MEMORANDUM IN OPPOSITION

S6216A (Bailey)/A5623B (Weinstein)

AN ACT to amend the insurance law, in relation to unfair claim settlement practices

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 135 years, strongly OPPOSES the above-captioned bill to authorize a private civil remedy against liability insurance companies for unfair claim settlement practices. This legislation is unnecessary with an unwarranted imposition of substantial costs on all New York insurance consumers without any real additional benefit.

California’s experience in the 1990s with a private right of action for insurance unfair claim settlement practices doctrine similar to this legislation and other private right of action bills is instructive. California adopted a civil remedy amendment to the unfair trade practice law. When the unfair claim settlement practice became a separate cause of action claim costs for all Californians increased beyond the norms of the consumer price index and claims were paid later. Due to these facts, California subsequently repealed the law. Were New York to adopt this legislation a similar experience would occur. A recent study indicated that legislation of this kind would cost New York policyholders an estimated additional $6.7 billion in premiums thereby raising costs for all New Yorkers. New York should not repeat California’s error and should therefore reject this legislation.

The bill would provide a plaintiff with a private right of action against any insurer on the grounds that the insurer failed to effectuate a prompt and fair settlement, and the insurer failed to reasonably accord at least equal or more favorable consideration to its insured’s interests as it did to its own interests to collect damages, including compensatory, and punitive damages. This legislation will be costly to the majority of New York policyholders and will actually slow down the payment of claims and increase premiums for New Yorkers.

New York courts have already substantially accomplished the goal sought by this legislation. The mechanism for recovery of extra-contractual compensation is Bi-Economy Market v. Harleysville, 10 NY3d 187 (2008). This Court of Appeals ruling holds that a policyholder can recover consequential damages for an insurance company’s breach of the insurance contract’s implied covenants of good faith and fair dealing. These damages, according to the Court, are not to be limited to the insurance contract’s policy limit but rather must be in an amount sufficient to “place the insured in the position it would have been in had the contract been performed”, see Bi-Economy at page 195. As a practical result, this means that policyholders aggrieved by their insurance company’s processing of their claim can sue under the Bi-Economy doctrine and recover damages in excess of their policy limits if they prove the insurer breached the implied covenants of good faith and fair dealing. While this court-derived action is available to policyholders, it would permit those
policyholders of liability policies to obtain moneys from the insurer that can be used to satisfy the plaintiff’s judgment in excess of the policy limits that was entered against the policyholder. This doctrine has been extended to third party liability cases, see *Mutual Association Administrators v. National Union Fire Insurance Company*, 118 AD3d 856 (Appellate Division, Second Department, 2014). Therefore, there is no need for this legislation.

In addition, the Department of Financial Services already regulates and enforces the unfair claim settlement practices of all insurance companies transacting business in New York. Given the fact that insurance consumers already have ample remedies available to address their grievances with their insurance companies, this legislation ends up only benefitting plaintiff attorneys who are seeking large compensatory awards. All this will do in the end is add unnecessary costs to the New York insurance system and encourage more lawsuits in New York, where we are already one of the most litigious states in the nation.

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