



Testimony of Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund in Opposition to House Bill 902

House Bill 902 proposes to amend Labor and Employment, § 9-504 by way of adding the athletic pubalgia hernia as a compensable hernia to the statute.

From 2018 – 2022, the Injured Workers' Insurance Fund and Chesapeake Employers' Insurance had 130 filed claims arising from a hernia with an average cost per claim of \$15,807.45.

Of concern with this bill is that it creates a conflict with the purpose and legislative intent of the current hernia statute. The hernia statute was created with the intention “to restrict compensation for hernia to accidents noticed and reported at or about the time of their occurrence”. (See *Lloyd v. Webster*, 165 Md. 574 (1933)). The Supreme Court of Maryland further identified the requirements for a hernia in *Bethlehem Steel Company v. Ziegenfuss*, 187 Md. 283 (1946): “the requirements for compensation for hernia...:First, that there was an accidental injury causing hernia, arising out of and in the course of employment; second, that the hernia did not exist prior to the injury for which compensation is claimed, with a proviso if a pre-existing hernia became strangulated, requiring immediate operation, this requirement would not apply; and, third, that the injury must be reported to the employer within 10 days next following its occurrence.” Of note, the 10 day notice has been amended to a 45 day notice in the statute.

The reason for the restriction of hernias in the Act was highlighted in a recent case, *Greer v. Montgomery County*, 246 Md. App. 245 (2020), wherein the Appellate Court of Maryland explained that the intent of Labor and Employment, § 9-504 was to provide protection to employers from employees who claim their hernias were as a result of a job-related activity as it is difficult to pick a particular event that cause a hernia, and they can easily be caused by non-job related functions.

An athletic pubalgia hernia diagnosis comes from chronic groin pain, where diagnosis often goes unrecognized for several months or even years, and patients will often be unable to recall the exact onset of pain. (See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3582984/>) Given the possibility of delayed diagnosis, the athletic pubalgia hernia is in direct controversion to the legislative intent of the Act. It would most certainly increase our claims to those with undiagnosed pre-existing and long-standing hernias. Additionally, Employers and Insurers would not be aware of whom is the responsible party given the lack of a specific incident. This has potential to create chaos in litigation with an undue burden on the injured workers' last employer. The increased costs

(and thereby increasing premium/reserves) would affect the State of Maryland, local government (counties and municipalities), and small businesses.

Therefore, the Injured Workers' Insurance Fund and Chesapeake Employers' Insurance must respectfully oppose House Bill 902.

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