

VETO MESSAGE:

VETO MESSAGE - No. 98

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 6306, entitled:

"AN ACT to amend the civil practice law and rules, in relation to declaratory judgment action against an insurer; and to amend the insurance law, in relation to the timing for giving notice of a claim under insurance contracts"

NOT APPROVED

This bill has two purposes. First, the bill would prohibit insurers from denying coverage for a late notice of claim unless the insurer demonstrates that it suffered "material prejudice" as a result of the delayed notice. Second, the bill would permit claimants in an underlying tort claim to bring a declaratory judgment action for a determination of the existence and the extent of insurance coverage owed by an insurer to the party against whom the underlying claim is interposed.

The late notice provisions of the bill are an important reform, because they would prevent insurers from denying coverage to insureds based on a technicality, thereby eliminating the extreme hardship that is brought to bear on those who pay their premiums religiously only to find at a time of need that their policy is not available. Indeed, these changes bring New York's laws into alliance with the laws in a majority of other states. Although there are some drafting issues with these provisions, particularly with respect to the burden of proof that must be met, if this bill merely permitted late notices of claim where there is no prejudice to the insurer, I would sign it.

The declaratory judgment provisions of the bill also have a commendable goal. In particular, these provisions would allow claimants to determine whether and to what extent a defendant's insurance coverage is available to compensate the claimant for his or her damages, before significant expense and effort is expended in prolonged litigation. This would be especially useful where an insured has limited resources and lacks the resources or the incentive to bring a declaratory judgment action.

Unfortunately, there is a serious dispute about the actual impact of these provisions. Many insurers and business groups strenuously object to the bill, asserting that it would result in a large increase in litigation, much of which would be unnecessary, and thereby would increase costs and insurance premiums. The proponents of the bill, in contrast, assert that the bill will actually streamline the litigation process, by obviating the need for litigation where the defendant lacks sufficient resources or insurance coverage to warrant pursuit of the claim.

Much of this dispute seems to result from the manner in which this bill was passed. The bill was not introduced until June 17, 2007, and passed both houses just three days later. Most of the affected parties were unaware that the bill had been introduced, and claim that they had

no opportunity to testify at any hearings or otherwise make their views known before the Legislature acted. As a result, there are significant unanswered questions relating to what the actual impact of the bill might be, and the members of the Legislature have not had an opportunity to appropriately balance the views of both sides.

As a result, I have instructed my staff and the Superintendent of Insurance to work with both houses, the insurance industry, business groups, consumer advocates, the trial bar and the Office of Court Administration to investigate this issue further and to determine the impact of these provisions on injured parties, on insurance rates, and on court caseloads.

As noted above, this bill's dual goals - streamlining litigation and prohibiting the denial of coverage for mere technicalities - are sound, and hopefully we can enact a new bill that accomplishes these important goals in a manner that protects the interest of claimants, policyholders and insurers alike.

The bill is disapproved.

(signed) ELIOT SPITZER
