

Law Division Rules that New Jersey Insurance Fair Conduct Act Applies Prospectively, Not Retroactively.

On March 10, 2022, the Superior Court of New Jersey, Law Division, ruled in Mosquera v. Vasquez. (“Mosquera”), that the New Jersey Insurance Fair Conduct Act (“NJIFCA”), S1559/A1659, applies prospectively, not retroactively. It therefore denied the plaintiff’s motion for leave to amend a complaint to assert a claim under the NJIFCA.

The Mosquera Court based its decision to deny the plaintiff leave to amend on two grounds. First, the Court found that the plaintiff failed to provide a sufficient factual basis to support a claim under the Insurance Fair Practices Act. The plaintiff merely alleged that the defendant insurer refused, in an unreasonable manner, to honor the plaintiff’s demand for payment of underinsured motorist (“UIM”) benefits. The Court found no factual basis to support the claim that any delay in payment of UIM benefits was unreasonable.

Second, the Court stated that in general, statutes apply prospectively rather than retroactively. Retroactive application is proper when the Legislature communicates an express or an implied intent that a statute shall have retroactive application; when the statute is curative; or when the parties’ expectations justify retroactivity.

The Mosquera Court found that the Legislature did not express an intent for courts to apply the NJIFCA retroactively. It also found that because the NJIFCA did not exist at the time of the plaintiff’s accident, the parties did not justifiably expect that the law should apply retroactively. Finally, the Court ruled that the NJIFCA was not curative but instead “was implemented to provide greater relief to prospective applicants.” The Court therefore denied the plaintiff’s motion to amend without prejudice.

This decision is not binding on any other court because it is unpublished and because it is a Law Division opinion. Nevertheless, parties can cite the Mosquera decision in other cases in which a claimant seeks to recover under the NJIFCA for losses that occurred prior to the statute’s enactment to argue that the NJIFCA does not apply retroactively. If you have any questions about the Law Division’s decision in Mosquera, please contact Kevin E. Wolff, Julia C. Talarick, or Timothy P. Smith.



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