No. 124661

IN THE
SUPREME COURT OF ILLINOIS

In re: Elena Hernandez, Debtor-Appellant.	Certif. 7th Cir. Federal Court, Seventh Circuit 18-1789

BRIEF *AMICUS CURIAE* OF PEOPLE OF THE STATE OF ILLINOIS EX REL. KWAME RAOUL, ATTORNEY GENERAL OF ILLINOIS, IN SUPPORT OF DEBTOR-APPELLANT

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INTEREST OF THE AMICI CURIAE

The fundamental purpose of the Illinois Workers' Compensation Act ("Act"), 820 ILCS 305/1 *et seq.* (2016), is to provide financial protection for injured workers. To achieve this important goal, more than a century ago the General Assembly enacted a statutory scheme that carefully balances the interests of employers and employees, benefitting each in different but complementary ways. That system still governs today: when an employee suffers an accidental injury in the workplace, she recovers damages as a matter of course, but at rates fixed by statute so as to limit her employer's financial exposure. The State, in turn, benefits by not bearing the financial burden of uncompensated workplace injuries. In furtherance of this compromise and the public welfare, the Illinois Workers' Compensation Commission ("Commission") tailors workers' compensation awards to the specific remedial needs of each injured worker.

For this system to operate effectively, however, injured workers must be able to use the awards for their intended ends, whether it be long-term care, vocational rehabilitation, or medical treatment, among others. Section 21 of the Act, 820 ILCS 305/21 (2016), performs this invaluable function by shielding workers' compensation awards and settlements from general liens and debts. This appeal presents a question of critical importance for *amici curiae* the People of the State of Illinois because it involves an attempt to limit the Act's longstanding financial protections for injured workers. Specifically,

Objecting Creditors-Appellees ask this Court to read an implied exception to section 21 into section 8.2(e-20) of the Act, 820 ILCS 305/8.2(e-20) (2016)—a provision enacted in the 2005 amendments—that would allow medical creditors to reach the proceeds of workers' compensation awards, judgments, and settlements.

As a threshold matter, the People have an interest in the proper interpretation of Illinois law. Here, the plain text of the Act provides for a broad exemption shielding workers' compensation awards and settlements from the reach of creditors with no stated exemption for medical creditors. Moreover, the People have an interest because under Appellees' interpretation, injured workers would be forced to delay or forgo the intended benefits of their awards in order to pay medical creditors. This misallocation of resources would impact not only the workers and their employers, but also the State itself, as it may be called upon to cover any gap in benefits. Finally, the People have an interest in the correct administration of the workers' compensation system. Recognizing an unstated exception to section 21 would significantly alter the careful balance struck by the General Assembly, as well as the day-to-day practice and procedures of the Commission.

In sum, the People have a significant interest in the proper interpretation and enforcement of the Act and can assist this Court by presenting ideas and insights not presented by the parties to this case who do not have the same institutional knowledge and experience.

ARGUMENT

As Debtor-Appellant Elena Hernandez correctly asserts, Illinois law does not contain an implied exception to section 21 of the Act that would allow medical creditors to reach the proceeds of workers' compensation awards, judgments, or settlements. To the contrary, the Act expressly protects those funds from creditor liens so that injured workers may use the awards for their intended remedial purposes. Appellees' attempt to read an exception to these longstanding financial protections into section 8.2(e-20) finds no support in the plain text of the Act and is at odds with its fundamental purpose. It also conflicts with the clear intent of the General Assembly when in 2005 it undertook to address the rising costs of medical care that were hindering the State's business environment and burdening injured workers. The system that emerged from this endeavor struck a careful and effective balance that would be fundamentally altered by Appellees' proposed exception. This Court should resolve the certified question by holding that the proceeds from a workers' compensation settlement are exempt from the claims of medical creditors.

I. Applying section 21's broad exemption to medical claims in bankruptcy fulfills the fundamental purpose of the Act.

A. The paramount purpose of the Act is to provide financial protection for injured workers.

In the early twentieth century, the General Assembly enacted a statutory scheme creating a workers' compensation system that reflected a

grand bargain between interests of employers and employees. *See Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 180-81 (1978). The Act's clear purpose—both at the time of its creation and in its more recent iterations—is "to provide financial protection for injured workers." *Beelman Trucking v. Ill. Workers' Comp. Comm'n*, 233 Ill. 2d 364, 371 (2009). Accordingly, this Court has repeatedly instructed that the Act "be liberally construed to accomplish that objective." *Id.*; *see Pathfinder Co. v. Indus. Comm'n*, 62 Ill. 2d 556, 563 (1976) ("It has been consistently held that the Act should be liberally construed to accomplish its purposes and objects."). Here, that construction counsels in favor of Hernandez's position, which would shield a workers' compensation award or settlement from medical creditors so that it can be used for its intended remedial purposes.

Providing financial protection for injured workers has always been central to the workers' compensation system. In fact, the existence of the Act itself derives from a "trade-off" between employees and employers that promoted that "fundamental purpose." *Kelsay*, 74 Ill. 2d at 180-81. With the approval of these two groups in hand, the General Assembly created a scheme that "substitute[d] an entirely new system of rights, remedies, and procedure for all previously existing common law rights and liabilities between employers and employees subject to the Act for accidental injuries or death of employees arising out of and in the course of the employment." *Id.* at 180.

As part of this compromise, "the employee gave up his common law rights to sue his employer in tort, but recovery for injuries arising out of and in the course of his employment became automatic without regard to any fault on his part." *Id.* Likewise, the employer "gave up the right to plead the numerous common law defenses" and accepted compelled payment. *Id.* In return, though, the employer's "liability became fixed under a strict and comprehensive statutory scheme." *Id.* The Act's framework, however, does not apply where either party can prove that "the injury (1) was not accidental; (2) did not arise from his employment; (3) was not received during the course of employment; or (4) was not compensable under the Act." *Folta v. Ferro Eng'g*, 2015 IL 118070, ¶ 14.

This compromise, and its continued vitality, also promotes the general welfare of the State, which would otherwise bear many of the financial burdens arising out of workplace injuries. *Id.* Indeed, the Act was "based upon the broad economic theory that accidental death or injury in industrial activity and production is an incident thereto and that compensation therefor is properly chargeable as a part of the cost of such activity and production." *Hays v. Ill. Terminal Transp. Co.*, 363 Ill. 397, 402 (1936); *see also Petrazelli v. Propper*, 409 Ill. 365, 368-69 (1951) ("the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of industry, nor by the public").

The financial protections afforded injured workers under this system are designed to compensate them "until they can return to the work force." *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 146 (2010). As such, the awards are remedial in nature, without any "allowance for pain and suffering" or punitive damages, among others. *Donoho v. O'Connell's, Inc.*, 18 Ill. 2d 432, 438 (1960). Instead, they fulfill the Act's aim "to make an employee whole for the interference with his future earnings" and employment capacity. *Flynn v. Indus. Comm'n*, 211 Ill. 2d 546, 561 (2004).

To that end, seven distinct categories of benefits are available under the Act: medical expenses, temporary total disability benefits, temporary partial disability benefits, permanent total disability benefits, permanent partial disability benefits, vocational rehabilitation services, and death benefits. *See* Illinois Workers' Compensation Commission, Handbook on Workers' Compensation and Occupational Diseases at 3 (Jan. 2013), https://www2.illinois.gov/sites/iwcc/Documents/handbook.pdf. An employee may receive compensation under one category or several, depending on the nature of the injury and the possibility of recovery.

At a minimum, employers must pay for "all the necessary first aid, medical and surgical services" that are "reasonably required to cure or relieve [the employee] from the effects of the accidental injury." 820 ILCS 305/8(a) (2016). As detailed below, *see infra* Section II.C, employers must pay providers directly for compensable services, procedures, and treatments. Accordingly,

Commission proceedings—or any negotiations between employers and employees—are often centered on determining the appropriate non-medical benefits, if any.

Benefits are also available during the employee's recovery. For example, if the employee experiences a temporary period of total incapacity that lasts more than three working days, she is entitled to weekly compensation in the amount of approximately two-thirds of her average weekly wage. *Id.* 305/8(b). If, however, she *is* able to work during recovery, but earns less than she would in her full capacity, the Act provides for temporary partial disability benefits calculated based on the difference in her wages. *Id.* 305/8(a). Further, an employer must pay for the necessary "treatment, instruction and training" where physical, mental, or vocational rehabilitation is required to make an employee whole. *Id.*

Once the employee reaches maximum medical improvement, the Commission will determine whether and to what extent there is permanent disability. *See Interstate Scaffolding*, 236 Ill. 2d at 142; 820 ILCS 305/8(e), (f) (2016). There are also provisions for compensation where the employee is found to be "partially incapacitated from pursuing [her] usual and customary line of employment," 820 ILCS 305/8(d)(1)-(2) (2016); where she has sustained "serious and permanent disfigurement" or "serious and permanent injuries" that are not otherwise covered under the statute, *id.* 305/8(c), (d)(2); or where, in addition to otherwise covered injuries, she has suffered injuries that would

"disable [her] from pursuing other suitable occupations," *id.* 305/8(d)(2). Finally, in cases where injury results in death, the Act provides for compensation for the loss of wages for the employee's survivors, *see id.* 305/7(a)-(d), and benefits to ensure proper burial, *id.* 305/7(f).

Under this comprehensive system, some combination of benefits is tailored to fit and compensate the losses to the employee in every case. For example, the injured trucker in *Beelman* received an award that included not only permanent disability benefits and medical expenses for full-time nursing care, but also motorized wheelchairs, modifications to his van, and a home computer system that controlled the lighting in his bedroom and enabled him to communicate with friends and family. 233 Ill. 2d at 367-70, 384. And in *National Tea Co. v. Industrial Commission*, the award included vocational rehabilitation in addition to temporary total disability and permanent partial disability benefits. 97 Ill. 2d 424, 425-26, 433 (1983). In other words, each award or settlement is tailored to ensure that the injured worker is fully compensated and receives the necessary treatment during his or her recovery.

B. Section 21 provides critical financial protection to injured workers.

Section 21 is fundamental to the Act's paramount purpose of providing financial protections to injured workers. This provision, which shields a workers' compensation award from general liens and debts, "demonstrates a policy to protect an employee's rights under the Act." *People ex rel. Baylor v. Highway Ins. Co.*, 57 Ill. 2d 590, 597 (1974). For the following reasons,

Hernandez correctly asserts that as a matter of Illinois law, section 21's protections apply to medical debts in the context of bankruptcy.

To begin, medical debts fall within section 21. By its terms, section 21 provides that "*No* payment, claim, award, or decision under this Act shall be assignable or subject to *any* lien, attachment or garnishment, or be held liable in *any way* for *any* lien, debt, penalty or damages." 820 ILCS 305/21 (2016) (emphasis added). As was recognized nearly a century ago, the "language of this section is clear and conclusive." *Lasley v. Tazewell Coal Co.*, 223 Ill. App. 462, 463 (3d Dist. 1921). The legislature's "evident" purpose, the court noted, was "undoubtedly . . . that no lien of any kind should be allowed to intervene to prevent the workman from receiving the benefit of the monthly compensation awarded to him." *Id.*; *see also Donoho*, 18 Ill. 2d at 438 (concluding that "liens upon those payments are forbidden"). Medical debts, like the ones at issue here, plainly fit within section 21's protections for "any debt." 820 ILCS 305/21 (2016); *In re Estate of Callahan*, 144 Ill. 2d 32, 43 (1991) (defining "debt" as "a certain sum of money owing from one person to another" and applying section 21 to legal bills).

Consistent with section 21's plain language, its breadth has been narrowed only where the General Assembly expressly created an exception, such as in the child support context. *See, e.g.*, *Ill. Dep't of Healthcare & Family Servs. ex rel. Black v. Bartholomew*, 397 Ill. App. 3d 363, 367 (4th Dist. 2009) ("Notwithstanding section 21 of the Act, which exempts workers'

compensation awards from liability for debts, section 15(d) of the Withholding Act creates an exception to that exemption for the collection of child support, including arrearages."). No exception extends to medical debts.

Beyond the plain text of the statute, the inclusion of medical debts within section 21's scope is in line with its targeted purpose and with the overarching aims of the Act. In the workers' compensation system, awards are carefully tailored to remedy the specific needs of each worker. If the Commission grants an award providing for temporary total disability benefits and vocational rehabilitation, for instance, it is in the best interests of the employer, the employee, and the State to allow the injured worker to use that award for its intended purpose. Likewise, if the Commission approves a settlement between an employee and her employer for the employee to receive rehabilitative treatment before returning to work, it benefits all parties to allow her to use the funds for rehabilitation. Section 21, which insulates these awards from general liens, is a necessary part of ensuring that the award provides the designated remedy.

Furthermore, although the U.S. Court of Appeals for the Seventh Circuit observed that this Court has not squarely held that section 21 creates a bankruptcy exemption, that court properly assumed, and the parties correctly agreed, that it does. *In re Hernandez*, 918 F.3d 563, 567 (7th Cir. 2019). Under federal law, a bankruptcy estate "is defined broadly, to include . . . all property interests of the debtor, including contingent claims." *In re McClure*,

175 B.R. 21, 22 (Bankr. N.D. Ill. 1994). "However, under Section 522(b) of the Code, the debtor may exempt certain property of the estate, and thus remove it from the pool of assets available to satisfy creditor claims." *Id.* The Bankruptcy Code outlines federal exemptions to this effect, but also provides that a State may opt out of the federal exemptions and enact its own. *See Clark v. Chicago Mun. Emp. Credit Union*, 119 F.3d 540, 543 (7th Cir. 1997). Because Illinois has opted out, *see* 735 ILCS 5/12-1201 (2016), debtors in Illinois "may exempt from [their] estate only property that would be exempt under Illinois law," *In re McClure*, 175 B.R. at 22; *see also id.* at 23 (in Illinois, "if an exemption is available under state law, it must be available in bankruptcy").

Section 21 is an exemption under state law because, as discussed, it "state[s] that workers' compensation claims shall not be 'subject to' any lien, attachment or garnishment, or be 'held liable in any way' for any lien, debt, penalty or damages." *Id.* (quoting 820 ILCS 305/21); *see also, e.g.*, *Ill. Dep't of Healthcare & Fam. Servs. ex rel. Black*, 397 Ill. App. 3d at 367 (noting that section 21 "exempts workers' compensation awards from liability for debts"); *Mentzer v. Van Scyoc*, 233 Ill. App. 3d 438, 442 (4th Dist. 1992) (discussing section 21 in the context of "exemptions"); *McCormick v. McDougal-Hartmann Co.*, 111 Ill. App. 2d 346, 279 (3d Dist. 1969) (describing the "breadth of the exemption declared by the legislature" in section 21); *E.*

Moline Works Credit Union v. Linn, 51 Ill. App. 2d 97, 100-01 (3d Dist. 1964) (analyzing "the exemption created by" section 21).

Moreover, recognizing an exemption for workers' compensation awards is consistent with the practice of other jurisdictions. *See, e.g.*, *In re Irish*, 311 B.R. 63, 69 (B.A.P. 8th Cir. 2004) (Iowa debtors may exempt workers' compensation benefits); *In re Fullwood*, 446 B.R. 634, 637 (Bankr. S.D. Ga. 2010) (exemption where "no claim for compensation under this act shall be assignable, and all compensation and claims therefore shall be exempt from all claims of creditors") (internal quotation marks omitted). In fact, some States extend their workers' compensation exemptions to include assets purchased with a workers' compensation award. *See, e.g.*, *In re Gardiner*, 332 B.R. 891, 893-84 (Bankr. S.D. Cal. 2005) (exempting award converted into purchase of house); *In re Williams*, 171 B.R. 451, 452 (Bankr. D.N.H. 1994) (exempting award converted into car purchase).

Finally, the practical effect of holding that section 21 is a general exemption, but not a bankruptcy exemption, would be to allow general creditors like medical providers to reach a worker's compensation award only in the bankruptcy context. This would be inconsistent with the plain language of section 21, as well as the broader aims of the Act. The Act is designed to offer financial protections to injured workers to allow them to recuperate following their injury and remedy any future loss. These goals do not dissipate when an injured worker files a bankruptcy petition; if anything, they are

strengthened. Indeed, it is well established that "the purpose of a chapter 7 bankruptcy proceeding is for a debtor to obtain a fresh start free from creditor harassment and free from the worries and pressures of too much debt." *Casey Nat'l Bank v. Roan*, 282 Ill. App. 3d 55, 61 (4th Dist. 1996) (internal quotation marks omitted). When a statute aimed to protect injured workers is applied in the context of a proceeding designed to give those same individuals a fresh start, their statutory protections should not be pared back.

II. The 2005 amendments did not create an exception to section 21 for medical providers.

None of the provisions enacted in 2005 contained an exception to section 21's broad financial protections that would allow medical creditors to reach the proceeds of workers' compensation awards, judgments, and settlements. Appellees' assertion to the contrary—that section 8.2(e-20) contains such an exception—is incorrect for three reasons.

First, the legislative history shows that in 2005, the General Assembly amended the Act for the express purposes of improving the State's business environment and alleviating financial burdens on injured workers by addressing the rising costs of medical care. To achieve this goal, it created a medical fee schedule and eliminated the long-disfavored practice of balance billing, among other reforms. This clear intent is inconsistent with Appellees' suggestion that the legislature intended to diminish longstanding financial protections for injured workers in order to increase collections on medical bills.

Second, consistent with that drafting history, the plain text of the amended Act does not contain an exception to section 21. For this reason alone, Hernandez should prevail. Third, there is nothing in the broader context of the 2005 amendments that transforms section 8.2(e-20) into the implied exception that Appellees propose. Rather, the billing and collections system created by the amended Act strikes a careful balance that protects the interests of injured workers while allowing providers to collect on medical bills in a manner consistent with the Act's fundamental goals.

A. The 2005 amendments were enacted to improve the State's business environment and provide relief to injured workers by alleviating medical costs.

In 2005, the General Assembly amended the Act by way of another comprehensive bargain. Like the original enactment in the early twentieth century, the 2005 amendments to the Act "resulted from an extended negotiation between labor and business." Brad A. Elward, *Survey of Illinois Law: Workers' Compensation*, 34 S. Ill. U.L.J. 1107, 1110 (2010); *see also, e.g.*, 94th Ill. Gen. Assem., House of Rep. Proceedings, May 27, 2005, at 117-18 (statement of Rep. Hoffman) ("[I]n the room were members and Representatives of each of the caucuses, members from organized labor and representatives of the business coalition. Traditionally, that's the way it's been done. That's the way this was done.").

These negotiations lasted for "approximately a year and a half," with an end result that was deliberate, "comprehensive," and beneficial to both

workers and business. 94th Ill. Gen. Assem., Senate Proceedings, May 26, 2005, at 82 (statement of Sen. Link); *id.* at 88 (statement of Sen. Dahl) ("This is a bill that will help labor. It will help businesses."); 94th Ill. Gen. Assem., House of Rep. Proceedings, May 27, 2005, at 106 (statement of Rep. Hoffman) (referring to the amendments as an "historic agreement between business and labor"). Although manifested in different ways, the shared goal of both groups was to alleviate the burden of rising medical costs.

Prior to these amendments, the workers' compensation system did not have sufficient safeguards to protect employers or employees from rising medical costs and did not sufficiently regulate billing practices. Medical providers would typically enter into contractual arrangements with employer insurance networks where providers would "agree to a reduced or negotiated payment rate in exchange for a volume assurance of business." David C. Seybold & Michael J. Brennan, Illinois Workers' Compensation Handbook § 4.02(6) (2002 ed.). Similarly, out-of-network providers often would agree to reduce their rates "in exchange for prompt payment" from insurers or employers. *Id.* These rates, however, were not uniform across providers and were maintained only so long as the parties continued to reach a deal.

Additionally, this system did not prohibit balance billing, a common practice in which medical providers would seek to hold employees liable for full payment after the employer had already paid a reduced rate. Providers were thus able to "accept the reduced payment amount but then 'balance bill' the

claimant for the difference." *Id.* In other words, both employers and employees were subject to increased medical costs, without any mechanism to manage it.

The legislative history of the 2005 amendments thus shows that, for employees, a primary goal of the proposed changes was "to hold down the cost of . . . health care providers or medical costs to injured workers." 94th Ill. Gen. Assem., Senate Proceedings, May 26, 2005, at 85 (statement of Sen. Cronin). As recognized during debate in the House of Representatives, the 2005 amendments were intended to "mak[e] sure that we hold the line on medical costs," which would be "a positive thing for people who are injured on the work site." 94th Ill. Gen. Assem., House of Rep. Proceedings, May 27, 2005, at 120 (statement of Rep. Hoffman). To accomplish this goal, several amendments centered not only on eliminating the practice of balance billing but also on updating the benefits that workers were eligible to receive and requiring employers to pay medical providers directly for these compensable services. *See, e.g.*, *id.* at 107 (statement of Rep. Hoffman); 94th Ill. Gen. Assem., Senate Proceedings, May 26, 2005, at 82-83 (statement of Sen. Link).

For employers, the most pressing concern in 2005 was "improv[ing] the business environment in Illinois" by reducing the cost of medical services that employers were required to provide under the State's worker's compensation program. 94th Ill. Gen. Assem., Senate Proceedings, May 26, 2005, at 82 (statement of Sen. Link); *id.* at 84 (statement of Sen. Dillard) (discussing how

the bill improves the business climate); *id.* at 85 (statement of Sen. Cronin) (explaining how the three key components in the bill "can lead to cost savings for the business community"). Among other changes, the 2005 Amendments established a fee schedule capping payment amounts for medical treatment; authorized a utilization review system that allowed employers to challenge the reasonableness, necessity, and frequency of prescribed treatments; and created mechanisms to reduce fraud. *See, e.g.*, *id.* at 82-83 (statement of Sen. Link); *id.* at 85 (statement of Sen. Cronin).

Medical providers, for their part, did not support the 2005 amendments or the goal of reversing the trend of rising healthcare costs; in fact, some provider groups actively opposed the reforms. *See, e.g.*, 94th Ill. Gen. Assem., House of Rep. Proceedings, May 27, 2005, at 114 (statement of Rep. Hoffman) ("There are opponents. The Illinois State Medical Society is opposed. The Illinois Hospital Association is neutral."). For example, the Illinois State Medical Society, the Illinois Society of Anesthesiologists, the Illinois Physical Therapy Association, and the Illinois Society for Advanced Practice Nursing filed witness slips in opposition to the amendments. *See* 94th Ill. Gen. Assem., Senate Executive Committee Witness Slips (May 26, 2005); 94th Ill. Gen. Assem., House Labor Committee Witness Slips (May 27, 2005).

It is true that some of the reforms provide incidental benefits to the medical community, such as by enabling more timely and efficient payment. *See Marque Medicos Archer, LLC v. Liberty Mut. Ins. Co.*, 2018 IL App (1st)

163350, ¶ 20 ("In other words, the benefit to providers is incidental to the Act's central purpose."). It is not true, however, that these incidental benefits suggest that the General Assembly intended to create an exception to the longstanding policy and practice—which is at the heart of the workers' compensation system—of putting workers' compensation claims beyond the reach of creditors, including medical providers. To the contrary, the legislative history shows that the legislature sought to protect employees and employers from the rising costs of medical treatment by placing limits on those costs and more closely regulating the medical community's billing procedures. Appellees' view that the 2005 amendments reversed the settled practice of exempting worker's compensation claims from the bankruptcy estate would turn this intent on its head and is inconsistent with the plain language of those amendments, as now explained.

B. The plain text of the amended Act does not include an exception to section 21.

Consistent with the legislative intent, none of the 2005 amendments implemented an exception to section 21 that would allow medical providers to collect on a debtor's workers' compensation award. The Seventh Circuit correctly acknowledged this fact, noting that "the plain text of the amended Act doesn't contain specific language of an exception to section 21." *In re Hernandez*, 918 F.3d at 570.

For their part, Appellees rely on section 8.2(e-20), which was added in 2005 and outlines the procedures a medical provider may use to collect

payment following resolution of a worker's compensation claim. However, like section 21, section 8.2(e-20) does not expressly exempt medical debts from the prohibition against collecting against an employee's worker's compensation claim. It provides:

> Upon a final award or judgment by an Arbitrator or the Commission, or a settlement agreed to by the employer and the employee, a provider may resume any and all efforts to collect payment from the employee for the services rendered to the employee and the employee shall be responsible for payment of any outstanding bills for a procedure, treatment, or service rendered by a provider as well as the interest awarded under subsection (d) of this Section. In the case of a procedure, treatment, or service deemed compensable, the provider shall not require a payment rate, excluding the interest provisions under subsection (d), greater than the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section. Payment for services deemed not covered or not compensable under this Act is the responsibility of the employee unless a provider and employee have agreed otherwise in writing. Services not covered or not compensable under this Act are not subject to the fee schedule in this Section.

820 ILCS 305/8.2(e-20) (2016). Had the General Assembly intended to allow medical providers, for the first time, to collect on an employee's workers' compensation award, it surely would have said so in either section 21 or section 8.2(e-20). *See In re May 1991 Will Cty. Grand Jury*, 152 Ill. 2d 381, 388 (1992) ("A statute should not be construed to effect a change in the settled law of the State unless its terms clearly require such a construction.").

Because this Court regards unambiguous statutory language as dispositive, the absence of an exception in the statutory text should end the matter. *Mich. Ave. Nat'l Bank v. County of Cook*, 191 Ill. 2d 493, 504 (Ill.

2000); *see also Ill. State Treasurer v. Ill. Workers' Comp. Comm'n*, 2015 IL 117418, ¶ 21 ("Courts are not at liberty to depart from the plain language and meaning of a statute by reading into it exceptions, limitations or conditions that the legislature did not express."); *Marque Medicos Archer, LLC*, 2018 IL App (1st) 163350, ¶ 24 ("The medical providers do not dispute that the plain language of the Act prohibits assignment of awards or decisions but . . . urge us to find an implicit exception to the prohibition on assignment. But the rules of statutory construction prohibit us from accepting the providers' invitation.").

C. The billing and collections procedures created by the 2005 amendments do not contemplate or require an exception to section 21.

Notwithstanding the absence of support in the plain language of the amended Act or its drafting history, Appellees ask this Court to read an exception into the 2005 amendments that would benefit their interests at the expense of injured workers and the public welfare. In particular, they assert that when section 8.2(e-20) is read against the broader context of the 2005 amendments and the intent of the General Assembly, it should be construed as allowing medical creditors to place liens on a workers' compensation award or settlement. This Court should decline this invitation. Implying an exception to section 21 would fundamentally alter the balance among the stakeholders' interests that the General Assembly struck in 2005, by elevating the interests of medical providers above those of employees and employers. And there is

nothing in the broader context of the 2005 amendments that favors a different result.

Indeed, a review of the amended provisions reveals that they complement section 21's protections in a manner consistent with the fundamental purpose of the Act. They do not, as the Seventh Circuit and Appellees suggest, "create[ ] tension" with section 21 or its application to the claims of medical creditors. *In re Hernandez*, 918 F.3d at 569. As explained, the two most consequential changes in 2005 were the implementation of a medical fee schedule and the creation of a comprehensive billing and collections system; neither conflicts with or evinces an intent to pare back section 21's protections. The fee schedule—created and maintained by the Commission—sets "the maximum allowable payment for procedures, treatments, or services covered" by the Act. 820 ILCS 305/8.2 (2016). Employers are thus responsible for the lesser of the fee schedule amount or the amount billed for the treatment provided. *Id.* 305/8(a). By crafting a ceiling for medical costs, the legislature *limited* payments to providers, with the goal of benefitting employers, not providers.

Likewise, the billing and collections procedures enacted in 2005 do not create dissonance within the Act. To the contrary, these new procedures reflect a heightened regulation of medical billing practices to relieve employees from aggressive collection tactics while Commission proceedings are pending, thus providing additional financial protection for injured workers. Under this

system, when an individual receives treatment for a workplace injury, the provider bills the employer directly. *Id.* 305/8.2(d). If the employer does not dispute the bill, it pays the provider the amount calculated under the fee schedule, on behalf of the employee. *Id.* 305/8(a). The majority of medical bills for workplace injuries are resolved in this manner, with no involvement on the part of the employee. And with the elimination of balance billing, the provider cannot pursue additional payment from the employee. *Id.* 305/8.2(e).

In the minority of cases in which an employer disputes the bill or a portion of the bill, "the provider may seek payment of the provider's actual charges from the employee." *Id.* 305/8.2(e-5), (e-10). At that point, the employee may file an application with the Commission to resolve the dispute, which stays collection efforts pending resolution of the Commission proceedings. *Id.* Once the Commission proceedings terminate, however, the "provider may resume any and all efforts to collect payment from the employee for the services rendered to the employee." *Id.* 305/8.2(e-20).

Contrary to Appellees' intimations otherwise, these new provisions did not entitle providers to seek payment for *all* medical procedures, irrespective of the circumstances. Instead, they created a system outlining when and how providers may seek payment. Section 21, which is part of this system, continues to prohibit providers from placing a lien on workers' compensation awards, judgments, or settlements. It does not, of course, preclude medical

providers from commencing collections proceedings generally or from seeking to collect on the employee's other assets.

Consistent with these principles, the Commission has implemented the 2005 amendments in a way that respects the employee's right to certain financial protections while also requiring payment for medical providers where appropriate. Relevant here, Commission proceedings may terminate by a decision or settlement. When the Commission enters an order determining the treatment to be compensable, the employer must pay the provider for that treatment in accordance with the fee schedule. *Id.* Because providers cannot engage in balance billing, section 21 does not come into play. *Id.*

Where the Commission concludes that the disputed treatment was not compensable, the employee (or her health insurer) must pay the provider for the full amount of the bill. *Id.*; *see Tiburzi Chiropractic v. Kline*, 2013 IL App (4th) 121113, ¶ 13. Notably, however, a finding that treatment was not compensable does not somehow remove section 21's protections for other awards, or portions of awards, that the Commission may enter. For instance, if the Commission finds that a medical provider performed unnecessary knee surgery on an injured worker where physical therapy would have sufficed, it could deny payment on the medical bills but still award nonmedical benefits like temporary partial disability or vocational rehabilitation. Nothing in the 2005 amendments unwinds section 21's protections on the nonmedical portion of an award. To the contrary, consistent with the remedial and compensatory

goals of the Act, even where medical bills arose out of the same workplace injury as a Commission award of nonmedical benefits, the injured worker is still entitled to use the award for its intended goals and is not required to shift those funds to pay medical creditors.

Similarly, section 21 and the 2005 amendments work harmoniously in the context of Commission proceedings terminated by settlement agreement. In this scenario, a provider's billing and collection efforts are constrained by both the terms of the agreement and the statutory scheme. Take, for example, a situation where the employer, employee, and medical provider enter into a settlement agreement requiring the employer to pay for the medical treatment. As a matter of contract, the employer is responsible for directing payment to the provider in the amount agreed upon by the parties. Alternatively, an agreement may resolve the employee's nonmedical claims without accounting for medical treatment. She would thus remain responsible for any outstanding medical bills under section 8.2(e-20).

But as with Commission decisions, section 21 limits medical providers to settlement funds specifically directed to resolving their claims. If the settlement agreement is designed to compensate medical providers for their treatment, then the medical providers will receive that compensation under the agreed-upon terms. If the agreement is not so designed, then the medical providers were not the intended recipients of those funds and thus should not have access to them. Once again, consistent with the clear purpose of the Act,

it is critical that an injured worker's compensation is used for its intended remedial purposes, and nothing in the 2005 amendments changes this result.

Furthermore, there is little risk that employees and employers will enter into settlement agreements for the express purpose of avoiding medical bills. Perhaps most obviously, this kind of scheme would protect only the settlement payment from debts; it would not insulate any of the employee's other assets from collection efforts or insulate that employee from the significant consequences of filing a bankruptcy petition. Additionally, there are safeguards built into the system that allow oversight by various state entities. For instance, the Commission reviews the settlement before it enters its approval. *See* Handbook on Workers' Compensation and Occupational Diseases at 11. If the Commission sees an outsized monetary award that does not purport to resolve medical debt, it will reject the settlement.

The 2005 Amendments also strengthened protections against fraud in the workers' compensation system. *See* 820 ILCS 305/25.5 (2016); 94th Ill. Gen. Assem., House of Rep. Proceedings, May 27, 2005, at 107-08 (statement of Rep. Hoffman). If a healthcare provider suspects that the employee and employer have made false statements in a conspiracy to evade medical bills, it may file a complaint with the Department of Insurance. *See* 820 ILCS 305/25.5 (2016). And finally, if access to care were ever threatened—due to these conspiracies or for any other reason—the Commission has tools to

counteract that problem, including adjusting the medical fee schedule. *Id.* 305/8.2(b).

All told, Appellees' plea to read an exception into the 2005 Amendments is an unfounded attempt to limit the Act's financial protections for injured workers. Challenges to the workers' compensation system have taken many shapes since its creation in 1912. But this Court has consistently rejected those attempts by returning to first principles and maintaining that broad financial protection for injured workers is paramount. *See Interstate Scaffolding, Inc.*, 236 Ill. 2d at 146 (concluding that temporary total disability benefits could not be denied to an injured employee discharged "for 'volitional conduct' unrelated to his injury" because the Act does not condition its benefits on the absence of cause). It should reach the same outcome here. For all of the reasons discussed and for those articulated by Hernandez, the 2005 amendments did not create an implied exception to section 21.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court resolve the certified question in favor of Debtor-Appellant Elena Hernandez.

Respectfully submitted,

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Dated June 3, 2019

SUPREME COURT RULE 341(c)
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on June 3, 2019, I electronically tendered the foregoing Brief *Amicus Curiae* of the People of the State of Illinois ex rel. Kwame Raoul in Support of Debtor-Appellant with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that another participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Additionally, I further certify that I served another participant by email at the address listed below on June 3, 2019.

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Finally, I further certify that that another participant in this appeal, named below, is not a registered service contact on the Odyssey eFileIL system, and has not designated an e-mail address of record for service, and thus was served by placing a copy in an envelope bearing proper prepaid postage and directed to the address indicated below, and depositing the envelope in the United States mail at 100 West Randolph Street, Chicago, Illinois 60601, before 5:00 p.m. on June 3, 2019.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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