

# Governor Spitzer Vetoes Controversial New York Insurance Legislation

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New York Governor Eliot Spitzer has vetoed legislation that would have imposed a "material prejudice" standard on insurers seeking to deny coverage based on late notice and would have given claimants a right to bring a direct action against insurers in New York. On behalf of the Complex Insurance Claims Litigation Association, Wiley Rein LLP attorney Laura A. Foggan had noted that these proposals represented a dramatic change in New York insurance law and urged that the legislation be vetoed.

The legislation contained two key components. First, it created a "material prejudice" standard with regard to late notice, stating that an insurer "shall not deny coverage for a claim based on the failure of an insured to give timely notice of claim unless . . . able to demonstrate that it has suffered material prejudice as a result of the delayed notice." The governor noted that "there are some drafting issues with these provisions, particularly with respect to the burden of proof that must be met." Although vetoing the legislation as currently drafted, the governor stated, "if this bill merely permitted late notices of claim where there is no prejudice to the insurer, I would sign it."

Second, the legislation modified New York's declaratory judgment statute to permit "a party who has interposed a claim against" a policyholder to bring a declaratory judgment action to determine the rights of the policyholder under the relevant insurance policy. In a memorandum explaining his veto, Governor Spitzer noted concerns that this provision would increase litigation and concluded that these concerns should be reviewed. He directed his staff and the Superintendent of Insurance to meet with the legislature and interested parties to further consider these issues.

New York Senator DeFrancisco has stated that he intends to reintroduce the legislation in 2008. Although he vetoed the current legislation, Governor Spitzer's memorandum stated: "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 interests of claimants, policyholders and insurers alike." Accordingly, further legislative activity on both the scope of the late notice defense and claimants' rights against insurers is likely in next year's legislative session.

Laura A. Foggan, a senior partner in Wiley Rein's Insurance Practice, represented the Complex Insurance

Claims Litigation Association in connection with these legislative developments.