

CARTER & CIVITELLO

ATTORNEYS AT LAW

WOODBIDGE OFFICE PARK
ONE BRADLEY ROAD, SUITE 301
WOODBIDGE, CONNECTICUT 06525
203-389-7000
FAX 203-389-7004

ROBERT F. CARTER
DONNA CIVITELLO
TARA BONZANI

NANCY PRIOR
DEBBIE SHERMAN
Paralegals

STATEMENT OF ROBERT F. CARTER IN SUPPORT OF H. B. 5449

Based on 37 years of experience in representing injured employees, I strongly urge the passage of H. B. 5449, in order to provide a remedy to injured employees in cases of egregious abuse and neglect by workers' compensation insurers acting in bad faith. The law has allowed such abusive behavior by insurers since 2005, when the Supreme Court in *DeOliveira v. Liberty Mutual Ins. Co.*, 273 Conn. 487 (2005), ruled that workers' compensation insurers are immune from civil liability for abusive behavior in the handling of workers' compensation claims simply on the basis that employers are immune from civil actions by injured employees unless the employer intentionally causes physical injury to the employee. Never since 1913, when workers' compensation began in Connecticut, had insurers been given such immunity, which was imposed by the Court without the blessing of the Legislature and without basis in the statutes.

The remedies available under the workers' compensation act to injured employees for the bad-faith withholding of medical care and weekly benefits under the workers' compensation act are wholly ineffective, and these remedies are rarely imposed by busy trial commissioners. The primary remedy for bad-faith neglect and abuse by insurers is the potential imposition of attorneys' fees. But the award of attorneys' fees does nothing to help the injured employee or to repair the damage done employee who has been unable to obtain surgery, physical therapy or other medical care, or to obtain weekly benefits, simply because the insurer has decided to deny the claim with no basis.

Since the *DeOliveira* decision, workers' compensation insurers have become even more cavalier and neglectful of their responsibilities promptly to investigate and resolve workers' compensation claims. Since the insurers operate with impunity, adjusters are assigned hundreds of cases, way too many for one person to handle.

In one New Haven case I am currently litigating, the claimant's shoulder required surgery because of a compensable work-related injury for which medical care had been provided for several years. When surgery was required, however, the insurer simply contested the case, with no medical basis, and refused to pay for the surgery or to pay any weekly benefits to the disabled employee. After the case was litigated for about a year and proceeded through months of the formal hearing, the insurer did what it was supposed to do in the first place: it finally had the employee examined by its own physician, who agreed that the need for the shoulder surgery was indeed caused by the injury at work. In the meantime, the claimant has been deprived of workers'

compensation benefits, including medical benefits, simply because the insurer neglected and refused to perform even the minimal duty required by law: to investigate the claim medically. Her unpaid bills are now in the hands of collection agencies and her automobile is about to be repossessed. Even after her shoulder condition was determined by the insurer's own physician to be compensable, the insurer has nevertheless still not paid a dime to the claimant or to the claimant's treating physician. Why? Because the insurer knows that nothing bad can happen to it under the total immunity provided by *DeOliveira*. This travesty is repeated in case after case daily.

No other insurance companies are allowed to run amok without civil liability. Automobile insurers, liability insurers, and health insurers are held to standards of good faith and fair dealing. The consequences of immunity for workers' compensation insurers has led to rampant neglect of their basic responsibilities to injured employees.

The proposed H.B. 5449 contains a provision to prevent frivolous bad faith actions by injured employees: if the insurer is found to have acted properly, the injured employee may be liable to the insurer for up to \$5,000.00 in attorneys' fees. This provision will assure that only meritorious actions will be brought against errant insurers.

Respectfully submitted:



Robert F. Carter
Carter & Civitello
Woodbridge Office Park
One Bradley Road, Suite 301
Woodbridge, CT 06525
Telephone 203-389-7000
Facsimile 203-389-7004
Juris. No. 105015
bc.cartercivitello@snet.net