

THE HEARING

A. Informal hearings

The Workers Compensation Commission conducts informal hearings in an attempt to bring both sides together and resolve disputed issues. The hearings are generally scheduled to last approximately 15 minutes. It is important to note that no binding decisions can be made by a commissioner at an informal hearing. The commissioner can only make recommendations, which the parties are free to either follow or disregard. However, the workers compensation system depends upon compromise and settlement, and in the majority of cases the parties will follow the commissioner's recommendation.

There are at least two situations where a commissioner does make an order at an informal hearing. These are 1., rendering a decision regarding a Form 36 to cut off benefits, and 2., rendering an order regarding discretionary benefits under section 31-308a. In these situations, if a party is dissatisfied with the commissioner's decision, the remedy is to request a formal hearing on the issue. At the formal hearing, the commissioner should consider the issue de novo. Brinson v. Finlay Bros. Printing Co., 77 Conn. App. 319 (2003).

Adequate preparation is crucial to a successful informal hearing. Claimant's attorneys should know exactly what benefits they are claiming; respondents attorneys should know the specifics of any defenses to the claims. The claimant's attorney needs to secure appropriate medical reports to document their claims. Unfortunately, many times counsel will encounter problems with physicians' offices in getting timely reports. If potential settlement of a claim is to be discussed at a hearing, respondents' attorneys should attempt to secure settlement authority from the insurance carrier prior to the hearing.

Candor to the commissioner and opposing attorney is not only required by the ethical rules (Rule 3.3), but also will help you earn a reputation as a credible source of information. The workers compensation bar in Connecticut is fairly small, and it is likely that you will encounter the commissioner and opposing counsel in the future.

Attorneys hold different opinions as to whether a client should be present at an informal hearing. Some attorneys believe that having a client present at the hearing helps to provide additional information to the commissioner, and helps with client relations. The author's opinion is to leave the clients at home. From both the claimants' and respondents' point of view, clients sometimes will say things that do not help their cases, and in fact hurt their cases. Also, when your client is present in the hearing room, it is generally a signal to opposing counsel that you have a difficult client.

B. Pre-formal hearings

Pre-formal hearings in practice are no different than informal hearings. However, each workers compensation commissioner is slightly different in the way they handle pre-formal hearings. Attorneys at pre-formal hearings should be prepared to state what witnesses they intend to call at a formal hearing, even though in most cases a commissioner will not require this. Counsel should also be prepared to state what additional procedures need to be done prior to the formal, such as depositions and IME=s. See the Chairman=s Memorandum re: Pre-Formal Hearings at the end of these materials.

C. Formal hearings

Formal hearings are similar to a trial to the court. Counsel should be prepared to present and cross-examine witnesses as well as documentary evidence. Reports of treating physicians are admissible under Connecticut General Statutes sec. 52-174(b).

Depositions of physicians are admissible under sec. 52-149a. However, the rules of evidence, while a rough guideline, are not strictly enforced at formal hearings.

Connecticut General Statutes section 31-298.

IME physicians are not treating physicians, and their reports are not admissible under the statute for records of treating physicians. The CRB has ruled that a respondent is not allowed to introduce an IME report absent testimony from that doctor. In contrast, the claimant's attorney is allowed to introduce an IME report without any testimony if he so chooses. Lee v. City of Norwalk, 1626 CRB-7-93-1 (11-7-94); Giovino v. Town of West Hartford, 1912 CRB-1-93-12 (5-12-95); Boland v. Solar Atmospheres of New England, Inc., 3673 CRB-08-97-09 (10-19-98). Thus, if a respondent wishes to introduce an IME report as an exhibit, he should either obtain the claimant's prior consent or arrange for a deposition of the IME physician.

Formal hearings are generally scheduled for only a few hours at a time. Once the allotted time is over, the formal hearing will be continued to another date, probably several months into the future. Thus, it is crucial for claimant's counsel to present their case as quickly as possible while still presenting the important aspects of the case.

At the conclusion of the evidence, the trial commissioner will generally set a date by which briefs and proposed findings of fact are to be filed. Both sides should take advantage of filing such briefs and proposed findings of fact. This is a good opportunity for counsel to persuade the trial commissioner as to what facts are important and how they fit together to support your case.

D. Settlement

The majority of workers compensation claims are settled at some point. There are numerous reasons for settlements. For the claimant, some reasons are the avoidance of long delays in litigation, the need for immediate financial help, and the prospect that the claim may not prevail. For the respondents, some reasons are the avoidance of future risk, maintaining reserves, and future administrative costs. Many times you will hear from respondents "the best file is a closed file".

Both claimants= and respondents= counsel must look out for potential liens on a claim. While the full discussion of liens is beyond the scope of this seminar (and in fact is the subject of full day seminars), a few points should be noted. Possible lienholders include group medical insurance companies, the State of Connecticut, Medicare, and others. While most liens do not arise unless written notice is sent to the parties, one should be aware that Medicare has a "super lien", which is enforceable even without any prior notice to the parties. There is also an argument, as yet untested by the commission or the courts, that the State of Connecticut incarceration lien also arises even without notice to counsel, and that it applies to workers compensation claims.

While some might argue that the valuation of claims for settlement is an art, it really is not difficult. The best and fairest way to evaluate a claim is to itemize the various benefits that are currently being claimed as well as potential future benefits. If the case is contested, or there are other contested issues, then a discount from the full value is appropriate. A general outline is as follows:

TT to date	\$
outstanding medical bills	\$
permanent partial disability	\$
31-308a	\$
future medical treatment	\$

future TT/TP	\$
future additional permanency	\$
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Total value	\$

Many commissioners as well as most insurance companies evaluate a claim in this way. Obviously, reasonable people can allocate different amounts to the various benefits. However, by itemizing your figure in this way, you can quickly see whether a party is being reasonable. You can also often quickly see where the disagreements lie, and thus help both sides to narrow their differences and come to some agreement.

APPENDIX

MEMORANDUM NO. 2001-11

TO: Commissioners, District Administrators, Self-Insureds,
Insurance Carriers, Attorneys, Unions, Legal Advisory Panel
Members, and Advisory Board Members

John A. Mastropietro, Chairman

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December 21, 2001

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RE: **Pre-formal Memos**

Effective immediately, the submission of Pre-formal Memos is no longer required. However, pursuant to Bailey v. State, 65 Conn. App. 592 (2001), parties should be prepared at the pre-formal hearing to articulate specifically what further activities (depositions, etc.) will be required before their matter is ready for trial. We anticipate that a full and open disclosure setting appropriate timetables will negate problems such as those that arose in the Bailey case. In addition, claimant's representatives should be prepared to articulate and defend a monetary demand for settlement based on actual benefits being claimed, and respondent's representatives should have reasonable authorization which will allow meaningful discussion to take place. All parties should be prepared to estimate the length of time required for the formal hearing, the number and identity of witnesses who will submit live testimony, and divulge the need and timetable necessary to complete any depositions in order to prevent unnecessary delays of the formal hearing. It is also expected that the parties will leave the pre-formal hearing with a complete understanding of exactly what issues are to be the subject matter of the formal.

An Act Increasing the Mileage Reimbursement Rate for Workers' Compensation Claimants

Increases the Mileage Reimbursement Rate for Workers' Compensation Claimants

Effective for actual travel expenses incurred on or after October 1, 2001, this public act increases the mileage reimbursement rate for all workers' compensation claimants who use their private motor vehicles to travel to medical appointments necessitated by their work-related injuries. This rate increase applies to all claimants, regardless of injury date, and now coincides with the federal mileage reimbursement rate.

- For all travel expenses incurred **prior to October 1, 2001**, the mileage reimbursement rate is **15 cents per mile**;
- For all travel expenses incurred **from October 1, 2001 through January 21, 2002**, the mileage reimbursement rate is **34.5 cents per mile**;
- For all travel expenses incurred **from January 22, 2002 through January 5, 2003**, the mileage reimbursement rate is **36.5 cents per mile**; and
- For all travel expenses incurred **on or after January 6, 2003**, the mileage reimbursement rate is **36.0 cents per mile**.
- For all travel expenses incurred **on or after January 1, 2004**, the mileage reimbursement rate is **37.5 cents per mile**.
- For all travel expenses incurred **on or after February 4, 2005**, the mileage reimbursement rate is **40.5 cents per mile**.
- For all travel expenses incurred **on or after September 1, 2005**, the mileage reimbursement rate is **48.5 cents per mile**.
- For all travel expenses incurred **on or after January 1, 2006**, the mileage reimbursement rate is **44.5 cents per mile**.
- For all travel expenses incurred **on or after January 1, 2007**, the mileage reimbursement rate is **48.5 cents per mile**.

State Reference: C.G.S. §31-312(a)

Federal Reference: Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement, 41 CFR Part 301-10 [FTR Amendment 95] RIN 3090-AH36

Effective October 1, 2001

[Click here to read the full text of *Public Act 01-33*.](#)

State of Connecticut

Workers' Compensation Commission

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Page URL: <http://wcc.state.ct.us/gen-info/rec-legis/01-mileage.htm>

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