

Act Number:	09-178	
Bill Number:	1099	
Senate Pages:	4261-4264, 4266-4268	7
House Pages:	9618-9622	5
Committee:	Judiciary: 5053-5055, 5217-5218, 5219-5222, 5390-5394	14
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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2009**

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e-mail. It's a really great common sense proposal and, again, I really want to thank Senator McDonald for moving forward with this legislation, and I want to comment Senator Witkos for bringing forward such a good piece of legislation and recommending it to this body.

Thank you, Mr. President.

THE CHAIR:

Thank you, sir. Remark further? Remark further on the bill? Senator McDonald?

SENATOR McDONALD:

Mr. President, if there's no objection, might this item be placed on the consent calendar?

THE CHAIR:

There's a motion on the floor to place this item on consent. Without objection, so ordered. Mr. Clerk?

THE CLERK:

Calendar Number 499, File Number 719, Senate Bill 1099, AN ACT CONCERNING CERTAIN APPEAL PROCEDURES, favorable report out of Judiciary and Labor.

THE CHAIR:

Senator McDonald?

SENATOR McDONALD:

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Mr. President, I move acceptance of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

Acting on acceptance and passage of the bill, sir, would you like to remark further?

SENATOR McDONALD:

Yes, Mr. President. Mr. President, this legislation comes to us as a result of a Supreme Court decision from 2007 where the court was faced with the question of whether a worker's compensation case was a final judgment for purposes of appeal, and after analyzing our statutes and existing case law, the Court came to the conclusion that determining what decisions of the Compensation Review Board would qualify as a final judgment for purposes of appeal was a matter that was best left to the discretion of this Legislature and, in fact, the Supreme Court invited us to revisit the issue.

Mr. President, this legislation would make it perhaps clear what some people already consider to be the law, and that is that any question of law regardless of whether it was a final judgment would be deemed to be a final decision for purposes of appeal from a decision in the Compensation Review Board.

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THE CHAIR:

Thank you, sir. Remark further? Senator Kissel?

SENATOR KISSEL:

Thank you very much, Mr. President. I'm actually delighted that Senator McDonald's voice is much better today than it was yesterday, but I can see he's still got one more day to go. I don't have any questions for the proponent of the bill, but it's a really nuanced area of the law, but I think probably the best story that comes out of the rendition regarding the background of this particular piece of legislation is the fact that the Supreme Court sort of let us know via the decision to enter into the field and further define the area, and that's the kind of relationship we want to have with the Judicial Branch, and we're happy to help clarify, and I would commend Senator McDonald for bringing this bill forward.

Thank you very much, Mr. President.

THE CHAIR:

Thank you, sir. Will you remark further on the bill? Senator McDonald?

SENATOR McDONALD:

Mr. President, if there's no objection, might this item be placed on the consent calendar?

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THE CHAIR:

Seeing no objections, so ordered. Mr. Clerk?

THE CLERK:

Calendar page 34, Calendar Number 520, File Number 2062, substitute for Senate Bill 1158, An Act Concerning Foreclosure Procedures favorably reported from the Committee on Judiciary and Banks.

THE CHAIR:

Senator McDonald? Senator Looney?

SENATOR LOONEY:

Yes, Mr. President. Might the item be passed temporarily?

THE CHAIR:

Without objection, so ordered. Mr. Clerk?

THE CLERK:

Calendar page 37, disagreeing actions, Calendar Number 321, File Number 411, Senate Bill 271, An Act Concerning Flood Plain Management and Mill Properties, as amended by Senate Amendment Schedule A and House Amendment Schedule A favorably reported by the Committee on the Environment and Planning and Development.

THE CHAIR:

Senator Meyer?

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THE CHAIR:

Senator Meyer requests that this item be put on consent. Seeing no objection, so ordered. Mr. Clerk?

THE CLERK:

Mr. President, that completes those items previously marked go.

THE CHAIR:

Senator Looney?

SENATOR LOONEY:

Thank you, Mr. President. If the Clerk might now call the first consent calendar?

THE CHAIR:

Mr. Clerk, please call the first consent calendar, and the machine will be open. Excuse me. Please call the consent calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate on the consent calendar. Will all Senators please return to the chamber? Immediate roll call has been ordered in the Senate on the consent calendar. Will all Senators please return to the chamber?

Mr. President, those items placed on the first consent calendar begin on calendar page 6, Calendar 486, substitute for Senate Bill 650. Calendar page

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17, Calendar Number 660, substitute for House Bill 5262.

Calendar 664, House Bill 5894, calendar page 23.
Calendar Number 202, Senate Bill 74. Calendar page
24, Calendar 220, substitute for Senate Bill 866.

Calendar 227, substitute for Senate Bill 920.
Calendar 238, House Bill 5222. Calendar 243, House
Bill 6501. Calendar page 29, Calendar Number 357,
substitute for Senate Bill 995.

Calendar page 33, Calendar 471, Senate Bill 1128.
Calendar 481, substitute for Senate Bill 533.
Calendar 499, Senate Bill 1099, and calendar page 37,
Calendar 321, Senate Bill 271.

Mr. President, that completes those items placed
on the first consent calendar.

THE CHAIR:

Please call the consent calendar. The machine
will be open.

THE CLERK:

The Senate is now voting by roll call on the
consent calendar. Will all Senators please return to
the chamber? The Senate is now voting by roll call on
the consent calendar. Will all Senators please return
to the chamber?

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THE CHAIR:

Have all Senators voted? If all Senators have voted, please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is adoption of Consent Calendar Number 1.

Total number voting 35

Those voting yea 35

Those voting nay 0

Those absent and not voting 1

THE CHAIR:

Consent Calendar Number 1 passes. Senator
Looney?

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, I would move for suspension for immediate transmittal to the House of Representatives of all items acted upon today requiring action in that chamber.

THE CHAIR:

There's a motion on the floor for suspension of the rules for immediate transmittal. Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, I would

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The House of Representatives is voting by roll call.
Members to the chamber. The House is voting by roll call.
Members to the chamber.

DEPUTY SPEAKER ORANGE:

Have all the members voted? Have all the members voted?
Please check the board to determine that your vote has been
properly cast and if so the machine will be locked and the Clerk
will take a tally. And will the Clerk please announce the
tally.

THE CLERK:

House Bill 5162 as amended by House A

Total number voting	143
Necessary for passage	72
Those voting Yea	143
Those voting Nay	0
Those absent and not voting	8

DEPUTY SPEAKER ORANGE:

Thank you, Mr. Clerk. And the bill passes. Will the Clerk
please call Calendar number 698.

THE CLERK:

On page 27, Calendar 698, Senate Bill 1099, AN ACT
CONCERNING CERTAIN APPEAL PROCEDURES favorable report of the
Committee on Labor and Public Employees.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker. I move for the acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER ORANGE:

The question is on acceptance of the joint committee's favorable report and passage of the bill. Will you remark?

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker. The current law states that a worker's compensation claimant can bring an appeal from a decision of the Compensation Review Board upon the issuance of a final decision or a final judgment and that appeal would go to the Appellate Court. The -- our courts have interpreted that rule however to mean that it requires an absolute final decision or final judgment and in recent Supreme Court decision, the decision of Hummel vs. Martin Transport the Supreme Court specifically stated that the legislature should seek to clarify what our intent is.

And the reason for that is because a worker's compensation case is different from other types of cases in that often times the case can go on for a number of years even including the

entire lifetime of the claimant just given the nature of the case. So what this does is it states that a claimant may bring a decision or an appeal of a decision by law by the Compensation Review Board without that decision necessarily being a final judgment. And I urge passage of the bill.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Fox. Will you care to remark further?

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Madam Speaker. And I concur with the explanation offered by the Vice Chair of the Judiciary Committee. This is a situation which the Supreme Court has invited the legislature to clarify the statutes and revisit issue regarding the finality of judgments as being a prerequisite for action -- for rather an appeal to be taken to the courts from the review board. And it something which apparently has been out there for a couple of years now. It's something which is fully appropriate for us to take action on.

It's really a decision that we as a legislature need to make. It's something that we should not be expecting the courts to do for us and this appears to be the most reasonable approach to dealing with the situation since so many matters do not go

forward and are not ever turned into final judgments in the form that they normally would be in a court action for an appeal. And therefore it's the correct thing for us to do with respect to this. And it's one of the occasions I will say that I don't have very many constituents come and testify on various matters but this actually happened to be one where a constituent of mine was testifying as to the desirability of the act that is before us. So I would urge the assembly to vote favorably. Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark on the bill? Will you care to remark on the bill? If not, staff and guests please come to the well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call.

Members to the chamber. The House is voting by roll call.

Members to the chamber.

DEPUTY SPEAKER ORANGE:

Have all members voted? Have all members voted? Please check the board to determine if your vote has been properly cast. If so the machine will be locked and the Clerk will take a tally. And will the Clerk please announce the tally.

THE CLERK:

Senate Bill number 1099 in concurrence with the Senate

Total number voting . 144

Necessary for passage 73

Those voting Yea 144

Those voting Nay 0

Those absent and not voting 7

DEPUTY SPEAKER ORANGE:

The bill passes in concurrence with the Senate.

Will the House please stand at ease.

(Chamber at ease.)

Deputy Speaker Godfrey in the Chair.

DEPUTY SPEAKER GODFREY:

The House will come back to order. We will return to the call of the Calendar. Mr. Clerk, would you please call Calendar 703.

THE CLERK:

On page 27, Calendar 703, substitute for Senate Bill number 939, AN ACT CONCERNING EDUCATOR CERTIFICATION favorable report

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JOSEPH O'BRIEN: Well, he is now. I did not represent him at the Claims Commissioner's level.

SENATOR KISSEL: Gotcha. When did he first become aware that the Claims office did not receive his claim in a timely fashion?

JOSEPH O'BRIEN: I think he became aware in December when he had not had any response and had to resubmit the claim in December of '07.

SENATOR KISSEL: Okay. When he resubmitted it, did he also submit the proof that it was submitted within the year?

JOSEPH O'BRIEN: I don't think he did. I don't think he realized that he needed to do that. I think he believed that this must be in the file in the Commissioner's office. But when he hadn't heard, he, I believe, contacted them, and then resubmitted it. But I think there was some error with respect to this original submission which occurred within the Claims Commissioner's office. I think Mr. Boyle, perhaps not even realizing the significance of the timeliness, just simply resubmitted a new (inaudible).

SENATOR KISSEL: Okay. Thank you, sir.
Interesting issue.

SENATOR MCDONALD: Robert Enright, followed by Brian Lynch. Is Brian Lynch here? Then after Mr. Enright would be Kevin Hennessy.

ROBERT ENRIGHT: Members of the Committee, good morning. I'm attorney Robert Enright and I am presently the head of the Workers Compensation Section of the Connecticut Bar Association.

SB1099

Essentially an insurance defense lawyer and I'm here to speak in favor of raised bill 1099. Now, it's a modest bill of narrow focus. It has to do with something that might cause your eyes to glaze over. It's the final judgment rule in the context of workers compensation appellate litigation.

All I'm going to tell you is that Connecticut Supreme Court, in a recent opinion invited the legislature to clarify the statute that pertains to appeals in workers compensation litigation. And I would like to see the legislature take up that invitation and pass this bill, which eliminates what's called a final judgment rule for our workers compensation appeals to reach the appellate court. That's what the Connecticut Supreme Court invites the legislature to do and I think it's a bill that would very much help the Bar. It would advance the remedial purpose of the act, and it would promote efficiency in resolution of disputes. So I would ask you, please, to give it a hard look. If you have any questions, I'll try to answer them. Other than that, I'll thank you for hearing me.

SENATOR MCDONALD: What was the name of the case?

ROBERT ENRIGHT: The case is called Hummel and, unfortunately, I don't have as much information in my head as Attorney Faulkner. I can't give you the citation, but Hummel came down within the last year or so.

SENATOR MCDONALD: Was Hummel the plaintiff or defendant?

ROBERT ENRIGHT: Hummel versus Martin Transport, I think is the full case name.

SENATOR MCDONALD: Martin Transfer?

ROBERT ENRIGHT: Transport.

SENATOR MCDONALD: All right, we'll track (inaudible). Any questions? Thanks very much. Kevin Hennessey, followed by Megan (inaudible)? Is Megan (inaudible) here? Okay, then Raphael Podolsky.

KEVIN HENNESSEY: Good morning, Senator McDonald and members of the Committee. My name is Kevin Hennessey. I'm a staff attorney at CBIA, Connecticut Business and Industries Association and I'm testifying on six bills today. I submitted written testimony so I will be summarizing that.

SB1090
SB1030
SB963

The first three bills that I actually like to lock together because they all entail extending the statute of limitations for various groups. The first is Senate Bill 641 which deals with medical malpractice actions regarding brain injury. The second is for civil action when a police investigation is pending, Senate Bill 1026. And the third is House Bill 6577, which deals with negligence actions by minors.

Everyone knows that today we live in very uncertain times and one of the certainties in our legal courtrooms is that there are statutes of limitations. Businesses need certainty in order to thrive and when we start to change around certainty, it causes them to lose money, to expose themselves to administrative burdens and to potential problems as to grow and invest here. Right now, the legal system is really driven by plaintiffs and the statutes of limitations is

test for the pads. Other ones don't have that.

So I think the biggest changes have been things that help people maintain them better. Because you could place one on a wall and someone still needs to go over to it once a month and check the batteries and make sure it's working. A lot of them have developed things so that it has an audible alarm when the battery is starting to die. So I think there are more safety features and maintenance features that have been improved than just the guts of the device as far as how you or I would use one. Does that --

REP. FOX: Yes, so if an office building had an AED that's nine or ten years old, they still would be able, somebody who'd never been trained in it, they would still be able to pull it off the wall --

VICKI GRAHAM: Yes, they all have voice prompts that tell you exactly what to do.

REP. FOX: Okay. Okay. Thank you. Thank you, Mr. Chairman.

SENATOR MCDONALD: Thanks for your testimony. Next is Kathy Emmett, followed by Maureen (inaudible). It's good to see you, Attorney Emmett. It must be Stamford Day here at the Capital.

KATHY EMMETT: Well, we're glad to be here. Senator McDonald, members of the Committee. I am here, I am Kathy Emmett, current president of the Connecticut Trial Lawyers and I'm here to speak on behalf of two bills, raised bill 1099 concerning certain appeal procedures in workers compensation and raised bill 6642,

which has a title having to do with solicitation of clients, patients or customers, which I would refer to as the runners bill.

First with respect to raised bill 1099, Attorney Robert Carter has prepared written testimony which was submitted on behalf of this bill and I would respectfully refer you to that. It details the basis for this bill. But, essentially, the reason for it is that it is now difficult or impossible to appeal workers compensation decisions by the Compensation review Board in a lot of circumstances. And that has to do with the fact that workers compensation claims are almost never over. And this would allow for appeals, and I believe both of those who insure employers and workers comp cases and the actual claimants agree that this is a good idea. I did want to point out, I know, Senator McDonald, you asked before for the citation of the case that the Supreme Court raised the issue in and it is the Hummel versus Martin Transport case, and the cite if you are interested is 282 Conn 477. It's a 2007 case.

Now with respect to the runner's bill, this is the bill that we are -- both bills we're strongly in favor of -- but this bill, we have been instrumental in getting it to you because over the past couple of years the Connecticut Trial Lawyers members have noticed that there is an increasing use or practice of runners developing in this state. Runners are people who, for money paid to them by providers, like a chiropractor will go out and find people who have just been in accidents and bring them to a chiropractor for treatment. Connecticut law now does not prohibit this kind of conduct.

HB 6642

And the intent of this bill is to fill that gap. It is, in fact, the case, as we lay it out in our written testimony, that individuals who have operated as runners in other states, in particular, -- one who is operating in New Jersey, came to Connecticut after he was convicted in New Jersey of bribing police officers to get accident reports for the purpose of identifying accident victims so he could then find and take to those chiropractors who he had a deal with to pay him for that -- he is now operating in the Bridgeport and Waterbury area, is our information.

Runners operate by going to the police station and getting all the previous days accident reports so they can identify who the victims of accidents are and then solicit them to take them for treatment. The purpose of that process is obviously, or perhaps not so obviously, but is in fact to get those victims to make claims against -- to make claims and then the chiropractor gets paid and the runner gets paid and the real focus is not the victim of the accident. In fact, sometimes people are taken who may not have medical problems and then, obviously, that would lead to fraudulent claims being made.

SENATOR MCDONALD: Thank you. Let me ask you a question. I haven't gotten really focused on this workers comp issue too much. But under this proposal, is existing law already -- says that any party agreed by that decision of the board, in a question of law, may appeal the decision to the Appellate Court, right? Why is that not sufficient? (inaudible) the Hummel case --

SB 1099

KATHY EMMETT: The problem is the Hummel case says

the final judgment rule must have been met for the court to have subject matter jurisdiction. Because it's not clear under the statute that the final judgment rule does not apply. And because workers compensation claims don't end unless they're voluntarily settled, it is difficult for -- many times there isn't a final judgment so the court has taken the position that it would not have jurisdiction unless that's clarified. And it's that issue that the court addressed in Hummel and suggested that, perhaps, the legislature should clarify that.

SENATOR MCDONALD: Now again, I don't work at all in the workers comp area, but a compensation review board even have authority to enter a judgment or is it a decision?

KATHY EMMETT: Well, that's an interesting question. I think at some point in a workers compensation case, when it becomes finally resolve, which happens only sometimes, I think something we would call a judgment does enter. But it's not a court judgment, obviously.

SENATOR MCDONALD: I mean, you're a former Superior Court judge so I figured this is a good person to ask this questions. Is it that the workers compensation review board, any final action, it constitutes a judgment for purposes of appeal?

KATHY EMMETT: I think had I been on the workers compensation review board, I might be in a better position to answer that question. This process was not something that I dealt with in the Superior Court. But I believe that there is a way in the workers compensation system, if you will, for there to be a final end to a workers compensation claim that might be

considered to be a final judgment. But I would defer to those who practice more in that area. As I indicated by my beginning statement here and we can provide further information to the Committee if that would be helpful. Attorney Carter, who is truly an expert in this area, which I do not claim to be, I'm sure could answer that question better than I.

SENATOR MCDONALD: Okay. And finally, on this bill, this proposal contemplates that any decision could be appealed. Have you given any thought to -- it would be appealed to the Appellate Court directly, have you given any thought to the possibility of having a petition for certification for appeal? I guess --

KATHY EMMETT: You mean as an alternative to permitting an appeal as a right?

SENATOR MCDONALD: Correct. Under the existing language it says any question arising in a proceeding could be appealed and that is pretty broad. And I guess you could really abuse the system if you wanted if you thought you had an automatic right of appeal to the appellate court regardless of what the question was for whatever reason. So if you had a petition for certification that could potentially winnow it down to only the substantive issues that should be appealed.

KATHY EMMETT: My response on that, and again, I would defer to Attorney Carter, but my response on that the compensation review board is an internal appeal process, in effect. And I think what is being accomplished by this bill is that a decision that that board makes on a question of law would be appealable. And

that, in effect, any decision on the question of law about what is an internal appeal, decision making body in the workers comp system would be like a judgment in the Superior Court, for example, which could then be appealed. I don't believe that it would create chaos on appealing multiple issues.

SENATOR MCDONALD: Well, it would be -- what I'm contemplating and not saying -- this is where my head is at -- but what I'm thinking is that it would be somewhat akin to land use appeals from the Superior Court. They're not appealable as of right and there's a petition for certification to appeal under section 81, I guess, to have that opportunity to appeal, which are fairly routinely granted unless they really do appear to be for delectory reasons. At least in my experience those are fairly routinely granted if there's any arguable issue that should be resolved by an Appellate Court. Maybe I'll ask Attorney Carter...

KATHY EMMETT: Well, my response is that I think everyone's concern on all sides of this is that there be an ability to appeal and so I think that goal would be accomplished by what you're proposing. I don't know how workable or whether it would be better or not. I'm not expressing an opinion on that.

SENATOR MCDONALD: This whole concept of runners, before this year I had never even heard of it. How prevalent -- you gave an example of somebody in Bridgeport, how prevalent is this situation?

KATHY EMMETT: It's actually quite prevalent and it's growing. It's a practice that attract people who are, essentially, taking advantage

HB 6642

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STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 17
5266 - 5611**

2009



Connecticut Business & Industry Association

**Testimony of Kia F. Murrell
Assistant Counsel, CBIA
Before the Judiciary Committee
March 20, 2009**

S.B. 1099 AAC Certain Appeal Procedures

The Connecticut Business and Industry Association (CBIA) represents more than 10,000 companies throughout the state of Connecticut, ranging from large corporations to small businesses.

We **oppose S.B. 1099** as a measure that will increase both costs and burdens for employers because it allows workers compensation cases to be heard by the Appellate Court before a final decision is rendered by the Compensation Review Board.

In most areas of the law, a final decision is required by the trier of fact or trial court before an appeal to a higher authority can be taken. The purpose of this general rule is to ensure that only meritorious, valid claims are taken on appeal. The necessity of a final judgment or decision thereby acts as a filter or gate-keeper in litigation to ensure that a state's appellate processes and resources are efficiently used and not wasted.

Insofar as **S.B. 1099** allows workers compensation claims to be appealed without a final decision by the trier of fact (i.e., the Compensation Review Board or CRB) this legislation will inevitably lead to an increase in the number of claims appealed; an increase in the time, expense and resources of the state appellate court system spent on workers comp claims; and it will undermine the finality of decisions rendered by the CRB. If and when that occurs, workers comp claimants will actually be encouraged to appeal their cases to the appellate court in search of a more favorable decision. Once the CRB's authority to render final judgments is undermined, it will inevitably lead to more lengthy workers comp cases and higher litigation costs for employers at a time when many are struggling to survive and compete in an increasingly difficult economy.

For all of these reasons, we oppose **S.B. 1099** and urge the Committee to reject it.



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Testimony of Robert J. Enright
Chair, Workers' Compensation Section of the Connecticut Bar Association
Senate Bill 1099 *An Act Concerning Certain Appeal Procedures*
Judiciary Committee
March 20, 2009

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to appear before the committee to comment in support of Senate Bill 1099, *An Act Concerning Certain Appeal Procedures*. My name is Robert Enright and I am the chair of the Connecticut Bar Association Workers' Compensation Section, whose members represent both claimants and respondents. The section has a great interest in legislation that concerns workers' compensation procedures and it supports Senate Bill 1099.

The purpose of the bill is to clarify that decisions of the Compensation Review Board (CRB) may be appealed by right, without satisfying the final judgment rule of C.G.S. Sec. 4-183 or Sec. 52-263. Connecticut General Statutes §31-301b, as presently written does not require a "final judgment," likely because workers' compensation cases are may last for years or even over the lifetime of the injured worker unless voluntarily settled. It is, therefore, difficult to determine when a judgment is final for purposes of appeal.

The decisions of the CRB resolve crucial issues in cases which should be reviewed, but the opportunity for meaningful appellate review is often delayed while the parties litigate to conclusion every issue, no matter how small. Currently, a court will not hear appeals of workers' compensation cases which have been remanded by the CRB,

however erroneous the grounds for remand, thus requiring what may be an unnecessary and erroneously ordered new trial.

The final judgment rule is not contained in statute; it was created by case law in several decisions issued by the Connecticut Supreme Court. The final judgment rule was recently revisited by the Supreme Court in Hummel v. Marten Transport, Ltd., 282 Conn. 477 (2007). In a concurring opinion, Justice Borden stated in pertinent part:

Furthermore, the majority opinion makes clear how jurisprudentially fragile the underpinning of the final judgment rule is in the workers' compensation context. I respectfully urge, therefore, that **now is the time for the interested groups and the legislature to revisit the question of whether a final judgment should be a subject matter jurisdictional requisite for an appeal from the workers' compensation review board.**

The CBA Workers' Compensation Section agrees that the legislature should act to clarify once and for all the requirements for appeal under §31-301b. The final judgment rule as currently applied to decisions of the CRB prohibits the appellate review of final decisions by trial commissioners which have been remanded for new trials, so that the decisions of the CRB in these cases are effectively not reviewable. The plain language of §31-301b arguably evinces a legislative intent that all decisions of the CRB should be appealable.

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

Thank you for the opportunity to comment in support of Senate Bill 1099, *An Act Concerning Certain Appeal Procedures*. I urge the Judiciary Committee to act favorably on the bill.

CONNECTICUT
TRIAL LAWYERS
ASSOCIATION



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Raised Bill 1099

Public Hearing: 3-20-09

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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