S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. ESPAILLAT, COOK, BENEDETTO, ALFANO, WALKER, FIELDS, COLTON, MILLMAN -- Multi-Sponsored by -- M. of A. ALESSI, AUBRY, BARRA, BRADLEY, BURLING, ERRIGO, GOTTFRIED, HOOPER, JEFFRIES, KOON, LATIMER, MARKEY, PHEFFER, ROSENTHAL, SWEENEY, THIELE, TOWNS, WEISENBERG -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to unfair claims practices of insurers of real property located in the state of New York that is damaged as a result of one or more catastrophic events

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The insurance law is amended by adding a new section 2403-a to read as follows:

S 2403-A. UNFAIR PRACTICES; CLAIMS FOR DAMAGES TO REAL PROPERTY AS A RESULT OF CATASTROPHIC EVENTS. (A) AN INSURED UNDER A POLICY OF INSURANCE PROVIDING COVERAGE FOR REAL PROPERTY LOCATED IN THIS STATE MAY BRING AN ACTION AGAINST ITS INSURER FOR UNREASONABLE FAILURE TO RESOLVE OR SETTLE A CLAIM ARISING OUT OF ONE OR MORE CATASTROPHIC EVENTS.

(B) THE INSURED SHALL BE ENTITLED TO PREVAIL IN ANY SUCH ACTION IF IT DEMONSTRATES THAT IT RECOVERED BY APPRAISAL AWARD, JUDGMENT OR SETTLEMENT AN AMOUNT EQUAL TO OR GREATER THAN ONE HUNDRED TWENTY PERCENT OF THE AMOUNT PAID OR OFFERED TO BE PAID BY THE INSURER IN SETTLEMENT OR PARTIAL PAYMENT OF THE INSURED'S UNDERLYING CLAIM UNLESS THE INSURER DEMONSTRATES THAT ITS POSITION WAS SUPPORTED BY ESTABLISHED NEW YORK PRECEDENT.

(C) IN ANY ACTION BROUGHT UNDER THIS SECTION, THE INSURED SHALL BE ENTITLED TO RECOVER: (I) COMPENSATORY DAMAGES FLOWING FROM THE DELAY IN PAYMENT BY ITS INSURER; (II) PUNITIVE DAMAGES IF THE INSURED ESTABLISHES THAT THE INSURER DENIED OR DELAYED PAYMENT WITH THE INTENTION OF VEXING, INJURING OR ANNOYING THE INSURED OR WITH A CONSCIOUS DISREGARD OF THE INSURED'S RIGHTS; (III) PREJUDGMENT INTEREST ON ALL AMOUNTS THAT ARE ULTIMATELY AWARDED TO THE INSURED AT THE CONCLUSION OF ANY SUIT OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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APPRAISAL PROCEEDING CONCERNING THE INSURED'S UNDERLYING CLAIM AT THE STATUTORY RATE PROVIDED PURSUANT TO THE CIVIL PRACTICE LAW AND RULES, COMMENCING FROM THE DATE THAT THE INSURED SUBMITTED ITS INITIAL PROOF OF LOSS, WHETHER PARTIAL OR FINAL, AND ENDING ON THE DATE THAT PAYMENT IS RECEIVED BY THE INSURED; AND (IV) ALL ATTORNEYS FEES AND OTHER COSTS AND EXPENSES INCURRED IN CONNECTION WITH ADJUSTING, APPRAISING AND/OR LITIGATING ITS UNDERLYING CLAIM AND ITS CLAIM UNDER THIS SECTION.

(D) FOR PURPOSES OF THIS SECTION, A "CATASTROPHIC EVENT" SHALL MEAN A NATURAL OR MAN MADE DISASTER, INCLUDING AN ACT OF TERRORISM, THAT CAUSES PROPERTY AND CASUALTY LOSSES IN AN AMOUNT IN EXCESS OF ONE BILLION DOLLARS.

S 2. This act shall take effect immediately and shall apply to all claims for recovery that have not been resolved by final payment in settlement of the entire claim prior to such effective date.