

Labor and Public Employees Committee State of Connecticut Legislative Office Building
Public Hearing
March 4, 2008

Honorable Members, Greetings.

⇒ Signifies Testimony

⇒ In a former career before my 1991 herniated disc injury, I was an Assistant Account Manager in Loss Control and Safety. I have conducted hundreds of Workers Compensation Safety Surveys and developed as many recommendations. From my experience viewing the workplace notification requirements I can say less than 50% or more employers I have observed complied with posting requirements.

H.B. 5727 31-279 (a) The chairman of the Workers' Compensation Commission shall adopt regulations, in accordance with the provisions of chapter 54, specifying the minimum information to be contained in a notice of the availability of compensation which shall be posted in the workplace by each employer subject to the provisions of this chapter pursuant to subsection (f) of section 31-284.

⇒ I am in favor of Employee Notification as outlined in An Act Concerning the Workers' Compensation Commission and Standards for Medical Treatment.

⇒ a. I would suggest an additional Warning be included in the Workplace Notification to Employees:

⇒ **WARNING: By filing a notice of injury to your employer, you have begun civil litigation. You may wish to consult with an attorney. If you can not afford an attorney, one will be appointed to you.**

When I started composing my message to you five days ago my letter began; "I'll tell you what is wrong with Workers Compensation." Now I can't tell you with certainty.

I found blame with The Workers Compensation Commission, The Governor, The Labor Committee, the insurance companies, the doctors and the employers.

Blameless is the injured worker. Especially injured workers like myself who have been too injured from the onset to fend for themselves. We have become the "exception" and the most likely abused by the system legislated to provide medical care and lost income.

⇒ There should be no possible legislation enacted to penalize injured workers as Raised Bill 5626.

⇒ HB 5626 "Each commissioner shall have the discretion to render findings of bad faith and impose penalties should said commissioner determine a party has not made reasonable effort to comply with, or maliciously refused to comply with, the commissioner's orders or requests."

⇒ Please do not vote favorable to HB 5626 because it will only enable unjust retaliation against Connecticut Workers. The Committee should strike the proposed Act Granting Workers Compensation Commissioner Power to Render Discretionary Findings.

My thoughts regarding what is wrong with the present Workers Compensation System are you have to begin new. Fortunately we have experts in the field of Insurance already employed by the State of Connecticut. These employees work for The State of Connecticut Department of Insurance. They know insurance cold. It has been my experience they have years of course work and experience. The State of Connecticut Department of Insurance employees know the history and the policy coverage of insurance. They are professionals. They know how insurance should work and would administer Workers Compensation just fine.

Presently the lawyers running Workers Compensation since the 1993 amendment that all commissioners be attorneys at law. All lawyers want to be Commissioners someday. None appear willing to stand up and tell you how corrupt Workers Compensation is. One of my more memorable legal conferences was an attorney telling me. "It is not a matter of if you will be screwed by Workers Compensation, just a matter of how badly."

Lawyers make decisions on coverage by case precedents. That is how lawyers think and act.

But case precedent is not insurance, that's litigation.

And that is what's wrong and delaying medical treatment to thousand of workers who in most cases are suffering. Such delays complicate their injury and destroy families.

What has been happening in Workers Compensation, is exactly what the WC Statute was enacted to replace and eliminate.

I challenge you Labor Committee members, to take a look at any Workers Compensation trial. I will give you a suggested reference # DeOliveria 273 Conn. 487. Read it and you will see that all the lawyers talk about is case precedent decisions to narrow and eliminate coverage and seldom are there references to what is covered under CGS 568 Workers Compensation Act. I beg you to read the entire case with all the footnotes contained in Westlaw. It is so complicated, how can anyone expect an injured worker to handle their own medical case, try to pay the bills and fight against the lawyers for the benefits they are entitled to?

⇒ Cases such as DeOliveria 273 Conn. 487 are exactly like the trials The Workers Compensation Act was designed to replace. They take as long, cost as much and delay injured worker treatment and wage compensation just as long.

Workers Compensation Act has become a hybrid system that is inadequate and is costing citizens their lives and livelihood.

⇒ Even the superior court judges feel inclined to remand Workers Compensation Commissioners. (See Footnote "CGSC").

⇒ *"Construing the Workers Compensation Act liberally advances its underlying purpose, i.e., to provide financial protection to the claimant and his family. Laliberte v. United Sec., Inc. (2002) 801 A.2d 783, 261 Conn. 181."*

⇒ HB 5626 - In the instance of HB 5626, Act Granting Workers Compensation Commissioner Power to Render Discretionary Findings. "Bad Faith" is not defined within Workers Compensation. The proposal as it stands now, is akin to allowing Workers Compensation Commissioners shoot from the hip. That is unsatisfactory in my opinion because I have

personally suffered many “shot from the hip” wounds of several commissions in the past 17 years. That is correct, 17 years. My case has lingered 17 years and there is no end in sight. This legislation is unsupportable and a detriment to all workers.

⇒ If the above unilateral power proposed was not detrimental to the process and injured workers then the following clause in HB 5626 makes it dangerous.

⇒ HB 5626 (31-278) “The Superior Court, on application of a commissioner or the chairman or the Attorney General, may enforce, by appropriate decree or process, any provision of this chapter or any proper order of a commissioner, or the chairman rendered pursuant to any such provision.”

⇒ I would encourage Labor Committee to use this opportunity to eliminate this provision in its entirety as non-applicable to any present item within this chapter.

The application and enforcement of a penalty of law as suggested in HB 5626 without due process appears to be unconstitutional. We are not talking about parking tickets here. Such power is unconscionable. Injured workers live in your community, have homes and children, pay taxes, support PTA’s and Boy Scouts. They are your neighbors. We are not scofflaws and should not be treated like criminals.

Here are four examples of Bad Faith court cases and the citations for your reference and research. Each one involves Nationwide Insurance. The Nationwide Insurance references are purely coincidental from a random Internet search.

Miller v. Nationwide Insurance, 112 N.C. App 295

“These allegations of plaintiffs complaint are sufficient to support an award of damages, including punitive damages, based upon a bad faith refusal to pay plaintiff’s claim.” 112 N.C. App. at 306

Lovell v. Nationwide Insurance, 108 N.C. App. 416, 424

“For example in Lovell, aggravation was demonstrated by Nationwide’s failure to conduct a timely investigation of a claim under the liability coverage and delay in paying med pay in order to affect a lower settlement of the pending liability claim.” 108 N.C. App. 416, 42

Smith v. Nationwide Insurance, 96 N.C. App 215,385

“The Smith court held that the plaintiff’s allegations of three violations of N.C. Gen. Stat. §58-54.4(11) satisfied the aggravation element of the bad faith tort. Additional facts alleged in support of the aggravation element included a five month passage of time between the adjuster’s initial contact and issuance of a claim check; extended negotiations with little progress towards resolution; and large differences between plaintiff’s estimates and Nationwide’s estimates. The Smith court also endorsed the holding from Payne, supra, that aggravated conduct could be shown by a pattern of excuses raised by an insurance company for refusing to pay a claim.”

96 N.C. App 215,385

Romano v. Nationwide Insurance Company, 435 PA. Super. 545, 646 A.2d 1228(1994).

"Bad faith" on part of insurer is any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e. good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.

⇒ **My Bad Faith Experience with Nationwide Insurance**

⇒ Nationwide Attorney told me at the exit of a WC informal hearing (May 2005) that no matter what the commissioner were to decide, they will deny my surgery and not pay, viscously delaying my treatment.

The doctor hired by Nationwide (Dr. Yannopolous) said to me just days before my surgery that there was nothing wrong with my two lumber vertebra discs and anyone who operated would be committing a criminal act. The insurance companies pay these doctors for these reports so well, that it is a substantial practice for them.

In the intervening week (June 2005) before surgery, Nationwide Insurance Claims Representative called Dr. James Yue of Yale University, New Haven, CT and told him lies about my medical history. Now this was after the May 2005 meeting when they already said they were not paying and Nationwide was made known I would be proceeding with my own private payment. Dr. Yue cancelled my surgery based on Nationwides' fraudulent misrepresentations. This is very Bad Faith Practices.

⇒ What if my attorney even bothered to make a claim for my surgery? (He didn't) The attorneys receive 20% of the money and medical benefits paid to injured workers on a contingency basis. For example the present value of my surgery is \$ 100,000.00. Had I received surgery benefits from Workers Compensation, then the attorney would have received \$ 20,000.00 and I would have netted \$ 80,000.00. That would still leave an injured worker short and unable to pay for covered medical expense. **I am still making monthly payments on my surgery.** If I had not had the surgery in 2005, I likely would not, or could not have had it by today. If I had not had surgery, I certainly would not be here before you today.

⇒ **My Bad Faith Experience with Workers Compensation Commission.**

⇒ In May 2005 Commissioner asked me if I had complained to Senator Edith Prague, Co-Chair of the Labor and Public Employee Committee, about his behaviors in my case. I told him I had met with Senator Prague. He then transferred my case from Hartford to Middletown, CT.

⇒ In June 2005 when Commissioner learned I had paid for my own surgery and it was successful, in retaliation, he terminated my workers compensation benefits unilaterally, without due process. He had Amy at Hartford Workers Compensation office to tell me on the phone.

⇒ If HB 5626 was in effect, I imagine Commissioner would have penalized me. For how much?

I was denied Physical Therapy by Workers Compensation after I paid for my own surgery.

In 2006 I was denied Vocational Rehabilitation by Workers Compensation.

And there was another instance in 1993 by Commissioner Spain of Worker Compensation Bad Faith even more notorious.

⇒ **My Bad Faith Experience with Lawyers**

⇒ An attorney has claimed \$ 100,000.00 in fees against me while I have not received one dime for medical benefits or lost wages in 17 years. 40% of this amount is unaccountable and the part I have tried to tell you all appears to be corruption. That is corruption beyond the abuses I have suffered in the Workers Compensation Commission of unilateral orders inflicted by Commissioners.

⇒ The concern I bring to you today is all awards or stipulations must be approved by the commissioners. How can the attorney trying to bilk me of \$ 100,000.00 be confident the extra fees will be approved by the commissioner? What penalties are to be assessed against fraudulent lawyers?

DeOliveria 273 Conn. 487 - Referenced from DeOliveria – Judges’ comments.

⇒ *FN8. The legislative history of the act (Workers Compensation) is replete with testimony reflecting the wide range of horrific circumstances that have resulted from an insurer's nonpayment of benefits-loss of a home, inability to buy food and clothing, and commitment to a psychiatric facility-and many instances of repeated and egregious conduct by insurers ranging from a failure to keep records necessary to process a claim to a failure to appear for claims hearings. DeOliveria 273 Conn. 487*

⇒ What DeOliveria is telling me is The Superior Court Judges, The Supreme Court Judges, The Governor, The Legislature, and Workers Compensation Commissioners and you Labor Committee, already know the damage done to injured workers by Workers Compensation and I must just be here boring you. There is no oversight of Workers Compensation.

I have met with you, Labor Committee. I brought to you examples of many others abused injured workers claiming fraud, malfeasance and corruption that you have ignored. The most heartbreaking was the blind nurse who tried to handcuff herself to the Middletown, CT Workers Compensation Office in protest. That doesn't surprise me because that is the same office and Commissioner that began my nightmare in the system.

⇒ I came to you members of the Labor Committee in my hours of dire pain, asking for help. I have been removed from the Governors' Office on several occasions and escorted out by the Capital Police. I have been to your place of business in protest. I have made a website, Paybilly.com/ to tell my story.

⇒ I have lost my family, my home and every penny I ever earned because of Workers Compensation. You may access my story on my Paybilly.com/ and read more injured workers abuses and Bad Faith acts of Nationwide Insurance.

Proposal to Amend Legislation

- ⇒ A. Bad Faith Claims can not be handled in Workers Compensation because there is no Summary Process and is subject to abuse.
- ⇒ c. Bad Faith is so serious that in most cases, punitive damages could be awarded. The elimination of jury imposed punitive damages through due process as negated in the proposed legislation of HB 5626 is detrimental to all workers.
- ⇒ d. Medical payments, prescriptions, treatment and the like should exclude attorney fees in order to enable the injured worker access and affordability of treatment and eliminate medical expense gap in Workers Compensation awards.
- ⇒ e. I would suggest an amendment to HB 5626 for an independent counsel review board to handle and record all complaints of corruption, malfeasance, denial, non-payments in Workers Compensation and to conduct a quality control review of all cases for a period back to 1990, one year prior to reforms.
- ⇒ f. HB 5626 must be amended to exclude injured workers from penalties levied by biased Workers Compensation Commissioners.
- ⇒ h. HB 5626 states "The Superior Court, on application of a commissioner or the chairman or the Attorney General, may enforce, by appropriate decree or process, any provision of this chapter or any proper order of a commissioner, or the chairman rendered pursuant to any such provision."
- ⇒ This clause has no meaning and should be amended for disposal.
- i. I believe an investigation of my case is warranted and I request The Labor Committee authorize such and investigation.
- j. I would ask you to collectively write to Nationwide Insurance to let them know you are watching. I don't think after 17 years this is too much to ask and the facts speak for themselves.

Sincerely,

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Footnote "CGSC" - Connecticut General Statutes Case comments by Judges.

Workers' Compensation Act is liberally construed in favor of employee and is to be interpreted with sufficient liberality to carry into effect its beneficial purpose and to prevent defeat of this purpose by narrow and technical definition. *Infante v. Mansfield Construction Co.* (1998) 706 A.2d 984, 47 Conn. App

Purpose of Workers' Compensation Law is to compensate worker for injuries arising out of and in the course of employment, without regard to fault, by imposing form of strict liability on employer. *Dowling v Slotnik* (1998) 712 A2nd 396, 244 Conn. 781.

Under Workers' Compensation Act, employee surrenders his right to bring a common law action against employer, thereby limiting employer's liability to statutory amount, in return, employee is compensated for his of her losses without having to prove liability. *Doe v. Yale University* (2000) 748 A.2d 834, 252 Conn.641.

Humanitarian and remedial purposes of workers' compensation law counsel against an overly narrow construction that unduly limits eligibility for workers' compensation, and thus courts do not construe the law to impose limitations on benefits that the law itself does not specify clearly. *Gartrell v Department of Corrections* (2001) 787 A2d. 541, 259 Conn.29

Construing the Workers Compensation Act liberally advances its underlying purpose, i.e., to provide financial protection to the claimant and his family. *Laliberte v. United Sec., Inc.* (2002) 801 A.2d 783, 261 Conn. 181.

Workers' Compensation Act is remedial and must be interpreted liberally to achieve its humanitarian purposes. C.G.S.A. § 31-275 et seq.

Gil v. Courthouse One, 687 A.2d 146
Conn.,1997

Since Workers' Compensation Act is remedial statute, Supreme Court should not impose limitations on benefits provided for disabled worker that statute itself does not clearly specify. C.G.S.A. § 31-275 et seq.

Laliberte v. United Sec., Inc., 261 Conn. 181
Conn.,2002

By recognizing limitations not delineated by the legislature, a court risks denying the beneficent purposes of the Workers' Compensation Act. C.G.S.A. § 31-275 et seq.

Infante v. Mansfield Construction Co., 706 A.2d 984
Conn.App.,1998

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