

# The Issue of Admissible Evidence in CUIPA Cases

RULING OFFERS GUIDANCE, BUT ADDITIONAL CLARIFICATION NEEDED

By BRIANNA KASTUKEVICH SPINNATO

The Connecticut Unfair Insurance Practices Act (CUIPA), Connecticut General Statute §38a-816, was adopted to prohibit unfair or deceptive behavior in the practice of insurance within the state. The act lists prohibited practices, such as misrepresenting the benefits of an insurance policy, disseminating false information to the public and engaging in unfair claim settlement practices. Specifically, the statute specifies 15 examples of unfair claim settlement practices prefaced by the phrase "committing or performing with such frequency as to indicate a general business practice any of the following."

When a CUIPA violation is alleged, the plaintiff must allege the relevant unfair claim settlement conduct was part of a general busi-

ness practice. Connecticut courts have widely considered how to *allege* a "general business practice" in the pleading stages. Specifically, the Appellate Court has held the plaintiff must allege the insurer committed the "alleged wrongful acts with such frequency as to indicate a general business practice." *Quimby v. Kimberly Clark*, 28 Conn. App. 660, 672 (1992).

## Similar Complaints

First, live testimony by other insureds, or their agents, of similar practices by the insurance company is admissible to prove a general business practice as set forth in CUIPA. The court reasoned the testimony of other insureds is allowed because these witnesses can be subjected to cross-examination and prior deposition by the insurance company. In *Williams*, the plaintiffs disclosed other Safeco insureds



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such lawsuits must have evidentiary value before they may be considered in support of a claim of violations of CUIPA. The cases must first involve "the same or very similar practice as alleged in the complaint" and second "must involve other claimants." The judge's requirement that all such evidence involve "the same or very similar practices" will likely lead to a question regarding how similar the alleged practices must be in order to be admissible.

The fourth category the judge set forth as admissible includes evidence provided by the insurer's employees and/or internal documentation as to the insurance company's policies and practices. Plaintiffs alleging CUIPA violations are entitled to present testimony and internal documentation as to the insurance company's practices and policies, such as claim manuals, claim handling guidelines and statements as to how the company generally handles claims filed by insureds. This appears to be the broadest category of admissible evidence and provides the plaintiff with the right to use the insurance company's own employees and internal documentation to prove a general business practice of unfair claim settlement practices.

on their witness list who they intended to call at trial. Although the case was settled after evidence presentation began and before any of the other insureds were called to testify, the judge's decision would have conceivably allowed these other insureds to testify regarding their prior dealings and experiences with Safeco.

Testimony about how Safeco handled the other insureds' claims would be admissible to show other instances of unfair settlement practices. The witnesses would be subjected to cross-examination by the insurance company, making such testimony admissible as evidence of an insurance company's general business practice of unfair settlement practices.

Second, complaints filed with the state insurance commissioner claiming similar practices engaged in by the insurance company are admissible at trial to prove a general business practice. For these complaints to be admissible, there must have been a fair opportunity for the insurance company to contest the findings and the complaints must have been ruled on by the commissioner. This evidence allows plaintiffs to use complaints filed by, or on the behalf of, policyholders with the commissioner in attempting to prove a general

business practice of unfair practices in court. In addition, testimony of Insurance Department personnel is admissible because they would be subject to cross-examination. The Insurance Department keeps records of complaints filed against insurance companies. The court's decision in *Williams* allows plaintiffs alleging a CUIPA violation to introduce these complaints at trial, as well as testimony of the Insurance Department employees to assist in proving a CUIPA violation.

The third category of admissible evidence to prove a general business practice is written evidence of similar practices in complaints filed in courts of record that have been adjudicated adversely to the insurance company. These adjudicated complaints are entitled to the effect of collateral estoppel. The judge's decision explained

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age to their home and personal property. Thereafter, the Williams filed suit against their homeowner's insurance carrier for breach of contract, negligent adjustment, bad faith, emotional distress and violations of the Connecticut Unfair Trade Practices Act and the Connecticut Unfair Insurance Practices Act. The complaint alleged that Safeco, while acknowledging coverage under the policy, unreasonably delayed full and fair payment through several allegedly unfair settlement practices. Safeco denied these allegations and the case proceeded to a jury trial in Stamford in October 2015.

In the context of ruling on a motion in limine seeking to prevent the plaintiffs from introducing evidence or comment concerning other allegations or complaints of bad faith against

the defendant insurer, Safeco, the judge provided a standard for admissible proof of unfair insurance settlement practices that were part of a "general business practice" in violation of CUIPA. The decision sets forth four categories of evidence that are admissible to prove a "general business practice" at trial.

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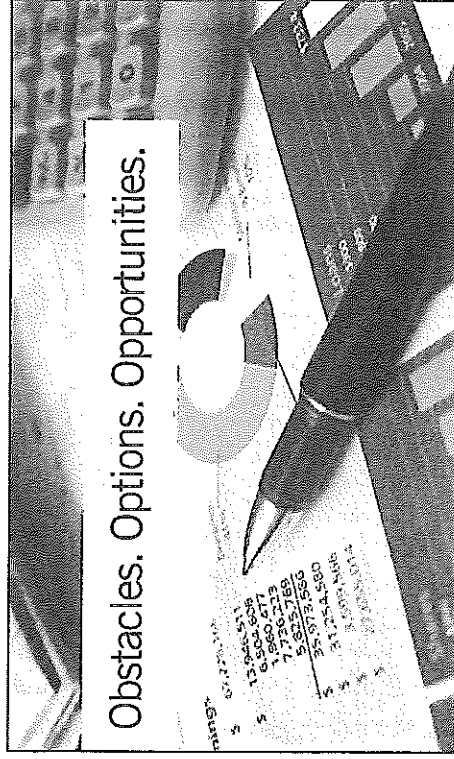
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