

***Testimony of Ryan M. Suerth In Support of H.B. No. 5247—
An Act Concerning the Award of Costs and Attorney's Fees
In an Action Concerning a Homeowners Insurance Policy***

I am here in support of H.B. 5247—An Act Concerning the Award of Costs and Attorney's Fees in an Action Concerning a Homeowners Insurance Policy. I am a policyholder-side insurance coverage attorney with my own Hartford-based practice. I represent insurance policyholders, exclusively, against insurance companies when claims have been wrongfully denied, and have been doing so for the past seven (7) years. I have seen, firsthand, the financial impact that an insurance claim denial has on policyholders, and in the wake of catastrophic weather events such as Irene and Sandy, especially, Connecticut policyholders need help.

Homeowners purchase insurance so that in the event of loss or damage to their home, they will, with the exception of paying a deductible, be made one-hundred (100%) percent financially whole. However, when a policyholder is forced to pursue its insurance claim through litigation, they can almost never be made whole, as they need to pay an attorney, like myself, to pursue their claim. This is especially problematic with respect to relatively small claims, where the cost to pursue the claim can exceed the claimed amount itself.

One of the first questions many policyholders ask pertains to whether they will be able to recover the attorney's fees they pay from their insurance company. I recently wrote an article published in the Connecticut Law Tribune regarding the status of Connecticut law as it relates to this issue, wherein I explained that, generally, policyholders cannot recover attorney's fees, even when successful in litigation against their insurance company.

Connecticut courts follow the "American Rule," which, in the insurance litigation context, provides that absent a contractual or statutory exception, a policyholder is not entitled to recover attorney's fees and other costs incurred as a result of a wrongful denial of their claim. Insurance policies do not, typically, or ever, contain any exception providing for the recovery of attorney's fees, and no statutory exception to the American Rule exists in Connecticut entitling a policyholder to recover attorney's fees in a straight breach of contract action.

Connecticut courts do recognize one limited exception to the American Rule, commonly referred to as "bad faith." However, bad faith can be difficult to prove, and generally requires more than mere negligence on the part of an insurance company. Connecticut also has a statutory exception to the American Rule under the Connecticut Unfair Trade Practices Act (CUTPA) and the Connecticut Unfair Insurance Practices Act (CUIPA), but only with respect to certain offenses, and only when a policyholder can prove that such offense is a general business practice of an insurance company.

If H.B. 5247 is passed, Connecticut will not be the only state that has chosen to protect its policyholders in this way. Florida, for example, a state which is no stranger to catastrophic weather events, has one of the most policyholder-friendly statutes, providing for the recovery of attorney's fees in almost all circumstances.

I suspect insurance companies would argue that they should be allowed to make mistakes without being exposed to having to reimburse policyholders for the costs of litigation. However, insurance companies always have the upper-hand in the insurance claim process. Insurance companies draft the policy, interpret the policy, and ultimately decide whether they will pay a claim or not. When an insurance company is wrong, policyholders have no choice but to incur additional costs to obtain the benefit of the insurance policy for which they paid a premium. Policyholders should not have to rely on allegations of bad faith and violations of CUTPA and CUIPA in order to be made whole after a loss.

While I support legislation regarding a policyholder's entitlement to the recovery of attorney's fees with respect to all types of insurance policies, H.B. 5247 is a good, and much-needed, start. As to the language to be included in this legislation, it must be made clear that such legislation is intended for the benefit of policyholders only, not insurance companies. The use of the term "insured" or "policyholder" should be used in place of the term "plaintiff." While it is not typical for an insurance company to be a plaintiff in litigation regarding a first-party property insurance claim, it is possible, and policyholders would be done a tremendous disservice should insurance companies also attempt to seek the benefit of this legislation.