OLR Bill Analysis  
HB 6916  

AN ACT EXPANDING REMEDIES AND POTENTIAL LIABILITY FOR UNREASONABLY CONTESTED OR DELAYED WORKERS’ COMPENSATION CLAIMS.  

SUMMARY  
This bill allows a workers’ compensation claimant to bring an action against a workers’ compensation insurer or third party administrator (TPA) for (1) a breach of the covenant of good faith and fair dealing in handling workers’ compensation claims or (2) violating the Connecticut Unfair Insurance Practices Act (CUIPA) or Connecticut Unfair Trade Practices Act (CUTPA). Current law generally requires all workers’ compensation-related issues to be adjudicated within the workers’ compensation system (see BACKGROUND).  

The bill prohibits workers’ compensation insurers and TPAs from seeking indemnification from an employer or organization, or increasing premiums or agreed-upon compensation, due to any claim brought under the bill.  

The bill also requires workers’ compensation commissioners to impose certain costs on employers or insurers who have unduly delayed providing workers’ compensation benefits. Current law allows, but does not require, the commissioners to impose these costs.  

EFFECTIVE DATE: October 1, 2019  

ACTIONS FOR COVENANT OF GOOD FAITH, CUIPA, OR CUTPA VIOLATIONS  
Under the workers’ compensation law’s “exclusivity provision,” an employer who provides workers’ compensation insurance coverage for its employees is not liable in any action for damages on account of an employee’s work-related personal injury (CGS § 31-284(a)). Under current law, the provision generally requires workers’ compensation-
related issues to be adjudicated within the workers’ compensation system and prohibits claimants from bringing a separate action against an insurer for bad faith processing of a workers’ compensation claim.

The bill exempts from the exclusivity provision, actions against a workers’ compensation insurer or TPA for (1) a breach of the covenant of good faith and fair dealing in handling workers’ compensation claims or (2) violating CUIPA or CUTPA.

Under the bill, a claimant for workers’ compensation benefits is a third-party beneficiary of (1) an insurance contract for an employer’s liability for workers’ compensation benefits and (2) a contract for third-party administration of claims for workers’ compensation benefits. And such an insurer or TPA owes the claimant a duty of good faith and fair dealing and a duty not to unreasonably contest or delay benefits.

The bill specifies that CUIPA and CUTPA do not preempt a common law action for breach of this covenant of good faith and fair dealing. It also allows a claimant to bring an action before exhausting the administrative remedies under the workers’ compensation law (i.e., while his or her case is proceeding through the workers’ compensation system).

The bill allows damages in actions against an insurer or TPA to include demonstrable economic damages, damages for mental or physical injury, pain or suffering arising from the insurer’s or TPA’s misconduct, and attorneys’ fees. But, any benefits awarded or penalties imposed under the workers’ compensation law must be credited against any duplicative damages awarded in the other action.

**REQUIRED WORKERS’ COMPENSATION COSTS**

The bill requires, rather than allows, workers’ compensation commissioners to award:

1. 10% interest and attorneys’ fees in cases of an undue delay in adjusting compensation due to an employer’s or insurer’s fault or neglect;
2. 12% interest and attorneys’ fees in cases of undue delay in paying compensation due to an employer’s or insurer’s fault or neglect;

3. up to 10% interest in cases where the delay in adjustment or payment of compensation was not due to the employer’s or insurers’ fault or neglect; and

4. reasonable attorneys’ fees in cases where the employer or insurer unreasonably contests liability.

BACKGROUND

Related Case

In DeOliveira v. Liberty Mutual Insurance Co. (273 Conn. 487 (2005)), the state Supreme Court ruled, among other things, that the workers’ compensation law’s exclusivity provision barred separate suits against an insurer for bad faith processing of a workers’ compensation claim. According to the Court, the provision applied because in CGS §§ 31-288 and 31-300, the legislature expressly gave the workers’ compensation commissioners authority to adjudicate claims related to untimely payment of benefits and provide remedies for them.

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney’s fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

Connecticut Unfair Insurance Practices Act (CUIPA)

The law prohibits engaging in unfair or deceptive acts or practices
in the business of insurance. It authorizes the insurance commissioner to conduct investigations and hearings, issue cease and desist orders, impose fines, revoke or suspend licenses, and order restitution for per se violations (i.e., violations specifically listed in statute). The law also allows the commissioner to ask the attorney general to seek injunctive relief in Superior Court if he believes someone is engaging in other unfair or deceptive acts not specifically defined in the statute.

Fines may be up to (1) $5,000 per violation to a $50,000 maximum or (2) $25,000 per violation to a $250,000 maximum in any six-month period if the violation was knowingly committed. The law also imposes a fine of up to $50,000, in addition to or in lieu of a license suspension or revocation, for violating a cease and desist order.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 13  Nay 0  (03/21/2019)