



To: The Honorable Nia Gill, Chair, Senate Commerce Committee

cc: Members, Senate Commerce Committee

RE: **NJLRA strongly opposes S-2460**, provides private cause of action for bad faith in settlement of insurance claims

Date: February 28, 2013

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The New Jersey Lawsuit Reform Alliance (NJLRA) is a state-wide, bipartisan coalition of the state's largest employers, small businesses, and trade and professional associations dedicated to improving New Jersey's civil justice system and promoting economic growth. On behalf of our members, **NJLRA strongly opposes S-2460 which, if enacted, will have devastating effects for New Jersey's business community and raise insurance premiums for most New Jersey residents.**

Supporters of this legislation argue that the bill will help those who have been affected by Superstorm Sandy by codifying existing case law governing insurance claims. In reality, however, similar legislative efforts to create a private cause of action for bad faith settlement of insurance claims have existed for several years. S-2460 creates a new cause of action - far beyond existing case law - which threatens to add uncertainty and consumer costs to New Jersey's homeowners' insurance market, while failing to create any adequate remedies for the vast majority of Sandy victims.

S-2460 offers no relief to New Jerseyans who lacked flood insurance during Sandy, nor does it bear any relevance to victims of Sandy who are unable to pay their deductibles or lack sufficient coverage. This legislation would impact only the small minority of Sandy victims who filed a claim and believe they were improperly denied adequate compensation.

When such an instance occurs and a policyholder believes there is "no fair debatable reason" for the denial of claim, he/she currently has the right to dispute the claim's denial in court as an act of "bad faith." This right is afforded by the New Jersey Supreme Court's 1993 decision in *Pickett v Lloyds*.

S-2460 would create a vast new private right of action and enable policyholders to recover damages in excess of the terms of their insurance contract. In addition, these policyholders would be permitted to file for attorneys' fees and court costs, as well as prejudgment interest dating to the time the suit was filed. Under this bill, recovery could occur if an insurer fails to settle a claim where liability "has become reasonably clear." This is a departure from the case law standard created in *Picketts* and would have a significant impact on insurance premiums, as the threat of litigation and additional damages would short circuit the process by which illegitimate claims are investigated.

Every policyholder, both commercial and private, will consequently pay for these higher awards through higher premiums and business costs.



In anticipation of potential disputes between policyholders and their insurers with respect to Sandy-related claims, Governor Christie has announced a mediation program under the direction of the Department of Banking and Insurance to spare consumers the time and expense associated with litigation. Similar programs were met with great success in Gulf Coast states following Hurricanes Katrina and Rita.

New Jersey's homeowners' insurance premiums hovered around the national average prior to Sandy, despite having some of the highest property values in the country. Enactment of this legislation threatens to escalate premiums and diminish the competitive rates New Jerseyans currently enjoy.

We believe that existing law in New Jersey and the Department's mediation program are a cost-effective, efficient way to settle disputes. **We respectfully request that S-2460 be held from consideration.**