



CONNECTICUT TRIAL LAWYERS ASSOCIATION WORKERS' COMPENSATION SECTION

The Connecticut Trial Lawyers Association supports **Raised Bill No. 548**, "An Act Concerning the Award of Workers' Compensation for Scarring and Disfigurement". This bill would give workers' compensation commissioners the authority to award benefits for work injuries that result in permanent significant scarring or disfigurement on any part of the body.

Current law (C.G.S. Sec. 31-308(c)) limits compensation for scarring and disfigurement to "(A) the face, head or neck or (B) any other area of the body which handicaps the employee in obtaining or continuing to work". This section was added in 1993. Prior to that time, commissioners had broad discretion to award compensation for scarring on any part of the body that resulted from a work-related injury.

We believe that the current statute is unfair and arbitrary. Subsection (A) of the statute limits scarring and disfigurement awards to those parts of the body that are visible. As noted by Professor Arthur Larson, the author of the leading treatise on workers' compensation, "modern cases generally do not insist that the disfigured area be one normally exposed to view." Larson's Workers' Compensation, Sec. 88.03. The underlying rationale for this view is provided by a New Jersey decision:

"This court can perceive no distinction between a normally visible, non-disabling disfigurement and one which is normally concealed, non-disabling, but of such a nature and extent that it would be revealed by the customary, pre-employment physical examination. Both types possess the inherent capacity to impair future earning capacity." Right v. Purepac Corp., 82 N.J. Super. 100, 196 A.2d 695, 700 (Law Div. 1063)

Subsection (B) of the current statute is likewise unduly restrictive. Other than modeling, in what other occupation would a permanent disfigurement reasonably prevent an injured worker from being gainfully employed? The lack of any reported decisions since 1993 in which a scarring award has been made under this subsection demonstrates its limited application.

What has happened in the last 13 years is that many workers who have suffered horribly painful and debilitating scars have been prevented from being properly compensated for their disfigurements. Some examples:

- Thomas Barton - an electrician who sustained severe burns to his hands, arms and torso in a propane fire in Wallingford, resulting in continual skin lesions and loss of skin function

- Sharon Mello - a supermarket employee who suffered burns to her right foot and ankle
- Manuel Mourao - a laborer who was buried in 300-400° hot asphalt up to his thighs while doing paving work in Norwalk and sustained second, third and fourth degree burns to both legs
- Joseph Tatroe - an auto body man who suffered severe burns over approximately 65% of his body and underwent multiple skin grafts and surgeries in an explosion in Norwalk
- Joseph Atkinson - an electrician who sustained hypertrophic burr scars to his back, right shoulder, right arm, trunk and thigh in an electrical arcing/explosion at Sikorsky Aircraft

Like countless other employees who have been injured since 1993, these individuals did not receive compensation benefits for their permanent significant scarring because the affected areas were not expressly covered by the statute. While those workers suffered, workers' compensation insurance carriers have annually earned, since 1993, an average after-tax profit of 14.2% of premium in Connecticut. This is more than twice as large as the countrywide average of 6.8%.

Raised Bill No. 548 would help to correct that inequity. It would allow trial commissioners to have the flexibility in appropriate cases, based upon established legal, medical and factual criteria, and subject to review by the Compensation Review Board, to award benefits for permanent significant scarring or disfigurement for all parts of the body.

The increase in overall workers' compensation costs of implementing this change, according to our actuarial analysis, based upon available data, would range from 0.7% to 2.0%. In light of the enormous profits earned by workers' compensation insurance carriers in Connecticut for the last 13 years, at the expense of injured workers, this cost seems a relatively small price to pay to partially restore fairness and balance to our workers' compensation system.

We urge the members of the Judiciary Committee to support **Raised Bill No. 548**.

Respectfully Submitted,

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