



JOHNS, FLAHERTY & COLLINS, SC

Good neighbors. Great lawyers.

April 5, 2010

600 Exchange Building
205 Fifth Avenue South
P.O. Box 1626
La Crosse, WI 54602-1626

Phone: 608-784-5678

Fax: 608-784-0557
Prairie du Chien
Phone: 608-326-2475
E-mail:
general@johnsflaherty.com
Web: www.johnsflaherty.com

Re: Assembly Bill 815

I am writing to you to express my opposition to Assembly Bill 815. As background, I have been a trial lawyer for almost 32 years here in La Crosse. While I have handled cases for both plaintiffs and defendants, I should certainly say in the beginning that most of my work involves representing insurance companies and their insureds.

ATTORNEYS

Robert P. Smyth
Maureen L. Kinney
Terence R. Collins*
Brent P. Smith*
Peder G. Arneson
Ellen M. Frantz
Gregory S. Bonney
Michael L. Stoker
Cheryl M. Gill**
Brian G. Weber
Joseph G. Veenstra
Emily E. Cannon
Brandon J. Prinsen

James P. Gokey
1949-1998

OF COUNSEL

Daniel T. Flaherty

RETIRED

Robert D. Johns, Jr.

PARALEGALS

Lisa L. Felt
Bridget M. Mullen***
Teresa M. Nielsen

* Admitted to the
Minnesota Bar
** Admitted to the
Missouri Bar,
Kansas Bar &
Bar of the
Commonwealth
of the Northern
Mariana Islands
*** Fluent in Spanish

I expect that one of the concerns raised by the proponents of this bill is if the pre-existing conditions of claimants are not relevant to the particular case raise privacy concerns. Let me comment. First, the pre-existing medical records that defendants may get in these cases are for the most part shared with the claimant and his or her lawyer. In the overwhelming majority of the cases, the lawyers agree as to what medical condition would be relevant to the trial and which ones clearly would not be. In a very small amount of cases, there have been motions before the court on whether certain evidence regarding a pre-existing medical condition can be introduced or not. The bottom line is that those issues are long decided before the case goes to a jury. A jury hears what medical conditions the lawyers and/or the judge have agreed upon are relevant to the case.

The proposed bill would limit defense counsel to pre-existing conditions that are similar to the claim being presented. The problem with how the bill is structured is who would decide what conditions are similar or relevant. How can you decide what in a medical person's background might be similar or relevant to the claim being presented unless you have a look at the medical records? What if a person, for instance, is claiming he or she can no longer do certain activities, or is at least restricted in what activities they can do because of an injury as a result of the accident? It is not uncommon for a claimant to have a pre-existing condition unrelated to the injury that is now being claimed from an accident that would put a restriction on their activities. The medical records would reflect that, and often include restrictions the doctor has placed on the claimant because of a pre-existing condition.

It appears to me that if this bill becomes law, you would not be able to get pre-existing records that do not have anything to do with the injuries being claimed from the accident. These pre-existing records could also indicate that a condition from an unrelated injury would have an impact on the person's ability

to make a living (wage claim), and claimants are often making a wage claim. How, then, can we find out about a person's impaired ability to make a living even before the accident?

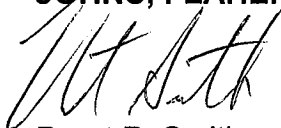
The problem here is that this legislation alters who is making the decision as to whether a pre-existing condition is relevant or similar. The way it is now, the medical records that are shared among all parties to the lawsuit reveal whether a pre-existing condition exists and/or is relevant to the claim being presented. Under this bill, it is up to the claimant and/or the claimant's attorney to make a decision as to whether a pre-existing condition exists and/or is relevant to the current claim. There have been numerous times over the 32 years I've been practicing when I've discovered accidentally that claimants have had previous treatment for similar injuries through current medical records or some other source, as opposed to the plaintiff's own testimony or answers given to written questions. On some occasions, I'm sure the claimants honestly believed they have not had treatment for the area of the body now claimed to have been injured as a result of the accident. They might have forgotten, or feel it's a different area of their body. How are you supposed to test the person's memory and/or credibility unless you have a chance to look at those pre-existing records?

Finally, as to independent medical examinations, we probably request 30 to 50 a year. We try to work around the claimant's schedule with regard to when and where the IME takes place. Again, for the overwhelming majority of these examinations, they go smoothly, and I've heard no complaints. It seems to me we're trying to correct a perceived problem that doesn't exist.

We are constantly making judgments to balance the rights of those people who choose to bring claims and the insurer who is defending them. I think this bill definitely unfairly tips the balance towards the claimants, and I urge you to vote against it.

Very truly yours,

JOHNS, FLAHERTY & COLLINS, S.C.



Brent P. Smith

e-mail: brent@johnsflaherty.com

BPS:pam