



New Jersey Supreme Court Enforces Supremacy Of Legislature's Acts: Invalidates Agency's Health Insurance Assessment Scheme

John M. Pellecchia, Esq., a partner with the law firm Riker Danzig Scherer Hyland & Perretti LLP, announced a major victory on behalf of CIGNA. The Supreme Court of New Jersey invalidated a regulatory assessment scheme on New Jersey health insurers because the assessment formula failed to follow the intent of the Legislature. The Court refused to allow the Individual Health Coverage Program Board to change the statutory assessment formula under the guise of administrative interpretation.

"The Supreme Court's decision is a victory not only for CIGNA, but for all of the regulated communities located and operating in New Jersey, as well as for the Legislative branch of State government. Today, the Court has affirmed the supremacy of a representative form of government," said Pellecchia.

Pellecchia successfully argued before the Supreme Court that state regulators had, through allegations of statutory ambiguity, and under the guise of administrative interpretation, unlawfully changed an assessment formula that only could be altered by the Legislature. As a result, his client, CIGNA, was forced to pay a disproportionately large assessment (almost \$9 million for 1996) for the subsidization of the individual health insurance market in New Jersey. In addition, unlike other insurers who also wrote individual health insurance coverage that year, CIGNA was unlawfully denied credit for participating in the individual market.

The Appellate Division previously had affirmed part of the assessment scheme and invalidated part of the formula. Today's decision makes clear that the entire assessment formula challenged by CIGNA is unlawful.

Pellecchia notes, "For many years, New Jersey has had the reputation of being a difficult and expensive place to do business, especially for regulated entities. The regulated communities should take solace in the fact that the Court has demonstrated that it will not tolerate arbitrary and capricious actions against the regulated community, even

when the regulators defend their actions by declaring they are merely using their administrative expertise to interpret state law and further their view of the Legislature's intent."