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## Week of March 11

Welcome to our Supreme and Appellate Court summaries webpage. On this page, I provide abbreviated summaries of decisions from the Connecticut appellate courts which highlight important issues and developments in Connecticut law, and provide practical practice pointers to litigants. I have been summarizing these court decisions internally for our firm for more than 10 years, and providing relevant highlights to my municipal and insurance practice clients for almost as long. It was suggested that a wider audience might appreciate brief summaries of recent rulings that condense often long and confusing decisions down to their basic elements. These summaries are limited to the civil litigation decisions. I may from time to time add commentary, and may even criticize a decision's reasoning. Such commentary is solely my own personal opinion.. Pullman & Comley's Appellate Practice Group of which I am a member includes experienced appellate advocates in almost every area of the law. Should you have a need to consult about a potential appeal, please email me at [emccreery@pullcom.com](mailto:emccreery@pullcom.com) I hope the reader finds these summaries helpful. – Edward P. McCreery

Posted March 11, 2015

- SC19182 - [Caraballo v. Electric Boat Corp.](#)

When employee's job injury was covered by workers' compensation, the employer, Electric Boat, had the hospital's bills reviewed by "Fair Pay Solutions." Fair Pay reduced the hospital's bills by about two thirds from their published rates, to what Fair Pay estimated as the actual costs to treat the patient/employee. The employer would only pay the lower amount under the "actual cost" language of C.G.S § 31-294d(d) which dated to 1921. The workers' comp commissioner sided with the hospital that the statutory language was no longer applicable and the employer had to pay the hospital's published rates unless it had negotiated a different pricing structure per C.G.S § 19a-646.

On appeal, the Connecticut Supreme Court sided with the commissioner and the hospital. In reaching that decision, Justice McDonald went through an exhaustive review of the sequence of regulation of hospital charges by the Connecticut State Legislature. The 1921 statute provided the employer was to pay the **actual costs** of hospital services, but never defined that term. Thereafter, the State Legislature undertook a series of efforts to regulate the costs of health care delivery, including the requirement of **published rates** and **Diagnosis-related Groups** (DRGs) which were based on an average cost per service. The Legislature then applied DRGs to all workers' comp claims. The SCT then ruled in an earlier case that the "actual cost" language had been effectively repealed by the imposition of DRG billing for workers' comp cases. But

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complaints led to the Legislature's rescission of DRGs in the 1980's. In 1984, the Legislature acted again and abandoned most regulation of hospital rates to let the market control pricing but left in place the concept of **Publish Rates**. That de-regulation was implemented over the following fifteen years.

Justice McDonald said that both the legislative history and a plain reading of the statutes supports the commissioner's ruling. When the adoption of DRGs conflicted with the concept of "actual costs," the old statute was effectively repealed and it cannot spring back to life just because the Legislature later did away with DRGs.

Next, turning to the remaining statutes, the court said they clearly provide that any payor may negotiate with a hospital for lower rates, but otherwise, a hospital may not provide a discount to anyone from their published rates. Additionally any other result would be unworkable as it would require worker's comp commissioners to figure out the actual costs of taking care of patients in this day and age of complexities in costs for hospital services.

The court's decision went on to address the myriad of conflicts that would arise in the statutory scheme if the employer's argument that only actual costs are reimbursable were correct. Nor was the court swayed by recent amendments to the statutory scheme in 2014 that provide that the liability of an employer shall be in accordance with the new Medicare-based formulas for the "actual costs" of the hospital services. The court deemed that to be just a carry-over of the old statutory language. The legislature was aware of the worker's comp decision in this case and made no effort to alter the outcome when it made the 2014 changes. Also, requiring the employer to pay the published rates is consistent with requiring that employers pay the same rates as the general public. The decision ends by noting that the employer is free to negotiate with the hospital for a different rate structure pursuant to C.G.S § 19(a)-646.

- SC19222 - [State v. Taylor G.](#)
- SC19222 [Concurrence - State v. Taylor G.](#)
- SC19222 [Dissent - State v. Taylor G.](#)

*The facts and holdings of any case may be redacted, paraphrased or condensed for ease of reading. No summary can be an exact rendering of any decision, however, so interested readers are referred to the full decisions. The docket number of each case is a hyperlink to the Connecticut Judicial Department online slip opinion. Copyright 2015 Pullman & Comley, LLC. All Rights Reserved.*

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The factual summary, or even the legal conclusions, of any case may be summarized, redacted, paraphrased or altered at the author's discretion for ease of reading. Accuracy of the summary cannot be guaranteed and the viewer is referred to the actual case for an exact reading. The Docket number should be a link to the full decision.