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Office of Speaker Therese M. Terlaje  
Guam Congress Building  
163 Chalan Santo Papa  
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**RE: Testimony in Support of Bill No. 112-36**

Dear Speaker Terlaje,

I am writing to submit my testimony in support of Bill No. 112-36. It saddens me to read about people facing threats of retaliation for having the courage to speak up on behalf of this long overdue and common-sense reform effort. I know what it is like to face intense and unfair retaliation for blowing the whistle and exposing major problems on an issue of great public importance. The bottom line up front is that if we are really being honest with ourselves, the real issue is simply whether wealthy and powerful special interests will continue to game the system so that every day working people never have a fighting chance to prevail on the merits of their case in a David versus Goliath battle that is tough to win even on the mainland where injured patients can take their medical malpractice claims directly to the courts. "Tort reform" and hysterical and unsupported allegations of frivolous lawsuits<sup>1</sup> make great soundbites but don't shed light on the truth underlying this issue. I hope to illustrate how this medical malpractice reform effort perfectly compliments and is closely intertwined with my own efforts at reforming Guam's Kangaroo<sup>2</sup> court of a Workers Compensation Commission. I fully expect even more threats and retaliation against me for taking a public stand here, but I know that the only way to overcome that political reality is for more people to come out and be willing to speak the truth even when it hurts.

Some brief background is important for understanding my perspective here. I rose from poverty

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<sup>1</sup> Even if a lawsuit were actually frivolous (without factual or legal merit) it could be quickly and cheaply dismissed by a court before the defendant even files and Answer to the Complaint.

<sup>2</sup> I fully stand by this professional observation based on 13 years of legal education and training, as well as direct experience working within Guam's system. Black's Law Dictionary (3<sup>rd</sup> pocket edition) defines Kangaroo Court as: "1. A self-appointed tribunal or mock court in which the principles of law and justice are disregarded, perverted, or parodied. 2. A court or tribunal characterized by unauthorized or irregular procedures, esp. so as to render a fair hearing impossible. 3. A sham legal proceeding." A few of the individual board members have spoken up during meetings to protests improper procedures and decisions but they are routinely shot down and then quickly find themselves no longer on the board from what I have seen.

and somehow managed to become an attorney against all odds with almost no social or economic support by sheer force of will and determination. By this, I mean juggling back-breaking<sup>3</sup> jobs and grueling undergraduate, law school, and bar exam schedules while also paying the bills and caring for a family. I will never forget coming home to Guam in 2012 just having taken the California bar exam and being so broke that I could not buy gas without a major struggle even when a family member was kind enough to loan me his car so I could go job hunting.

Yet I am not that special and that is precisely my point. Physicians and other medical professionals are not the only professionals who endured hardship and sacrifice to get where they are. I cannot think of any class of professionals (or large groups of various professions in Guam's case) which are effectively immune from their own negligence simply because only the very wealthy could possibly afford to sue them. Many injured patients and their families who are expected to come up with tens of thousands of dollars to get their foot in the door via Guam's current medical malpractice scheme have also endured hardship and sacrifice to earn a living and achieve their dreams and should not be forced to endure life-changing economic hardships to come up with the money to pay for an arbitration that should have been handled at much lower cost by a court. Isn't this what our tax dollars pay for? Equal<sup>4</sup> access to justice?

Given my life experience and blue-collar background<sup>5</sup>, it should be little surprise to anyone who knows me that I became an attorney not to make a lot of money but to make a real and meaningful difference<sup>6</sup>. I did an intensive clinical internship with a seasoned personal injury and medical practice attorney who taught me the ins and outs of medical malpractice in California as a full time (unpaid) job over a period of months. This same attorney also happened to teach ethics and professional responsibility at my law school and was a great mentor in all respects.<sup>7</sup> I elected to obtain a concentration<sup>8</sup> in labor and employment law so that I could help everyday working people as an attorney advocate. As part of the

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<sup>3</sup> I have struggled with my own back problems since I threw it out as a 14 or 15 year-old dishwasher forced to lift 30 gallon trashcans full of beer bottles (many of which still had a lot of liquid in them) into tall dumpsters, by myself. As I recall, when I reported this work injury, my supervisor basically told me to suck it up and get over it. I have injured my back repeatedly at many other blue-collar jobs over the years but generally decided not to bother filing any claims because of the daunting and intimidating processes which I did not understand. The only day I can recall ever missing work as attorney was many years ago when my low back was so swollen with inflammation that I literally could not get out of my bed and headed to urgent care. Thanks to the many medical professionals on and off-island who have opined on the underlying causes of my back pain (I note low back pain seems to be a common and complex problem), I have managed to better understand and manage the pain. This personal experience is just one reason why I can relate to the plight of Guam's workers compensation claimants.

<sup>4</sup> Access to justice will never be equal. The wealthy, powerful, and connected will always have major advantages. Thankfully, thought not perfect, Guam's courts are generally capable of providing meaningful access to everyday citizens. David might not defeat Goliath very often in a local court battle, but at least he has a fighting chance if he has a clearly meritorious claim.

<sup>5</sup> I had fun driving my maintenance technician service van right up to the front of the law school and kept my tool belt on when I took my official student photo. My law professors always got a kick out of that.

<sup>6</sup> Also, because my Philosophy professors at San Diego State University discouraged me from pursuing my first career choice of becoming a Philosophy professor and encouraged me to instead get a 'real job' by taking the LSAT (law school admission test) because the legal field was more stable and I would still be able to make use of my philosophy training (heavily focused on ethics).

<sup>7</sup> <http://members.calbar.ca.gov/fal/Licensee/Detail/195159>; <https://www.avvo.com/attorneys/92130-ca-randall-rechs-251159.html>

<sup>8</sup> <https://www.cwsl.edu/academics/academic-programs/jd-program/areas-of-concentration/labor-and-employment-law>

additional training, I completed 50 clinical hours assisting a veteran workers compensation specialist with at the local workers compensation appeals board<sup>9</sup>. I certainly do not claim to have mastered workers compensation appeals in just 50 hours of training, but I have seen with my own eyes what a functioning adjudication process looks like.

After being successfully licensed both in California and Guam, I have walked the walk by leaving high paying corporate attorney environments to seek out employment where I could really help the everyday working people that inspired me to be an attorney in the first place. I have been advised privately by a friend, “don’t feed the trolls,” so I will try not to say more than I need to. But I completely understand how difficult it truly is, especially in our uniquely small and tight-knit island community, to speak truth to power despite<sup>10</sup> whatever political agendas certain groups have one way or the other, not to mention their power and influence over certain governing bodies who control my license and career.

Many years ago, given my life experience and specialized background, it made sense that I was handed a workers compensation claim and instructed only to figure out what happened which, little did I know at the time, would become the start of a 9-year journey to figure out how workers compensation claims on Guam are supposed to be properly documented and adjudicated. 9 years later, what I can say with absolute certainty and conviction is that our workers compensation system is, practically speaking, one big insurance fraud scheme<sup>11</sup> where a few well-connected people in power decide behind closed

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<sup>9</sup> [https://www.dir.ca.gov/dwc/DWC\\_address/SanDiego.html](https://www.dir.ca.gov/dwc/DWC_address/SanDiego.html); <http://members.calbar.ca.gov/fal/Licensee/Detail/85143>

<sup>10</sup> It will probably be obvious to certain people what I am referring to here but I assure the reader I am only raising the issue to illustrate how painful and precarious bringing about meaningful change truly is. The work of an attorney sometimes has political ramifications that he does not care about or even know about. But everything we are taught about our ethical obligations to the law, the tribunal, to the client, and others is to present the facts truthfully whether it is convenient or not. People with agendas will spin things no matter what you do. Just ask Robert Mueller. <https://www.pbs.org/wgbh/frontline/article/the-mueller-investigation-explained-2/>

<sup>11</sup> With my client’s full consent, I have been authorized to share my very recent experience trying to get an injured worker a fair hearing to adjudicate his back injury claim, which essentially means a medical fact-finding that would logically require a fair opportunity to present medical documentation and testimony. The bottom-line up front is that this is designed to be a simple process that the average working-class person can figure out without even needing an attorney. But the WCC makes it intentionally difficult so that injured workers simply give up and go away. I am sure I will be smeared for blowing the whistle here and that the political spin doctors will make it seem like I was just unprepared for the hearing. The case is ongoing, but the record is clear. I was unprepared because the system was rigged to make sure I was unprepared. It has been this way for decades. Every veteran attorney on Guam has confirmed they had the same experience and told me what to expect. The hearing was a train wreck because the WCC has gotten away with denying hearings, with literally just a few exceptions if you define “hearing” very broadly, for so many decades, that they do not have even the most basic rules or infrastructure in place to provide fair hearings even if they wanted to, which they do not. I try to omit names as much as possible as I am not trying to personally attack anyone. I just want to call attention to the broken system so that it can be fixed.

The parties via their lawyers had agreed to not even have the hearing or turn in the prehearing witness list and documents in the first place because they agreed it would be unfair, but the hearing officer denied the extension for no reason given. It is important to understand that the hearing was only happening at all because a judge had ordered the WCC (for the second time in my favor) to stop denying my client any hearing at all for no good reason. Much of my research and analysis about what happened here is highly technical, but the legislators and staff as well as most people can easily follow. WCC’s entire authority/jurisdiction requires it to follow certain minimum due process rules and standards very closely. Almost exactly one year ago, in *Guam Police Dep’t v. Guam Civil Serv. Comm’n (Charfauros)*, 2020 Guam 12, our Supreme Court clarified/reminded us that (technical formatting issues will be largely ignored in the interest of time):

- The AAL [Administrative Adjudication Law aka AAA aka 'the triple AAA statute'] in its entirety applies to the [every Agency], unless the [Agency's] enabling legislation provides otherwise.
- Statutes must be read based on plain language, as a whole, in harmony with other statutes, that we must pay close attention to the Definitions provided,
- ...the [AAA is interchangeable with AAL] defines “administrative adjudication” to mean an “administrative investigation, hearing and determination by any agency of issues or cases applicable to particular parties. 5 GCA § 9108 (2005)
- ... 5 GCA § 9200 establishes the AAL’s scope: “The procedure of any agency shall be conducted pursuant to the provisions of this Chapter in any proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing.” 5 GCA § 9200. As we explained in *Guam Federation of Teachers ex rel. Rector v. Perez*, 2005 Guam 25, that provision in AAL’s Article 2 does not create the right to a hearing, and instead “states that the hearing procedures delineated in Article 2 must be followed by an agency when the agency is required by law to conduct a hearing.”
- ...Read as a whole, it is clear the Legislature intended [all] agencies ...to comply with all of the AAL, and not just parts of it. For example, the AAL requires “any agency” to conduct proceedings “pursuant to the provisions of this Chapter,” 5 GCA § 9200 (emphasis added)—and the Chapter comprises all three Articles of the AAL. See *Toves v. Guam Mem’l Hosp. Auth.*, D.C. Civ. No. 86-0060A, 1987 WL 109896, at \*2 (D. Guam App. Div. June 22, 1987) (“[I]nterpretations of statutes which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.” (citation omitted)).

This part of our local Supreme Court's reasoning in *Charfauros* referring to absurd results is key: The **public policy behind Workers Compensation** is pretty universal nationwide:

*It is generally accepted that, as noted in cases such as Gomez v. Crookham Co., 457 P.3d 901, 166 Idaho 249 (2020) and Glass v. Stahl Specialty Co., 97 Wash.2d 880, 887, 652 P.2d 948 (1982)), “[Workers compensation statutes] came of a great compromise between employers and employed. Both had suffered under the old system, the employers by heavy judgments of which half was opposing lawyers' booty, the workmen through the old defenses or exhaustion in wasteful litigation. Both wanted peace. The master in exchange for limited liability was willing to pay on some claims in future where in the past there had been no liability at all. The servant was willing not only to give up trial by jury but to accept far less than he had often won in court, provided he was sure to get the small sum without having to fight for it. All agreed that the blood of the workman was a cost of production, that the industry should bear the charge.”*

- In plain English, a workers compensation scheme is supposed to provide an injured claimant simpler and easier to access medical care and disability payments to offset his lost earnings resulting from the injury.
- Guam's Worker's Comp statute is modeled after New York's and the Longshoremen's and Harbor Workers' Compensation Act (LHWCA). Guam even adopts for elective use the LHWCA forms: see 17 GAR Ch 10. New York and LHWCA cases indicate those systems share the same "great bargain" policy analysis in *Stahl*, supra, and there is no reason to believe Guam's Legislature's intended something different.
  - See for example:
    - *Lawrence v. City of NY*, 82 A.D.2d 485, 447 N.Y.S.2d 506 (App. Div. 1981).
    - *CERES MARINE v. DIRECTOR, OFFICE OF WORKERS' COMP*, 848 F.3d 115 (4th Cir. 2016).
    - *Fagan v. Dell'Isola*, 2006 Guam 11

WCC's enabling statute prescribes, "§ 9141. Administration. (a) Except as otherwise specifically provided, the Workers' Compensation Commission shall administer the provisions of this Title, and for such purpose the Commission is authorized: (1) to make rules and regulations in conformance with this Title." While it is true that, unlike the CSC's enabling statute, the WCC statute does not explicitly refer to the AAA, the AAA explicitly refers to its procedures applying to WCC and throughout the AAA statute is express legislative intent for all parts of the AAA to apply to every aspect of every agency's investigative and adjudicative functions. AAA's 5 GCA § 9102 defines "Agency" as "...any board, commission, department, division, bureau or officer of the territory of Guam authorized by law to make rules or adjudicate contested cases."

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WCC's 9103(e) defines "Commissioner" as "...the head of the Workers' Compensation Commission who shall be the Director of the Department of Labor or his designee." WCC's 9120(c) says the Commissioner [or designee; not the Commission] "shall reject the claim or make an award [with or without a hearing]. The DOL Director or anyone he/she appoints can preside over a worker's comp case as the WCC as a board is designed to address policy issues and not preside over individual hearings which makes sense. Hearings are clearly intended to be a common occurrence, so having one person able to just get it done makes statutory and pragmatic sense.

Much of the community (including our legal infrastructure and political leaders) have been confused after years because of WCC's disinformation campaigns. But it is clear that the DOL Director (as Commissioner, or his "designee") makes the final compensation order decision [ "shall reject the claim or make an award"]. WCC for years has changed it's story from 'we can't issue timely orders because we can't get a quorum' OR 'we can't find an Attorney to be hearing officer,' OR 'even after the Commissioner held a hearing he can only make a recommendation to the Commission (which means further delay until they have a quorum). By focusing more on the AAA one can see how it all fits together. AAA's law makes it crystal clear that:

**All this time the WCC is supposed to have been having a single person (note that "or his designee" could mean literally anyone so far as I read the statute) issue a quick hearing and final(not just provisional or tentative) decision in less than a month from the time a hearing has been requested [no strict form or procedure for this is required] which one may do any time after a claim has been filed [no strict form or procedure for this is required here either]!!!**

It appears that for decades nobody has figured this out or said anything if they did. In fairness: WCC/DOL has spent literally decades getting this wrong, both negligently and \*intentionally\* I am sure, and convincing every single judge, lawyer, and claimant that going from work injury to compensation order was this super lengthy and complicated process that required lots of special forms, procedures, and levels of approval. Statutory interpretation is tricky and it has confused lawyers and judges for years. It is quite common to misinterpret or misapply different sets of rules that in hindsight can only be read one way and makes perfect sense when you put it all together. For example, the Supreme Court of Guam just recently decided revisited its years of interpretation of how the CSC rules and AAA rules interact and completely changed their interpretation of the appeals timing and process they had spent years developing via cases.

4. \*I stand by my position that WCC and its officers have at least sometimes made intentional misrepresentations of fact and law to me and even to judges, because more times than I can count, I have confronted them with very straight forward facts or law that they still refused to consider in good faith and refused to admit what was an irrefutable fact or legal contention.

All of this further research and analysis was extremely time consuming and cost me a fortune of my own time and resources. But it was time well spent. The entire point of the AAA statute is to ensure that government agencies and officials act in a clear, consistent, and fair manner in all aspects of their dealings. In other words, *Due Process*. That is really all this is about. The AAA makes clear due process means ensuring fairness and transparency from start to finish: from routine ministerial duties (receiving and processing work injury claims for example), to investigative processes (e.g. WCC's Pablo and Fullerton), to the conduct of any hearings, to the actual adjudication (final rulings based on the facts and law), to the appeals process up to the Superior Court.

It is designed to prevent tribunals such as WCC from acting like a Kangaroo Court as defined by Black's Law Dictionary: "1. A self-appointed tribunal or mock court in which the principles of law and justice are disregarded, perverted, or parodied. 2. A court or tribunal characterized by unauthorized or irregular procedures, esp. so as to render a fair hearing impossible. 3. A sham legal proceeding."

The WCC is supposed to give a little extra assistance to the injured worker which makes sense because they are normally unrepresented whereas the employer, insurance carrier, and WCC have vastly superior knowledge and resources, and they develop and control the entire process and official records. It is BECAUSE of WCC's lack of any due process that the insurance company and employer in collusion with WCC were allowed to create a lot of confusion, ambiguity, etc, while working out secret evidence, agreements, etc with others which they also refused to provide even for the hearing. The WCC as a whole routinely violates open government laws and procedures. Their website right now literally tricks employees in both private sector and public sector so that they don't really understand how to actually obtain any benefits

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or what to do if the WCC itself (as is the case for line agency employees) or carrier denies their claim (so they don't know to ask for a hearing).

My client is a young warehouse worker who injured his back lifting heavy things many years ago. He acknowledges a preexisting medical condition that affects it but clearly by itself did not cause the back injury. Even the carrier's treatment providers and experts largely concurred that he was 54% disabled and definitely could not work as a warehouse stocker any longer, but the WCC, in collusion with the Carrier, neglected its obligations to guide him through the process, resulting in the Carrier spending years shopping for medical opinions and muddying the waters of the case. Most of the medial providers concurred that work was the major cause of his injury. The carrier and WCC have an obligation to review and act upon the facts in good faith and cannot legally insulate themselves from any liability simply because they can eventually find a doctor who is willing to dirty his hands as well. The lone opinion of a hired gun cannot absolve them. *Dale M. v. Comm'r of Soc. Sec.* (2021 is most recent update on this Soc. Security but legally relevant case) would be one of countless citations. But that is one the many tricks up the sleeve of the WCC and carrier. They bring out their trusty hired gun physician who will always deny that the issue is work related, always make the injured worker think he is mistaken, always cherry pick the medical record out of context, and always add it little bits of legal reasoning disguised as medical reasoning in order to provide cover for a denial that is not just in bad faith but amounts to outright fraud.

The WCC, insurance carriers, and employers have been conspiring for years to gaslight injured claimants and even attorneys who are much more experienced than I am by tricking them into thinking they will get a fair hearing when all they are really doing is purposely running them around in circles so that they exhaust their time, energy and resources playing by their made-up and fake rules, hoping for a chance when the decision was already (secretly) made.

An interesting analogy many military veterans can appreciate is having the FNG chase down an ID10T form (this has now also become tech support humor) where the whole point is to use your superior knowledge to trick the person who is new to the system and has no reason to think you will intentionally mislead them when they are coming to you for help. You pretend to help them but really you are just giving them false hope/wasting their time and laughing behind their backs. This might be an innocent practical joke in some contexts but when it is done by public officials, insurance adjusters, and employers it is literally fraud and is criminally actionable by the very terms of the WCC statute, criminal code (Official Misconduct, e.g.) and potentially presents an insurance bad faith claim against carrier and Civil Conspiracy torts as well. Here is actual court citation to ID10T gag: *Miller v. FOOD CONCEPTS INTERNATIONAL, LP*, No. 2: 13-cv-0124 (Miller) (S.D. Ohio Jan. 17, 2014). : [3] Defendant's November 4 Response states: "Cursory internet research . . . reveals that ID10T is an alpha numeric expression of "Idiot," and the error code is evidently used as a jab against computer users. (Wikipedia, Urban Dictionary)." (Doc. 35, PageID 350.) Mr. Fortune confirmed that explanation during the November 8 telephone conference, stating that he used the term as "a joke reflecting his frustration with himself." (November 12, 2013 Status and Scheduling Conference Order, p. 2, *Miller v. Food Concepts Int'l, et al.*, 2:13-cv-124, Doc. 32, PageID 302.)

It is noteworthy that when Guam's (hopefully just a few bad apples) unscrupulous physicians and other medical professionals want to get down and dirty knowingly and intentionally inserting factually and medically indefensible comments just to set up the basis for denial, they all seem well aware that they better plant buried in a medical report that won't be scrutinized as closely an official WCC form. All of my client's GWC-101b's (official WCC form for physician's medical findings specifically for determining the compensability of injury claim) asked these two questions:

- #16: "Is there any history or evidence of PRE-EXISTING injury, disease, or physical impairment?"
  - ALL of the medical pros who used this form (even those specifically chosen by carrier and who tried to help carrier by writing a biased report) answered "NO."
- #19. "Do you believe the condition found was CAUSED or AGGRAVATED by the employment activity described? [ ] YES [ ] NO (Please explain if there is doubt):"
  - Again, ALL of the medical pros who used this form (even those specifically chosen by carrier and who tried to help carrier by writing a biased report) answered "YES."
  - I don't recall seeing any explanations which makes sense because that seems to be only for a "NO"

One might wonder why these medical professionals would provide a medical report that is totally biased against him and yet provide an official WCC form that answers truthfully that it is a legitimate WCC injury (bad back) that was caused by the exact employment activity described (lifting heavy stuff) and confirms it is not caused by some preexisting condition (such as diabetes). The answer is simple. That official government form which they know will become an

doors and with very little transparency as when an injured claimant, if ever, gets any benefits. Most importantly, I now understand that, although the system was designed by the Legislature to work well, the WCC and local insurance carriers have colluded for years to ensure that there really is no system in place. If the only path the benefits is a broken and/or corrupt system that rigs everything in favor of thwarting claims, that is great for profits and public employer payroll budgets but not so great for the person with a legitimate claim. This systemic problem transcends any party affiliation or political ties.

I have only gotten deep into litigation in the current medical malpractice arbitration scheme once, many years ago. I defended a doctor who I truly believe did not cause the injury, but I understood why the Plaintiff probably felt otherwise and had no other meaningful option but to try. Although we statistically would almost certainly have won on the merits given the available science and applicable burden of proof, the Plaintiff I am told gave up because she could not continue the fight. I do personal injury work and have fought successfully for many Davids against many Goliaths over the years. I have had to turn away many prospective clients who simply do not have the kind of money lying around that it would take just to cover the costs of medical malpractice arbitration.

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official government record warns them: "22 GCA§9132 "Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Title, or for the purpose of evading liability for any benefit or payment under this Title. shall be guilty of a misdemeanor."" I note that the subsection for GovGuam employees (who get a lot more benefits) makes it a major felony with serious prison time.

For whatever reason, the local medical professionals, insurance adjusters, public officials, etc, are all too eager to make demonstrably false statements in medical reports, unsworn statements, emails, back-room conversations, etc. But I notice they are much more careful when they are placed under oath, signing an official form, etc. They don't seem to realize or care that they are committing a criminal act regardless of whether it is an official form, sworn testimony, etc. At least one local physician in my client's case said he treated him for a related foot injury that he is sure was caused by the back injury at work and not by any underlying condition. This doctor noted that he was willing and able to testify to this despite fully expecting economic backlash in that local insurance adjuster would not longer steer referrals his way. As I read the WCC statute, all medical reviews, carrier decisions such as a claims denial, etc, are supposed to be filed with the Commission (Fullerton normally maintains the file like the Clerk of Court would) and served on all parties (including Paulino and/or his attorney). But the reality is that much of the documentation is controlled and manipulated by the carrier or simply not generated at all so that there is no paper trail to prove wrongdoing or even present your case to the WCC or court. How do you appeal a secret phone call or email you never knew about (until your Attorney sent a FOIA request years later, e.g.). In my client's case, we wanted an independent medical opinion as called for in the statute and wanted someone from island so we could ensure no insurance carrier influence or bias. What we got instead was a medical opinion from someone without the credentials of the local provider we had acquiesced to who later revised the records (presumably at the request of the carrier) to sway things further against my client even though the GWC-101b officially and formally submitted by this provider stated it was a work injury not caused by some preexisting condition. The point is that the WCC and carriers just need the superficial appearance of justification to make it look like there was a decision on the merits. Unlike in personal injury law, the injured claimant is not supposed to "prove" his case at all. If it appears on its face to be a work injury, it is presumed to be covered until shown otherwise.

At his hearing, despite a great deal of pushback from the medical providers who were surprised at being subpoenaed to appear at a hearing or present documents, the WCC excluded several witnesses because WCC either negligently or willfully could not figure out how to work Zoom despite the fact I sought permission in advance for my witnesses to have that option. I was able to briefly bring the insurance adjuster to the stand and ask some brief questions and that was enough to likely establish that my client's case was not likely handled according to the statute or legal or ethical norms for insurance adjusters under Guam's WCC scheme.

Almost every day of my practice has been a struggle just to keep my doors open in part because of the massive toll of two main sources of economic hardship: 1) I take on a lot of cases where David cannot keep up with the legal fees or even the costs when fighting Goliath (local/federal governments, huge multinational corporations, etc) which means I get pennies on the dollar or no pennies at all in some cases; not even enough to cover the overhead. I literally lost money my first few years in solo practice because of clients who either could not or would not pay their bills, and frankly because not every tribunal on island gives you a level playing field to start from.

That brings me to point 2): Having to personally<sup>12</sup> tackle workers compensation reform has been extremely taxing financially, personally, and professionally. That is part of why I write in support of this reform bill. Perhaps not everyone will understand or agree how closely intertwined these two ongoing reform efforts are. But it is hard to not see the similarities and hard to not step in to lend my support when I know all too well how frustrating it is to stand up, speak truth to power, blow the whistle, and face severe professional retaliation as a result, only for your voice to fall on deaf ears. Is it malpractice for local medical providers to willfully and knowingly make factual and medical assertions in bad faith just to help an insurance company or government agency deny a valid claim to maximize its profits or minimize its operation costs? I would certainly hope so.

Our insurance companies and political leaders often have very close and cozy ties. The often low income or working class people who most need your help can't afford your fundraiser tickets or have the connections it normally takes for you to really hear them. Some healthcare professionals have courageously maintained their medical finding in WCC cases despite their fear of economic backlash. But even then, with undisputed medical facts, our WCC both in public and private sector cases will stop at nothing to avoid that claim. That sometimes means those medical providers being unduly denied payment as well. The WCC and other statutes contemplate these expected attempts but it is useless to have laws when law enforcement at the highest levels either looks the other way or actively participates in covering things up.

Our injured WCC claimants have little chance when the WCC administrator Fullerton tells them not to hire an attorney while directing them and even their attorneys to hire doctors they do not realize are hire guns controlled by the local insurance defense infrastructure. At the first WC hearing I ever attended, I watched her basically tell a doctor trying to help explain why the injury claim was valid to sit down and shut up. I was shocked but that is just how much power she has over them despite having no apparent experience or qualifications in workers compensation and no medical or legal background.

As a new attorney 9 years ago, I would have not believed what I find myself saying now, but at this point the evidence clear and the courts have started to pay attention and realize they have also been tricked by some attorneys. Healthcare workers suffer work injuries too, and we are in the middle of a

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<sup>12</sup> I speak generally and not in absolute terms as I fully acknowledge a few exceptional persons and parties who have shared in the sacrifice and carried some efforts to the finish line all on their own.



pandemic. I hope they don't let the insurance industry continue trying to trick people with the help of local doctors into believing that occupational diseases are not compensable. I am so proud to have helped doctors, nurses, and countless others in our medical community with their own employment issues, which has given me some insight into their legitimate concerns and interests.

Our legislature deserves credit for passing some limited WCC reform a few years ago despite all of the expected industry and interest group push-back. We increased the compensation rates to simply catch up with almost 30 years of unaddressed inflation because the unfairness of the system was exposed so clearly that no amount of money or influence could stop reform. But as I said at the time, all of this is for nothing if the injured worker doesn't have a reasonable path to those benefits and I predicted then that because the stakes are so much higher, the efforts to sabotage claims will only increase. And here we are. I want to thank each and every WCC board member, including physicians and attorneys, who have tried to speak up and get to the truth only to be shut down and admonished to play along and not to rock the boat. I hope this bill is passed so that our medical community will have that much more incentive to examine and opine on all patients in good faith, regardless of who is paying for it and the obvious incentive to favor the insurance company that pays you.

I again thank and encourage the medical professionals that have privately told me that they don't want to push the insurance companies too far out of fear of economic retaliation. Please keep in mind who is stuck with the expense of providing the necessary medical treatment (if any at all) and providing the worker and their family public assistance because their WCC insurance claim was denied in bad faith. It is the taxpayer, including hard-working people who through their tax dollars are supposed to have a functioning system. At the end of the day, we just want cases to be decided based on the truth. Don't buy into the Big Lie that it's Med Mal Arbitration or bust. The courts have always been capable of adjudicating medical claims, have always had the ability to quickly dismiss meritless claims, and have always had the legal, ethical, and professional obligation to give each litigant a fighting chance, even when it's David versus Goliath.

On behalf of countless victims of workers compensation insurance fraud whose claims were denied in bad faith (at least initially) with the help of an unscrupulous doctor or other medical professional, and on behalf of the countless people I have turned away from even reviewing their medical malpractice allegation because they for sure were not able to cover the costs, I ask you to pass this reform effort. I am tired of having to watch people give up and go away simply because of a rigged system designed to waste their time and money and make them give up and go away without consideration of the merits of their claim.

Respectfully,

  
John Richard Bordallo Bell, Esq