



Written Testimony Before the Judiciary Committee

*In Support Of*

**H. J. No. 61 (COMM) RESOLUTION CONFIRMING THE DECISION OF THE CLAIMS COMMISSIONER TO DISMISS THE CLAIM AGAINST THE STATE OF RICHARD B. WEBER, M. D.**

The Department of Social Services urges your support of House Joint Resolution 61 Confirming the Decision of the Claims Commissioner to Dismiss the Claim against the State of Richard Weber, M.D.

The Claims Commissioner correctly dismissed this claim filed by Dr. Weber for lack of jurisdiction. Dr. Weber currently has a federal lawsuit pending based on the same facts and seeking monetary damages as in this state claim. Under section 4-142(2) of the Connecticut General Statutes, the Claims Commissioner does not have jurisdiction over "claims upon which suit otherwise is authorized by law including suits to recover similar relief arising from the same set of facts."

Dr. Weber should not be permitted to pursue his claim in more than one venue.

Attached for your review is a more detailed analysis of the issue before you provided by the Office of the Attorney to the Claims Commissioner.

Thank you for your consideration.

*For additional information on this testimony or any other legislation concerning the Department of Social Services, contact Matthew Barrett at (860) 424-5012 or via email at [matthew.barrett@ct.gov](mailto:matthew.barrett@ct.gov)*

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January 8, 2008

The Honorable James R. Smith  
Commissioner  
Office of Claims Commissioner  
18-20 Trinity Street  
Hartford, CT 06106

RE: Claim of Richard B. Weber, M.D., File No. 20099  
Response to Request for General Assembly Review of Decision

Dear Commissioner Smith:

This letter is submitted in response to the claimant's December 28, 2007 request for review by the General Assembly of the December 7, 2007 Memorandum of Decision (Decision) issued by the Claims Commissioner in the above-referenced claim. In that Decision, the Claims Commissioner granted the respondents' motions to dismiss the claim, based on the exception to the Claims Commissioner's jurisdiction for "claims upon which suit otherwise is authorized by law including suits to recover similar relief arising from the same set of facts." Conn. Gen. Stat. § 4-142(2). Decision, p. 5. In determining that this claim was not within the jurisdiction of the Office of the Claims Commissioner, it was noted in the Decision that the claimant Weber filed, and currently has pending, a federal lawsuit that is based on the same set of facts as those asserted in the claim and that both the lawsuit and the claim seek money damages. Decision, pp. 3, 5. The Claims Commissioner correctly concluded that this claim was excepted from the jurisdiction of the Office of the Claims Commissioner under Conn. Gen. Stat. § 4-142(2).

The claimant articulated the factual basis for his claim as follows:

The basis for Claimant's claims may be summarized as follows: On October 8, 2002, Claimant was arrested and charged with larceny in the first degree by Defrauding a Public Community in violation of C.G.S. 53a-12(a)(4). In short, the information alleged that Claimant knowingly, intentionally and falsely submitted claims to DSS for reimbursement for the use of his laser equipment as a facility fee and therefore committed the felony crime of larceny. The State, by and through various representatives and officials of both the Department [of Social Services] and OCSA [Office of Chief State's Attorney], continued to maliciously prosecute the Claimant despite receiving credible evidence that the

Claimant reasonably relied upon information and instructions from the State to code and bill in that manner.

Notice of Claim, April 29, 2004, p. 2 (In his Amended Claim, the claimant expressly incorporated by reference the facts asserted in the original Claim). The Claim sought money damages "in excess of seven and one-half million dollars." Amended Notice of Claim, August 17, 2006, p. 2. The federal lawsuit similarly states that "[t]his action arises from the malicious and wrongful prosecution of Weber. . . for larceny in connection with allegations of Medicaid fraud." Complaint, p. 2 (attached to Claimant's Request for General Assembly Review of Decision). The federal lawsuit, like the Claim, seeks money damages relating to the alleged malicious prosecution of Weber. Complaint, p. 69.

Prior to October 1, 1996, Conn. Gen. Stat. § 4-142(2) provided an exception to the jurisdiction of the Claims Commissioner for "claims upon which suit otherwise is authorized by law." By way of P.A. 96-85, the legislature amended that statute to read "claims upon which suit otherwise is authorized by law including suits to recover similar relief arising from the same set of facts." (Emphasis added). As noted in the Claims Commissioner's Decision, the language of the statute is clear and reflects the intent of the legislature that a petitioner not be permitted to pursue both a lawsuit and a claim against the state for the same type of relief, e.g., money damages, arising out of the same set of facts. This conclusion is confirmed by the legislative history of P.A. 96-85:

[T]here was a recent court decision where a lawsuit and a claim were pursued at the same time based upon the same underlying facts and seeking the same relief. This bill would clarify that that is not appropriate under the statute.

39 Conn. H.R. Proc., Pt. 6, 1996 Sess. 2035 (April 24, 1996) (remarks of Rep. Scalettar). There can be no legitimate dispute that, in this instance, both the claim and the lawsuit were based upon the same underlying facts, i.e., the factual allegations which, according to Weber, demonstrate malicious prosecution, and seek similar relief, i.e., money damages. As a result, this case falls squarely within the exception of Conn. Gen. Stat. § 4-142(2). The legislature has made clear its intent that in such a situation, pursuing two actions is not appropriate and cannot be permitted.<sup>1</sup> The Claims Commissioner has dismissed claims brought by similarly situated individuals, and to permit Dr. Weber to maintain both a lawsuit and a claim under these circumstances would work an injustice both to the State in this case and others who have not been permitted to seek a dual remedy.

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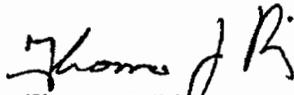
<sup>1</sup> Because the claimant chose to file his pending lawsuit in federal court, a decision by the General Assembly to vacate the Claims Commissioner's decision and authorize the claimant to sue the state would lead to the strange result of two actions pending at the same time, one in federal court and one in state court, both of which arise out of the same facts and seek similar relief.

In his Request for General Assembly Review of Decision, the Claimant asserts that he wishes to pursue claims of negligence and breach of contract "against the State and its employees and agents." According to the Claim, the matter before the Claims Commissioner concerned "[t]he egregious conduct by State officials leading to his arrest and prosecution...." Notice of Claim, p. 4. With respect to the Department of Social Services, any such alleged "egregious conduct" would have had to occur prior to the claimant's arrest, since the Department of Social Services has no authority to either arrest or prosecute individuals for criminal offenses. The claimant acknowledges that he was arrested on October 8, 2002. Complaint, p. 42, ¶ 216. His initial Notice of Claim was not filed until April 29, 2004, more than one and one-half years after the date of his arrest.

Conn. Gen. Stat. § 4-148(a) provides that "[e]xcept as provided in subsection (b) of this section,<sup>2</sup> no claim shall be presented under this chapter but within one year after it accrues." The claim filed on behalf of Dr. Weber, not having been filed within one year of the alleged "egregious conduct" by Department of Social Services officials, was not timely, and was subject to dismissal for that reason as well. This issue was raised in the respondent Department of Social Services' Motion to Dismiss. Because the Claims Commissioner dismissed the claim on the basis of the "suit otherwise authorized by law" jurisdictional exception, the issue of the untimely filing of the claim was not addressed in the Decision.

In addition, with regard to both allegations regarding the Office of the Chief State's Attorney and the Department of Social Services, it is the State's position that no wrongdoing was committed by any agent of the State and that this claim is entirely without merit. For all of the reasons cited above, the claimant should not be permitted to pursue his claim in more than the one appropriate avenue currently available to him, the federal District Court.

Very truly yours,



Thomas J. Ring  
Assistant Attorney General

cc: Atty. Ryan M. Mihalic  
Lynn Wittenbrink, AAG

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<sup>2</sup> Subsection (b) addresses authorization by the General Assembly of an otherwise untimely claim if it "makes an express finding that such authorization is supported by compelling equitable circumstances and would serve a public purpose."