No. 124661

IN THE
SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR DEBTOR-APPELLANT

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I.

INTRODUCTION

Rather than attempting any meaningful analysis of the question posed by the Seventh Circuit in this case (that issue – whether the exemption for proceeds of a workers' compensation award under Section 21 of the Illinois Workers' Compensation Act ("IWCA") remains viable after the 2005 Amendments of the Act - does receive a *few* pages of discussion in the Response Brief), Appellee Medical Providers ("Providers") use their Brief to make an impassioned plea for this Court to remedy all of the perceived deficiencies in the Workers Compensation system in Illinois as the Providers see it. Blaming poorly drafted legislation and cramped appellate decisions, the Providers insist that this Court should close the "relatively obvious loophole" in the language of the IWCA that gives rise to the present dispute (Appellee Brief, p. 29), and overrule all of the appellate decisions that stand in the way of the Providers getting their medical bills and the interest thereon paid by employers and insurance companies. (Appellee Brief pp. 18, 29-31). Debtor submits that, under the guise of "statutory interpretation," what the Providers are actually seeking from this Court is a wide-ranging and novel set of substantive rights not found in any of this States' statutes or the court decisions interpreting them. In sum, the Providers' arguments wander far afield from the issue this Court agreed to decide, and in any event, are addressed to the wrong branch of Illinois' government. Debtor thus maintains that nothing in the Response Brief should deter this Court from answering the certified question in the affirmative.

II.

THE MEDICAL PROVIDERS' ARGUMENTS CONCERNING SECTION 21 ARE WITHOUT ANY SUPPORT IN LAW. THE BALANCE OF THE PROVIDERS' ARGUMENTS ARE BEYOND THE SCOPE OF THE QUESTION PRESENTED AND SHOULD BE ADDRESSED TO THE GENERAL ASSEMBLY

Debtor has briefly described above what the Providers' Brief attempts to do. Here is what the Response Brief does *not* do. It does not dispute the fact that there is an Illinois Statute, Section 21 of the IWCA, which states that the proceeds of a Workers' Compensation Award shall not be assignable, lienable, attached, garnished or held liable in any way for any lien, debt, penalty or damages. It does not contend that there is a specific exception to the exemption provided for in Section 21 in favor of medical providers. It does not rely on any of the Legislative History of the IWCA or its amendments to show that the General Assembly or any particular legislator either explicitly or inferentially advocated for an exception to the Section 21 exemption in favor of medical providers. Nor does the Brief challenge Debtor's assertion that Section 21 does in fact create an exemption from the claims of creditors for Workers' Compensation awards under Illinois Law.

To the extent that the Providers' Brief directly addresses the question this Court stated it would answer in this case (Appellee Br., pp. 24-28), the argument appears to be that the exemption in Section 21 is "sound" "…so long as it is limited to the injured workers' disability benefits and does not affect the medical providers' right to payment." (Appellee Br., pp. 25-26). In other words, while there is not a present exception for medical providers under Section 21, Providers contend that there *should* be one. (And apparently, Providers want this Court to create that

exception). This contention is premised on the Providers' novel theory that "…as a result of the 2005 (and related) Amendments, the injured workers' claim for disability benefits and the medical providers' right to payments have been conceptually separated…" such that "…the claim for payment of medical bills [should] be deemed outside the scope of the injured workers' general assets under Section 21…but rather [should be] treated as the proceeds of a constructive or resulting trust for the benefit of the medical providers." (Appellee Br., p. 26).

There are many things wrong with the Providers' proffered reading of the law, not the least of which is that there is not the slightest support for it in the IWCA, its amendments, their Legislative History, or the decisions of this or any other Illinois court. Indeed, the Providers' argument runs directly counter to the pronouncements of this Court (as recently as 2016) in *Bayer v. Panduit Corp.*, 2016 IL 119553, ¶ 30 (cited by Providers on pages 17-18 of their Brief). In *Bayer*, this Court (reaffirming its holding in *McMahan v. Industrial Commission*, 183 Ill.2d 499, 513 (1998) that payment of medical bills is an essential part of an injured worker's compensation claim) held that "…the law is settled that *both* payments for medical services *and* payments for lost wages constitute compensation benefits an employee is entitled to receive under the Workers' Compensation Act.") (Emphasis in original). *Bayer, supra*, at ¶ 30.

This understanding of the constituent elements of a workers' compensation claim is crucial to the resolution of the question at issue here concerning Section 21 of the IWCA. The specific language of Section 21 is that "no payment, claim, award or decision…" can be used to satisfy a debt. Since every workers' compensation

claim consists of *both* medical payments and lost wages (pursuant to *Bayer*) there is no "conceptual separation" of medical payments and lost wages as the law stands now per the pronouncements of this Court. Nor is there a "resulting trust". Rather, under *Bayer*, the employee is entitled to keep any lost wages *and* the medical payments awarded by the Commission. If there are unpaid medical bills after an award or settlement in the Commission, the Providers can sue the employee under Section 8.2 (e-20) (added by the 2005 Amendments). But, as noted in Debtor's opening Brief, the fact that the Providers can get a judgment against the employee does not mean that that judgment can be satisfied from the proceeds of the award or settlement of a workers' compensation claim, because those funds are exempt under Section 21. The employee's non-exempt assets remain available to the Providers (and all creditors) to satisfy any judgment. That is the clear mandate of the Workers' Compensation system, embodied in Section 21 and the other provisions of the IWCA as amended, and this Court should so hold.

Providers offer no other *legal* analysis, grounded in an examination of the statutory language, its Legislative History or principles derived from case law, that would support an exception to the Section 21 exemption. Instead, Providers resort to sheer advocacy of policy arguments as to why the law, as the courts have presently interpreted it, should *change* – precisely the kind of polemics that any interest group in search of new substantive rights might urge on the Legislature.

For instance, Providers candidly admit that "By [Section 21's] plain language, an injured worker's general creditors have no right to place or enforce a lien of any kind against 'payments, claims, awards or decisions'". (Appellee Br., p.

25). Providers then go on to argue that the only way that they can protect themselves is if they are granted a private right of action against employers and insurers to collect unpaid bills, (Appellee's Br., pp. 29-31), a right previously denied them by allegedly "erroneous" appellate court decisions holding that no such right in favor of medical providers presently exists or can be inferred from Illinois law. (*Id*., pp. 30-31). Providers' wish list then expands to include not only a declaration that workers' compensation claims are limited to disability benefits only (no medical payments), but an overruling of at least three appellate court opinions (at least one of which this Court refused to review) so that this Court can declare that Providers have that new private right of action. (Appellee Br., p. 31). Again, this is not legal analysis of what the law is, but advocacy of a particular interest group's policy arguments as to why the law should *change*. These arguments should be presented to the General Assembly, not this Court.

Debtor takes no position as to the merits of Providers' contentions regarding the overruling of the Appellate Court holdings or their claim to a private right of enforcement against employers and insurance companies, because, frankly, they are irrelevant to the question to be answered in this case.

In the end, what Providers appear to be after is an overhaul of the way medical bills are paid in the Workers' Compensation system, in which the interests of medical providers take primacy over those of the other actors in the system. But the fact that, as Providers acknowledge, the IWCA has been frequently amended in the last 15 years, through which amendments the General Assembly has attempted to adjust the competing interests of the various parties affected by the Workers'

Compensation laws, is powerful evidence that Providers are not entitled to the relief they seek here. If the Providers feel they need more protection than they were granted in the 2005 Amendments (i.e., the right to pursue the employer for unpaid medical bills after settlement or judgment, (*See,* 820 ILCS § 305/8.2 (e-20)) they can petition the General Assembly for increased enforcement rights. But they cannot wring those rights out of this proceeding, involving what the law *is*, not what substantive changes to it should be made.

Conclusion

Providers' Response Brief contains little, if any, *legal* analysis of the Section 21 question posed by the Seventh Circuit. Their argument that medical payments received by an injured worker are held in trust for Providers is utterly without any support in the plain language, Legislative History or case authority regarding Section 21 or the IWCA generally. The Providers' other contentions, seeking substantive changes to the Workers Compensation Act apart from the Section 21 issue, exceed the bounds of the question presented and should be addressed to the Legislature, not this Court.

Debtor urges this Court to answer the question posed by the United States Court of Appeals for the Seventh Circuit in the affirmative.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief is 6 pages.

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NOTICE OF FILING

PLEASE TAKE NOTICE that on October 22, 2019, Debtor-Appellant electronically submitted the REPLY BRIEF OF DEBTOR-APPELLANT to the Clerk of the Supreme Court of Illinois via the electronic filing system to be filed electronically. A copy of the Reply Brief of Plaintiff-Appellant is attached and hereby served upon you.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

Richard D. Grossman, an attorney, certifies pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certifies that the statements set forth in this instrument are true and correct and that on October 22, 2019, I e-filed Reply Brief For Debtor-Appellant and served a copy to the attorneys identified below at the email addresses supplied by in their respective briefs.

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I further certify that on October 22, 2019, I mailed a copy of the foregoing to:

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