



LEGISLATIVE & REGULATORY UPDATE

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Fall 2011 Legislative Outlook

This November, all 120 seats of the New Jersey Legislature are up for election marking Governor Chris Christie's first mid-term election. We anticipate a busy lame duck session as the current session concludes in January, 2012.

The Democrats continue to control the Senate with a 24-16 majority led by South Jersey Senator Stephen Sweeney as Senate President, Senator Barbara Buono as Majority Leader and Senator Paul Sarlo as Chairman of the powerful Senate Budget Committee. Republican Senator Thomas Kean, Jr. remains the minority leader for the Senate Republicans.

The Assembly Democrats also maintain a sizeable 47-33 majority where Sheila Oliver presides as Speaker and Joseph Cryan serves as Assembly Majority Leader. Assemblyman Alex DeCroce continues to serve as the Republican leader.

New Jersey recently completed its legislative redistricting process that occurs every ten years. The new map is viewed as a victory for Democrats as it significantly maintains the status quo. [Click here to see the newly adopted New Jersey legislative districts map.](#)

Underground Storage Tank Insurance Coverage Legislation

A hot topic in Trenton concerns the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, known as the UST Fund. The Fund was created in 1997 to provide assistance to businesses, private individuals, and municipal and county governmental entities for remediation related to leaking of underground storage tanks.

The Economic Development Authority (EDA), which administers the Fund, has characterized the UST Fund as a victim of its own success as it is nearly depleted. The EDA continues to accept new applications for assistance with unregulated petroleum underground storage tanks, which includes home heating oil tanks; however, they will not review or process new applications at this time due to insufficient funds.

The UST Fund was the subject of several Budget and Senate Environment Committee hearings this Spring. During the hearings there was some discussion of possible solutions for expired and leaking tanks requiring removal.

As a result, Senator Jennifer Beck (R-12) is working on draft legislation that would require insurers writing homeowners insurance policies in the State to offer certain coverage for heating oil tanks. The Senator is seeking input from all stakeholders, including the insurance industry, in crafting a solution to the need for assistance with removing underground storage tanks.

Private Cause of Action for Bad Faith Legislation

Legislation providing a private cause of action for bad faith in settlement of insurance claims has been reintroduced in the Senate this session by Senator Nick Scutari (D-22), Chair of the Senate Judiciary Committee.

During the previous legislative session the bill's scope was narrowed and applied only to first party bad faith claims. The trial bar continues to advocate for the bill, which may be heard in the Senate Commerce Committee during the lame duck session following the Fall legislative election.

Regulatory Update

PIP Regulations

On August 1, 2011, the New Jersey Department of Banking and Insurance (DOBI) proposed new Personal Injury Protection (PIP) regulations. According to DOBI, the continually rising cost of providing PIP coverage has led to a spike in private passenger automobile (PPA) insurance rate increase requests. In fact, the Department has stated that PIP expenses accounted for 97% of all rate increase requests in the last year.

Despite several legislative and regulatory changes over the last few years, including the implementation of rules governing PIP protocols and diagnostic tests, an updated PIP medical fee schedule and creation of the basic automobile insurance policy, the Department believes more comprehensive reform is necessary and that the proposed regulations will help contain rising costs.

The regulations will add about 3,000 more codes to the PIP medical fee schedule and should help make the system more cost-effective. The regulations also make changes to the existing arbitration process, which insurers and health care providers utilize when disputing fees for medical services. The proposed rules would require insurers to follow an internal appeals process before going to arbitration in an effort to minimize costs, including attorneys' fees, etc.

Interested parties may submit comments to the Department by September 30, 2011.

If you have any questions or comments on this article, or if you would like to learn more about the Firm's experience, please contact Richard J. VanWagner at (609) 989-5042 or e-mail rvanwagner@sternslaw.com or Grace Strom-Power at (609) 989-5008 or email gpower@sternslaw.com.