

4995

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:

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

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

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

15 (C) IN ANY ACTION BROUGHT UNDER THIS SECTION, THE INSURED SHALL BE
16 ENTITLED TO RECOVER: (I) COMPENSATORY DAMAGES FLOWING FROM THE DELAY IN
17 PAYMENT BY ITS INSURER; (II) PUNITIVE DAMAGES IF THE INSURED ESTABLISHES
18 THAT THE INSURER DENIED OR DELAYED PAYMENT WITH THE INTENTION OF VEXING,
19 INJURING OR ANNOYING THE INSURED OR WITH A CONSCIOUS DISREGARD OF THE
20 INSURED'S RIGHTS; (III) PREJUDGMENT INTEREST ON ALL AMOUNTS THAT ARE
21 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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1 APPRAISAL PROCEEDING CONCERNING THE INSURED'S UNDERLYING CLAIM AT THE
2 STATUTORY RATE PROVIDED PURSUANT TO THE CIVIL PRACTICE LAW AND RULES,
3 COMMENCING FROM THE DATE THAT THE INSURED SUBMITTED ITS INITIAL PROOF OF
4 LOSS, WHETHER PARTIAL OR FINAL, AND ENDING ON THE DATE THAT PAYMENT IS
5 RECEIVED BY THE INSURED; AND (IV) ALL ATTORNEYS FEES AND OTHER COSTS AND
6 EXPENSES INCURRED IN CONNECTION WITH ADJUSTING, APPRAISING AND/OR LITI-
7 GATING ITS UNDERLYING CLAIM AND ITS CLAIM UNDER THIS SECTION.

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

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