



Raised Bill 5449
Public Hearing: 3-3-16

TO: MEMBERS OF THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 3, 2016

RE: SUPPORT OF 5449 AAC LIABILITY FOR UNFAIR INSURANCE PRACTICES IN WORKERS' COMPENSATION CLAIMS

House Bill 5449 allows injured workers to claim damages from unfair insurance practices by workers' compensation insurers. This bill reverses the Connecticut Supreme Court decision in deOlivera v. Liberty Mutual, 273 Conn. 487 (2005), which protected workers' compensation insurers, self-insured employers and third party administrators from claims under the Connecticut Unfair Insurance Practices Act ("CUIPA"). The Court believed that the remedies afforded under the Workers' Compensation Act were sufficient. However, in practice, the remedies afforded under the Act do not provide relief commensurate with the harm suffered by the injured worker. Furthermore, these remedies are often not utilized by the Commissioners and when used, the sanction is usually minimal (usually a fine from \$300 to \$1,000) providing no deterrent effect on the insurer to discourage the unfair practice, which mostly centers on undue and unreasonable delay in medical treatment.

The immunity from claims under CUIPA has encouraged insurers to often substitute their own judgment for that of the treating physicians and deny medical treatment, which financially benefits them. The obvious result to the injured workers is that they do not receive timely medical treatment, preventing them from recovering from their injury and delaying their return to work. Even worse are the times where the absence of timely treatment has resulted in further irreversible debilitating medical conditions. A further consequence is the shifting of medical costs to group health insurers, Medicaid and Medicare. The legislature should be aware of this inappropriate cost shifting to government subsidized health insurers. Additionally, delay in wage replacement benefits affect many injured workers who live paycheck to paycheck, causing unpaid bills, evictions and foreclosure.

An amendment to the bill as raised is necessary, specifically, the provision that awards attorneys' fees to the insurers if the claimant does not prevail. Connecticut utilizes the American Rule which provides that attorneys' fees are paid by each party unless authorized by statute. No other claims under CUIPA or CUTPA allow the recovery of attorneys' fees against the unsuccessful plaintiff. Further the provision does not distinguish between frivolous or vexatious claims and claims where the plaintiff simply does not prevail. This provision sets up an unfair situation where an injured worker could be punished for attempting to assert his or her rights.

In conclusion, allowing injured workers the right to bring claims of a punitive nature for the harm they suffered at the hands of insurers for unreasonable and undue delay in medical treatment and wage replacement benefit, under CUIPA will have the deterrent effect necessary to eliminate or mitigate the practice of unreasonable denials.

WE URGE YOU TO SUPPORT HB5449 WITH ONE AMENDMENT. Thank you.