

EMBRY AND NEUSNER

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January 30, 2007

The Honorable Edith Prague, Co-Chairperson
The Honorable Kevin Ryan, Co-Chairperson
Labor and Public Employees Committee
Legislative Office Building
Hartford, CT 06106

RE: January 30, 2007 Public Hearing
Labor and Public Employees Committee
Position of the Connecticut Trial Lawyers Association

Dear Senator Prague and Representative Ryan:

Thank you for the opportunity to submit the position of the Connecticut Trial Lawyers Association (CTLA) on a number of bills that have been presented to the Labor and Public Employees Committee for the public hearing held on January 30, 2007.

1: Senate Bill 151: An Act Concerning Workers Compensation Appeal

CTLA supports the proposed amendment that streamlining of filing the post decisions motions filed in the event one chooses to take an appeal. The current statutes and regulations are cumbersome and can lead to dismissals in the event the party fails to follow these convoluted guidelines.

Section 31-301 provides, when a Commissioner renders a decision, a party to the action has twenty days to file an appeal with the Compensation Review Board. In further compliance with the regulations found in 31-301-2 a party must file with the Compensation Review Board Reasons of Appeal within ten days after filing their appeal. Moreover, if party petitions the Trial Commissioner to correct the findings pursuant Regulation 31-3014, this must be done within two weeks from the date of the decision, unless an extension of time is granted. However, a party has the right to Petition the Trial Commissioner to Correct the findings pursuant to Regulation 31-301-4, but this must be done within two weeks of the Commissioner's decision, unless and extension of time is granted.

Senate Bill 150 simplifies the process. One may not need to take an appeal until the Commissioner addresses the Motion to Correct first. So in accordance with Bill 150, a party can ask the Commissioner to Correct the findings and avoid the necessity of

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filing an appeal and asking for an extension of time to file Reasons of Appeal. This will alleviate the procedural pitfalls that can arise for prose claimants or practitioners who may not be as familiar with the workers compensation. Additionally, Senate Bill 150 would closely resemble the practice in Superior court which requires that all matters pending at the trial level be resolve before and appeal is filed.

CTLA strongly urges the Committee to recommend Regulation changes to 31-301-2 to comport with an amendment to Section 31-301 regarding the filing of an appeal only after a Motion to Correct has been decided upon.

2: Proposed Senate Bill 152: An Act Concerning the Accidental Failure of Workers Compensation Claims

CTLA strongly urges the adoption of Proposed Senate Bill 152 that provides the claimant with the opportunity to refile its claims after a dismissal of claim for lack of jurisdiction for naming the wrong party or for any other reason.

Too often cases are dismissed because of technicalities that prohibit a claim to go forward. Section 31-294c provides that no proceedings for compensation shall be maintained unless a written notice of claim for compensation is given within one year from the date of an accident or three years from the date of manifestation in the event of an occupational disease. The exceptions that prohibit a dismissal of claim are found in Section 31-294c(c) occur when an employee is provided medical treatment by the employer, a voluntary agreement is agreed upon or a hearing is requested within one year.

Most claimants are unaware of the fact that after an injury and informing their employer about the injury that extra steps are required to perfect and toll the statute for running on their claims. In fact all claimants are required to file a first report of injury with their employer, and under current case that is not enough to stop the statue of limitations from running. Proposed Senate Bill No 152 does not guarantee that a claimant will always prevail on the merits of their claim. It merely removes a arduous procedural bar that too often is used as a tool to deny benefits. Instead this bill serves to further the humanitarian intent of the act by establishing a level playing field for all the participants.

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3: Proposed Bill 172:

AN ACT REQUIRING WORKERS' COMPENSATION RESPONDENTS TO REQUEST HEARINGS TO ASSURE THAT CLAIMANTS ARE RECEIVING BENEFITS

CTLA does not support amending the act to require respondents to request a hearing after receiving a permanent partial disability rating. The issuance of a rating on a claimant can have a detrimental impact on a claimant's claim and to mandate the respondents to request a hearing has the potential to cause many problems for claimants. The payment of a permanent partial disability rating is for limited number of weeks and one it is paid, all benefits have the potential of ending before the claimant has ever returned to work. Additionally, some insurance companies treat the issuance of a rating as a justification for stopping medical treatment so to require the Respondent to request a hearing will needlessly put the claimant in a situation that they otherwise might not have to encounter.

4: Proposed Senate Bill No 400:

An Act Concerning Dependents of Deceased Workers Compensation Claimants

CTLA strongly urges the Committee to amend Chapter 568 to provide specific guidelines to ensure that in the event a claimant dies that their claim be given a special priority by the Commissioner to ensure that the bills of the decedent are paid in a timely fashion. It is too often the case that even while the claimant is alive that bills which purportedly are suppose to be paid often are not paid and the injured worker is saddled with collection actions and even forced to appear in court on collection matters. When the injured worker dies these outstanding bills which are legitimately the responsibility of the carrier, often slow down the settling of estates and can add further misery to a difficult situation.

The Workers Compensation Commission needs to recognize the exigency of this situation and come up with a speedier process to resolve this particular situation. The Chairman has spoken about that in matters of surgery or no benefits those cases get special attention by the Commission. So too should this situation.

Sincerely yours,

Nathan Julian Shaffer