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MEMORANDUM

June 10, 2009

TO: Honorable Members of the Pennsylvania Senate
FROM: Sam Denisco, Director, Government Affairs
RE: SB 746 – Bad Faith Amendment

On behalf of its 24,000 members and customers, the PA Chamber asks you **not** to support SB 746, which is currently on the Senate calendar. Specifically, the Chamber opposes an amendment advanced by the trial bar that was adopted into the bill. The amendment would now allow juries, not judges, to decide insurance bad faith cases thereby ruling on damages, attorney fees and costs and interest.

The Chamber is not only concerned that this amendment will drastically change the process by which bad faith cases are heard – a process that has been in statute for nearly 20 years, but we are also troubled that this bad faith amendment is completely unrelated to the bill as introduced and adopted without any substantive dialogue amongst interested parties. The Chamber is unaware of any compelling reason as to the need to remove a judge from ruling on insurance bad faith cases. The only plausible motive would be for the trial bar to instill greater uncertainty in such cases thereby increasing their chances to recover substantially more money.

Under Pennsylvania's bad faith statute, if an insurer is found to be in breach of contract, the policyholder may file a civil claim against the insurer for bad faith in order to recover punitive damages. This remedy is available in addition to the standard remedies available under a breach of contract claim. In determining whether an insurer acted in bad faith, the judge rules on whether the insurer had a reasonable basis to have taken a particular position. An unbiased, legally trained judge is best fit to rule on such actions.

Therefore, the Chamber asks that you **not** support SB 746 in its current form as the current law is based on sound policy.

If you have any questions or concerns, please feel free to contact me at (717) 720-5580 or sdenisco@pachamber.org.