



Raised Bill 1099
Public Hearing: 3-20-09

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 20, 2009

RE: SUPPORT OF RAISED BILL 1099 – AN ACT CONCERNING CERTAIN APPEAL PROCEDURES

Testimony of Robert F. Carter for the Connecticut Trial Lawyers Association on March 11, 2009, in support of Raised Bill No. 1099, LCO 4513, An Act Concerning Certain Appeal Procedures

Senator McDonald, Representative Lawlor and members of the Judiciary Committee:

I am Robert Carter, speaking in favor of Raised Bill No. 1099, An Act Concerning Certain Appeal Procedures on behalf of the Connecticut Trial Lawyers Association. I live in Southbury. I've been practicing workers' compensation law for more than thirty years in Connecticut. I have been active in workers' compensation matters for the Connecticut Trial Lawyers Association and Connecticut Bar Association for a long time. I have many times testified in legislative hearings and written many amicus curiae briefs for both organizations. I represent injured employees.

The bill would conform the law to the statute, Section 31-301b, by allowing all disputed decisions of the Compensation Review Board to be appealed to the Appellate Court. The statute does not require a final judgment, but allows appeals from the CRB of "any question of law." The Supreme Court, however, has imposed a requirement of a final judgment, imposing on Sec. 31-301b the final judgment requirements of Sec. 4-183 and Sec. 52-263, which require final judgments for appeals in civil and criminal cases.¹

Both defense lawyers and plaintiffs' lawyers agree that the present system is not working properly. Workers' compensation cases are never final but last for the lifetime of the injured worker unless voluntarily settled. Thus it is very difficult to tell when a judgment is final enough to be accepted by the Court for appeal. The decisions of the CRB resolve crucial issues in cases which should be reviewed, but the final judgment rule bars appellate review until every trivial issue is unnecessarily litigated and resolved, like the exact amount of medical bills which the employer must pay or the amount of interest on past due permanent impairment benefits. But the parties ordinarily resolve these issues without needing a decision by a commissioner.

¹ The final judgment rule, although not contained in Sec. 31-301b as enacted by the legislature, was imposed on Sec. 31-301b by the Supreme Court in Matey v. Estate of Dember, 210 Conn. 626 (1989) and Hall v. Gilbert & Bennett Mfg. Co., 241 Conn. 282, 294-98, 695 A.2d 1051 (1997) and was revisited by the Court recently

In addition, unlike civil cases ordered remanded by the Appellate Court, the Court will not hear appeals of workers' compensation cases which have been remanded by the CRB, however erroneous the grounds for remand, thus requiring what may be an unnecessary and erroneously ordered new trial. A remand by the CRB can never be reviewed under the current interpretation of Sec. 31-301b by the Supreme Court.

In Hummel v. Marten Transport, Ltd., 282 Conn. 477 (2007), the Court invited you to clarify the statute. The Court acknowledged "...that, if we were writing on a clean slate, § 1-2z might foreclose us from reading a final judgment requirement into § 31-301b because the text of § 31-301b contains no such requirement..." but said that because the legislature hadn't responded, it would stick with its rule until told otherwise: the Court said "In sum, it is the legislature, and not this court, that is best suited to entertain the argument of the parties and amici that appeals under § 31-301b should not be limited to final judgments of the board."

Justice Borden concurring, joined by Justice Katz, specifically urged the legislature to act:

The second point that I wish to underscore is that, as the majority also aptly notes, all the parties and the amici curiae in the present case, who represent all parts of the workers' compensation spectrum, have urged us to return to the plain language of General Statutes § 31-301b. Furthermore, the majority opinion makes clear how jurisprudentially fragile the underpinning of the final judgment rule is in the workers' compensation context. **I respectfully urge, therefore, that now is the time for the interested groups and the legislature to revisit the question of whether a final judgment should be a subject matter jurisdictional requisite for an appeal from the workers' compensation review board.**

We agree. In Hummel, a death case, all parties agreed that the appeal was ripe and should be heard on the issue of compensability. The parties were in no dispute as to any minor details, which would all fall into place once the compensability was determined; but the Court refused to hear the appeal.

The language and history of the statute plainly show an intent that all decisions of the CRB should be appealable. Under the Workers' Compensation Act, workers' compensation claims remain open and non-final for the claimant's lifetime, leading to confusion as to what decisions are appealable under the final judgment rule. The final judgment rule, moreover, as currently applied by the Court to decisions of the CRB, prohibits the appellate review of final decisions by trial commissioners which have been remanded for new trials, so that the decisions of the CRB in these cases, where the decision of the trial commissioner was indeed a final judgment, are unreviewable.

Because this bill is clarifying legislation, we believe it should apply as of the date of passage to pending appeals.

WE RESPECTFULLY URGE YOU TO SUPPORT RAISED BILL 1099. Thank you.