal homeowners' insurance market was once a thriving, competitive market, prior to Hurricane Sandy, and has continued to be so, in the nearly 10 years since. Overreactions, however, such as this measure, could greatly inhibit such a competitive market. In fact, this bill presumes there are substantial problems with the claim settlement process. Hurricane Sandy, however, is actually a prime example of how committed insurance companies are to settling claims, both expeditiously and fairly.

It should be noted, that DFS's own report card on insurers' performance in handling Sandy claims, clearly reported that over 320,000 claims were closed with payment by insurance companies as of July 26, 2013. In accordance with that track record, it is respectfully submitted, that such is ample evidence of the system working well, and as intended, in addressing the needs of policyholders, all across the state.

As further evidence of the insurance companies' exemplary performance, DFS's own report card showed that total complaints (not even just those that have been upheld as meritorious) as a percentage of the total number of claims filed, is consistently less than 1%. From this perspective, the property and casualty insurance industry achieved a 99% satisfaction rate, in the wake of truly unprecedented events. This is an incredibly praiseworthy track record.

Requiring companies to inspect losses they legitimately want to inspect within an arbitrary time frame set by law will unquestionably slow down the claims adjustment process, harming both insurers and policyholders.

Moreover, if a uniformly brief time frame is simply imposed by law, rather than the circumstances incumbent in the disaster, then such would prove totally unrealistic in light of practical difficulties encountered by adjusters after a major disaster. Adjusters seeking to go out right after Hurricane Sandy ran into a myriad of problems with the high occupancy vehicle lane restrictions imposed by New York City for several days after Sandy impacted New York. In addition, the gas shortages that occurred after Hurricane Sandy, also placed a severe impediment upon the ability of adjusters to see as many damaged properties as possible.

It needs to be noted, that there has not been widespread complaints over the current, longstanding 15 day time frame contained in 11 New York Code of Rules & Regulations (NYCRR) section 216.5(a). This provision requires property insurers to "establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within 15 business days of receipt of notice of claim." Such is a standard that has worked, and has proven effective, over the course of many natural and man made disaster declarations.

This regulatory framework also recognizes the realities of a disaster situation, where this bill does not. For absent in this bill, but present in section 216.5, is a provision that states, that if "the insurer needs more time to determine whether the claim should be accepted or rejected, it shall so notify the claimant, or the claimant's authorized representative, within 15 business days after receipt of such proof of loss, or requested information. Such notification shall include the reasons additional time is needed for investigation." This provision recognizes that there are sometimes when the adjustment of a claimant's loss simply cannot be completed within the compressed time frames, and accordingly adjusters, upon giving claimants an explanation, must be given more time. Nowhere does this bill allow for such a reasonable exception, harming both claimants and insurers in the process.

It should also be noted, that DFS has the ability under their regulatory authority, to shorten the overall claim settlement time frame, when the circumstances dictate, and has explicitly tied such to emergency regulation. There is little question that such action would most probably occur in a future state of emergency, if the circumstances so dictate. Such an adjustment by DFS strikes NYIA as a very wise concession to the realities of adjusting claims in the dynamic aftermath of a natural disaster.

A competitive property insurance market, as New York currently enjoys, is the best method of ensuring the optimal response to insurance consumers. Passage of legislation, such as this bill, could result in a serious backlash, leading to a much less competitive coastal insurance market, with negative results for New York residents and businesses. This is exactly the mistake that New York made a few decades ago with coastal disasters in Long Island, where an over reaction by regulators and the insurance law, made coastal properties effectively uninsurable, and cost effective insurance unavailable. After realizing their mistake, these actions were repealed, and an effective, available, free market, at more reasonable prices, were restored. We should learn from such a mistake, and not repeat it.

For the foregoing reasons, **NYIA strongly urges the Legislature to not enact this measure.**