

# STATE OF NEW YORK

3634--B

2019-2020 Regular Sessions

## IN SENATE

February 11, 2019

Introduced by Sens. BRESLIN, SEWARD, FELDER, GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to maintaining an action against a liability insurer seeking compensatory damages in excess of the policy limits where such insurer failed to engage in prompt and fair settlement of the claim

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 3420 of the insurance law is amended by adding a  
2 new subsection (b-1) to read as follows:

3 (b-1) An action may also be maintained by the persons identified in  
4 paragraphs one, two and three of subsection (b) of this section against  
5 the insurer to recover damages including compensatory damages and inter-  
6 est measured from the time of failure to offer a fair and reasonable  
7 settlement in accordance with this section, from such insurer to the  
8 full extent of the judgment against the insured, not limited to the  
9 policy limits and not subject to the limitations and conditions of para-  
10 graph two of subsection (a) of this section, where a preponderance of  
11 the evidence establishes that the insurer failed to effectuate a prompt  
12 and fair settlement of a claim or any portion thereof, and where under  
13 the totality of the facts and circumstances related to the claim, the  
14 insurer failed to reasonably accord at least equal or more favorable  
15 consideration to its insured's interests as it did to its own interests,  
16 and thereby exposed the insured to a judgment in excess of the policy  
17 limits.

18 § 2. This act shall take effect immediately.

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

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