

## NJ Justices Fortify Insureds in Asbestos Coverage Gap Fights

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Sherilyn Pastor

The New Jersey Legislature is weighing a bill that would allow policyholders to collect triple damages and attorneys' fees from insurance companies found liable for unfair business practices such as unreasonable coverage delays or denials, and attorneys say the whopping potential penalties could spur an explosion in bad-faith claims if the measure becomes law.

"New Jersey law recognizes bad-faith claims in theory, but in practice the judiciary has made it tremendously difficult to prevail on such claims," said Sherilyn Pastor, leader of McCarter & English LLP's insurance coverage group. "As it stands, you are more likely to see Sasquatch than a bad-faith verdict in New Jersey."

"Penalties will encourage insurers to meet claims appropriately and provide recourse to insurers who otherwise may be reluctant to pursue litigation, even when they are wrongfully denied coverage or their insurer wrongfully delays paying what is owed," said Pastor of McCarter & English.

According to Pastor, insurers often take the position that unreasonable delays of benefit payments cannot support a bad-faith claim under the current common-law regime. Therefore, the Insurance Fair Conduct Act's explicit recognition that an unreasonable delay is equivalent to an outright denial is important, she said.

"With some property claims, insurers may create excuses to delay paying for years, and then when they finally cut a check claim they haven't done anything wrong," Pastor said.