

State of Connecticut
Connecticut General Assembly
Attn: Labor and Public Employees Committee
Legislative Office Building, Room 3800
Hartford, Connecticut 06106

Re: **Raised S.B. No. 986 - Session Year 2011;**
An Act Concerning Additional Requirements for an Employer's Notice to Dispute Certain Care Deemed Reasonable for an Employee Under the Workers' Compensation Act

Good afternoon ladies and gentlemen of the Connecticut General Assembly. My name is Eric Desmond, and I am an attorney licensed in the States of Connecticut, Illinois, Indiana and Texas. I have become familiar with the Connecticut workers' compensation system due to the unfortunate fact that my wife, Sandhya Desmond, suffered a workplace injury in 2004. Recently, I have begun to familiarize myself with the workers' compensation systems in other states, especially with regard to identifying worker protections, employer rights and the manner in which undue delay is prevented in those states.

According to the medical record, the treating physicians (the first two of whom were likewise employees of my wife's employer) stated the import of quick and decisive treatment, and the dire consequences of undue delay. Though liability was quickly accepted by the employer, the warnings of undue delay in medical treatment fell upon deaf ears. As a consequence, the medical record unequivocally establishes that delays in, and denials of, medical treatment prescribed as medically necessary caused her condition to worsen and become exacerbated. It is in relation to this undue delay that I respectfully submit this testimony in support of Senate Bill 986.

In 1913 the Connecticut legislature enacted the Workers' Compensation Act (hereinafter, the "Act"), with the purpose of "... compromis[ing] an employee's right to a common law tort action for work related injuries **in return for relatively quick and certain compensation.**"¹ The Act compromised the constitutional rights of a segment of the Connecticut citizenry, otherwise enshrined at Article First, § 10 of the Connecticut Constitution.² The Connecticut Supreme Court, however, did note that "the legislature [could not] abolish a legal right existing at common law prior to 1818 without also establishing a 'reasonable alternative to the enforcement of that right.'" Despite the 'reasonable alternative to enforcement of the right' to obtain medical treatment, enforced by the Workers' Compensation Commission (hereinafter, the "WCC") in lieu of a civil action, it is undeniable that the State of Connecticut did not intend to create a duality of medical treatment, with injured workers being a separate but reasonably equal class of citizens. The public policy of the State of Connecticut is to ensure that a single standard of care exists for all its citizenry – and no impingement of this right should be acceptable.³

The Act clearly "was designed to hold the employer liable for job related injuries, without regard to

1 Martinez v. Southington Metal Fabricating Co., 101 Conn. App. 796, 800 (2007) (emphasis added).

2 Mello v. Big Y Foods, Inc., 265 Conn. 21 (2003).

3 Connecticut public policy is expressed at CGS § 19a-7a, provides that "it shall be the goal of the state to assure the availability of appropriate health care to **all Connecticut residents** . . . the state shall . . . assure access to a **single standard of care** for all residents of Connecticut . . ." CGS § 19a-7a (emphasis added).

permanently.” In early 2010, Sandhya’s long-term, approved treating physician, whose treatment has been impeded for years, stated that “[Sandhya’s] **care has been interrupted with the lack of approvals on numerous occasions. . . . It would seem that enough time has elapsed since her injury six years ago.**” Then, in July 2010, yet another approved treating physician stated that “**I find that her case management through [the employer’s] workers compensation has been barbaric, uncivilized, detrimental and unconscionable.** This is a young professional with severe neuropathic chronic pain syndrome who **requires standard medical care to maximize her function and minimize her suffering.**”

The challenges to Sandhya’s medical treatment are not relegated to the objective commentary of her multiple, approved, treating physicians. She has had to face multiple challenges before the WCC that I believe are contrary to the Act, and which could be resolved in part by Senate Bill 986. The challenges follow:

- On April 11, 2005, the Employer filed a Form 43 contesting Sandhya’s eligibility for benefits, including for the medically necessary surgery that was already scheduled. In the Form 43, the Employer stated that “the delivery [of a baby] constitutes an intervening trauma and any lost time from work of medical treatment on or after that is not payable under workers’ compensation[and that her] status will be reevaluated following [her] recovery from child birth.” There was no medical documentation that a natural birth in any reasonable way constituted an intervening trauma for the purposes of injuries to Sandhya’s upper extremities. The result of Form 43 was the postponement of the surgery.
- On April 28, 2005, the Employer filed a Form 36 accusing me of “refus[ing] to proceed with reasonable surgery as scheduled with Dr. Carrie Swigart.” The postponement of the surgery was solely the result of the above-referenced April 11, 2005 Form 43, referenced above, and was maintained in place until the surgery was performed despite the fact that no action Sandhya took could be reasonably construed as “refusing” the surgery.
- On July 31, 2006, the Employer filed a Form 36 alleging that Sandhya had “refused reasonable medical treatment (an additional right wrist surgery). Her benefits should therefore be suspended for the duration of her refusal to undergo this procedure.” The Form 36 was filed despite the indisputable fact that: (a) none of the preoperative procedures indicated as medically necessary, and required by her treating physician, had been authorized by the Employer, much less performed (the Employer’s hired medical examiner stated that he agreed with Sandhya’s physician’s medical opinion); (b) the location of the operative site had not been specifically identified by a treating surgeon; (c) the surgical procedure had not been authorized by the Employer; and (d) there was no surgeon authorized by the Employer to perform any authorized surgical procedure (notably, the treating surgeon had been recently removed by a utilization review, which itself was performed in a manner that violates the Act). Further, the Employer itself was aware that there was no determination as to the medical necessity of any surgery as of the time it filed its Form 36, as exhibited by the fact that it contacted the treating physician *a month later*, on August 24, 2006, to obtain his “**opinion on whether a second wrist surgery is medically reasonable at this time.**”
- On May 29, 2007, the Employer filed a Form 36 alleging that Sandhya “failed and/or refused to follow through with reasonable medical treatment (surgery) authorized by the Employer. [Her] benefits should

. compromis[ing] an employee's right to a common law tort action for work related injuries **in return for relatively quick and certain compensation.**⁴ Reducing litigation, and the expense to employers of such litigation, is also a goal of the Act. However, it is my opinion that insulating employers from litigation risks is grounded in the legislative trade-off, or quid pro quo, whereby injured workers are ensured, quickly and with certainty, the receipt of medical treatment. Denying such medical treatment, or access to such medical treatment, while still insulating employers from the consequences of their actions, reduces the integrity of the system and the confidence of those subjected to its provisions. The medical record clearly confirms that if Sandhya had received the treatment that her physicians both prescribed and pleaded for, for years, she might have returned to work and not been considered, to a medical degree of certainty, 100% disabled. She has been forced to relinquish her career, and otherwise to endure the avoidable intrusion upon her life of such an injury.

If Senate Bill 986, or any other legislative enactment, can prevent such a travesty from happening again, then a civilized society should tolerate no argument against it.

Thank you for your time and consideration.

Very truly yours,

Attorney Eric Desmond

⁴ Martinez v. Southington Metal Fabricating Co., 101 Conn. App. 796, 800 (2007) (emphasis added).