I. Regulatory Limits on Claims Handling

A. Delegation of Regulatory Authority to Insurance Commissioner

The Connecticut Constitution provides that the legislative branch may delegate regulatory authority to the executive branch. CONN. CONST. art. II. The Connecticut Insurance Commissioner has jurisdiction to issue regulations that are reasonable and necessary to the implementation of the Connecticut insurance statutes. CONN. GEN. STAT. § 38a-8(c). The Connecticut Insurance Commissioner has a very broad grant of regulatory authority when engaged in interstitial rulemaking. Orkney v. Hanover Ins. Co., 248 Conn. 195, 203, 727 A.2d 700 (1999). Connecticut has adopted its version of the Uniform Administrative Procedure Act, which governs procedure for the implementation and judicial review of insurance regulations and standards. See CONN. GEN. STAT. § 4-166, et seq.

B. Timing for Responses and Determinations

Connecticut General Statutes § 38a-816, Connecticut’s Unfair Insurance Practices Act (“CUIPA”), defines unfair methods of competition and unfair and deceptive acts or practices in the business of insurance to include: the “[f]ailure . . . to pay accident . . . claims . . . within the time periods set forth in subparagraph (B) of this subdivision, unless the Insurance Commissioner determines that a legitimate dispute exists as to coverage, liability or damages or that the claimant has fraudulently caused or contributed to the loss.” CONN. GEN. STAT. § 38a-816(15). The time period set forth in subparagraph (B) of Section 38a-816(15) is “not later than forty-five days after receipt by the insurer of the claimant's proof of loss form . . .” Id. Under Connecticut’s fact pleading system, a plaintiff “need only allege the facts as necessary to bring himself within the terms of the statute.” Bouchard v. People’s Bank, 219 Conn. 465, 471, 594 A.2d 1 (1991) (internal quotation marks and citation omitted).

C. Standards for Determinations and Settlements

Connecticut’s Unfair Insurance Practices Act (“CUIPA”) and Unfair Trade Practices Act (“CUTPA”) govern an insurer’s liability “based on its conduct in settling or failing to settle the insured’s claim and on its claims settlement policies in general.” See Heyman Assocs. No. 1 v. Ins. Co. of Pa., 231 Conn. 756, 790, 653 A.2d 122 (1995) (internal quotation marks omitted); see also CONN. GEN. STAT. §§ 38a-816, et seg. (CUIPA); CONN. GEN. STAT. §§ 42-110a, et seq. (CUTPA). “The factual inquiry focuses, not on the nature of
the loss and the terms of the insurance contract, but on the conduct of the insurer.” Heyman, 231 Conn. at 790.

An “insurer’s duty stems not from the private insurance agreement but from a duty imposed by statute.” Id. However, “the existence of a contract between the parties is a necessary antecedent to any claim of breach of the duty of good faith and fair dealing.” Macomber v. Travelers Prop. & Cas. Corp., 261 Conn. 620, 638, 804 A.2d 180 (2002). Thus, an insurer does not owe a duty to a third-party claimant under the unfair settlement practices provisions of CUIPA. See Hipsky v. Allstate Ins. Co., 304 F. Supp. 2d 284, 291-92 (D. Conn. 2004); see also Carford v. Empire Fire & Marine Ins. Co., 94 Conn. App. 41, 52-53, 891 A.2d 55, 62 (2006) (concluding that the right to assert claims under CUIPA does not extend to third party claimants absent subrogation or a judicial determination of the insured’s liability). However, where it is plausibly alleged that the claimant is a third party beneficiary to the insurance contract, he should be able to assert a CUIPA-through-CUTPA claim against the insurer for unfair settlement practices. Ensign Yachts, Inc. v. Arrigoni, 2010 U.S. Dist. LEXIS 22425, at *45 (D. Conn. Mar. 11, 2010).

D. Privacy Protections

The Gramm-Leach-Bliley Financial Modernization Act (“GLBA”), effective November 12, 1999, allowed the formation of financial holding companies, which can own banks, security firms, and insurers, as well as to provide banking services and underwrite and sell insurance and securities. GLBA enhanced competition in the financial services industry by allowing financial services industries to affiliate with one another and to allow those affiliated institutions to share confidential customer data. Title V of GLBA (15 U.S.C. § 6801, et seq.) sets forth requirements for protecting the privacy of the non-public personal information of consumers. Federal and State agencies designated as functional regulators in GLBA are directed to implement the Act’s consumer privacy protections.

GLBA requires licensees to establish privacy policies, develop systems for implementing those policies, protect personal information of consumers and customers and to provide privacy notices to all customers. “Licensee” means all insurers, agents, brokers and all other persons licensed or required to be licensed or authorized under Title 38a of the Connecticut General Statutes.

GLBA’s privacy protections provide a minimum privacy standard. GLBA’s privacy protections do not override state law, which affords greater consumer privacy protection. If a state does not provide adequate privacy protection, however, preemption will occur, but only to the extent of the inconsistency.

Connecticut General Statute § 36a-701b, effective October 1, 2015, applies to computerized breaches of personal information, notice of such, and subsequent identity theft prevention and mitigation services to be provided; as well as delay for criminal investigation, means of notice, and unfair trade practice. CONN. GEN. STAT. § 36a-701b, et seq. Any person who conducts business in Connecticut must provide notice of any breach of security involving a Connecticut resident’s personal information. § 36a-701b(b)(1). Personal information means an individual’s name in combination with their Social Security number; driver’s license or state identification card number; or account, credit, or debit card number, in combination with any required password or passcode. § 36a-701b(a).
Such notice must be made no later than ninety days after the breach is discovered, must also be provided to the Attorney General, must offer the affected resident appropriate identity theft prevention and mitigation services at no cost for at least twelve months, and include information on how to obtain a credit freeze. § 36a-701b(b). Effective October 1, 2017, the Auditors of Public Accounts must also be notified in every situation under this section where the Attorney General must be notified. See 2017 Connecticut Senate Bill No. 1028.

If a person maintains the computerized data that is breached, but does not own it, such person must immediately notify the owner or licensee upon discovery or reasonable belief of breach. § 36a-701b(c). If a law enforcement agency requests delayed notification after a it determines that such notification will impede a criminal investigation, then notification will be delayed for a reasonable period of time. § 36a-701b(d). Failure to comply with the requirements of 36a-701b shall constitute an unfair trade practice for purposes of section 42-110b and shall be enforced by the Attorney General. § 36a-701b(g).

Connecticut General Statute § 42-471, effective October 1, 2009, applies to the safeguarding of personal information. Any person in possession of personal information of another shall safeguard the data, computer files and documents from misuse by third parties, and shall destroy, erase or make unreadable such data, computer files and documents prior to disposal. CONN. GEN. STAT. § 42-471(a).

Any person who collects Social Security numbers in the course of business shall create a privacy protection policy which shall be published or publicly displayed, including posting on an Internet web page. § 42-471(b). Such policy shall: (1) Protect the confidentiality of Social Security numbers, (2) prohibit unlawful disclosure of Social Security numbers, and (3) limit access to Social Security numbers. Id.

Any person or entity that violates the provisions of § 42-471 shall be subject to a civil penalty of five hundred dollars for each violation, provided such civil penalty shall not exceed five hundred thousand dollars for any single event. § 42-471(e). It shall not be a violation of § 42-471 if such violation was unintentional. Id.

Connecticut General Statutes §§ 38a-975 through 38a-998 are known as The Connecticut Insurance Information and Privacy Protection Act ("CIIPPA"). Connecticut Insurance Department Regulations pertaining to CIIPPA are Regs. Conn. State Agencies §§ 38a-8-105 through 38a-8-123. CIIPPA establishes standards for the collection, use and disclosure of personal information gathered by the insurance industry in connection with an insurance transaction. All insurance institutions, including corporations, associations, partnerships, reciprocal exchanges, interinsurers, Lloyds insurers, fraternal benefit societies, health care centers and medical and hospital service organizations engaged in insurance transactions, insurance support organizations, agents and brokers and their staffs are affected by CIIPPA.

CIIPPA applies to collecting, receiving and maintaining insurance information affecting any insurance transaction for personal, family or household needs including the servicing of policies, applications, contracts or certificates or determining eligibility for coverage, benefit or payment.
For property or casualty insurance, any person who engages in the transaction or about whom information is collected, received or maintained is afforded rights. Rights may be extended beyond the named insured to members of the insured household or additional insureds who are nonresidents. For life, health or disability, rights are afforded only when the person is a resident of the state. If the last known address is in the state, then the person is a resident.

CIIPPA necessitates the development of several forms and notices. Standards for the forms are set forth in CIIPPA and cover the following areas, with the applicable section of CIIPPA indicated in parentheses:

1. Insurance information practices (CONN. GEN. STAT. § 38a-979)
2. Identification of information sought for marketing or research purposes (CONN. GEN. STAT. § 38a-980)
3. Disclosure authorization (CONN. GEN. STAT. §38a-981)
4. Notification of investigative consumer report (CONN. GEN. STAT. § 38a-982)
5. Access to recorded personal information (CONN. GEN. STAT. § 38a-983)
6. Correction, amendment or deletion of recorded personal information (CONN. GEN. STAT. § 38a-984)
8. Acquisition of information concerning a previous adverse underwriting decision (CONN. GEN. STAT. § 38a-986)
9. Limitations on disclosure of information (CONN. GEN. STAT. § 38a-988)

See also Regs. Conn. State Agencies §§ 38a-8-105 to -123; Regs. Conn. State Agencies §§ 38a-8-124 to -126.

In 1999, Connecticut added to CIIPPA a privacy law designed to foreclose the sale of medical records titled “An Act Concerning Managed Care Accountability,” CONN. P.A. 99-284 § 18a, codified at CONN. GEN. STAT. § 38a-988a. This legislation targeted insurers, health care professionals and universities specifically, but applies more broadly to anyone with access to medical data. For purposes of CIIPPA, Medical-Record Information is “individually identifiable personal information” which relates to the physical, mental or behavioral health condition, medical history or medical treatment of an individual or a member of the individual’s family and is obtained from a medical professional or medical-care institution, from a pharmacy or pharmacist, from the individual, or from the individual’s spouse, parent or legal guardian or from the provision of or payment for health care to or on behalf of an individual or a member of the individual’s family. See CONN. GEN. STAT. § 38a-976(18) & (20). Insurance entities must receive a written authorization from the patient before any personal or privileged information collected or received is disclosed in connection with an insurance transaction. However, the law specifically exempts medical providers, insurance regulators, marketers, professional peer review organizations, and law enforcement officials from the authorization requirement. The Federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. § 300gg, 29 U.S.C. § 1181 et seq., and 42 U.S.C. 1320d et seq., would also afford additional privacy protections for medical
Like Gramm-Leach-Bliley, HIPAA’s privacy regulations do not supersede state privacy laws that afford individuals more protection.

For a case dealing with the statutory limitations on disclosure of insurance information under CIIPPA, see Pike v. Anderson, 2002 Conn. Super. LEXIS 3042 (Conn. Super. Ct. Sept. 18, 2002) (Hodgson, J.) (granting plaintiff’s request for a certified copy of any motor vehicle insurance policy issued to lessee by insurer; ordering redacted disclosure of all applications and other related documents submitted by lessee “including a complete copy of the underwriting file for each insurance policy and all documents relating to any cancellation of any policy issued to [lessee];” and barring disclosure of documents in the insurer’s possession that related to the motor vehicle accident at issue).

II. Duties Imposed By State Law

A. Duty to Defend

1. Standard for Determining Duty to Defend

The duty to defend arises solely under contract. Security Ins. Co. of Hartford v. Lumbermens Mut. Cas. Co., 264 Conn. 688, 713, 826 A.2d 107 (2003). The duty to defend is broader than the duty to indemnify and rests solely on whether the allegations of the complaint bring the claim within the scope of the policy. DaCruz v. State Farm Fire & Cas. Co., 268 Conn. 675, 687-88, 846 A.2d 849 (2004). The insurer may not refuse to defend unless a comparison of the policy with the complaint shows on its face that there is no potential for coverage. Moreover, in determining the duty to defend, the insurer may not look beyond the four-corners of the complaint to the underlying facts in order to avoid its duty to defend. This rule applies even where the suit is meritless or lacks factual basis. Wentland v. Am. Equity Ins. Co., 267 Conn. 592, 600, 840 A.2d 1158 (2004). If the complaint alleges liability which the policy does not cover, the insurer is not required to defend. QSP, Inc. v. Aetna Cas. & Sur. Co., 256 Conn. 343, 354, 773 A.2d 906, 915 (2001).

However, the four-corners rule does not apply to the insurer’s determination whether one qualifies as an insured under a liability policy. In that context, the insurer is required to provide a defense where it has actual knowledge of facts establishing a reasonable possibility of coverage. Hartford Cas. Ins. Co. v. Litchfield Mut. Fire Ins. Co., 274 Conn. 457, 876 A.2d 1139 (2005). This case may support a claim that a “fifth corner” exists in every duty to defend analysis.

If an insurer breaches the duty to defend, the insurer will be liable for the total amount of any judgment rendered, up to the limits of the applicable policy, in addition to costs reasonably incurred in the defense of the action. Keithan v. Mass. Bonding & Indem. Co., 159 Conn. 128, 267 A.2d 660 (1970). Or, the insurer is liable to pay to the insured the amount of a reasonable settlement entered into by the insured with the injured party in good faith and without fraud. Black v. Goodwin, Loomis and Britton, Inc., 239 Conn. 144, 153-54, 681 A.2d 293 (1996). The breach will be considered a waiver of the insurer's right to defend under a reservation of rights, and, thus, a waiver of the insurer's opportunity to lodge a post-verdict challenge.

2. Issues with Reserving Rights

In Missionaries, the Connecticut Supreme Court stated that when an insurer is "called upon to exercise its judgment as to what [is] required of it under its contractual obligation to [an insured]... [i]t [can] either refuse to defend or it [can] defend under a reservation of its right to contest coverage under the various avenues which would subsequently be open to it for that purpose." 155 Conn. at 113. Should the insurer choose to refuse to defend and subsequently be determined wrong in its coverage analysis, the insurer may be in breach of its contract with the insured, entitling the insured to recovery. Id. “The defendant having, in effect, waived the opportunity which was open to it to perform its contractual duty to defend under a reservation of its right to contest the obligation to indemnify the plaintiff, reason dictates that the defendant should reimburse the plaintiff for the full amount of the obligation reasonably incurred by it.” Id. at 113-14.

B. Duty to Settle

The insurer has the sole right to settle claims against the insured, within the limits of the policy, and therefore, the insurer is obligated to exercise that right in a reasonable and prudent manner. General Acc. Group v. Gagliardi, 593 F. Supp. 1080, 1088 (1984), aff'd, 767 F.2d 907 (2d Cir. 1984). The insurer which fails to exercise due care or good faith with regard to settling claims within policy limits is subject to a direct statutory right of action by judgment creditor of insured. Id. An insurer may be found to have breached its duty and to have acted in bad faith if it fails to settle a claim fairly. Conn. Gen. Stat. §38a-816; Banatoski v. Sheridan, 1998 Conn. Super. LEXIS 2965 (Conn. Super. Ct. Sept. 17, 1998) (Leheny, J.); Zamary v. Allstate Ins. Co., 1998 Conn. Super. LEXIS 1649 (Conn. Super. Ct. June 10, 1998) (Corradino, J.); see also Mead v. Burns, 199 Conn. 651, 509 A.2d 11 (1986).

Connecticut has long recognized a cause of action in negligence for the failure to settle a claim. “In situations analogous to that presented by this case, courts have applied varying standards by which to determine whether or not an insurer is liable to an insured for failing to settle a claim. These may be generally summarized as a requirement of good faith and honest judgment on the part of the insurer or one that the insurer should use that care and diligence which a person of ordinary prudence would exercise in the management of his own business.” Hoyt v. Factory Mut. Liability Ins. Co. of America, 120 Conn. 156, 159 (1936). See also Capitol Fuel Co. Inc. v. New York Casualty Co., 16 Conn. Sup. 155, 158 (1948) ("From all the pertinent literature enjoyed by the court, it is concluded that the trend of judicial and text opinion favors the more just and modern theory of holding an insurer accountable for want of due care in handling a case against its assured.").; Bourget v. Government Employees Insurance Co., 456 F.2d 282, 285 (2d Cir. 1972); Windmill Distributing Co. v. Hartford Fire Ins. Co., 742 F. Supp. 2d 247, 263 (D. Conn. 2010); Carford v. Empire Fire & Marine Ins. Co., Superior Court, judicial district of Fairfield, Docket No. CV065001946 (August 21, 2012, Tyma, J.). “The basis for judicial imposition on liability insurers of a duty to exercise good faith or due care with respect to opportunities to settle within the policy limits is that the company has exclusive control over the decision concerning settlement within policy coverage, and company
and insured often have conflicting interests as to whether settlement should be made—whether one considers the insured's claim to sound in tort, as most of the cases have—or as based on an expansive reading of the contractual obligation to protect up to the agreed limits—what gives rise to the duty and measures its extent is the conflict between the insurer's interest to pay less than the policy limits and the insured's interest not to suffer liability for any judgment exceeding them.” Bourget, supra, 456 F.2d 285.

III. Extracontractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

1. First Party


2. Third Party

An injured claimant must be a party to an insurance contract or be subrogated to the rights of the insured in order to assert a claim for bad faith before the liability of the insured has been established. Carford v. Empire Fire and Marine Ins. Co., 94 Conn. App. 41, 891 A.2d 55 (2006) (“no claim of breach of the duty of good faith and fair dealing will lie for conduct that is outside of a contractual relationship.”).

3. Damages – Common Law Bad Faith

In Connecticut, common law punitive damages may be awarded in a bad faith action upon a showing of a reckless indifference by the defendant to the rights of others or an intentional and wanton violation of those rights. Berry v. Loiseau, 223 Conn. 786, 811, 614 A.2d 414 (1992); Collens v. New Canaan Water Co., 155 Conn. 477, 489, 234 A.2d 825 (1967). A plaintiff need not prove actual intention to do harm by the defendant in order to be awarded punitive damages as long as the plaintiff proves defendant’s reckless indifference to the consequences. Berry, 233 Conn. at 811; Collens, 155 Conn. at 490. Significantly, common law punitive damages in Connecticut are limited to reasonable costs incurred in an action, including attorney's fees and nontaxable costs. Berry, 233 Conn. at 827; Bodner v. United Servs. Auto Assoc., 222 Conn. 480, 492, 610 A.2d 1212 (1992).

B. Fraud
In order for a plaintiff to prevail upon a claim of fraud, he or she must establish: (1) that a false representation was made as to a statement of fact; (2) that it was untrue and known to be untrue by the party making it; (3) that it was made to induce the other party to act on it; and (4) that the latter did so act on it to his or her injury. Nazami v. Patrons Mut. Ins. Co., 280 Conn. 619, 628, 910 A.2d 209 (2006); Weisman v. Kaspar, 233 Conn. 531, 539, 661 A.2d 530 (1995); Billington v. Billington, 220 Conn. 212, 217, 595 A.2d 1377 (1991); Miller v. Appelby, 183 Conn. 51, 54-56, 438 A.2d 811 (1981). To succeed in a common law fraud action, the plaintiff must prove damages - the fourth element - by a preponderance of the evidence, but must prove all other elements by a higher standard, defined as “clear and satisfactory evidence.” Weisman v. Kaspar, 233 Conn. at 540; Rego v. Connecticut Ins. Placement Facility, 219 Conn. 339, 343, 593 A.2d 491 (1991); Kilduff v. Adams, Inc., 219 Conn. 314, 330, 593 A.2d 478 (1991).

C. Intentional/Negligent Infliction of Emotional Distress

In order to prove a claim of intentional infliction of emotional distress, a plaintiff must establish; (1) that the actor intended to inflict emotional distress; or that he or she knew or should have known emotional distress was a likely result of his or her conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe. Appleton v. Board of Educ., 254 Conn. 205, 210, 757 A.2d 1059 (2000); Hall v. Bergman, 296 Conn. 169, 183 n.9, 994 A.2d 666 (2010).


In 2003, however, the Connecticut Supreme Court rejected the application of intentional infliction of emotional distress to the context of an insurer that, failing to conduct a thorough and reasoned investigation, hastily determined a lack of coverage based on arson. Carrol v. Allstate Ins. Co., 262 Conn. 433, 815 A.2d 119 (2003). That same court, however, found that the jury could reasonably have concluded that the defendant negligently inflicted such distress. In reviewing the elements of such a claim, the court found that (1) the defendant’s conduct created an unreasonable risk of causing such distress, (2) the distress to the plaintiff was foreseeable, (3) the emotional distress was severe enough to result in potential illness or bodily harm and (4) the defendant’s conduct was the cause of the plaintiff’s distress. Id. at 447.

It remains an open question in Connecticut whether a plaintiff must allege and prove extreme and outrageous conduct in order to prevail on a claim of negligent infliction of emotional distress. In 2005, the Appellate Court of Connecticut held that “a pivotal difference between claims for emotional distress based on intentional conduct and those based on negligent
conduct is that an essential component of an intentional infliction claim is that the defendant's alleged behavior must be extreme and outrageous. A claim based on the negligent infliction of emotional distress requires only that the actor's conduct be unreasonable and create an unreasonable risk of foreseeable emotional harm. Thus, to survive a motion to strike, a complaint alleging negligent infliction of emotional distress need not include allegations of extreme and outrageous behavior.” Olson v. Bristol-Burlington Health Dist., 87 Conn. App. 1, 7, 863 A.2d 748, cert. granted in part, 273 Conn. 914, 870 A.2d 1083 (2005) (defendant's petition granted as to the issue of “[w]hether the Appellate Court applied the correct legal standard to the negligent infliction of emotional distress claim?”). The Court’s holding in Olson represents a retreat from its previous position that the “[t]he elements of negligent and intentional infliction of emotional distress differ as to the state of mind of the actor and not to the conduct claimed to be extreme and outrageous.” Muniz v. Kravis, 59 Conn. App. 704, 709, 757 A.2d 1207 (2000).

D. State Consumer Protection Laws, Rules and Regulations


To establish a claim for unfair claims handling practices under CUIPA, one must prove that the insurer engaged in a “general business practice.” CONN. GEN. STAT. § 38a-816 (6). The term “general business practice” is not statutorily defined, however, in Lees v. Middlesex Ins. Co., 229 Conn. 842, 643 A.2d 1282 (1994), the Connecticut Supreme Court held that multiple instances of insurer misconduct during the handling of a single claim were insufficient to prove a violation of CUTPA. Lees, 229 Conn. at 847-51. In Lees, the Court upheld the decision of the Connecticut Appellate Court in Quimby v. Kimberly Clark Corp., 28 Conn. App. 660, 613 A.2d 838 (1992), which held that a CUTPA plaintiff alleging unfair claims handling must show a "general business practice" involving more than a single claimant. Lees, 229 Conn. at 849 n.9; Quimby, 28 Conn. App. at 671-72. In Belz v. Peerless Ins. Co., 46 F. Supp. 3d 157, 167(D. Conn. 2014), the district held that there is no “magic number” of instances a plaintiff must allege to survive a motion to dismiss under CUIPA through CUTPA's enforcement provision; rather, “the allegations must be considered in the context and the circumstances of the entire complaint.”

Compare Southridge Capital Mgmt., LLC v. Twin City Fire Ins. Co., 2005 Conn. Super. LEXIS 1537 (Conn. Super. Ct. June 3, 2005) (Quinn, J.); Herbert v. Assurance Co. of America, 38 Conn. L. Rptr. 670 (Conn. Super. Ct., Feb. 9, 2005) (Stevens, J.). Also of note is Judge Gallagher’s decision in Autobody Ass’n v. Southwest Appraisal Group, 2002 Conn. Super. LEXIS 2721, at *4 (Conn. Super. Ct. Aug. 9, 2002) in which she denied the respondents’ motion to strike the petitioner’s application for a pre-suit bill of discovery where the plaintiff asserted unfair business practices against respondent appraisers. The petitioner in that case was seeking the production of various documents and authorization to take sworn depositions before filing its underlying lawsuit because, although it could make specific allegations that might constitute unfair business practices, it lacked the factual predicate on which to base its CUIPA claim. Id. at *1-2.

There has been some movement in Connecticut, however, to depart from this general rule; that an insured may only bring a cause of action against an insurer for CUTPA when that claim is predicated upon an alleged CUIPA violation. Recently, one Connecticut Superior Court held that insurer conduct not subject to CUIPA may still give rise to a CUTPA claim. Lawrence & Memorial Hospital v. Health Net, Inc., 2010 Conn. Super. LEXIS 3049, at *13 (Conn. Super. Ct. Nov. 23, 2010) (Berger, J.) (“[A] CUTPA count may stand if a plaintiff’s allegations are sufficient on some basis other than CUIPA to establish a cause of action under CUTPA.”).

Nonetheless, the Supreme Court of Connecticut recently provided some major pushback to this notion and reinforced the CUTPA/CUIPA rule. State v. Acordia, Inc., 310 Conn. 1, 73 A.3d 711 (2013). In Acordia, the Court held that “conduct by an insurance broker or insurance company that is related to the business of providing insurance can violate CUTPA only if it violates CUIPA.” Id. at 27. Although the Court acknowledged “[t]he trial court decisions that have concluded that a CUTPA claim based on insurance related conduct can be raised independently of any CUIPA claim,” it ultimately found them to be unconvincing. Id. at 33. Still, the Court explicitly stated that it did not decide that particular issue, noting that “whether a business transaction by a commercial entity must be in the conduct of that entity’s main business to be in the conduct of trade or commerce for purposes of CUTPA . . . has not been addressed by an appellate court in Connecticut,” and instead determining that “the sole question before us is whether conduct by an insurance company that is related to its insurance business can be found to violate CUTPA when it does not violate CUIPA,” answering that question in the negative. Id. at 27, n. 7.

1. Third Party Claimants

The Connecticut Appellate Court recently decided as an issue of first impression that under CUTPA a third party claimant may not, prior to obtaining a judgment against the tortfeasor, assert a CUIPA violation against the insurer alleging unfair claim settlement practices. Carford v. Empire Fire and Marine Ins. Co., 94 Conn. App. 41, 48-53, 891 A.2d 55 (2006). The Court explained that “[t]o hold otherwise would create confusion, increased and multiple litigation both generally and within specific cases, the potential coercion of settlements when the insured’s liability has not been and may never be established, and an inherent conflict of interest. The judicial creation of such a right would not further the policy underlying CUIPA and CUTPA. Rather, it is the province of the legislature to create new rights and remedies contained within the highly regulated industry of insurance.” Id. at 53.
2. **Damages – Statutory Bad Faith**

Both “real” or traditional punitive damages as well as common law punitive damages (costs of litigation and attorney fees) are available by statute for violations of the Connecticut Unfair Trade Practices Act ("CUTPA"). Connect. Gen. Stat. § 42-110g (a) ("[T]he court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper."). If a plaintiff seeks punitive damages based on allegations of a CUTPA violation, he or she must satisfy the threshold requirements for an award of common law punitive damages, that is, the “evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights.” Votto v. Am. Car Rental, Inc., 273 Conn. 478, 486, 871 A.2d 981 (2005); Utzler v. Braca, 115 Conn. App. 261, 280 (2009). The trial court’s discretionary award of punitive damages and attorney fees will not be interfered with on appeal unless abuse of discretion is manifest or injustice has been done. Votto, 273 Conn. at 486.

**F. Class Actions**


**IV. Discovery Issues in Actions Against Insurers**

**A. Discoverability of Claims Files Generally**


**B. Discoverability of Reserves**

Although there is no Connecticut case law directly addressing this issue, several Superior Court decisions suggest that reserve information is protected from discovery. In Gonzalez v. White, 1990 Conn. Super. LEXIS 308 (Conn. Super. Ct. June 18, 1990) (Jones, J.), for example, a plaintiff suing
for personal injuries allegedly resulting from slipping and falling on defendant’s defective stairway requested copies of an insurance claims investigative file relating to the initial investigation of the claim. The defendant objected on the grounds that the file was prepared in anticipation of litigation, contained information regarding reserves, the defense of the action, mental impressions and the evaluation of liability. The Connecticut Superior Court, Jones, J., ordered the defendant to comply with the plaintiff’s production request but permitted the defendant to remove from the documents produced “any mental impressions, conclusions, opinions, including liability evaluations, and legal theories of an attorney or other representative of the defendant concerning this litigation.” The wording of the holding of this decision strongly suggests that the defendant was allowed to hold back the reserve information in the claims investigative file. Id.; see also Litwak v. Lemons, 1990 Conn. Super. LEXIS 310 (Conn. Super. Ct. June 18, 1990) (Jones, J.).

C. Discoverability of Existence of Reinsurance and Communications with Reinsurers

There is a dearth of case law on the discoverability of reinsurance information in Connecticut; however, the trial court addressed this issue in North Am. Philips Corp. v. Aetna Casualty & Sur. Co., 1993 Conn. Super. LEXIS 1428 (Conn. Super. Ct. June 7, 1993) (O’Neill, J.). There, the plaintiff sought discovery in an action seeking liability insurance coverage for three separate underlying actions against it. The court agreed with the plaintiff that communications between the defendant insurers and their reinsurers were relevant because such communications may indicate the defendants’ own interpretations of the policies in question. Further, because the defendants were denying liability, the information may show whether or not the types of claims made by NAPC were anticipated by the defendants. Such information might in some instances rise to the level of admissions. Id. at *2-4. Additionally, the court found that attorney-client privilege and work product did not apply. Although the court concluded that communications made after the final judgments in the underlying actions or after NAPC commenced its action against the defendants were made in anticipation of litigation, the defendant failed to demonstrate attorney involvement in the procurement of the information, as would be required for the work-product principle to apply. Id. at *9 (citing Stanley Works v. New Britain Redevelopment Agency, 155 Conn. 86, 95, 230 A.2d 9 (1987)).

V. Defenses in Actions Against Insurers

A. Misrepresentations/Omissions: During Underwriting or During Claim

In determining whether an answer contained in an application for insurance is false, the court will construe the questions as a layman would understand it; if there is room for two or more reasonable constructions, the question will be interpreted against the insurer. Walsh, 218 Conn. at 691. The trial court may determine a representation is false as a matter of law when it is not objectively reasonable. Id. at 694. The insurer must prove reliance on a material misrepresentation. Id. In the instance of an insurance policy issued without a medical examination, misrepresentations made on a medical questionnaire or insurance application are deemed material. State Bank & Trust Co., 109 Conn. at 70-71. However, in automobile liability insurance cases involving injured third parties, the insurer cannot rescind based upon application misrepresentations of the insured. Munroe v. Great Am. Ins. Co., 234 Conn. 182, 661 A.2d 581 (1995).

B. Failure to Comply with Conditions

In the absence of waiver or other excuse, cooperation by the insured is a condition the breach of which brings an end to the insurer's obligation. Arton v. Liberty Mut. Ins. Co., 163 Conn. 127, 302 A.2d 284 (1972). Lack of cooperation must be substantial or material. Double G.G. Leasing, LLC v. Underwriters at Lloyd's, 116 Conn. App. 417, 432 (2009) (citing Curran v. Connecticut Indem. Co., 127 Conn. 692, 696, 20 A.2d 87 (1941)). In the absence of prejudice to the insurer, breach of the cooperation condition is actionable. However, the insured has the duty to establish that lack of cooperation did not prejudice the insurer. Taricani v. Nationwide Mut. Ins. Co., 77 Conn. App. 139, 822 A.2d 341 (2003).

A breach of the policy’s notice condition may result in a forfeiture of coverage provided the insurer has been prejudiced by the late notice. The requirement for prompt notice is to give the insurer a fair opportunity to investigate the claim. Taricani v. Nationwide Mutual Ins. Co., 77 Conn. App. 139, 150 (2003). With regard to late notice, the burden of proof has recently been shifted from the insured to the insurer as to prejudice. See Arrowood Indem. Co. v. King, 304 Conn. 179 (2012). In this way, the insurer must come forward with evidence of prejudice to defeat insurance coverage on the basis of late notice. Id. However, in the case where an insured goes beyond delay and fully fails to file a notice of claim (or a proof of loss), the burden shifts back to the insured to demonstrate that the insurer was not prejudiced. Palkimas v. State Farm Fire & Cas. Co., 150 Conn. App. 655, 660, 91 A.3d 532, 535 (2014).

C. Challenging Stipulated Judgments: Consent and/or No-Action Clause

Under the majority view, when an insurer breaches its contractual duty to defend and, as a result, improperly leaves its insured to fend for itself, the insurer will not be heard to complain when the insured enters into a settlement agreement “so long as the insured acts in good faith, and without fraud.” Furthermore, the settlement must be reasonable. The majority rule is based on the rationale that when an insurer has refused to defend its insured, it is in no position to argue that the steps the insured took to protect himself should inure to the insurer’s benefit. Thus, the insured can make his own settlement, consent to the entry of judgment with whatever stipulations he can make that are favorable to his interests, such as that the plaintiff will not levy on specified property of the insured, or simply assign certain rights to the plaintiff. Black v. Goodwin, Loomis and Britton, Inc., 239 Conn. 149, 154, 681 A.2d 293 (1996).
D. **Statute of Limitations**


E. **Attorney/Client Communications**

A party who specifically pleads reliance on the advice of his attorney as an element of a claim or defense, and willingly testifies regarding portions of the attorney-client communication, or specifically places at issue, in some other manner, the attorney-client relationship, waives the right to confidentiality by placing the content of the advice directly at issue; the issue cannot be determined without an examination of the advice. Metropolitan Life Ins. Co. v. Aetna Cas. and Sur. Co., 249 Conn. 36, 52-53, 730 A.2d 51 (1999).

In addition to the "at issue" exception to the attorney-client privilege, the Connecticut Supreme Court has also recognized a crime-fraud exception to the attorney-client privilege that extends to civil fraud. Hutchinson v. Farm Family Cas. Ins. Co., 273 Conn. 33, 39, 867 A.2d 1 (2005); Olson v. Accessory Controls & Equipment Corp., 254 Conn. 145, 169, 757 A.2d 14 (2000). “Under the civil fraud exception, the party seeking disclosure of privileged materials must establish both that there is probable cause to believe that the client intended to perpetrate a fraud . . . and that ‘the communications sought in discovery were made in furtherance of the fraud.’” Hutchinson, 273 Conn. at 39.

VI. **Trigger and Allocation Issues for Long-Tail Claims**

A. **Trigger of Coverage**


B. **Allocation Among Insurers**

In Connecticut, defense and indemnity costs for long latency loss claims that implicate multiple insurance policies are allocated on a pro rata basis to all periods in which injury or damage took place. Id. at 700.

VII. **Contribution Actions**

Connecticut recognizes both a statutory and an equitable basis for contribution actions. The former is embodied in Connecticut General Statute § 52-572h and is available to parties who are required to pay “more than
their proportionate share of [a] judgment "when it happens that a portion of the judgment is determined to be "uncollectable" and, as such, is allocated among the other parties. Conn. Gen. Stat. § 52-572h(g) & (h) ("The total recovery by a party seeking contribution shall be limited to the amount paid by such party in excess of such party's proportionate share of such judgment.").

The latter, an equitable basis, "arises when, as between multiple parties jointly bound to pay a sum of money, one party is compelled to pay the entire sum." Hanover Ins. Co. v. Fireman's Fund Ins. Co., 217 Conn. 340, 353, 586 A.2d 567, 574 (1991). "That party may then assert a right of contribution against the others for their proportionate share of the common obligation." Id.; see also Kaplan v. Merberg Wrecking Corp., 152 Conn. 405, 412, 207 A.2d 732, 736 (1965) ("contribution involves a claim for reimbursement of a share of a payment necessarily made by the claimant which equitably should have been paid in part by others").

There is an important caveat however: in Hanover, the Supreme Court of Connecticut recognized the doctrine that "voluntary" payments do not create a right to contribution. Id. at 354. Although the Hanover court was explicit that it did not fully adopt this doctrine, the fact that the plaintiff in that case had made a voluntary payment when it was "not clear . . . that [it] could legally have been compelled to pay the . . . loss in its entirety" was one of the equitable factors the court weighed against it, stating that for a plaintiff to be so compelled was "[a classic] prerequisite to an action for contribution." Id. at 353.

Hanover involved a business that simultaneously held dual coverage between two insurers when it suffered a fire loss. One insurer, Hanover, paid the entire loss and sought contribution from the second company. However, the Court ruled that equity did not favor an award of contribution to Hanover. Besides the voluntary (non-compulsory) nature of Hanover’s payment, other equitable factors the Court cited as weighing against the insurer were the fact that it did not bring suit within the one-year provision of the policy and the contextual fact that the second company’s coverage had been sought as a supplemental policy rather than as a replacement policy. Id. at 353-56.