

PA 11-205

HB6474

House	3172-3210	39
Judiciary	671-673, 772-788, 848-855	28
<u>Senate</u>	<u>7051-7063</u>	<u>13</u>
		80

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2011**

**VOL.54
PART 10
3113 - 3437**

pat/gbr
HOUSE OF REPRESENTATIVES

150
May 17, 2011

The House is voting by Roll Call. Members to the Chamber.

DEPUTY SPEAKER ALTOBELLO:

Have all Members voted? Have all Members voted?
Please check the board to make sure your vote is properly cast.

If all Members have voted, the machine will be locked. Would the Clerk please take the tally.

Would the Clerk please announce the tally.

THE CLERK:

House Bill 6490 as amended by House "A".

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

DEPUTY SPEAKER ALTOBELLO:

The Bill as amended is passed.

Would the Clerk please call Calendar 177.

THE CLERK:

On Page 10, Calendar 177, House Bill Number 6474
AN ACT CONCERNING THE RESOLUTION OF LIENS IN WORKERS'
COMPENSATION CASES. Favorable Report of the Committee
on Judiciary.

pat/gbr
HOUSE OF REPRESENTATIVES

151
May 17, 2011

DEPUTY SPEAKER ALTOBELLO:

Representative Fox of the 146th, you have the floor, sir.

REP. FOX (146th):

Thank you, Mr. Speaker. I move for the acceptance of the Joint Committee's Favorable Report and passage of the Bill.

DEPUTY SPEAKER ALTOBELLO:

The question before the Chamber is acceptance of the Joint Committee's Favorable Report and passage of the Bill. Please proceed, sir.

REP. FOX (146th):

Thank you, Mr. Speaker. This Bill addresses those civil actions that are brought by plaintiffs against third party defendants who are liable for injuries that they may have sustained.

What happens in some of these cases that there's also workers' compensation benefits that are involved and what happens is that in those situations, workers' compensation would be, and the carrier for workers' compensation would be entitled to 100 percent of recovery of their outlaid lien upon settlement or disposition of the personal injury matter.

The way this legislation is proposed, and it has been through this Chamber before, is the 100 percent of that lien would be reduced by one-third and the workers' compensation carrier would then receive two-thirds of the amounts of their eligible lien.

The way it would work is that upon settlement or disposition of a personal injury matter, is that the proceeds would be distributed in a manner such as the attorneys' fees would come off as well as the costs of litigation incurred by that plaintiff's attorney. Then the workers' compensation lien would be paid. Then, you know, any other liens that may also exist would also be taken care of prior to the plaintiff actually receiving any funds.

I do want to make one thing clear as well. There is language here that says the reduction shall inure solely to the benefit of the employee. That's on lines 40 and 41. And that's the reduction of the one-third portion of the workers' compensation carrier's lien.

I should point out that that, the purpose of that line is to make it clear that the one-third reduction does not go in addition, to the plaintiff's attorney in addition to any fee that they may already be

pat/gbr
HOUSE OF REPRESENTATIVES

153
May 17, 2011

entitled to. So I do want to make it clear that that is not funds that would then go to the plaintiff's attorney.

It would be to the benefit of the employee and/or plaintiff provided that the settlement did have sufficient funds by which to effectuate such a settlement.

Also, Mr. Speaker, there were some concerns raised because in this situation what happens now is the workers' comp carrier would often intervene in the plaintiff's action and would then be a party to the plaintiff's action and as a result of that, they would be required to incur some expense to hire attorneys who would then monitor the case.

And, Mr. Speaker, the Clerk has an Amendment, LCO Number 5579. I would ask that that be called and I be permitted to summarize.

DEPUTY SPEAKER ALTOBELLO:

Would the Clerk please call LCO 5579, which shall be designated House Amendment Schedule "A".

THE CLERK:

LCO Number 5579, House "A", offered by
Representative Fox.

DEPUTY SPEAKER ALTOBELLO:

pat/gbr
HOUSE OF REPRESENTATIVES

154
May 17, 2011

Representative Fox, seeks the Chamber's permission to summarize. Seeing no objection, please proceed.

REP. FOX (146th):

Thank you, Mr. Speaker. What the Amendment does is, it will enable a workers' comp carrier to provide written notice to the plaintiff or the plaintiff's attorney by which they would then not be required to intervene in the plaintiff's action.

They still may. We haven't taken that section out, and I can understand certain situations where the workers' comp carrier may say, we do want to have counsel involved in monitoring the case.

But what this says is that they're not required to do so. They don't have to intervene in the case and their lien would still be protected, and I urge adoption of the Amendment.

DEPUTY SPEAKER ALTOBELLO:

The question before the Chamber is adoption of House "A". Further on House "A"? Representative Hetherington of the 125th, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker. If I may address a question to the proponent.

pat/gbr
HOUSE OF REPRESENTATIVES

155
May 17, 2011

DEPUTY SPEAKER ALTOBELLO:

Please proceed, sir.

REP. HETHERINGTON (125th):

Through you, Mr. Speaker, I want to be sure I'm clear on the impact of this Amendment. Would this, if the employer received notice, pardon me.

If the employer gave notice of a lien but did not intervene, what would the situation be then with respect to the reduction, the one-third reduction?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker, and through you, the one-third reduction would still exist. It's only that they would not have to intervene in the lawsuit that's pending in Superior Court and they would not be required then to hire counsel to participate in that action.

So what this would do is, this would provide notice to the plaintiff that there is a lien and that they do have to honor that lien.

DEPUTY SPEAKER ALTOBELLO:

Representative Hetherington.

pat/gbr
HOUSE OF REPRESENTATIVES

156
May 17, 2011

REP. HETHERINGTON (125th):

Through you, Mr. Speaker. And if the employer did, in fact, intervene, would the reduction still be the same, the one-third? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker. Through you, yes, it would.

DEPUTY SPEAKER ALTOBELLO:

Representative Hetherington.

REP. HETHERINGTON (125th):

I thank the proponent for his responses. Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Further on House "A"? Further? Representative Schofield of the 16th District, you have the floor, madam.

REP. SCHOFIELD (16th):

Thank you, Mr. Speaker. I have a couple of questions for the proponent of the Bill.

DEPUTY SPEAKER ALTOBELLO:

Please proceed, madam.

REP. SCHOFIELD (16th):

pat/gbr
HOUSE OF REPRESENTATIVES

157
May 17, 2011

Mr. Speaker, I'm wondering about the section that exempts the state and municipalities from this and why the state and municipalities were exempted from a proposed law that would affect every other employer in the state?

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox, would you care to respond?

REP. FOX (146th):

Through you, Mr. Speaker, I just would ask, is this related to the Amendment or the underlying Bill, this question?

DEPUTY SPEAKER ALTOBELLO:

Representative Schofield.

REP. SCHOFIELD (16th):

Beg your pardon. It is the underlying Bill. I will hold off. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Thank you madam. Further on House "A"? Further on House "A"? Further on House "A". If not, I'll try your minds.

All those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

pat/gbr
HOUSE OF REPRESENTATIVES

158
May 17, 2011

DEPUTY SPEAKER ALTOBELLO:

Opposed? The Amendment passes.

Further on the Bill as amended? Representative Schofield. Good afternoon, again. You have the floor.

REP. SCHOFIELD (16th):

Thank you, Mr. Speaker. The same question. Why is it that the state and the municipalities are exempted from something we are applying to every other employer in the state?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, there are situations throughout our statutes where we do handle state liens differently than potentially other liens.

In this situation, it is correct that the language does say, the State of Connecticut or a political subdivision of the state does not apply, this provision would not apply to them.

So in those situations they would still be responsible for 100 percent of the lien.

DEPUTY SPEAKER ALTOBELLO:

Representative Schofield.

pat/gbr
HOUSE OF REPRESENTATIVES

159
May 17, 2011

REP. SCHOFIELD (16th):

Thank you, Mr. Speaker. I'm not sure that that really answered my question in terms of why we shouldn't apply things equally to ourselves as to other employers.

Thank you, Mr. Speaker, through you.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative. Representative Candelora. Do you wish to speak on the Bill as amended, sir?

REP. CANDELORA (86th):

Thank you, Mr. Speaker. If I may, just a couple of quick questions to the proponent of the Bill.

DEPUTY SPEAKER ALTOBELLO:

Please proceed, sir.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. As I understand this Bill, the, we're dealing typically with workers' compensation claims that are insured.

Are there ever situations where the employer is self-insured, and would this provision apply under those circumstances? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

pat/gbr
HOUSE OF REPRESENTATIVES

160
May 17, 2011

REP. FOX (146th):

Through you, Mr. Speaker, this provision would apply if there was a legally enforceable lien. So whatever mechanism the insurance would come by, if it was a legally enforceable lien that would currently be reimbursed by 100 percent, that lien would be reduced by one-third.

If it is a self-funded situation, unless it falls under the exemption dealing with the State of Connecticut or political subdivision, I would expect that it would apply.

DEPUTY SPEAKER ALTOBELLO:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. And is the underlying intent of this Bill as I understand it, to make sure that when an employee is bringing a claim against a third party that their remedy, that they are made whole for their damages as opposed to making an employer becoming 100 percent of whole first.

So we're sort of prioritizing the employee's damages first? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

pat/gbr
HOUSE OF REPRESENTATIVES

161
May 17, 2011

REP. FOX (146th):

Through you, Mr. Speaker. It certainly would be a benefit to the employee, this legislation. However, the testimony that came before the Committee is that many times these cases are never brought because of the complications that can arise from reimbursement of 100 percent of a lien.

So what happens in many cases is, whether it could be a slip and fall situation or a motor vehicle accident, when there's 100, when 100 percent of the lien is required to be reimbursed, the case is simply never brought, in which case the workers' comp carrier would be out all of the lien. They wouldn't even receive the two-thirds that would come from a disposition from a tort action against a third party.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. And I just presume that would happen in situations, the reason that would happen is because the employee is made whole through workers' compensation, so it wouldn't make sense for them to bring a personal injury action if their

pat/gbr
HOUSE OF REPRESENTATIVES

162
May 17, 2011

employer is basically reimbursed 100 percent of the claim.

So this is sort of giving a carrot to try to incentivize people for going after the appropriate parties? Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

I sense a bit of a query there. Representative Fox.

REP. FOX (146th):

Actually, I do think I understood the question, and it's a fair question in that what it does is, it might make it worthwhile to pursue a claim against the responsible party, the actual person who caused an injury if it can be, if there's a better understanding of what it would be required to be reimbursed.

And what this would do is allow for these claims to be brought, to be pursued. The workers' comp carrier would receive two-thirds of which, in many cases they would receive nothing, so.

DEPUTY SPEAKER ALTOBELLO:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. I appreciate the good gentleman's answers. Thank you.

pat/gbr
HOUSE OF REPRESENTATIVES

163
May 17, 2011

DEPUTY SPEAKER ALTOBELLO:

Representative Schofield, again on the Bill as amended, I believe for the second time. Please proceed, madam.

REP. SCHOFIELD (16th):

Thank you, Mr. Speaker. I didn't feel I got an answer the first time, and I guess I had to ask it again as a question, but I will just make a statement.

I am concerned that we are applying something to every employer and not to the state and the municipalities, and my suspicion is that that would cost the state and the municipalities money if we did that, as it will cost employers higher insurance, workers' comp insurance premiums by changing these rules.

And I've spent a lot of time talking with workers' comp, couple of workers' comp companies who indicate to me that they are able to subrogate and that these cases don't go without being pursued just because the claimant doesn't have an incentive, but that in fact when the workers' comp company has paid out medical claims for the person and they are able to go after a third party, they do that on their own.

pat/gbr
HOUSE OF REPRESENTATIVES

164
May 17, 2011

They have the ability to do what's called subrogation and they do get paid back.

So if now they're not able to get paid back 100 percent of what they have paid out in claims on that person's behalf, because they have to pay a third of it to the individual, they will be out 33 percent of what they otherwise would have collected, which means that their premiums therefore will have to go up and that's not good for businesses, and that's going to cost more money.

And so I would again ask the proponent of the Bill, did we exempt the state and the municipalities because of the fiscal note impact on it, or was there another reason?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker. The language that came before us has come before in the past, so I'm not, I don't believe there was a fiscal note on this Bill this year.

However, it is possible, and I think there may have been in the past. I think there was in the past,

pat/gbr
HOUSE OF REPRESENTATIVES

165
May 17, 2011

actually, a fiscal note when it dealt with municipalities or the State of Connecticut or political subdivisions of the state.

The, whether it would in fact result in a loss, I would seriously doubt it, and I can also state that there are definitely cases that are not brought because of the size of a workers' compensation lien. And many of those cases involve situations where it is deemed in advance that it's just not worth it unless they can work something out where the lien is somehow reduced.

If there are times when it can be negotiated, but there's many times in the testimony that came before us, there are times when it cannot be negotiated, and what this will do is allow for those liens to be reduced by one-third in situations where then everyone can recover in some way.

DEPUTY SPEAKER ALTOBELLO:

Representative Schofield.

REP. SCHOFIELD (16th):

Thank you, Mr. Speaker. I will be opposing the Bill because I just feel it's inappropriate for us to apply a rule to every employer in the state and exempt ourselves.

pat/gbr
HOUSE OF REPRESENTATIVES

166
May 17, 2011

And I think there was a fiscal note in the past and that that's why we changed this, and that's of concern to me.

It's also of concern to me that this is about insurance. It's workers' comp insurance, and it never came before the Insurance Committee this year, although it did in previous years, and I'm not sure why that was. You don't have to answer that question, but that seems inappropriate to me as well. Thank you.
DEPUTY SPEAKER ALTOBELLO:

Further on the Bill as amended? Representative Shaban, you have the floor, sir.

REP. SHABAN (135th):

Thank you, Mr. Speaker. I rise really with some comments similar to the ones I made in Judiciary when this Bill came before us, and in opposition to the Bill.

The workers' compensation laws were passed with the goal of creating, to promote coverage in creating a quick and prompt resolution so injured workers could get coverage and get back to work.

If the goal of this legislation is to promote, well, I should say, the goal of this legislation is, in fact, to promote more lawsuits. I mean, some of

pat/gbr
HOUSE OF REPRESENTATIVES

167
May 17, 2011

the reasons for, the proponent even said, because well, some of the cases aren't being brought because of a 100 percent lien.

Well, that's a good thing. A 100 percent lien, if that knocks out a second lawsuit, that's a good thing. We do not need more lawsuits.

But what this Bill will do is carve out a third of what should be the employers or the insurer's money and allow trial lawyers, frankly, to play with the house money. They're going to roll the dice. Hey, listen, we've got a third to play with here. Let's take a shot at that third party. You know, let's take a shot at, it's not an employer, you add a lawsuit.

We're promoting needless litigation. If it's not good for the state, it's not good for the private sector, either. So I urge this House to reject the Bill.

Thank you, sir.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative. Representative Rowe of the 123rd, you have the floor, sir.

REP. ROWE (123rd):

Thank you, Mr. Speaker, good afternoon. Maybe a couple questions to the Chairman of the Judiciary

pat/gbr
HOUSE OF REPRESENTATIVES

168
May 17, 2011

Committee, just to be sure. And I'll preface them by saying, this Bill would change the landscape of workers' compensation, you know, in the civil context.

So just to be clear, the Bill now clarifies that an employer or one who ordinarily would intervene to recover a lien paid in a workers' compensation claim need not intervene any more. Through you, is that correct?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, that is correct provided that they submit the written notice.

DEPUTY SPEAKER ALTOBELLO:

Representative Rowe.

REP. ROWE (123rd):

Thank you. And whether or not they intervene, well, through you, they still have every right to intervene as they do under current law. Correct?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER ALTOBELLO:

pat/gbr
HOUSE OF REPRESENTATIVES

169
May 17, 2011

Representative Rowe.

REP. ROWE (123rd):

So I guess, in other words, this would give them, give the intervener or the lien holder another option and this would clarify. I think probably under existing law they need not intervene anyway, but this certainly clarifies that.

And whether or not they intervene, or give notice, however they assert their lien, that's not going to affect the one-third that's taken off of the lien they have. Correct? Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, that is correct.

DEPUTY SPEAKER ALTOBELLO:

Representative Rowe.

REP. ROWE (123rd):

And again through you, if we look at line 39 of the Bill where it talks about the claim of the employer shall be reduced by one-third of the amount of the benefits to be reimbursed to the employer. Do you see that? Through you. You can nod.

REP. FOX (146th):

pat/gbr
HOUSE OF REPRESENTATIVES

170
May 17, 2011

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER ALTOBELLO:

Representative Rowe.

REP. ROWE (123rd):

When we talk about amount of the benefits to be reimbursed, is that synonymous with the amount of the workers' compensation lien? Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, yes.

DEPUTY SPEAKER ALTOBELLO:

Representative Rowe.

REP. ROWE (123rd):

Okay, thank you. And the one-third figure, is it fair to say that that was a, I don't know if a compromise is right, because whether people were compromising with themselves, but was there any magic to the one-third figure? Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, I don't believe there's any magic to the one-third figure. There are

pat/gbr
HOUSE OF REPRESENTATIVES

171
May 17, 2011

certainly other ways we could address this, but it seemed to be a way that would allow a reimbursement of the lien while still acknowledging that there was work done that would not have, that may have brought the payment of this lien to fruition. I'm not sure there's real magic to it, though.

DEPUTY SPEAKER ALTOBELLO:

Representative Rowe.

REP. ROWE (123rd):

Thank you. And thank the gentleman for his answers.

You know, this is kind of a big deal in the workers' compensation arena. I think on balance it will help more than it hurts. You know, I guess we could have a theoretical argument on whether we want more lawsuits or not, and in general, I don't think we do.

I think an argument can be made, though, that there are injured people who because they have such a large lien, it just does not make sense for them to bring a lawsuit, and therefore, they're precluded from, you know, recovering non-economic damages, essentially.

pat/gbr
HOUSE OF REPRESENTATIVES

172
May 17, 2011

So this will open up, I don't think by any means it will be floodgates, but I think there will be some instances of injured people that are helped by this.

I also frankly think that you know, a carrier might benefit in that they now need not have counsel intervene and go through the motions of intervening. And as a practical matter, a lot of times when there is an intervening plaintiff as they're called, the party is just there. It's representative doesn't do much but it does take up a lot of the attorney's time, so in theory there could even be cost savings to the carriers in that regard.

I understand the concerns with it and as usual, it's not a perfect bill, but probably the next bill we do that's perfect will be the first one that we've done that's perfect.

So on balance I'll be supporting, and I thank you, Mr. Speaker, for the time.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Rowe. Further on the Bill as amended? Representative Simanski of the 62nd District, you have the floor, sir.

REP. SIMANSKI (62nd):

pat/gbr
HOUSE OF REPRESENTATIVES

173
May 17, 2011

Thank you, Mr. Speaker. I would like to build upon the comments of the good Representative Schofield, how it seems patently unfair that we wouldn't apply this same to our state and political subdivisions, yet we have no qualms in imposing this burden on insurance companies. So I will be voting against this Bill.

I also see that, well, I surmise that the insurance workers' compensation rates will increase as a result of this Bill, and we already pay some of the highest workers' compensation premiums in this state. For that reason I will be voting against this Bill.

DEPUTY SPEAKER ALTOBELLO:

Thank you, sir. Representative Smith of the 108th District, you have the floor, sir.

REP. SMITH (108th):

Thank you, Mr. Speaker, and good afternoon to you.

DEPUTY SPEAKER ALTOBELLO:

Good afternoon, sir.

REP. SMITH (108th):

I have to disagree with some of my colleagues on this Bill. I stand in support of this Bill. Having

pat/gbr
HOUSE OF REPRESENTATIVES

174
May 17, 2011

dealt with this issue over the years in handling personal injury claims, what I found is this.

When I first started practicing there used to be some give and take with the workers' comp carrier in the sense that once you've recovered for an injured party, if you knew there was a lien against the file, you were able to then to back to the carrier and say, would you reduce your lien by 10 percent, 20 percent or a third and at that time there would be some willingness to do that.

Over the years that has changed, and now strictly it's a no answer, and this is despite the fact, Mr. Speaker, that as the attorney for the injured party, typically we would be doing 100 percent of the work while the workers' comp carrier would sit back and wait for the check to arrive.

So I think it was patently unfair in that scenario for plaintiff's lawyer to do all the work, reimburse 100 percent of the workers' comp lien and leave a small portion for the injured party.

As we know, the workers' comp statutes allow for recovery of certain types of injures. They have a chart. They have a number next to it as to how much they can recover. It doesn't really deal with the

pat/gbr
HOUSE OF REPRESENTATIVES

175
May 17, 2011

pain and suffering and some of the additional injuries that are normally recovered in a personal injury suit.

I don't think it's going to open the doors to litigation. I just think it makes a more level playing field, and I would urge the adoption of this Bill.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Smith. Representative Hetherington of the 125th, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker. Regretfully, I'm going to oppose this Bill. I have several difficulties with it.

I could understand if we allowed a reduction in the recovery on a lien by an employer if the employer had failed to initiate a suit. But if the policy is to encourage recoveries from liable third parties, it seems to me that we ought to be encouraging a lien claimant to go forward with an action alone, which could be joined in by the injured worker.

That would, but in this case, the employer has a reduction in his lien of one-third, even if he does bring an action. The one-third reduction applies even

pat/gbr
HOUSE OF REPRESENTATIVES

176
May 17, 2011

if the employer does nothing but file a notice of a lien.

It is certainly an improvement in this Bill that the employer can secure a lien without actually engaging in a lawsuit, but if the employer does engage in a lawsuit and undertakes the burden of going forward with a suit, then it seems to me that that employer ought to be rewarded in some respect in that he would not suffer the one-third reduction.

The logical way, it seems to me, is that the one-third reduction would apply if the employer didn't do anything but sit on his right, sit on his lien.

So I don't understand how the application of the one-third reduction whether or not the employer brings a lawsuit makes sense, in terms of public policy or reality.

The second thing is, I'm concerned about the application of lines 55 through 60. This would allow the one-third reduction to apply from amounts of any compensation, which has been paid, and an amount equal to the present worth of any probable future payments.

So that we will be looking at the actual amount paid to determine the employer's recovery before the reduction, and then we would look at separately, the

pat/gbr
HOUSE OF REPRESENTATIVES

177
May 17, 2011

probable present value of the obligations of the employer for future compensation, which have not yet been paid. In fact, which have not been actually determined. They are only determined as an actuarial matter.

It seems to me the possibility there is open for applying the one-third reduction again and then again, so that you may have a double, an unintended, I assume it's unintended, double recovery or double reduction.

So I think that there are real problems with this. I don't understand the policy that it advances in terms of the general good and I don't understand, or I'm not convinced that this is not going to avoid in some real problems in the case of compensation paid and compensation determined to be paid on the basis of an actuarial calculation.

Finally, it is without justification to exempt the state and its political subdivisions. I mean, there is no reason why the state and towns should be exempt just like any other, should be otherwise, should be exempt and not subject to this reduction, just like any other employer.

It seems to me it's ill becoming this Legislative body when we want to encourage employment in the

pat/gbr
HOUSE OF REPRESENTATIVES

178
May 17, 2011

state, to say well, what's good for our policy under, for private employers is not so good when it comes to the state. The state and towns here plainly are not being subject to the same standard as a private employer for no reason, except we want to avoid a fiscal note and we want to spare the government the same responsibilities that any private employer would have.

So for those reasons, Mr. Speaker, and with respect to all the work that's been done on this by the Chairs of the Judiciary Committee, I'm going to oppose this Bill and I would urge others to do so.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Hetherington. Representative Candelora of the 86th, you have the floor, sir.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. After listening to the debate and trying to sort of understand the intent of this legislation, I do need to rise to oppose it.

What I had heard is that this particular piece of legislation is going to encourage more claims to be

pat/gbr
HOUSE OF REPRESENTATIVES

179
May 17, 2011

brought and therefore more reimbursement back to
worker compensation carriers.

And what then puzzles me is why we would exempt
the state, because I would think if it's going to
encourage more recovery, then the State of Connecticut
being self-insured as a workers' comp carrier, if they
were included it would in fact become a revenue gain
for them.

So it's puzzling to me that we would exclude the
state if this Bill in fact would result in additional
claim money coming in.

So my assumption is that the possibility is that
what we're doing here today is, we're sort of
appeasing the insurance companies and we're appeasing
the trial lawyers.

We saw here that the trial lawyers want this
legislation because of course they want to encourage
more third party claims, and by allowing for a notice
to be put to create a lien for a case, we're now
giving something to the insurance companies to appease
them, because we're going to cut down on their
administrative costs.

So the insurance companies are happy and the
trial lawyers are happy. But I think the implications

pat/gbr
HOUSE OF REPRESENTATIVES

180
May 17, 2011

of this legislation is significant, and that being, what effect is this legislation going to have on workers' compensation costs.

Because if that cost increases, it's certainly going to impact job creation in the State of Connecticut, and my concern here is that this particular legislation is going to increase costs to the employer, and that's the one person in this whole equation that hasn't weighed in on it.

We could see from the report that you know, CBIA opposed this Bill because they were concerned with this increase, but it hasn't been addressed by the Amendment or the underlying Bill.

So I am very concerned going forward. I can understand why we would want more claims to be brought to recover where it's valid, and also to make the administrative process easier.

But I can't support doing that to the detriment of job creation in the State of Connecticut, so I must oppose it. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Candelora. Further on the Bill as amended? Representative Srinivasan, you have the floor, sir.

pat/gbr
HOUSE OF REPRESENTATIVES

181
May 17, 2011

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker. At the point of being redundant, what I also don't understand in this Bill is how we can separate out the entire, all the employers of the state on the one hand, and keep the state and the municipalities on a different footing altogether.

That is the part that I'm not able to understand, through you, Mr. Speaker, to the proponent of the Bill.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox, would you care to respond?

REP. FOX (146th):

Through you, Mr. Speaker, I didn't. There was a question at the end and I'm sorry. I missed it. If the Representative could please repeat it.

DEPUTY SPEAKER ALTOBELLO:

Representative Srinivasan, would you repeat your statement?

REP. SRINIVASAN (31st):

Yes, with pleasure, sir. The question is, through you, Mr. Speaker, that it appears that we have different playing fields for the state, the municipalities, and the rest of all the employers in

pat/gbr
HOUSE OF REPRESENTATIVES

182
May 17, 2011

the state, and that is the part that I'm not able to understand in the Bill as to how we could separate as opposed to keeping it uniform for anybody who employs anybody.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker, and I thank the Representative for his question. There are situations in our laws, especially in civil actions where we do treat the state and cities and towns differently than other parties.

For example, there are situations where we provide immunity, or we propose providing immunity in certain places where that would not be the case in privately owned property, for example.

I know that there's, we all know that there's a bill floating around regarding that, which is on the Go List for today.

Also with respect to municipalities and the state, there's issues regarding sole approximate cause that don't exist in other places, sovereign immunity that doesn't exist in other places.

pat/gbr
HOUSE OF REPRESENTATIVES

183
May 17, 2011

So while yes, it's somewhat different here with respect to how our states and towns are being treated, it's not unusual in terms of how we enact our statutes as a whole.

DEPUTY SPEAKER ALTOBELLO:

Thank you, sir. Representative Klarides of the 114th, you have the floor, madam.

REP. KLARIDES (114th):

Thank you, Mr. Speaker. Mr. Speaker, through you, a few questions to the Chairman of the Judiciary Committee.

DEPUTY SPEAKER ALTOBELLO:

Please proceed, madam.

REP. KLARIDES (114th):

Thank you, Mr. Speaker. In lines, I believe 40, 42 through 45, we exempt the State of Connecticut from this Bill. Could we please have an explanation as to why we're exempting the state? Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker. I believe as I stated, there are situations where the state and cities and

pat/gbr
HOUSE OF REPRESENTATIVES

184
May 17, 2011

towns are treated differently under our statutes,
especially when it comes to civil claims.

Also, while it does not provide this one-third reduction to the state or cities and towns, I do believe that if this does proceed as expected in that there is ultimately more reimbursement for workers' compensation carriers and the employers that it could be a situation where in the future they may like to be included in this because it would be a possibility that it could result in greater revenue. Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker, and through you, the Chairman mentioned if it does result in increased revenue in the future they may decide they want to be included in that.

Can I presume from that comment that they requested to not be included in it in the first place, that's why the exception was made? Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

pat/gbr
HOUSE OF REPRESENTATIVES

185
May 17, 2011

Through you, Mr. Speaker, this Bill, this language was included in the Bill as we received it this year. But I do, I have been involved for a number of years now, and I do recall in the past that they did ask to be excluded, so that would be correct for referencing to the past.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker. Well, I guess I'm, that really doesn't make a lot of sense to me because although the Chairman is clear. I mean, I understand what he's saying. They asked to be excluded from it.

Why would we, if we believe this Bill is something that would be beneficial to the state in the way we've articulated thus far, why because one group asked to be excluded from it.

I mean, what if other employers asked to be excluded from it. I'm sure they weren't happy about it either. We didn't exclude them. Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

pat/gbr
HOUSE OF REPRESENTATIVES

186
May 17, 2011

Through you, Mr. Speaker, the only ones excluded are the ones that are referenced here.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

I'm sorry, Mr. Speaker. If he could just repeat that. I didn't hear it.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, the only entities that are excluded are the ones that are referenced in the Bill.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th)

Thank you, Mr. Speaker. I certainly thank the Chairman for his answers. I guess my concern is, we make legislation that we believe is in the best interest of this state, and clearly each piece of legislation affects different people differently.

But I guess if we believe that this piece of legislation was something that was beneficial to the state for the reasons we've articulated, we wouldn't

pat/gbr
HOUSE OF REPRESENTATIVES

187
May 17, 2011

exempt the largest single employer in the State of Connecticut, which is the State of Connecticut, from it.

So if it wasn't good for them, why would it be good for other employers, and I would venture a guess that it's not, because it's not beneficial to them.

So for those reasons, Mr. Speaker, I will not be voting for this Bill. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Thank you, madam. Further on the Bill as amended? Further on the Bill as amended? Further on the Bill as amended?

If not, staff and guests please retire to the Well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representative is voting by Roll Call. Members to the Chamber.

The House is voting by Roll Call. Members to the Chamber, please.

DEPUTY SPEAKER ALTOBELLO:

Have all Members voted? Have all Members voted? Please check the board to make sure your vote is properly cast.

pat/gbr
HOUSE OF REPRESENTATIVES

188
May 17, 2011

If all Members have voted, the machine will be locked. Would the Clerk please take a tally, and would the Clerk please announce the tally.

THE CLERK:

House Bill 6474 as amended by House "A".

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	93
Those voting Nay	51
Those absent and not voting	7

DEPUTY SPEAKER ALTOBELLO:

The Bill as amended is passed.

Would the Clerk please call Calendar 314.

THE CLERK:

On Page 18, Calendar 314, Substitute for House Bill Number 6422 AN ACT CONCERNING THE NOTIFICATION OF MEDIATION AND ARBITRATION DECISIONS IN DISPUTES BETWEEN BOARDS OF EDUCATION AND TEACHERS BARGAINING UNITS. Favorable Report of the Committee on Education.

DEPUTY SPEAKER ALTOBELLO:

Representative Olson of the 46th, you have the floor, madam.

REP. OLSON (46th):

S - 633

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2011**

**VOL. 54
PART 22
6915-7208**

cd/lg/sg/mhr/gbr
SENATE

448
June 8, 2011

Yes. Thank you. Thank you, Madam President.

Madam President, two additional items to mark go, at this time. First is Calendar page 11, Calendar 518, House Bill 6474.

The second item, Madam President, is from Calendar page 17, Calendar 611, House Bill 6341.

Thank you, Madam President.

THE CHAIR: . .

Thank you.

Mr. Clerk, will you please call the two items.

THE CLERK:

Calendar page 11, Calendar Number 518, File Number 280 and 816, House Bill 6474, AN ACT CONCERNING THE RESOLUTION OF LIENS IN WORKERS' COMPENSATION CASES, as amended by House Amendment Schedule "A"; Favorable Report of the Committee on Judiciary.

THE CHAIR:

Good evening, again, Senator Coleman.

SENATOR COLEMAN:

Good evening, Madam President.

I move acceptance of the Joint Committee's Favorable Report and passage of the bill, in concurrence with the House.

THE CHAIR:

cd/lg/sg/mhr/gbr
SENATE

449
June 8, 2011

The approval is on a passage of the bill.

Will you remark further, sir?

SENATOR COLEMAN:

Madam President, this bill would provide for one-third of reimbursements for Workers' Compensation payments or settlements to be reserved for the employee in the case.

And, Madam President, my recollection of this bill is that in Workers' Compensation matters, the employer has what may be referred to as a right of subrogation, so that when the employer pays to an employee who has been injured while working within the scope of his employment, if the injury is caused by a third party, there is an opportunity for the employee, the employer, and the insurance carrier to recover from that third party. And in such circumstances, this bill would require that one-third of that recovery be reserved -- one-third after costs and attorneys' fees would be reserved for the employee.

I would urge passage of the bill, Madam President.

THE CHAIR:

Will you remark further? Will you remark further?

Senator Fasano -- oops -- Senator Welch.

Senator Fasano. Senator Welch. Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

I have a few questions for the proponent of the
bill --

THE CHAIR:

Please --

SENATOR WELCH:

-- through you --

THE CHAIR:

-- proceed, sir.

SENATOR WELCH:

-- if I may? Thank you.

And if I may, through you, Madam President, what
-- what is the policy behind the proposed changed in
this law?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

If the Senator could repeat his question, just a
little bit louder; I didn't really hear it.

THE CHAIR:

cd/lg/sg/mhr/gbr
SENATE

451
June 8, 2011

Senator Welch, would you repeat your question,
please?

SENATOR WELCH:

Gladly, Madam President.

What is the policy behind this proposed
legislation?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I think, fairly stated, the policy behind this
legislation is simply to provide the employee some
incentive to actually seek the recovery of whatever
damages or award that could be secured from the third
party that caused the accident.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

And if I may, Madam President, why -- why would
they not already have that incentive now?

Through you, Madam President.

THE CHAIR:

cd/lg/sg/mhr/gbr
SENATE

452
June 8, 2011

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

Because under the Workers' Compensation system, the employer has already paid the compensation that the employee would be entitled to. So I guess in -- in virtually all respects, the -- the employee would have been made virtually whole, not completely whole, probably. But because the Workers' Compensation Insurance would provide at least a portion of the salary that the employee would be entitled to, there would be less incentive for the employee to pursue an action against the third party that caused the injury.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

And, through you, is the insurer that pays pursuant to current law, do they have a subrogated right, as the law stands right now, to bring an action in the injured party's name?

Through you, Madam President.

THE CHAIR:

cd/lg/sg/mhr/gbr
SENATE

453
June 8, 2011

Senator Coleman.

SENATOR COLEMAN:

Yes, they do, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Which would lead me to think that they would have an incentive to pursue a claim, notwithstanding the -- notwithstanding whether the injured party would want to pursue that claim.

So is -- what would be the situations where this bill would be an incentive to a carrier?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, to Senator Welch, the -- the bill would only apply -- the reservation of one-third of whatever is recovered would only apply if the employee brought the suit. If the insurance carrier or the employer brought the suit, than the one-third reservation would not apply.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR COLEMAN:

And I'm not sure -- through you, Madam President -- I'm not sure why the insurance carrier or the employer would not bring this suit.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

So then is this bill trying to get the injured party to bring the suit rather than the carrier?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I believe that would -- that would make sense.

What the bill also provides is that the insurance carrier and the employer would have a lien, lien rights to whatever award was recovered.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

cd/lg/sg/mhr/gbr
SENATE

455
June 8, 2011

And -- and what -- what would be the policy behind having the injured be the person bringing the suit rather than the carrier?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I'm having a little bit of difficulty, Madam President. Could Senator Welch repeat the question?

THE CHAIR:

Senator Welch, please repeat your question.

SENATOR WELCH:

Absolutely. As -- as I -- as I think I've understood so far from the discourse we've had, the -- the bill incentivizes the injured party rather than the subrogated party to bring the action. And -- and I'm just curious as why we would want that to be the policy.

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

And I'm not sure. I'm not sure why we would want that to be the policy unless it may be that the -- the

cd/lg/sg/mhr/gbr
SENATE

456
June 8, 2011

costs and attorneys' fees, perhaps, that might accrue to the employee would be less expensive than the costs that might accrue to the employer or the insurance company.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

Do -- through you, Madam President, to Senator Coleman -- do we know if other states have a similar Workers' Compensation statute, as the one proposed here?

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

I do not know.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

cd/lg/sg/mhr/gbr
SENATE

457
June 8, 2011

I think, Madam President, that -- that those are all the questions I have right now.

I -- I -- I do have an -- some reservations with respect to the bill as its proposed, and I think those will flush out a little bit more in my mind as the dialogue continues this evening.

So with that, I thank you for the Chamber's indulgence, and I yield.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator Welch.

Will you remark further? Will you remark further?

Senator Kissel.

SENATOR KISSEL:

Thank you, very much, Madam President.

I stand in support of the bill. And, briefly, let me explain why. Typically if an individual is injured and is able to attain Workers' Compensation benefits, then that's the path that that individual will proceed upon.

If there is another, potential liable party, a third party, quite often those claims are tenuous, and there really isn't that much of a motivation for the

cd/lg/sg/mhr/gbr
SENATE

458
June 8, 2011

injured party, the employee, to bring that case to seek redress, especially if -- if they go through the process of seeking redress, that the party that paid the Workers' Compensation benefits get most of all of the funds.

By taking one-third and setting it aside, it acts as a motivation or -- or -- it allows for individuals who may be up in the air as to whether to pursue that third-party claim to have the motivation to do that.

And the reason why I think that's good for all parties concerned is because if we, in this way, somehow incent the employee to seek out a claim against the third party and they're successful, than at least there will be some reimbursement back to the insurance provider who paid on the Workers' Compensation claim. Also, there's a carve-out here, such that if the ultimate payor was a political subdivision, a municipality, that we're not going to incent the employee to seek those funds.

So there were interesting arguments on both sides of the issue. In the Judiciary Committee, the vote was 24 to 8, in favor of the bill. It's a good bill. It'll actually help insurers, I believe, down the road, because they don't pursue these claims on their

cd/lg/sg/mhr/gbr
SENATE

459
June 8, 2011

own; they need the injured party to initiate these. And if the injured party is successful, not only will the injured party's benefits get enhanced by what they're allowed to keep, but at least some portion of those proceeds will go to the employer.

And for those reasons, Madam President, I support the bill.

THE CHAIR:

Thank you, sir.

Will you remark further? Will you remark further? If not, will the -- a roll call vote will be ordered.

Mr. Clerk, will you announce the roll call vote? And the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber. An immediate roll call has been ordered in /the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Senator Bye.

SENATOR BYE:

cd/lg/sg/mhr/gbr
SENATE

460
June 8, 2011

(Inaudible.)

THE CHAIR:

Thank you, Senator.

Have all members voted? Have all members voted?

The machine will be locked.

Mr. Clerk, will you please call the tally?

THE CLERK:

Motion is on passage of House Bill 6474, in
concurrence with the action in the House.

Total number voting	36
Those voting Yea	25
Those voting Nay	11
Those absent and not voting	0

THE CHAIR:

The bill is passed.

Mr. Clerk.

THE CLERK:

Calendar page 17, Calendar Number 611, File 707
and 883, House Bill 6341, AN ACT CONCERNING THE
STATUTE OF REPOSE FOR ASBESTOS-RELATED PRODUCT
LIABILITY CLAIMS, as amended by House Amendment
Schedule "A"; Favorable Report of the Committee on
Judiciary.

THE CHAIR:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 3
642 - 949**

2011

25
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

And once it goes to trial -- I've never, I've, frankly, never seen one go to trial.

REP. O'NEILL: Okay.

SENATOR MUSTO: So I really can't tell you in my personal experience that anything would happen after trial, because they -- I can't imagine more than 1 percent if that make it to trial.

REP. O'NEILL: Okay. Thank you, Mr. Chairman.

REP. FOX: Thank you.

Any other questions? Thank you, Senator Musto.

SENATOR MUSTO: Thank you.

Mr. Chairman, if I might, for a moment of personal privilege. Do I get one?

REP. FOX: Sure. Of course. What do you --

SENATOR MUSTO: My father sitting right behind me, he'll be testifying later. Please be nice to him.

REP. FOX: I did see the name there. I figured (inaudible). Okay. So --

SENATOR MUSTO: Thank you.

REP. FOX: -- sure.

We now turn to our members of the public. First is Susan Giacalone. Good morning.

SUSAN GIACALONE: Good morning, Representative Fox and members of the Judiciary Committee. For the record my name is Susan Giacalone and I'm here. I have submitted testimony on four bills today. And being -- I only have three minutes I'm going

HB 424 SB 1073
HB 341 HB 474

26
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

to try to keep my comments brief, but please don't in any way think that reflects our importance of the bills to our industry.

First of all, I'd like to thank the committee for raising House Bill 6424 and Senate Bill 1073. 64 -- using the words of someone who spoke so -- wisely before -- it's like a perennial, a hearty perennial that keeps coming back every year. It's a bill that this committee has seen for many, many years on and off in dealing with independent medical exams. It has been a system that's been in place for a long time.

Contrary to what you might hear later, it is not working. this is one of the biggest issues for defense bars, that the INEs are being objected to without cause, without reason. It is subject to volumes of litigation and we're just seeking that if -- to make the playing field fair and even and to allow the INEs to actually work and serve their purpose.

Senate Bill 1073, is AN ACT CONCERNING APPORTIONMENT COMPLAINT. This bill came before you about five years ago for the first time -- four years ago after the supreme court's ruling in Vierra versus Cohen in which the court determined against what they thought the better judgment -- but based on the black letter of the law, that if a party has been withdrawn against that cannot be apportioned against. And they thought that was a miscarriage of justice.

It wasn't what you all had intended what you adopted the apportionment complaint and urged that the Legislature relook at this and allow apportionment against withdrawing parties.

The insurance association is opposed to House Bill 6341, 6474. Again, these -- 6341 is a new

27
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

bill and I think this is the first time this committee has seen it, where it actually seeks to throw out the statute of repose for product litigation cases. The statute of repose serves a finite time, serves a purpose. Justice is supposed to be balanced.

By removing the statute of repose you're taking away justice from the system. Is purely a plaintiff's claim there and it eliminates any ability. Right now we already have 60 years, which is already making it difficult to defend these cases. You eliminate it, you're providing no benefits and no rights and protections to defendants, which is what part of the justice system is supposed to be about.

6474 is a bill that you have seen a lot of times before. It's dealing with the worker's comp liens. Basically it says that plaintiffs, if they bring a lien (inaudible). If we have a lien on a worker's comp claim they bring an action against a third party. Plaintiff's counsel gets a third of that lien.

Connecticut is unique in the only state that mandates it. And the only way we can protect our lien is we have to intervene in those claims. Therefore we have to pay two councils. This makes no sense. Why are we having to pay our counsel and plaintiff's counsel.

The system is already working. We work out an arrangement. If we don't intervene and we join it then we work out. But the State shouldn't be getting into dictating contracts for third parties.

Thank you. That's my three minutes, so my time is up.

REP. FOX: That was very good. I think you got

126
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

where you have lawyers, like most of the ones here in the room here today, know what they're doing and don't run into this problem.

I wish I could answer that question, but I guess to the extent I have a comment on this, I would urge you not to make public policy just on the basis of complaints by the Connecticut Trial Lawyers Association, because this is a problem for them, but I suspect it's not as widespread as they complain about. And I also suspect that the incidence of that will go down as the courts have fleshed out what this means and particularly in those two cases I referred to. I hope I'm being responsive.

REP. FOX: No. You are. And we can get that information. I just thought you might have it.

FRANK H. SANTORO: No. I just do not know offhand. You know, the trouble is you have lots of different law firms. Different firms have different policies. Some defense lawyers are more aggressive than others. It's just very difficult to answer that question in the abstract.

REP. FOX: Okay. All right. Thank you.

Are there any other questions? Thank you very much for the testimony.

Next is Bill Sweeney.

WILLIAM J. SWEENEY: Good afternoon, Representative Fox, members of the committee. This is kind of an annual appearance by myself in support of this bill. Every year we get it right to the top. I can't remember exactly the order, but one year we got through the Senate and it didn't fail. It failed in House. Got in through the House and it failed in the Senate. So we're

HB 6474

127
rgd

JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

going to try for three this year and hopefully get it passed. I come here again to speak about raised bill 6474, having to do with workers' comp claims.

At the risk of boring you, the situation arises when you settle a third-party case. I'm going to give you a quick example. You're going to -- there's a -- you're a highway guy, you're working on a highway somehow. You get hit by a car. Generally, under workers' comp your only remedy is to collect comp, but that's an exception when you hit -- when an automobile is involved.

You can bring an action against the tortfeasor who drove the car. If you bring an action against that tortfeasor and recover a settlement, the workers' comp carrier who has probably paid your medical bills has a right to intervene and be satisfied for whatever expenses they have paid.

Now in the average, you know, run-of-the-mill kind of case, in the past what's generally been the case is that in trying to settle these cases, especially when there's limited coverage -- limited coverage means that person may have a basic policy of a \$20,000 policy. Or in the situation where maybe it's even higher and the plaintiff is found to be somewhat comparatively negligent, is not getting a hundred percent recovery, the comp carrier still wants a hundred percent back.

Now until about -- I can't give you an exact time, but in the last five, six, seven, eight years, I've had conversations with comp carrier adjustors talking about giving us a credit to give back to the client. And generally the way it works is that a third come off and that just gets translated over to the client. The

128

rgd

JUDICIARY COMMITTEE

March 4, 2011

10:00 A.M.

client -- and the lawyer doesn't take a fee on that.

And I've had these conversations with a justice where they'll say, we're not doing anything with this. We're not going to give you anything off, because, you know, it's Connecticut. And Connecticut doesn't have a statute that requires us to do so. And so we're not going to do it. And so in many cases that prevents cases from getting settled.

And so, you know, those of us who do do these cases have come to the Legislature to try to resolve this thing to satisfy those adjustors who say, well, there's no statute that says that we have to do this.

So all what we're -- all we're asking for is that it be -- that according to the formula set out in the statute, which basically, a third, that the lawyer -- that there's a credit to the claimant of up to a third of the recovery in order to get the case settled. So --

REP. FOX: That was a good job on the three minutes. Are there any questions?

I'll just say some of the things that I -- the complaints that I hear about this bill over the last couple of years -- and maybe you can elaborate a little more. One is that this one third is -- that comes off the workers' comp lien goes to the lawyer and not the client. And do you want to just --

WILLIAM J. SWEENEY: Well, I don't know of a situation -- I have never heard of that situation happening. Now whether there's -- I mean, many, many years ago I brought a class action on behalf of some clients against a law firm in Hartford here that was running a -- kind

129
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

of a mill practice and -- because they were not adhering to the no-fault statute in a way in which they were dealing with reimbursements. So I can speak that there aren't somebody -- that people that might be doing it, but as a general practice, I don't know people that do it, but I can't speak for every attorney in the state.

REP. FOX: But wouldn't the attorney's fee be established that the fee agreement anyway that would be (inaudible).

WILLIAM J. SWEENEY: Oh, yeah. Well, I don't think this -- this doesn't affect the fee between the lawyer and the client per se. If there's a third -- well, you've got to have a fee agreement, because it's a personal injury case. And it would be set out. Yeah. I mean, it would be set out in the statute.

So that if the lawyer was charging more -- assuming that the statute -- or the agreement said, a third, if the lawyer was getting more than a third, then yes, it would violate the contract. So the lawyer can't charge more than what's in the -- what's in their fee agreement.

REP. FOX: And the lawyer, isn't the lawyer also statutory -- there's a statutory set up for personal injury.

WILLIAM J. SWEENEY: In cases where the fee might be in settlements that are greater than \$300,000. Yes.

REP. FOX: But you can't take more than a third.

WILLIAM J. SWEENEY: That's correct. That's correct.

REP. FOX: Yeah. So I just -- I mean, because there is -- it does -- it has been said that, you know, that this extra one third off the workers'

130
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

comp lien would go to the attorney and --

WILLIAM J. SWEENEY: That's not -- that is not the intent of the statute at all, and that has been clear in my testimony here every year I've been. That's not the intent. The intent is to pass it onto the client in order to get the case resolved.

REP. FOX: Okay.

WILLIAM J. SWEENEY: Because just, again, if there's a lien -- first of all, the comp statute puts you on -- provides for notice to the attorney. So number one, the lawyer is bound by the statute and to the extent that the lawyer -- comp carrier is saying they need a lawyer, they don't need a lawyer in this situation. The statute puts the lawyer on notice. I mean, the lawyer doesn't follow the statute then the lawyer is subject of some discipline.

But what we're talking about is reducing the amount of money that has to be paid back to the comp carrier. That's -- so the lien in a \$30,000 case, the lien is \$10,000. Instead of that situation where the 10,000 is going to the insurance company, 30, 66 -- only 6666 goes back to the insurance company. The other third stays in with the benefit of the client.

REP. FOX: That answered it.

Any other questions? Thank you very much.

WILLIAM J. SWEENEY: Thank you.

REP. FOX: Next is Angelo Ziotas.

ANGELO ZIOTAS: Good afternoon, Representative Fox and members of the committee. Thank you. I'm Angelo Ziotas. I reside in New Canaan,

131
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

Connecticut and practice law at the firm of Silver, Golub & Teitell in Stamford. And I'm here to speak in favor of Bill 6487, the bill that's been referenced a couple of times regarding certificates of merit.

I should say at the outset the testimony from Attorney Rigg, I agree with in only one respect and that's -- Senator Kissel I was here in 2005. You did you speak eloquently at that time. And there was a lot of eloquent speakers who referenced this bill. And none of them intended the certificate of merit bill to be interpreted that way the appellate and supreme court have done in Bennett.

I am going to speak a bit about Bennett because that really is the reason for our supporting this bill. We currently have a situation under the current supreme court decision where an expert witness who is qualified to testify at trial, that a Connecticut physician violated the standard of care cannot sign a certificate of merit to start a lawsuit against that physician. The appellate court described as illogical and we agree.

The illogic in that decision extends to the absurd extent that the defendant doctor in Bennett could not have signed a certificate of merit against himself. And I want to make sure that that's clearly understood in my testimony. The defendant doctor in Bennett was not board certified in emergency medicine. The plaintiffs believed him to be based upon their pre-suit investigation to be a specialist in emergency medicine.

On the basis of those two facts Dr. Lowes, the defendant in Bennett, is not qualified under this law as interpreted by our courts. So we do think that it needs some modification to address,

132
rgd

JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

that illogic.

And I do want to address another point that has come up. That illogic could not have been anticipated. I think Senator Kissel, you raised the issue with one of our witnesses whether an attorney could have made an error. The attorneys in Connecticut, the lawyers that are members of our association could not have anticipated that the statute was going to be interpreted in the way that it has been until the Bennett decision.

And so it's something that I think the lawyers in our state really do need to have this clarified in a way that makes sense and what this bill seeks to do is to marry the two statutes which address the qualifications of an expert to offer good faith.

And I really do take exception to one of the comments that was made earlier. This statute is not, as it's currently interpreted by our courts, so simple that a child could follow it. I really do take exception to that. It does need to be addressed in a way that would allow lawyers and litigants to submit good-faith certificates and keep meritorious cases within the system.

Thank you.

REP. FOX: Thank you, Attorney Ziotas.

Any questions?

Senator Kissel.

SENATOR KISSEL: Thank you for your kind words.

Thank you, Mr. Chairman.

133
rgd

JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

In a nutshell, what actually is happening now in the field right now six years after our reforms? Because we really did think that we made a good reform that was balanced. You know, for the folks, the defense counsel, you know, we thought it was fair to them as well.

But it seems like -- and you had indicated in the court cases, but I'm just wondering in your actual day-to-day practice what has driven up the frustration level such that, you know, you're all here now saying, we took a great shot at it, but it is now sort of evolved into a point where we need to revisit it?

ANGELO ZIOTAS: Senator Kissel, thank you for that question, because it also allows me to also address what Chairman Fox asked of Attorney Santoro about how frequently these are coming up.

When we were here last year, and this bill got through the committee unanimously and kind of got stuck at the end of the session and didn't get all the way through, we had looked at the numbers and there were hundreds of these motions to dismiss that have been filed since the statute was passed. And I don't think any of the people that testified on behalf of the bill in '05 -- I was here, I testified. I heard the testimony -- we were not trying to create a system that was going to lead to motion after motion after motion in delaying these cases. Those hundreds of motions constitute, depending on how you look at it, half or more of the cases that have been filed since this bill was put into effect.

And it really is -- there are differences and I can appreciate Attorney Santoro indicating that there are differences in aggressiveness of certain firms. There's a firm in New Haven that

134
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

I have frequently on the other side of malpractice cases. They never file. There's a firm in Bridgeport and a firm in Hartford that files them in every case. Whether I have the Harvard top surgeon in the field that their client is board certified in, that they claim the certificate is not detailed enough.

So it is something that does need some clarification to avoid all of the problems that that we have at the outset of the cases. It's not something that's just kind of on the margins. What you're talking about half or more of the cases we need some brighter line rules that do not allow for the motion after motion.

What Mr. Rigg talked about it terms of being able to refile and the accidental failure suit statute, we don't want that to be the basis of litigation. The first witness today may, under the Bennett decision now, have the right to refile after the whole case ends, but do we want him litigating about the death of his wife ten years afterwards?

I think if we can clarify this now -- it took some time. We knew this was a problem right away. We came back. We spoke with the chairs of the committee at the time and they said, you know, let it work its way out a little bit. Then we ended up with Bennett one. We had hopes for Bennett two and the supreme court did not clarify this in a way that addresses the beginning of the case.

SENATOR KISSEL: Thank you. And please give my best to Attorney Teitell, too.

ANGELO ZIOTAS: Thank you, Senator.

REP. FOX: Thank you.

135
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chairman.

(Inaudible) I just want to say, welcome to you. You're a constituent from New Canaan and I'm very happy to see you and thanks for coming up.

ANGELO ZIOTAS: Thank you, sir.

REP. FOX: Any other questions?

Representative Shaban.

REP. SHABAN: Thank you, Mr. Chair.

You guys obviously have more background on this because I was not here in 2005. And I don't -- although I'm an attorney I don't do med-mal work.

But I don't see -- and maybe because I missed the point -- the inherent instability of the bill or the statute as it's written now to say that all right. This defendant couldn't have written a certificate for himself. Ergo, that's illogical and we've got to rewrite the whole thing.

I view it more as having read it, you know, in the past and again today, just a policy decision, of this is the initial speed bump we want to put on malpractice cases. And if, you know, if in every situation it's imperfect, well, that's -- maybe that's just life. I mean, could you fill me in? Am I missing something?

ANGELO ZIOTAS: And I apologize for being brief, Representative. The written submissions that we laid out, we did try to address the statutory scheme in a little bit more detail.

136
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

The illogic that we see is, the statute has Mr. Rigg said, was designed to allow plaintiffs to file suits when there is a reasonable basis for believing negligence occurred. You never know when you file a lawsuit everything that you're going to know after the lawsuit starts.

I get to depose the defendant. I find out what they really think is going on. There's usually records missing that I don't get until I've deposed the defendant. So we get a lot more information once the lawsuit is filed. Then you get to court and you have to prove beyond a reasonable doubt with a competent expert that the defendant violated the standard of care.

Well, it seems like logically the requirements on expert at the end should be stricter than they are at the beginning. What we have under this bill right now is a doctor who could testify at the end can't sign the letter at the beginning. And the problem with that, it was not the policy that was intended.

You know, there are lots of speed boats that were discussed, but the example I used last year when I testified before this bill was, you have doctors around the country with different specializations doing the same thing. Neck surgery, if you need a cervical fusion in the United States, half the time you're going to see an orthopedic surgeon. Dr. Yu at Yale does them. Then you could see a neurosurgeon in Hartford to do the same procedure.

Well, there's a limited number of doctors in the country who will help plaintiffs in lawsuits. And it's really illogical and unfair to take out that other half that do the same thing, that treat the same patients, that know what the standard of care -- that could testify at trial from those pool of doctors that can sign the

137
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

certificate of merit.

And Representative Shaban, I really want to you to understand that we -- when we start these cases, my firm has got a lot of resources. We do a lot of this. We can't get a Connecticut doctor to talk with us about these cases. We've got to go out-of-state. And the out-of-state doctors, if we're talking about neurosurgeons, the American Academy of Neurological Surgeons has a policy of limiting their experts from working with plaintiffs. They have an express written policy that makes it harder for us to get experts.

So in order to really make this logical and fair, keeping those two things together is all we're asking for.

REP. SHABAN: But at trial that expert is subject to voir dire, it's subject to cross-examination, is subject to the usual evidentiary teasing, if you will. Whereas the -- in the certificate, it's really just getting an apples to apples piece of paper that says, all right. You know, doctor, practice area X, practice area X, thumbs up. Okay. We can move on. I mean, I'm -- and I'm not trying to argue with you. I just see -- I don't see that your comparison is being, you know, eye to eye on that problem.

ANGELO ZIOTAS: Well, it is in the sense of the certificates always are on the papers. That's all it is now. And so what I am envisioning under the example that I've used last year, and then again now, is the certificate would say as ours do the first paragraph, Dr. So-and-so is board certified in, let's say, orthopedic medicine.

The defendant is a neurosurgeon, however he performs X number of these surgeries a year at a

138
rgd

JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

major medical institution. That's giving the court the four corners of the certificate, the basis for evaluating that. And clearly under this initial evaluation, it's giving the judge every bit as much as another sentence that says, he's a neurosurgeon.

So that all we're asking is, it's not a complete inquiry at that stage. We don't want it to be. We don't want a trial when you first start the lawsuit. There's got to be discovery. You've got to get down the road. We want to get past this part.

And there's nothing about this bill that would keep a judge from throwing out the Plant case. That's the problem that I see with Mr. Rigg's hyperbolic testimony last year and this year. A nurse whose properly identified in a good-faith certificate is not allowed under this Raised Bill to offer opinion against a psychologist. It just -- it doesn't happen.

So I, you know, I understand those objections. We don't like frivolous cases. We have a complete disagreement in terms of how many of them there are, but this bill does not change the Plant case.

REP. FOX: Thank you. And I asked the question earlier as to whether -- how the motions to dismiss are handled, because you're responding to the motions to dismiss. Are they often either done on the papers or done in oral argument on a short calendar? Is that how you see it happening?

ANGELO ZIOTAS: They are typically done that way, Representative Fox. I mean, I, you know, I do see after Bennett it became a slightly different universe.

139
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

You know, as much as we've heard that it's easy to get these experts who check the boxes the same way, my firm has had situations like the neurosurgeon orthopedic example. And in those cases, those motions, we had our doctor ready to fly in. I mean, you know, look. If the motion --

A motion to dismiss makes a plaintiff's lawyer break out in a sweat. You do not want a significant case thrown out of court at that stage. It's the worst thing in the world for your client. Your client ends up in a situation that this gentleman first testified today did, with a meritorious case. I believe he had a case with a Yale physician who's willing to say the doctor committed malpractice, and he couldn't go forward with that suit.

So look, a motion to dismiss is a serious thing. Typically it was done of the papers, but look, there certainly circumstances if I thought my expert qualified under 52184(c) sub D, until Bennett got clarified we were looking to bring them in.

REP. FOX: That's my recollection from last year, because some of these cases -- the motion to dismiss -- a lot of these cases, you have to do your initial investigation, so they're filed close to the statute. If a dismissal is mandatory without any recourse, I can imagine how that would certainly cause concern and you'd want to have whatever you need to have available for whatever procedure it is in order to combat that.

ANGELO ZIOTAS: And Mr. Traylor had a Yale doctor, so he could bring him down from New Haven. In most of our cases, we're flying them in from Boston or someplace else in order to get them to testify.

140
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

REP. FOX: Any other questions for Attorney Ziotas?

Representative Fritz.

REP. FRITZ: As the cochairman of the medical malpractice working group (inaudible) took us two years. The first bill that we did was vetoed by Rowland and we walked around the capitol all in the light uniforms cheering for the doctors. We forgot all about the victims.

The intention of the certificate of merit, if I recall, was clearly to stop frivolous lawsuits, but now what we're hearing is because of this lawsuit, the court's interpretation has taken it to another level.

I will share with you my one fear in all of this. I think the certificate of merit is a good thing. It may be not a good process. Maybe we need to spell it out more, define it more, make it so that there's no (inaudible). But I still think it's necessary because of frivolous lawsuits, because you know how litigious we are.

At the end of the day my fear is we're opening a can of worms and how do we prevent it? I mean, people are still out there screaming about tort reform and when we say to them, this is what happens, this is what we addressed, we've tried to make it better for you, they don't want to know it because (inaudible) some years ago. They still need tort reform and they have their own definition.

So how do we preserve what we did and all the good that we did without destroying it? You tell me. You're the lawyer.

ANGELO ZIOTAS: Thank you for asking such an easy

141
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

question, Representative Fritz.

It is a hard thing to answer. My main response is I don't think we can let fear of people wanting the wrong thing to --

A VOICE: (Inaudible.)

ANGELO ZIOTAS: I have. I have. And I'm here all the time and I've seen it. But I don't think we should let that prevent us from fixing something we know is wrong.

I'll be there to fight against all those other things if they come up. I realize that in concept, tort reform sounds like a great thing, but there's no person who backs away from tort reform more quickly than a prior advocate who has become injured through medical negligence.

The most vociferous clients that I've represented over the years are physicians who have been injured or had a family member injured and they expect the system to treat them fairly when it happens. And it's up to all of us to ensure the system treats everybody else fairly.

REP. FOX: Thank you. And just so I'm clear, you're not purposing -- I don't think anyone has proposed getting rid of the certificate of merit. It's clarifying what our intent was when we initially did this.

ANGELO ZIOTAS: That's exactly right, Representative. I mean, I, you know, as I said at the beginning of my comments, it is not in the interest of my association, my firm, frankly, my clients to have frivolous cases. I am perfectly willing to have a certificate of merit that weeds out the bad cases.

I just don't want one that allows good cases

142
rgd JUDICIARY COMMITTEE

March 4, 2011
10:00 A.M.

with experts to be dismissed and to have to wait five years for an accidental failure suit claim to be filed.

REP. FOX: Any other questions?

Thank you for the testimony.

ANGELO ZIOTAS: Thank you. Thank you.

REP. FOX: There was a Jean Rexford.

JEAN REXFORD: And there still is.

REP. FOX: And there still is. I'm sorry.

JEAN REXFORD: Good afternoon, distinguished members of the Judiciary Committee. I Jean Rexford and I'm Executive Director of the Connecticut Center for Patient Safety. And I actually wasn't going to testify until late last night and I thought unless I speak the health care consumer, which we all are, will not be represented.

HBG487

If a nurse or a doctor were to be injured while at work not only would that be reported to OSHA, but they would have health insurance, disability insurance and while injured, have some protections. But a patient can be injured in a hospital and it is a very different story.

First, let's look at the statistics. I'm a veteran of the med-mal battle too, and we didn't have all the information six years ago, five years ago that we have now. There are two recent studies that are a dramatic, substantiating scope of medical error.

HealthGrades has just released a new study confirming the growing evidence of preventable death. HealthGrades is a leading independent ratings organization, and over an 11 year



150 Trumbull Street, 2nd Floor
Hartford, CT 06103
p) 860.522.4345 f) 860.522.1027
www.cttriallawyers.org

PAGE 14
LINE 10

TESTIMONY OF WILLIAM J SWEENEY
SWEENEY & GRIFFEN
NEW BRITAIN CT
WJS@SWEENEYGRIFFEN.COM
860-827-6453
MARCH 4, 2011

**RAISED BILL 6474, AAC RESOLUTION OF LIENS IN WORKERS'
COMPENSATION CASES**

I appear here to day on behalf of the Connecticut Trial Lawyers and the many clients we represent to right a wrong that is being perpetrated on the insurance consumers of Connecticut because of the unreasonableness of worker compensation insurance carriers in not being willing to compromise and or make a contribution to the windfall they have as a result of legislation currently in effect that allows them a lien on the proceeds received from third party tortfeasors.

It had been the common practice until recently that when settling workers compensation liens in third party cases that the workers comp carrier generally made a contribution towards the settlement by making a contribution to the Claimants attorneys fees for their getting back what it had paid out in workers compensation benefits to someone injured as a result of third party negligence and for which a claim had been made. The contribution was taken by the attorney and then passed on to the claimant. Now we are finding almost universally the workers compensation carriers refuse to compromise in a meaningful way causing unnecessary delay in the resolution of claims that the parties have settled in theory but for the compensation lien. It seems that the adjusters calling the shots and there is no doubt that is the case from my

personal experience, have all attended the same seminar and now refuse to make anything but a token reduction in the compensation lien. I have had personal conversations with adjusters who have said, " Connecticut doesn't require any reduction so we are not going to give any". This is contrary to the way these cases were settled in the past and I believe has become an industry position. The workers compensation insurers position is unfair to the claimant and places unnecessary strain on the system without justifiable grounds other than profit to the carriers. I believe that this amendment is justified for the following reasons: (1) it delays settlement, (2) the carrier reaps a windfall with no cost associated with it by statute. (3) there is no provision for reduction of the lien for when the claimant is not being made whole i.e. where there is limited insurance or the claimant 's comparative fault reduces the value of the case yet the comp carrier insists on 100 % return (4) this is relatively new practice (5) judges are powerless to require a reduction (6) this has now become an industry practice that will continue unless legislation mandates a change. We think the proposed legislation, while not perfect, provides a simplified system for deterring the reduction that should be allowed and will apply to all cases across the board.

**PLEASE SUPPORT RAISED BILL 6474, AAC THE
RESOLUTION OF LIENS IN WORKERS' COMPENSATION CASES**

Statement

Insurance Association of Connecticut

March 4, 2010

Judiciary Committee

HB 6474. An Act Concerning The Resolution Of Liens In
Workers' Compensation Cases

The Insurance Association of Connecticut is opposed to HB 6474, An Act Concerning The Resolution Of Liens In Workers' Compensation Cases, as it is unnecessary, unfair and a costly endeavor that provides no benefit.

HB 6474 mandates that workers' compensation liens be reduced by one-third if there is a cause of action brought against a third party, however liens held by the state and municipalities are exempt from the provisions of this proposal. If it is bad for the state and towns, how is it not bad for businesses operating here in Connecticut? The state and municipalities were removed from the provisions of this act because of the significant fiscal note a similar proposal had last year. If such a proposal is costly to the state, cities and towns exempting them from HB 6474's provisions, how is it not a financial burden to Connecticut businesses?

Pursuant to the terms of HB 6474 a workers' compensation lien is reduced by one-third solely if an employee brings a separate cause of action against a liable third party. Why is the lien being reduced by one-third? HB 6474 is unprecedented by dictating a party's rights to negotiate. Currently, employers are free to compromise its lien if they so choose. It is not for the legislature to statutorily require a compromise of any lien, let alone a worker's compensation lien. HB 6474 will result in reducing the

recovery of what has already been paid under the workers' compensation system, driving up loss costs, impacting rates.

If the goal of HB 6474 is to compensate plaintiff's counsel for pursuing a third party claim, why should a workers' compensation lien be reduced at all to pay an attorney the employer has no relationship with? Connecticut law mandates that if an employer wants to protect its lien, it must pursue a direct action of its own or join an action brought by the plaintiff. As such, the lien holder must retain counsel of its own to protect the lien holder's interest. That can be done at minimal cost to the employer as the lien holder controls the contractual relationship with the counsel it chooses. Yet if HB 6474 were to pass, the lien holder would lose its right to contract and be forced to enter into a contract with an attorney it did not choose, may not want, and at a rate set by statute.

No other attorney fee is guaranteed by statute. It is not the job of the state to protect attorneys from bad business decisions. If an attorney chooses to pursue a personal injury action against a third party on behalf of a client and can only recover an amount equal to, or slightly more than, the workers' compensation lien, than that was a bad business decision on behalf of the attorney to pursue that case. An employer should not be forced to fund that decision. A recovery of that nature simply proves that that individual was fairly compensated by our workers compensation system.

If the reduction of the lien contained in HB 6474 is to provide more compensation for the injured party, that simply is ignoring the fundamental policy behind Connecticut's current workers' compensation system, in that all injured workers are treated fairly and adequately. Mandating the reduction of a workers' compensation lien, simply because an individual may have a cause of action against a third party, puts

that injured worker in a better position than all other injured workers. The rationale behind the mandate that any workers' compensation lien be paid in full was so that no one person was permitted to receive a windfall and to make the workers' compensation system whole. HB 6474 improperly ignores that rationale by permitting one class of workers to receive a windfall at the expense of the rest of the workers' compensation system. Reduced recoveries directly impact an employer's workers' compensation rates. HB 6474 will cause workers' compensation rates to increase for no valid reason.

HB 6474 provides no benefit to employers, employees or the worker's compensation system. The IAC strongly requests your rejection of HB 6474.



Connecticut Business & Industry Association

Testimony of Kia F. Murrell
Assistant Counsel, CBIA
Before the Judiciary Committee
March 4, 2011

H.B. 6474 AAC The Resolution of Liens in Workers Compensation Cases

My name is Kia Murrell and I am Assistant Counsel for Labor & Employment matters at the Connecticut Business and Industry Association (CBIA). CBIA represents more than 10,000 companies throughout the state of Connecticut, ranging from large corporations to small businesses, but the vast majority of our members are small businesses of 50 or fewer employees. As a general principle, CBIA opposes legislation that increases the costs of doing business in the state; creates new administrative burdens for employers; or restricts employers' flexibility when managing their workforces and handling workplace claims.

We oppose H.B. 6474 because it unfairly increases the costs of doing business for Connecticut employers. The proposal requires employers participating in third-party workers' compensation cases, after they have already paid an employee workers' compensation benefits, to have their recovery in such cases reduced by one-third unless otherwise agreed upon by the parties. This reduction does not apply to cases where the state of Connecticut, its agencies or the Second Injury Fund intervene in third-party workers compensation actions.

We believe H.B. 6474 places an unfair financial burden on employers because:

- It essentially forces employers to pay for the same work-related injury three times: Once, in the workers' compensation benefits paid to the employee, twice for the employer's attorney fees, and then again when the employer's ultimate recovery amount is reduced by one-third.
- Employers incur significant legal costs in exercising their right to recover losses suffered in these types of workers' compensation cases. State law allows an employer to intervene in a lawsuit filed by an employee against a third-party tortfeasor and employers routinely participate in alternative dispute resolution in these cases in an effort to save time and money. With the investment of time, money and effort expended to protect their right to intervene, reducing the amount of an employer's recovery is unfair and will leave them with little to no monetary reward for their efforts in many cases.

- In most cases, employers usually do not receive their full reimbursement even now. Employers are entitled by law to receive full lien recovery, but often agree to negotiate down or accept less than the full amount of their recovery in order to speed case settlement. If employers' recovery is reduced even further than they stand to receive much less.
- Connecticut state law prohibits employees from receiving "double payment." Courts and the legislature have long held that employees should not be paid twice for the same injury, but H.B. 6474 will contradict this tenet. It will unfairly increase the employee's payback to include an additional payment for its legal fees by the employer.
- Employers will have to pay for two attorneys representing conflicting financial interests. In addition to the adverse concept of double billing, requiring a percentage of the employee's attorney fee be paid by the employer could create a disincentive for the employee's attorney to quickly resolve the claims case.

What's more, by mandating a reduction in employers' lien recovery, S.B. 6474 will likely take away any employer's incentive to compromise on its reimbursement in order to settle a claim. This will mean a slower, more difficult and more costly path to the resolution of cases, as well as a backlogged court system.

For all of these reasons, we oppose this legislation and urge the committee to reject H.B. 6474.

PAGE 16
LINE 2

DANAHER, LAGNESE & SACCO, P.C.
ATTORNEYS AT LAW

CAPITOL PLACE · 21 OAK STREET
HARTFORD, CONNECTICUT 06106
(860) 247-3666
FAX (860) 547-1321

www.danaherlagnese.com

FRANK H. SANTORO
DIRECT DIAL (860) 493-5740
fsantoro@danaherlagnese.com

TESTIMONY IN OPPOSITION TO RAISED BILL 6487
JUDICIARY COMMITTEE PUBLIC HEARING, MARCH 4, 2011

Members of the Judiciary Committee:

I am a lawyer whose practice is substantially devoted to the representation of physicians in medical malpractice cases in Connecticut. I am a co-author of Connecticut Medical Malpractice - a book devoted to the subject of medical malpractice law in Connecticut. On behalf of myself and many of the physicians we represent, I would urge the Committee to reject Raised Bill 6487 for the following reasons:

1) It should be recognized at the outset that the fine print of Raised Bill 6487 would amount to virtually a complete gutting of the opinion letter requirement as it was originally enacted into law in 2005 and has been interpreted by many judicial decisions including four decisions of the Supreme Court¹. It would effectively overrule the decision of the Supreme Court in Bennett v. New Milford Hospital, 300 Conn. 1 (2011) with respect to the similar health care provider requirement. By substituting the word “may” for “shall” with respect to the dismissal remedy, it would eviscerate the statutory requirement of an opinion letter. By postponing any challenge to the qualifications of the opinion letter writer to the end of discovery, it would make the “similar health care” requirement of the opinion letter meaningless. By eliminating the requirement for a “detailed basis” of the opinion, it would at least arguably reduce the opinion to the *ipse dixit* of the letter writer. By requiring that a motion to dismiss be filed within 60 days of the return date and providing that any defect could be cured within 30 days, it renders the statute an empty formality. As a practical matter, the enactment of this bill would effectively repeal the certificate of merit statutory scheme.

2) As the Committee may recall, the “certificate of merit” feature of the law was an outgrowth of the tort reform debates of 2004-2005. These were debates which, for the most part, were *lost* by the medical profession. The primary goal of the medical profession in those debates was the imposition of caps on non-economic damages. In 2004, the General Assembly passed a reform measure without caps which was vetoed by Governor Rowland. The General Assembly returned to the subject in 2005 and adhered to its decision to reject caps but enacted a variety of

¹Dias v. Grady, 292 Conn. 350 (2009); Bennett v. New Milford Hospital, 300 Conn. 1 (2011); Plante v. Charlotte Hungerford Hospital, 300 Conn. 33 (2011); and Shortell v. Cavanaugh, SC 18434 (decision announced on Judicial Department website on March 3, 2011).