**MEMORANDUM**

**TO:** Members of the Assembly Financial Institutions and Insurance Committee
**FROM:** Alida Kass, Chief Counsel
**SUBJECT:** Assembly Bill 231
**DATE:** December 10, 2015

The New Jersey Civil Justice Institute is a statewide, bipartisan coalition of the state's largest employers, small businesses, and leading trade associations advocating for a fair and predictable civil justice system in New Jersey. On behalf of our members, **we respectfully oppose A-231.**

We appreciate sponsors' concern with incentivizing fair and efficient behavior from both carriers and claimants when settling cases. However, expanding the availability of bad faith remedies to individual claims arising out of declared natural disasters would not improve the efficiency or fairness of claims settlements. Rather, it would make claims settlements less predictable and more expensive, and distort the existing incentive structure to the particular detriment of policy holders in areas prone to natural disasters.

The challenge of regulating insurance is striking the appropriate balance of incentives. We want to ensure that policy holders are not subject to undue delay or unnecessary litigation, while at same time protecting carriers' ability to investigate questionable claims and hold policies to terms on which they are drafted.

That balance is critical, because shifting too far towards deterring carriers from policing the terms of insurance contracts is not a benefit to consumers. Policies are priced according to their terms, not just as drafted, but as they are likely to be enforced. If policy limits are not enforced in a predictable fashion, then affordable policies with set policy limits will not be among the policies available for purchase.

The existing framework is designed to ensure that carriers are held to the terms of their policies in a few ways. When there is no reasonable basis to dispute the claim, individual claimants can currently bring a bad faith claim to recover damages in excess of policy limits, so that in addition to consequential damages and attorney fees, the jury award is not reformed to policy limits.

When claims are fairly debatable, however, the bad faith remedy of fee-shifting and extra-contractual damages, can result in over-deterrence. In some cases, the carrier will have been correct to challenge the claim, in others, the decision will have been in error. The goal is to distinguish between errors made in good faith, and claim denials that arise out of a general business practice to use litigation as a tool to drive down settlement values. Hence the regulatory

oversight by the insurance commission, which brings bad faith actions against carriers when there has been a sufficient pattern of behavior to indicate bad faith settlement practices.

Finally, the individual policy holder is not without effective remedy when he believes his insurance carrier is erroneously denying a claim. In fact, the offer of judgment rule exists for precisely such situations. The policy holder who makes a settlement offer and is ultimately vindicated by a verdict in excess of 120% of the offer is entitled, not only to damages but also to attorney fees incurred from the time the offer was made.

In short, given existing balance of incentives already in existence to deter bad faith business practices, and the specific remedies and tools to address erroneous claim denials in the individual context, that workable structure should not be upended simply because a natural disaster has been declared.

The predictable outcome of such a choice would be even higher premiums for homeowners in areas prone to natural disasters, and no improvement in coverage in the settlement of claims.

We respectfully oppose Assembly Bill 231.

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