No. 124661

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEBTOR-APPELLANT

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This case began in the United States Bankruptcy Court for the Northern District of Illinois, in what appeared to be a garden variety consumer Chapter 7 bankruptcy. In her bankruptcy Petition, the Debtor, Elena Hernandez, listed several creditors who had provided medical services for her work-related injuries. She also listed one principal asset: an Illinois Workers' Compensation claim, which she listed as "exempt" in light of 820 ILCS § 305/21 (hereafter "Section 21" of the Illinois Workers' Compensation Act ("IWCA")). The providers challenged Debtor's exemption, the contours of which are controlled by Illinois law, to which Federal Bankruptcy Courts defer on this issue.

The Bankruptcy and District Courts for the Northern District of Illinois upheld the medical providers' objection. The District Court accepted the providers' argument that certain amendments to the IWCA in 2005 had, in effect, worked a partial repeal of Section 21 so that, despite the absolute nature of the prohibition in the language of the statute, medical providers were not prohibited from looking to the

proceeds of Debtor's Workers' Compensation claim to satisfy their debt. Debtor appealed to the United States Court of Appeals for the Seventh Circuit.

The Federal Appellate Court panel members found themselves "genuinely uncertain about the correct interpretation" of the interplay between Section 21 and the 2005 Amendments to the IWCA. *In re: Elena Hernandez*, 918 F.3d 563, 565 (7th Cir. 2019). Accordingly, pursuant to Illinois Supreme Court Rule 20(a) (and Seventh Circuit Rule 52(a)), the United States Court of Appeals for the Seventh Circuit certified the following question, which this Court agreed to answer:

> After the 2005 amendments to 820 Ill. Comp. Stat. 305/8 and the enactment of 305/8.2, does section 21 of the Illinois Workers' Compensation Act exempt the proceeds of a workers' compensation settlement from the claims of medical-care providers who treated the illness or injury associated with that settlement?

STATEMENT OF THE ISSUE PRESENTED

After the 2005 amendments to 820 Ill. Comp. Stat. 305/8 and the enactment of 305/8.2, does section 21 of the Illinois Workers' Compensation Act exempt the proceeds of a workers' compensation settlement from the claims of medical-care providers who treated the illness or injury associated with that settlement?

APPLICABLE STANDARD OF REVIEW

The issue under review is exclusively one of statutory interpretation. Accordingly, the standard of review is *de novo*. *Rosenbach v. Six Flags Entertainment Corp*., 2019 IL 123186, ¶ 18.

STATEMENT OF JURISDICTION

Illinois Supreme Court Rule 20(a) provides as follows:

> (a) Certification. When it shall appear to the Supreme Court of the United States, or to the United States Court of Appeals for the Seventh Circuit, that there are involved in any proceeding before it questions as to the law of this State, which may be determinative of the said cause, and there are no controlling precedents in the decisions of this court, such court may certify such questions of the laws of this State to this Court for instructions concerning such questions of State law, which certificate this court, by written opinion, may answer.

Pursuant to its Rule 52, the Seventh Circuit certified the question referred to above to this Court on March 18, 2019. *In re: Elena Hernandez*, 918 F.3d 563 (7th Cir. 2019). On March 25, 2019, this Court issued a notice that it had accepted the Seventh Circuit's request to answer the question certified.

STATUTES INVOLVED

820 ILCS § 305/21 provides in relevant part as follows:

> "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

The 2005 Amendments to the Illinois Workers' Compensation Act as they relate to the issues herein are primarily 820 ILCS § 305/8 and 820 ILCS § 305/8.2.

820 ILCS § 305/8 provides, in relevant part, that:

> The amount of compensation which shall be paid to the employee for an accidental injury not resulting in death is:
>
> (a) The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably requested to cure

or relieve from the effects of the accidental injury. If the employer does not dispute payment of first aid, medical, surgical, and hospital services, the employer shall make such payment to the provider on behalf of the employee. The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto. If as a result of the injury the employee is unable to be self-sufficient the employer shall further pay for such maintenance or institutional care as shall be required.

(The underlined portion represents the new, amendatory language in both statutes).

820 ILCS § 305/8.2

Sec. 8.2 Fee schedule.

(a) Except as provided for in subsection (c), for procedures, treatments, or services covered under this Act and rendered or to be rendered on and after February 1, 2006, the maximum allowable payment shall be 90% of the 80th percentile of charges and fees as determined by the Commission utilizing information provided by employers' and insurers' national databases, with a minimum of 12,000,000 Illinois line item charges and fees comprised of health care provider and hospital charges and fees as of August 1, 2004 but not earlier than August 1, 2002. These charges and fees are provider billed amounts and shall not include discounted charges. The 80th percentile is the point on an ordered data set from low to high such that 80% of the cases are below or equal to that point and at most 20% are above or equal to that point. The Commission shall adjust these historical charges and fees as of August 1, 2004 by the Consumer Price Index-U for the period August 1, 2004 through September 30, 2005. The Commission shall establish fee schedules for

procedures, treatments, or services for hospital inpatient, hospital outpatient, emergency room and trauma, ambulatory surgical treatment centers, and professional services. These charges and fees shall be designated by geozip or any smaller geographic unit. The data shall in no way identify or tend to identify any patient, employer, or health care provider. As used in this Section, "geozip" means a three-digit zip code based on data similarities, geographical similarities, and frequencies. A geozip does not cross state boundaries. As used in this Section, "three-digit zip code" means a geographic area in which all zip codes have the same first 3 digits. If a geozip does not have the necessary number of charges and fees to calculate a valid percentile for a specific procedure, treatment, or service, the Commission may combine data from the geozip with up to 4 other geozips that are demographically and economically similar and exhibit similarities in data and frequencies until the Commission reaches 9 charges or fees for that specific procedure, treatment, or service. In cases where the compiled data contains less than 9 charges or fees for a procedure, treatment, or service, reimbursement shall occur at 76% of charges and fees as determined by the Commission in a manner consistent with the provisions of this paragraph. Providers of out-of-state procedures, treatments, services, products, or supplies shall be reimbursed at the lesser of that state's fee schedule amount or the fee schedule amount for the region in which the employee resides. If no fee schedule exists in that state, the provider shall be reimbursed at the lesser of the actual charge or the fee schedule amount for the region in which the employee resides. Not later than September 30 in 2006 and each year thereafter, the Commission shall automatically increase or decrease the maximum allowable payment for a procedure, treatment, or service established and in effect on January 1 of that year by the percentage change in the Consumer Price Index-U for the 12 month period ending August 31 of that year. The increase or decrease shall become effective on January 1 of the following year. As used in this Section, "Consumer Price Index-

U" means the index published by the Bureau of Labor Statistics of the U.S. Department of Labor, that measures the average change in prices of all goods and services purchased by all urban consumers, U.S. city average, all items, 1982-84=100.

(b) Notwithstanding the provisions of subsection (a), if the Commission finds that there is a significant limitation on access to quality health care in either a specific field of health care services or a specific geographic limitation on access to health care, it may change the Consumer Price Index-U increase or decrease for that specific field or specific geographic limitation on access to health care to address that limitation.

(c) The Commission shall establish by rule a process to review those medical cases or outliers that involve extra-ordinary treatment to determine whether to make an additional adjustment to the maximum payment within a fee schedule for a procedure, treatment, or service.

(d) When a patient notifies a provider that the treatment, procedure, or service being sought is for a work-related illness or injury and furnishes the provider the name and address of the responsible employer, the provider shall bill the employer directly. The employer shall make payment and providers shall submit bills and records in accordance with the provisions of this Section. All payments to providers for treatment provided pursuant to this Act shall be made within 60 days of receipt of the bill as long as the claim contains substantially all the required data elements necessary to adjudicate the bills. In the case of non-payment to a provider within 60 days of receipt of the bill substantially all of the required data elements necessary to adjudicate the bill or nonpayment to a provider of a portion of such a bill up to the lesser of the actual charge or the payment elevel set by the Commission in the fee schedule established in this Section, the bill, or portion of the bill, shall incur interest at a rate of 1% per month payable to the provider.

(e) Except as provided in subsections (e-5), (e-10), and (e-15), a provider shall not hold an employee liable for costs related to a non-disputed procedure, treatment, or service rendered in connection with a compensable injury. The provisions of subsections (e-5), (e-10), (e-15), and (e-20) shall not apply if an employee provides information to the provider regarding participation in a group health plan. If the employee participates in a group health plan, the provider may submit a claim for services to the group health plan. If the claim for service is covered by the group health plan, the employee's responsibility shall be limited to applicable deductibles, co-payments, or co-insurance. Except as provided under subsections (e-5), (e-10), (e-15), and (e-20), a provider shall not bill or otherwise attempt to recover from the employee the difference between the provider's charge and the amount paid by the employer or the insurer on a compensable injury.

(e-5) If an employer notifies a provider that the employer does not consider the illness or injury to be compensable under this Act, the provider may seek payment of the provider's actual charges from the employee for any procedure, treatment, or service rendered. Once an employee informs the provider that there is an application filed with the Commission to resolve a dispute over payment of such charges, the provider shall cease any and all efforts to collect payment for the services that are the subject of the dispute. Any statute of limitations or statute of repose applicable to the provider's efforts to collect payment from the employee shall be tolled from the date that the employee files the application with the Commission until the date that the provider is permitted to resume collection efforts under the provisions of this Section.

(e-10) If an employer notifies a provider that the employer will pay only a portion of a bill for any procedure, treatment, or service rendered in connection with a compensable illness or

disease, the provider may seek payment from the employee for the remainder of the amount of the bill up to the lesser of the actual charge, negotiated rate, if applicable, or the payment level set by the Commission in the fee schedule established in this Section. Once an employee informs the provider that there is an application filed with the Commission to resolve a dispute over payment of such charges, the provider shall cease any and all efforts to collect payment for the services that are the subject of the dispute. Any statute of limitations or statute of repose applicable to the provider's efforts to collect payment from the employee shall be tolled from the date that the employee files the application with the Commission until the date that the provider is permitted to resume collection efforts under the provisions of this Section.

(e-15) When there is a dispute over the compensability of or amount of payment for a procedure, treatment, or service, and a case is pending or proceeding before an Arbitrator or the Commission, the provider may mail the employee reminders that the employee will be responsible for payment of any procedure, treatment or service rendered by the provider. The reminders must state that they are not bills, to the extent practicable include itemized information, and state that the employee need not pay until such time as the provider is permitted to resume collection efforts under this Section. The reminders shall not be provided to any credit rating agency. The reminders may request that the employee furnish the provider with information about the proceeding under this Act, such as the file number, names of parties, and status of the case. If an employee fails to respond to such request for information or fails to furnish the information requested within 90 days of the date of the reminder, the provider is entitled to 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.

(e-20) 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.

(f) Nothing in this Act shall prohibit an employer or insurer from contracting with a health care provider or group of health care providers for reimbursement levels for benefits under this Act different from those provided in this Section.

STATEMENT OF FACTS

All references are to the Federal Government's "Public Access to Court Electronic Records" System or "PACER".

On December 1, 2016, Debtor, Elena Hernandez, filed a Chapter 7 bankruptcy in the Bankruptcy Court for the Northern District of Illinois. (Bktcy Ct. Elec. Dkt. For Case No. 16 B 38083, No. 1). Debtor listed her Workers' Compensation claim then pending as exempt on Schedule C of her Bankruptcy Petition. (Bktcy Ct. Elec. Dkt. For Case No. 16 B 38083, No. 20). The claim was valued at $31,000.00. (Bktcy Ct. Elec. Dkt. For Case No. 16 B 38083, No. 21).

On December 3, 2016, Debtor settled her Workers' Compensation claim for $30,366.33. ((Bktcy Ct. Elec. Dkt. For Case No. 16 B 38083, No. 11, p. 2, ¶ 4). On February 3, 2017, creditors who had provided medical services to Debtor related to her work injury filed an objection to Debtor's exemption of her Workers' Compensation claim. ((Bktcy Ct. Elec. Dkt. For Case No. 16 B 38083, No. 11). On April 12, 2017, a hearing on the Objection to The Exemption was held

before Bankruptcy Judge Cox ((Bktcy Ct. Elec. Dkt. For Case No. 16 B 38083, No. 28). On April 13, 2017, Judge Cox denied Debtor's claimed exemption for her Workers' Compensation proceeds. (*Id*. at 27).

Debtor timely appealed the Bankruptcy Court's decision to the United States District Court. On March 26, 2018 the District Court (Judge Jorge Alonso) entered a Memorandum Opinion and Judgment affirming the Bankruptcy Court's denial of Debtor's claimed exemption. The Seventh Circuit characterized the District Court's holding as follows:

> Judge Alonso held that section 21 creates an exemption for worker's compensation claims but the subsequent amendments "significantly altered" the Act, striking a "balance" by limiting what providers can charge while allowing them to resume collection efforts following a settlement. Reading the Act as a "harmonious whole" and citing interpretive canons against surplusage and absurdity, Judge Alonso rejected Hernandez's interpretation of the amendments as "not reasonable" because it

> would undermine a key purpose of the amended Act: ensuring payment for care providers.

In re: Elena Hernandez, 918 F.3d at 566.

Debtor appealed to the United States Court of Appeals for the Seventh Circuit, arguing that Section 21 meant what it said and that the Legislature had not altered the language of Section 21, or made an exception for medical providers to reach the proceeds of a Workers' Compensation claim elsewhere in the statute.

On March 18, 2019, the Seventh Circuit issued its opinion certifying the question of the meaning of Section 21, particularly in light of the 2005 Amendments to the Workers' Compensation Act.

ARGUMENT

I.

Introduction

Although the Seventh Circuit certified the question of Illinois law it wanted answered relating to Section 21 of the IWCA and the 2005 Amendments thereto, its opinion also raised "…a key preliminary question: whether section 21 creates an exemption in the first place." *In re: Elena Hernandez*, 918 F.3d at 571. As Debtor explains below, the answer to both this "preliminary" question and the certified question is "yes".

II.

Section 21 of the Illinois Workers' Compensation Act Creates An Exemption For Workers' Compensation Claims and/or Proceeds

As noted above, the Seventh Circuit's desire for guidance as to the meaning of certain provisions of the IWCA was motivated not only by questions as to the interplay of Section 21 and the 2005 Amendments to the IWCA, but by the threshold question of "whether section 21

creates an exemption in the first place." Although other courts have held that Section 21 creates an exemption forbidding creditors to satisfy a debt with the proceeds of a Workers' Compensation claim, the Seventh Circuit observed that "[w]e don't have a dispositive Illinois Supreme Court opinion clarifying the boundaries of section 21 or even classifying it as an exemption." *Hernandez*, *supra*, 918 F.3d at 567. Debtor submits that, as discussed below, every court considering the question has concluded that Section 21 creates an exemption (useable to prevent creditors from seizing Workers' Compensation proceeds in either state or bankruptcy court), and there is no legally compelling reason to hold otherwise. Accordingly, Debtor urges this Court to declare that Section 21 does create an exemption (applicable in bankruptcy court, with the other exemptions found in Part 10 of Article XII of the Illinois Code of Civil Procedure), and prohibits any creditor access to the proceeds of a Workers' Compensation claim to satisfy any "debt, lien, penalty or damages".

As noted, every court facing the question has ruled that Section 21 of the IWCA, despite its placement in the statute books, is effective

as an exemption from the claims of creditors seeking to use Workers' Compensation proceeds to satisfy debts. And Section 21 has a venerable history.

In *Weber v. Ridgway*, 212 Ill. App. 159 (Ill. App. 4th Dist., 1918) the Court determined that a creditor could not garnish funds held by the administrator of a decedent's estate that had yet to be distributed to the widow of the decedent. The widow had signed a promissory note and defaulted, so the creditor attempted to garnish the estate funds in the administrator's possession, which the administrator acknowledged were being held for the widow. However, the parties had stipulated that the funds held by the administrator consisted entirely of a Workers' Compensation award that devolved upon the widow as the only surviving dependent of the deceased. The Court held, citing the 1916 version of Section 21:

> It is next contended by appellant that under the provisions of section 21 of the Workmen's Compensation Act [Callaghan's 1916 St. Supp. ¶ 5475(21)], the funds in question are not subject to garnishment. This act provides among other things: "that no

> payment, claim or award of a deceased under this act shall be assignable or be subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages."
>
> Under the stipulation in this case the funds sought to be garnisheed were made up of an award made under the Workmen's Compensation Act to appellant Vera Weber, as the only dependent left surviving by the said Jesse Weber, deceased. We think, under the provisions of said statute, that inasmuch as this award was made directly to Vera Weber and is made up from funds derived from said award, it would not be subject to garnishment.

Weber, *supra*, 212 Ill. App. At 162-163.

Several years later, in *Lasley v. Tazewell Coal Company*, 223 Ill. App. 462 (Ill. App. 3rd Dist., 1921) the Court refused to allow a Workers' Compensation claimant's own attorney to satisfy his claim for attorney's fees from the proceeds of the award he had won for his client. Said the Court:

Section 21 of the Workmen's Compensation Act (Cahill's Ill. St. ch. 48 ¶ 221) referred to precludes the enforcement of any lien against the installments or payments which were to be made to [the claimant's attorney] by the appellee under the award in question. The language of this section is clear and conclusive. It directs 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." There is nothing in the other sections of the act which in any way conflicts with the provisions referred to, and the purpose of the legislature is evident; it undoubtedly intended 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. While it is true that the rule for the construction of statutes is as stated by counsel for appellant, it is also apparent that this rule cannot have application to the matter here presented, or to any case where the intention of the legislature is clearly expressed. In that kind of a case there is no

> room for construction. And the intention of the legislature must be inferred from the ordinarily and generally accepted meaning of the words of an enactment. *Culver v. Waters*, 248 Ill. 163. The words "any lien" in section 21 referred to obviously include the liens provided for by the act creating attorney's liens.

Lasley, supra, 223 Ill. App. at 463-464.

Moving into the latter part of the 20th Century, the Court in *East Moline Works Credit Union v. Linn*, 51 Ill. App. 2d 97, 200 N.E.2d 910 (1964) upheld the trial court's determination that the funds in a claimant's bank account, which represented the proceeds of his Workers' Compensation claim, could not be garnished. The Court rejected the creditor's theory that the Section 21 exemption only applied until the proceeds were actually paid over to the claimant. The Court concluded that the funds were exempt even after the claimant took possession of them, to wit:

> It is significant to note that the Illinois statute uses the broad language of (a) payment, (b) claim, (c) award, or (d) decision. The word 'payment' connotes that which has been paid.

> The other words connote compensation that is in the process of determination. Thus the exemption attaches to the compensation that has been paid as well as compensation that may be due or may become due.
>
> In view of the foregoing, we are of the opinion that the conclusion reached by the trial court that the funds on deposit in the garnishee bank were exempt is correct. Accordingly, the judgment of the Circuit Court of Mercer County will be affirmed.

East Moline Works Credit Union, *supra*, 51 Ill. App. 2d at 101-102; 200 N.E.2d at 912.

In the same vein is this Court's decision in *In re Estate of Callahan*, 144 Ill. 2d 32, 578 N.E.2d 985 (1991). There, the trial court's ruling that a discharged attorney's $36,000.00 fee for his work in a guardianship case could be satisfied from Workers' Compensation benefits paid to the estate was reversed, to wit:

> "The pertinent part of section 21 provides that workers' compensation benefits paid under the Act shall not be liable for any 'debt'. The word 'debt' is not defined in the Act. A debt is a

> certain sum of money owing from one person to another. (Black's Law Dictionary 363 (5th ed. 1979).) By virtue of the trial court judgment in the instant case, the guardianship estate owes the claimant $36,000 for legal services it has received. Therefore, we consider this sum of money to be a debt within the meaning of the Act and the claimant should not be permitted to recover his judgment against the workers' compensation benefits paid to the estate."

Callahan, 144 Ill. 2d at 43, 578 N.E.2d at 989.

Finally, in *Mentzer v. Van Scyoc*, 233 Ill. App. 3d 438, 599 N.E.2d 58 (1992), the Fourth District Appellate Court, relying on *Weber*, *East Moline Works Credit Union* and *Callahan*, explicitly held that, notwithstanding its placement outside "the elaborate scheme" of personal property exemptions in the Illinois Code of Civil Procedure, Section 21 provided an exemption from creditors' attempts to seize Workers' Compensation proceeds. Indeed, the Court declared that the Section 21 exemption provided *greater* protection from the claims of creditors for Workers' Compensation claimants than the protections

afforded for other debtors under the Civil Procedure Code. First, Section 21 specifically protects Workers' Compensation proceeds and second, it protects against more than just the "judgment, attachment or distress for rent" found in the Code. *Mentzer*, 233 Ill. App. 3d at 62, 599 N.E.2d at 442.

In 1994, when the United States Bankruptcy Court for the Northern District, Eastern Division was actually faced with answering the question whether, despite its placement outside the list of personal property exemptions in the Code of Civil Procedure, Section 21 provided an exemption that could protect Workers' Compensation proceeds in bankruptcy, the Court in *In re McClure*, 175 B.R. 21 (Bktcy N.D. Ill. 1994) relied on *Mentzer*, *supra*, to find that it did. The Court explained its conclusion thusly:

> It is difficult to see why the placement of provisions of state law within a particular codification should have the substantive impact for which the trustee argues. Nothing in the Code of Civil Procedure states that only exemption provisions contained within that Code are available in bankruptcy cases, and

so there is no reason why Section 21 of the Workers' Compensation Act should be required to state explicitly that it is available as an exemption in bankruptcy. But more fundamentally, the trustee's argument misunderstands the relationship between the Bankruptcy Code and state law. As outlined above, the Code allows states to prohibit the use of the *federal* exemptions otherwise available under Section 522(d), but the Code does not allow states to prohibit the use in bankruptcy of exemptions otherwise available under *state* law. To the contrary, Section 522(b)(2) provides debtors the option of exempting "any property that is exempt under…State or local law that is applicable on the date of the filing of the petition." Thus, if an exemption is available under state law, it must be available in bankruptcy, and the only question is whether Section 21 of the Workers' Compensation Law provides for an exemption of workers' compensation claims.

Plainly it does. Although Section 21 does not employ the words "exemption" or "exempt", it does state 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. That this language is effective to exempt workers' compensation claims from judgments of creditors was the emphatic conclusion of the Illinois Appellate Court in *Mentzer v. Van Scyoc*, 233 Ill. App. 3d 438, 174 Ill.Dec. 512, 599 N.E.2d 58 (1992).
>
> . . . . . .
>
> Because Section 21 of the Workers' Compensation Act is an applicable statute of exemption, it was available to be claimed by the debtor in the present case, and the trustee's objection to the claimed exemption must be overruled.

McClure, 175 B.R. at 23-24.

Clearly, Section 21 has functioned as an exemption for the proceeds of Workers' Compensation claims under Illinois Law for over a hundred years. Every court to encounter the issue has treated Section 21 as such. The logic of *McClure* and the decisions *McClure* relied upon is compelling and there is no contrary precedent. The Seventh

Circuit was not content to rely upon *McClure* or Illinois Appellate Court precedents in determining whether Section 21 qualifies as an "exemption" under Illinois law, in the absence of an authoritative ruling from this Court. Debtor submits this Court should declare that Section 21 of the IWCA is every bit as much an exemption under Illinois law for bankruptcy purposes as anything found in the Code of Illinois Civil Procedure.

III.

This Court Should Answer The Certified Question In The Affirmative

The question certified to this Court by the Seventh Circuit is:

> After the 2005 amendments to 820 Ill. Comp. Stat. 305/8 and the enactment of 305/8.2, does section 21 of the Illinois Workers' Compensation Act exempt the proceeds of a workers' compensation settlement from the claims of medical-care providers who treated the illness or injury associated with that settlement?

As explained *infra*, well-established principles of statutory construction enunciated by this Court dictate that the answer to the question should be "yes". Moreover, there is nothing in the legislative history of the IWCA which militates in favor of implying an exception to the clear command of Section 21, placing Workers' Compensation proceeds off limits to creditors, in favor of medical providers. Finally, the Illinois Legislature has shown that it knows how to create exceptions to exemptions in general, and Section 21 in particular, when it wants to, and it has not created one for medical providers. In short, there is no reason to believe that the General Assembly intended for the 2005 Amendments to the IWCA to work a *sub silentio* repeal of Section 21 in favor of medical providers.

IV.

Well-Established Rules of Statutory Construction Dictate That The Certified Question Should Be Answered in the Affirmative

Debtor begins, as this Court has instructed, time and again, with the cardinal precept of Illinois statutory construction which is "to ascertain and give effect to the intent of the Legislature" *Price v. Phillip*

Morris, Inc., 219 Ill.2d 182, 242 (2005). And this Court has emphasized that there is no better indicator of legislative intent than "the clear language of the statute" itself. *People v. NL Industries*, 604 Ill.2d 349, 355 (1992). In this case, the statutory language could hardly be clearer. Workers' Compensation awards or payments cannot be "held liable in any way for any lien, debt, penalty or damages…" 820 ILCS § 305/21. Nor can it be assigned, liened, attached or garnished. *Id*. The statutory language admits of no exceptions.

Normally, that would be the end of the matter. In the bankruptcy, district and appellate courts in the federal system, where this case started, the medical providers argued, and the District Court agreed, that the 2005 Amendments impliedly excepted medical providers from Section 21's prohibitions on creditors' attempts to reach Workers' Compensation proceeds. This reading should be rejected. A recent decision of the First District Appellate Court involving similar arguments anent Section 21, and at least one of the same medical providers in this case, shows why.

In *Marque Medicos Archer LLC* (and *Medicos Pain & Surgical Specialists, S.C.*, the same creditor who is one of the Appellees in this case) *v. Liberty Mutual Insurance Company*, 2018 IL App (1st) 163350, the Medical Providers made the same argument they are making here. That is, the Medical Providers made the argument that the Court should recognize an exception to the Section 21 exemption in light of the putative purpose of the Act (as the Medical Providers saw it). The Court refused to do so, citing the rule of statutory construction preventing the addition of exceptions departing from or in addition to the ones specified in the statute.

More specifically, the Medical Providers asserted a claim under the Consumer Fraud Act, which depended on the validity of the injured worker's purported assignment of his claims, despite the prohibition found in Section 21 of the IWCA. The Court held:

> The medical providers do not dispute that the plain language of the Act prohibits assignment of awards or decisions but maintain that the purpose of this prohibition is to protect an injured worker from his creditors and not to prevent the injured

worker from tasking a third party with enforcing his rights to payment of benefits. In other words, the providers 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.

Our supreme court has cautioned that we cannot construe a statute to add an exception when none otherwise exists. *In re Michael D.*, 2015 IL 119178, ¶ 9 ("It is never proper to depart from plain language by reading into a statute exceptions *** which conflict with the clearly expressed legislative intent."). And it is a well-established canon of statutory construction that where the statutory language expresses certain exceptions, it is construed as an exclusion of any other exceptions. *State v. Mikusch*, 138 Ill. 2d 242, 250 (1990). This is the case here. The Act excepts from its general prohibition against assignment those assignments made by beneficiaries of certain deceased employees. It does not include an exception for an injured worker to assign the enforcement of his rights to a third party.

Marque Medicos Archer, LLC, 2018 IL App (1st) 163350 ¶¶ 24-25.

Marque Medicos Archer, LLC is not the only case to remark the extraordinary clarity and forcefulness of Section 21's wording. In *Lasley v. Tazewell, supra*, the Court quoted Section 21 verbatim. (And the language quoted, in 1921, has remained unchanged to this day, almost one hundred years later). The Court stated:

> ***The language of this section is clear and conclusive***. It directs 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." There is nothing in the other sections of the act which in any way conflicts with the provisions referred to, and the purpose of the legislature is evident; it undoubtedly intended 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. While it is true that the rule for the construction of statutes is as stated by counsel for appellant, ***it is also apparent that this rule cannot have application to the***

> ***matter here presented, or to any case where the intention of the legislature is clearly expressed. In that kind of a case there is no room for construction***. And the intention of the legislature must be inferred from the ordinarily and generally accepted meaning of the words of an enactment. *Culver v. Waters*, 248 Ill. 163. The words "any lien" in section 21 referred to obviously include the liens provided for by the act creating attorney's liens. (Emphasis added).

Lasley, supra, 223 Ill. App. at 463-464.

Debtor submits that the plain, straightforward and explicit language of Section 21 could only be overcome by a legislative declaration of remarkable clarity. After all, this Court has admonished:

> "When statutory language is clear, it must be given effect without resort to other tools of interpretation. It is ***never*** proper to depart from plain language by reading into a statute exceptions, limitations or conditions which conflict with the clearly expressed legislative intent." (Emphasis added).

In re Michael D, 2015 IL 119178 ¶ 9, citing, *People v. Rissley*, 206 Ill.2d 403, 414, 795 N.E.2d 174, 180 (2003).

The Court in *Marque Medicos Archer, LLC* adhered to the canons of statutory interpretation above and refused the medical providers' invitation to read an exception into Section 21 that "conflict[ed] with the clearly expressed legislative intent." This Court should do the same here.

V.

There Is No Conflict Between Section 21 and the 2005 Amendments

The medical providers do not, and cannot, gainsay the import of the exceptionally clear statutory language employed in Section 21. What they argued in federal court (and will presumably argue here) is that, unless the IWCA is interpreted to allow medical providers to use the proceeds of a Workers' Compensation award to satisfy their claims, the 2005 Amendments would be rendered meaningless. However, nothing in the language of the Amendments, or the legislative history of them, justifies that position.

The 2005 Amendments changed the way medical bills involved in a worker's compensation case are paid. The Amendments basically require the employer and medical providers to assume administrative responsibility for dealing with a worker's medical bills when a worker's compensation claim has been filed. The medical provider is to bill the employer directly and the employer is to pay the medical provider directly, rather than having the worker receive the bill from the medical provider and then give it to the employer. 820 ILCS 305/8(a); 820 ILCS 305/8.2(e-5); 820 ILCS 305/8.2(d).

Section 8(a) of the IWCA was altered to require employers to "pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or [fees] according to a fee schedule…". If the employer fails to pay a bill containing all of the required data, within 60 days statutory interest of 1% per month accrues. 820 ILCS § 305/8.2(d).

The 2005 Amendments also banned a practice known as "balance billing", whereby providers seek payment for any bills not paid or partially paid by the employer. 820 ILCS § 305/8.2(e). The issue

of unpaid bills is regulated by subsections (e-5)(e-10) and (e-15) added by the 2005 Amendments.

Basically, those sections provide that if an employer refuses to pay the bill, the medical provider can seek payment from the employee, unless the employee notifies the provider that she has filed an application with the Commission to resolve the dispute. Then, the provider has to cease all efforts to collect payment, during which time the statute of limitations on the debt is tolled.

Perhaps most relevant to the provider's argument here is Section 8.2(e-20). That section provides that:

> 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.

The medical providers infer from the fact that in return for requiring providers to adhere to streamlined billing procedures and a new fee schedule, the General Assembly gave them the right to pursue the employee after settlement of a claim for bills that remain unpaid, that Section 21 must not apply to them. In other words, the providers view the overarching purpose of the 2005 Amendments to be getting medical providers paid no matter what.

What the text of the 2005 Amendments and the Legislative History reveal is that the Amendments represented a 20-year-long effort to balance the interests of employers, employees, insurance companies and medical providers with a view toward making the whole compensation system more efficient and less expensive. (See Appendix, *Illinois House Transcript, 2005 Reg. Sess. No. 59*:

[Chief Sponsor] Jay Hoffman: "…First of all this is the first such agreed Bill process regarding workers' compensation in 20 years…This agreement is an agreement between business and labor…the cost to business has always been an important factor in businesses locating here in Illinois. This reduces their costs. Yet it brings labor on board by

updating benefits…In addition this joins 44 other states in the nation in providing for a medical fee schedule and prohibits the action what is called balance billing. The Bill would also require that employers pay providers of medical…medical care within 60 days or pay 1 percent interest per month after 60 days of an unpaid medical bill. This would also streamline some of the procedures in the Workers' Compensation Commission…to move cases through the system quicker…"; "And making sure that we hold the line on medical costs. And making sure that for the first time here in Illinois we have litigation review for medical costs and making sure we do something that people have been trying to do for 20 years and that's get rid of what's called balance billing is substantial. These are substantial changes…"

See Appendix: *Illinois Senate Transcript, 2005 Reg. Sess. No. 49* [Chief Sponsor] Senator Link:

> Thank you, Madam President. This is probably one of the longest working bills that we've had in the Senate. It's only taken about twenty years to come to here. These last efforts represent approximately a year and a half of work to adopt major

comprehensive reforms on workers' compensation. What will this bill do? At heart, I hope it will improve the business environment in Illinois and in result bring more jobs to the State. It establishes a medical fee schedule that increases every year by the Consumer Price Index for urban areas, not that much faster growing medical care CPI. The bill permits utilization review standards in processing claims, hopefully reducing the cost of litigation by providing further avenues for quicker determination by the commission in arbitration of disputes. It calls for employers to pay providers directly when there are no disputes about payment. When an employer has the necessary information, payment of a bill, such as payment required within sixty days or a one-percent per month penalty applies. With certain exceptions, the litigation prohibits balance - billing so that injured workers will no longer receive bills for balancing - balance of charges on comprehensible {sic} (compensable) services to treat injuries that are not paid by workers' employer. Injured workers will see some increase in benefits, some of

which have not increased since the last major reforms of these Acts.

. . . . .

I want to thank the IMA, the AF of L-CIO, the Illinois—Retailers, the—the National Federation of Independent Businesses, the Chambers and all the other groups that were there adding to this. This is a bill that will help labor. It will help businesses.

. . . . .

SENATOR CRONIN:

Thank you, Madam President, Ladies and Gentlemen of the Senate. And thank you to Senator Dillard. Yes, I do, as a lawyer/legislator, practice law in the area of workers' comp and I'm voting my conscience. And I've been participating in the negotiations, driven by what I believe is the right thing to do. I rise in support of this bill. My support, however, is careful and it is measured. I, first, would like to—to recognize the—the process. I want to—I want to acknowledge the Governor,

Legislative Leaders, business and labor and to commend them for convening a process that led to this product.

. . . . .

There are three very important components to this bill. And those three components, I believe, can lead to cost savings for the business community. And why is that important? Because that will help the economic climate in the State of Illinois and that will stimulate job growth and that's vitally important for all of us here. Those three components that are in this bill is a medical fee schedule, which seeks to hold down the cost of—of health care providers or medical costs to injured workers. And we think we've done it in a way that does not harm the injured workers' ability to access quality health care. Secondly, there is a utilization review component to the fee schedule which basically says that you can't—you can't over-utilize these—these medical services thereby driving up fees and costs. And lastly, there's a ban on balance billing, which has been around here for some time and has been very, very important to the

business community and that is included in this bill. Those three main components, along with the fraud provision, offer a lot of hope and promise to the business community.

As reflected in the Legislative History above, payment to medical providers was but one of a host of considerations that underlay the Amendments. In fact, the legislators who spoke seemed very much concerned with holding down medical costs, and believed that implementation of the fee schedule would help reduce them. But no legislator mentioned anything about Section 21 or the primacy of getting medical providers paid above all else. In sum, although the clear expression of legislative intent in Section 21 should prevent "resort to other tools of interpretation", even if the legislative history is consulted it does not advance the medical providers' argument in favor of an exception.

Moreover, the fact that Section 8.2(e-20) gives medical providers the right to resume collection efforts against an employee after a settlement with the employer is a far cry from a *sub silentio* repeal of Section 21. The question is not whether the medical providers can get

a judgment against the employee for unpaid medical bills—they can. The issue in this case is whether Section 21 will let that judgment be satisfied from Workers' Compensation proceeds. Everything in the foregoing pages of this Brief yields the conclusion that Section 21 prevents medical providers from using Workers' Compensation proceeds to have their bills paid.

What this means is that the 2005 Amendments are not rendered meaningless if there is no exception for medical providers under Section 21. The Amendments can co-exist with Section 21 without implying an exception for medical providers. The providers can get judgments against defaulting employees—they just can't collect from the proceeds of Workers' Compensation claims. There is no compelling reason that medical providers should be in a better position than the attorney in *Lasley*, *supra*, who was not able to collect his fee from the proceeds of the Workers' Compensation award he had won for his client, despite the existence of the attorney's lien statute

VI.

The Illinois General Assembly Knows How To Create an Exception To Exemptions When It Wants To, And It Did Not Do So For Medical Providers In This Case

A final consideration is this: The Illinois General Assembly knows how to create exceptions to exemptions when it wants to. (To wit; only $2,400.00 of the value of a vehicle is exempt—the rest of it is available to satisfy creditors' debts, 735 ILCS § 5/12-1001(c); only $1,500.00 of "tools of the debtor's trade" is exempt, 735 ILCS § 5/12-1001(d); only $15,000.00 of homestead property is exempt, 735 ILCS 5/12-901, etc.). If the Legislature had wanted to allow medical providers the right to resort to otherwise exempted proceeds of Workers' Compensation claims to satisfy debts for medical services rendered it certainly would have said so.

Undoubtedly, if the General Assembly wanted to rescind the protections of Section 21 it could have done so by explicitly repealing it. Or, it could have provided that Section 21 applies except for medical providers in light of the 2005 Amendments. Or, it could have easily

provided that in making the award, the Commission or arbitrator deduct from the award any outstanding medical bills. The Legislature did none of these things.

Tellingly, the Legislature has made a specific exception to Section 21 in only one circumstance—court-ordered support payments. *In re Marriage of Brand*, 123 Ill. App. 3d 1047, 463 N.E.2d 1037 (1984). In the case of child support, the Legislature explicitly referenced Workers' Compensation benefits in amending the Illinois Marriage and Dissolution of Marriage Act in 1984. The amendment, Section 706.1 of the Act, provided that a court entering a support order may include a requirement directing any entity, required to pay Workers' Compensation benefits to one subject to a support order, to withhold from those benefits a sufficient sum to cover such part of the support order as the court may direct. And, as explained in *Ill. Dept. of Healthcare and Family Services v. Bartholomew*, 397 Ill. App. 3d 363, 920 N.E.2d 542 (2009), the Illinois Withholding For Support Act specifically references "workers' compensation" as a permissible

source that can be withheld for support. In *Bartholomew*, the Court found that:

> The exception to income exemptions from judgment appears in section 15(d) of the Income Withholding for Support Act (Withholding Act)(750 ILCS 28/15(d) (West 2008)), which provides as follows:
>
> "(d) 'Income' means any form of periodic payment to an individual, regardless of source, including workers' compensation [.]
>
> . . . . .
>
> Any other [s]tate or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply."

397 Ill. App. 3d at 366, 920 N.E.2d at 545.

It went on to hold that:

> 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.

Id.

The fact that the General Assembly knows how to create an exception to the exemption embodied in Section 21 when it wants to, but declined to do so in favor of medical providers when it amended the IWCA in 2005, is powerful evidence that it did not intend there to be such an exception.

Ultimately, what the medical providers want this Court to do is rewrite the Workers' Compensation Act to afford them the special exception they believe they are entitled to, but which the General Assembly apparently forgot to grant while it was amending the Workers' Compensation Act. But this Court has consistently held that:

> This court will not depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the express legislative intent. *Petersen v. Wallach*, 198 Ill.2d 439, 446, 764 N.E.2d 19 (2002).

In short, the well-established principles of statutory construction consistently adhered to by this Court yield the conclusion that, in the absence of an explicit legislative pronouncement creating an exception in Section 21 in favor of medical providers, the proceeds of Debtor's Workers' Compensation award are fully exempt. This Court should so rule.

CONCLUSION

Debtor urges this Court to answer the question certified to it by the United States Court of Appeals For The Seventh Circuit in the affirmative.

Respectfully submitted,

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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 ~~51~~ 47 pages.

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NOTICE AND PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 3, 2019, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the Court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, the person named below with identified email address will be served using the court's electronic filing system and one copy is being mailed to the Appellee in an envelope deposited in a U.S. mailbox in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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APPENDIX

In the

United States Court of Appeals

For the Seventh Circuit

No. 18-1789

IN RE:

ELENA HERNANDEZ,

Debtor-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 17 CV 3230 — **Jorge L. Alonso**, *Judge.*

ARGUED OCTOBER 26, 2018 — DECIDED MARCH 18, 2019

Before WOOD, *Chief Judge*, and SYKES and SCUDDER, *Circuit Judges.*

SYKES, *Circuit Judge.* When Elena Hernandez filed a voluntary Chapter 7 bankruptcy petition in December 2016, she reported one sizable asset: a pending workers' compensation claim valued at $31,000. To place that claim beyond the reach of creditors, she listed it as exempt under section 21 of the Illinois Workers' Compensation Act ("the Act"), 820 ILL. COMP. STAT. 305/21 (2011), applicable via 11 U.S.C. § 522(b). Two days after filing for bankruptcy, Hernandez settled the claim.

Hernandez owed significant sums to three healthcare providers who treated her work-related injuries. The providers objected to her claimed exemption, arguing that 2005 amendments to the Act enable unpaid healthcare providers to reach workers' compensation awards and settlements. The bankruptcy court denied the exemption and Hernandez appealed. The district judge affirmed, concluding that using the workers' compensation exemption to thwart this specific class of creditors would frustrate the Act's purpose.

We confront an important question of statutory interpretation: whether the Illinois Workers' Compensation Act, as amended, allows care-provider creditors to reach the proceeds of workers' compensation claims. Section 21 of the Act has been interpreted by bankruptcy courts to create an exemption for these assets. The 2005 amendments made several changes to the Illinois workers' compensation regime, imposing a new fee schedule and billing procedure for care providers seeking remuneration. Did those changes alter the scope of section 21?

The Illinois Supreme Court hasn't addressed the interplay between these competing components of state workers' compensation law. Without that controlling authority, we find ourselves genuinely uncertain about the correct interpretation. This state-law issue is dispositive, likely to recur, and implicates the effective administration of workers' compensation in Illinois. Therefore, we respectfully certify the question set forth in this opinion to the Illinois Supreme Court.

I. Background

In December 2016 Hernandez filed a Chapter 7 bankruptcy petition in the Northern District of Illinois. Between 2009 and 2011, she sustained on-the-job injuries and was treated at the Ambulatory Surgical Care Facility, Marque Medicos Fullerton LLC, and Medicos Pain and Surgical Specialists, S.C. In her bankruptcy petition, Hernandez reported unsecured claims held by these healthcare providers. She owed $28,709.60 to Ambulatory Surgical; $58,901.20 to Marque Medicos Fullerton; and $50,161.26 to Medicos Pain and Surgical. She reported minimal assets, listing $1,300 in bank accounts; some inexpensive jewelry; and her pending workers' compensation claim, which she valued at $31,000.

Hernandez claimed an exemption for the entirety of that claim, citing section 21 of the Illinois Workers' Compensation Act. Two days after filing her bankruptcy petition, Hernandez settled the claim with her employer, apparently for $30,566.33, without consulting the Trustee. The health- care providers objected to Hernandez's claimed exemption, arguing that the amended Act empowered them to reach her settlement. They also urged the court to disallow the exemption on grounds that the settlement was the product of fraud. In April 2017 the bankruptcy court heard argument on the exemption. The judge focused on process-based concerns about Hernandez's settlement—including her failure to notify interested parties or the Trustee—rather than the statutory arguments raised by the parties. In the end, the judge summarily denied the exemption without a written opinion.

Hernandez appealed to the district court, and Judge Alonso affirmed. His opinion focused exclusively on the interplay between section 21 of the Act and the 2005

amendments codified at 820 ILL. COMP. STAT. 305/8 and 8.2. Relying on *In re McClure*, 175 B.R. 21 (Bankr. N.D. Ill. 1994), Judge Alonso held that section 21 creates an exemption for workers' compensation claims but the subsequent amendments "significantly altered" the Act, striking a "balance" by limiting what providers can charge while allowing them to resume collection efforts following a settlement. Reading the Act as a "harmonious whole" and citing interpretive canons against surplusage and absurdity, Judge Alonso rejected Hernandez's interpretation of the amendments as "not reasonable" because it would undermine a key purpose of the amended Act: ensuring payment for care providers.

Hernandez moved to alter or amend the judgment. At a hearing on the motion, Judge Alonso again rejected her statutory arguments. This appeal followed.

II. Discussion

We apply de novo review to the bankruptcy court's conclusions of law. *First Weber Grp., Inc. v. Horsfall*, 738 F.3d 767, 776 (7th Cir. 2013). "A debtor's entitlement to a bankruptcy exemption is a question of law . . . ." *In re Yonikus*, 996 F.2d 866, 868 (7th Cir. 1993). Matters of statutory interpretation are likewise questions of law. *Boyd v. Ill. State Police*, 384 F.3d 888, 896 (7th Cir. 2004).

A bankruptcy estate contains most property interests held by the debtor, including pending claims. 11 U.S.C. § 541(a). Under § 522, some assets within the estate are nonetheless shielded from creditors by statutory exemptions. *Clark v. Chi. Mun. Emps. Credit Union*, 119 F.3d 540, 543 (7th Cir. 1997) (explaining that under § 522 "an individual debtor can retain certain exempt property while the debtor's non-exempt property

may be used to satisfy creditors' claims"). The Bankruptcy Code recognizes two sources of exemptions: the federal exemptions outlined in § 522(d) and, essentially, all others (that is, federal exemptions beyond § 522(d) and state-law exemptions). *See* 11 U.S.C. § 522(b)(3). The default rule is that a debtor chooses between these bodies of law. *Id.* § 522(b)(1). However, states may deny debtors that choice and restrict them to non-§ 522(d) exemptions. *Id.* § 522(b)(2). Illinois has done so. *See* 735 ILL. COMP. STAT. 5/12-1201; *Clark*, 119 F.3d at 543.

Illinois law carves out exemptions for a broad range of personal property. 735 ILL. COMP. STAT. 5/12-1001. The State's general exemption statute doesn't mention workers' compensation claims or awards. *Id.* Hernandez relies on section 21 of the Illinois Workers' Compensation Act, which bankruptcy courts have interpreted as an exemption. In relevant part that section provides: "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 ILL. COMP. STAT. 305/21. A version of section 21 has been in place since the early 20th century. *See Lasley v. Tazewell Coal Co.*, 223 Ill. App. 462, 463 (Ill. App. Ct. 1921).

In the 1994 *In re McClure* decision, a bankruptcy court classified section 21 as a state-law exemption applicable in bankruptcy proceedings under § 522(b). 175 B.R. at 23–24. The court acknowledged that section 21 isn't codified alongside other state-law exemptions and doesn't use the word "exempt." *Id.* at 23. Even so, the court held that the provision's plain "language is effective to exempt workers' compensation claims from judgments of creditors." *Id.* The court reasoned

that the statutory text may not be overridden by "the placement of provisions of state law within a particular codification." *Id.*

McClure found support for its conclusion in *Mentzer v. Van Scyoc*, 599 N.E.2d 58 (Ill. App. Ct. 1992). *Mentzer* involved a small-claims dispute in which the trial court ordered a tenant to pay $10 per month to her landlord. *Id.* at 60. The tenant's income was comprised entirely of workers' compensation benefits. She objected to the judgment, arguing that section 21 shielded this income from creditors. The Illinois Appellate Court held that "court[s] cannot generally require workers' compensation benefits to be applied to the debts of a claimant, even when reduced to judgment, unless some specific statutory provision ... so provides." *Id.* at 61. Nor did Illinois's general exemption statute "supersede or infringe upon the protection given by section 21." *Id. Mentzer* relied on an earlier Illinois Supreme Court case addressing a claim against a guardianship whose sole asset was a workers' compensation award. *In re Estate of Callahan*, 578 N.E.2d 985 (Ill. 1991). *Callahan*, in turn, held that section 21 prevented the claimant from reaching an award under the Act; in so holding, the court relied in part on a dictionary definition of "debt." *Id.* at 989.

We don't have a dispositive Illinois Supreme Court opinion clarifying the boundaries of section 21 or even classifying it as an exemption. The parties agree that section 21 creates an exemption and thus haven't briefed that question, so for the time being we assume that the interpretation embraced in *McClure* is correct. The crux of the dispute is whether the exemption applies to the claims of healthcare providers after the 2005 amendments.

We turn now to the text of those amendments. First, the General Assembly created a detailed schedule limiting the fees providers may charge for their services to treat job-related injuries or illnesses. 820 ILL. COMP. STAT. 305/8.2. Under section 8.2(a), the Workers' Compensation Commission ("the Commission") is empowered to set and adjust price ceilings for medical care on a regional basis across Illinois.

The General Assembly also altered section 8(a), requiring employers to "pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or [fees] according to a fee schedule ... in effect at the time the service was rendered for all the necessary" medical care "reasonably required to cure or relieve from the effects of the accidental injury." 820 ILL. COMP. STAT. 305/8(a). Section 8(a) also instructs employers to pay undisputed medical bills *directly* to care providers on the employee's behalf. *Id.*

To accompany the new fee schedule, the amendments installed new billing and collection rules. Under section 8.2(d): "When a patient notifies a provider that the treatment[] ... being sought is for a work-related illness or injury and furnishes the provider the name and address of the responsible employer, the provider shall bill the employer or its designee directly." If the "bill contains substantially all the required data elements necessary to adjudicate the bill," the employer has 30 days to pay the providers involved in the claim. *Id.* § 8.2(d)(1). Claim denials or disputes must be communicated to the provider within 30 days. *Id.* § 8.2(d)(2). Unpaid undisputed bills accrue statutory interest. *Id.* § 8.2(d)(3).

The amendments also curtailed a billing practice known as "balance billing," whereby providers attempted to collect from an employee the remaining balance on an undisputed

bill paid only partially by an employer. "Except as provided in subsections (e-5), (e-10), and (e-15)," the Act now bars providers from "hold[ing] an employee liable for costs related to a non-disputed procedure, treatment, or service rendered in connection with a compensable injury," or "bill[ing] or otherwise attempt[ing] to recover from the employee the difference between the provider's charge and the amount paid by the employer … on a compensable injury." *Id.* § 8.2(e).

Subsections (e-5), (e-10), and (e-15) address procedures in the event of a dispute between the employer and the provider over a medical bill. If an employer determines that an injury or illness is noncompensable under the Act and refuses to pay the entire bill, the provider is entitled to seek payment from the employee. *Id.* § 8.2(e-5), (e-10). But if the employee notifies the provider that he has filed an application with the Commission to resolve the dispute, the provider "shall cease any and all efforts to collect payment," and the statute of limitations on the debt is tolled. *Id.* During the pendency of the dispute, providers are permitted to mail payment reminders—but not bills—to the employee. *Id.* § 8.2(e-15).

Finally, the General Assembly addressed collection procedures *after* an award or settlement of a disputed claim:

> 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.

Id. § 8.2(e-20). After the claim is adjudicated or settled, the provider may seek collection from the employee, capped at the fee schedule's price ceiling if the care is compensable. Payment for noncompensable services "is the responsibility of the employee unless a provider and employee have agreed otherwise in writing." *Id.*

The healthcare providers here argue that these amendments carve out an exception to the exemption in section 21 for care providers who treat an employee's work-related injuries or illnesses. Their argument focuses squarely on statutory purpose. Leaving the exemption intact would "obviate the plain meaning" of section 8.2(e-20) by placing a workers' compensation settlement "outside the reach of a specific class of creditors … [that] the Act has now gone to extraordinary lengths to protect." Hernandez emphasizes statutory text, arguing that the General Assembly knew how to create an exception to the exemption but conspicuously left out any language to that effect. Thus, while the amendments ensure that providers can seek recourse against an employee following a settlement, section 21 continues in force as an exemption, walling off the proceeds of this particular exempted claim.

The healthcare providers' interpretation carried the day below. The district judge concluded that section 21 continues to exempt workers' compensation claims as against *general* creditors "but not as against medical providers after the debtor settles her … claim with her employer."

We apply Illinois's rules of statutory construction when interpreting an Illinois statute. *Zahn v. N. Am. Power & Gas, LLC*, 815 F.3d 1082, 1089 (7th Cir. 2016). "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature," and "[t]he best evidence of legislative intent is the statutory language." *People v. Donoho*, 788 N.E.2d 707, 715 (Ill. 2003). When assessing legislative intent, "courts should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought." *Id.* Statutory provisions should not be read in isolation but "as a whole; all relevant parts of the statute must be considered when courts attempt to divine the legislative intent underlying the statute." *People v. NL Indus.*, 604 N.E.2d 349, 356 (Ill. 1992).

Illinois law recognizes interpretive canons against surplusage and absurdity. "We must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous, avoiding an interpretation [that] would render any portion of the statute meaningless or void," and "presume that the General Assembly did not intend absurdity, inconvenience, or injustice." *Sylvester v. Indus. Comm'n*, 756 N.E.2d 822, 827 (Ill. 2001) (citations omitted). This statute in particular "is to be interpreted liberally[] to effectuate its main purpose—providing financial protection for interruption or termination of a worker's earning power." *Id.* (citation omitted).

Applying these interpretive rules, we see plausible arguments on both sides. The amendments constructed a payment process designed to balance the interests of healthcare providers, employees, and employers. For instance, by tolling the statute of limitations during payment disputes, the General

Assembly clearly sought to "protect[] providers' ability to ultimately receive payment." *Marque Medicos Fullerton, LLC v. Zurich Am. Ins. Co.*, 83 N.E.3d 1027, 1036 (Ill. App. Ct. 2017). Hernandez's interpretation incentivizes strategic behavior and unquestionably undermines healthcare providers. It places the only asset that employees *necessarily* possess after receiving a workers' compensation award or settlement—the award or settlement itself—beyond the reach of providers. Moreover, ensuring that providers are paid helps guarantee that employees receive care in the first place—surely a goal of the workers' compensation regime. Applying the exemption in section 21 to the claims of care providers creates tension with the rest of the Act. It's at least possible that Hernandez's interpretation generates the "absurdity, inconvenience, or injustice" that Illinois law seeks to avoid. *Sylvester*, 756 N.E.2d at 827.

On the other hand, Hernandez is correct that the plain text of the amended Act doesn't contain specific language of an exception to section 21. If the drafters wanted to place workers' compensation settlements within the reach of these creditors, they could have altered section 21 or explained that section 8.2(e-20) enables providers to reach those assets. Reading these amendments to create an implicit exception to section 21 is not a lightly taken step. *In re Michael D.*, 69 N.E.3d 822, 825 (Ill. 2015) ("It is never proper to depart from plain language by reading into a statute exceptions, limitations, or conditions [that] conflict with the clearly expressed legislative intent."). The Act never discusses which assets are available to healthcare providers seeking to vindicate their collection rights. So while the purpose of the amendments may have been to protect care providers, it's not obvious that the General Assembly *effectuated* that purpose by exposing a

heretofore-exempt asset. And while Hernandez's interpretation might hinder the Act's effectiveness, it wouldn't make any provision "meaningless or void," triggering the canon against surplusage. *Sylvester*, 756 N.E.2d at 827.

Without guidance from the Illinois Supreme Court, we decline to hold, as the district court did, that section 21 no longer blocks this class of creditors. That's one reasonable interpretation of the amended Act, but it's also possible that the General Assembly's silence on the matter means the workers' compensation exemption remains intact.

In her appellate brief, Hernandez moves to certify this question to the Illinois Supreme Court.[1] The healthcare providers join her motion. We may certify a question if "the rules of the highest court of a state provide for certification to that court." 7TH CIR. R. 52(a). The Illinois Supreme Court permits certification provided the question is one of state law, "determinative of the said cause," and unanswered by "controlling precedents." ILL. S. CT. R. 20(a).

In exercising our discretion to certify a question, "the most important consideration is whether we find ourselves genuinely uncertain about a question of state law that is key to a correct disposition of the case." *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 732 F.3d 755, 766 (7th Cir. 2013). For the reasons discussed above, we have "serious doubt[s] about how [the] state's highest court would resolve" this question of statutory interpretation. *State Farm Mut. Auto. Ins. Co. v. Pate*, 275 F.3d 666, 672 (7th Cir. 2001) (quotation marks omitted).

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[1] A party is permitted to move for certification in his brief without filing a separate motion. 7TH CIR. R. 52(a) ("A motion for certification shall be included in the moving party's brief.").

Neither the Illinois Supreme Court nor the state appellate court has addressed the interplay between section 21 and the 2005 amendments to the Act. *Lyon*, 732 F.3d at 766 (explaining that certification is warranted "where the state supreme court has yet to have an opportunity to illuminate a clear path on the issue"). And the answer to that question determines the outcome in Hernandez's case—a requirement for certification under our caselaw and the Illinois Supreme Court's rule. *Zahn*, 815 F.3d at 1086.

There is an added layer of uncertainty here because the Illinois Supreme Court hasn't answered a key preliminary question: whether section 21 creates an exemption in the first place. To be sure, a federal bankruptcy court has construed section 21 to do so, *see In re McClure*, 175 B.R. at 24, and other bankruptcy courts have followed suit. But that's not dispositive. Without an authoritative interpretation of section 21 from the state courts, our evaluation of the interaction between that section and later enactments is yet more uncertain.

Our decision to certify also considers whether "the case concerns a matter of vital public concern" or is an "issue likely [to] recur in other cases." *Zahn*, 815 F.3d at 1085 (quotation marks omitted). Of course, Hernandez won't be the last bankruptcy debtor with unpaid medical bills and a workers' compensation settlement. In many low-asset bankruptcies, access to the proceeds of a workers' compensation claim will determine whether healthcare providers receive compensation at all. Whether the Act permits providers to reach that asset implicates the state's ability to administer a fair and efficient workers' compensation regime.

We respectfully ask the Illinois Supreme Court, in its discretion, to answer the following certified question:

> After the 2005 amendments to 820 ILL. COMP. STAT. 305/8 and the enactment of 305/8.2, does section 21 of the Illinois Workers' Compensation Act exempt the proceeds of a workers' compensation settlement from the claims of medical-care providers who treated the illness or injury associated with that settlement?

Nothing in this certification should be read to limit the scope of the Illinois Supreme Court's inquiry, and the justices are invited to reformulate the certified question. Further proceedings in this court are stayed while this matter is under consideration by the Illinois Supreme Court.

QUESTION CERTIFIED.

Amendments 1 and 3 to House Bill 1100?' All those in favor should vote 'aye'; all those opposed vote 'no'. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? The Clerk shall take the record. On this question, there are 116 voting 'aye', 0 'noes', 0 'presents'. And this Bill... and the House does concur in Senate Amendments 1 and 3 to House Bill 1100. And this Bill, having received the Constitutional Majority, is hereby declared passed. On the Order of Concurrences, we have House Bill 1149, Representative Millner. The Gentleman from DuPage."

Millner: "Thank you, Mr. Speaker. House Bill 1149 is one we had in committee before regarding... creates the Computer Equipment Disposal and Recycling Commission. And what we did is we added an Amendment to add people that were in the industry in the business as well. So I ask for your favorable support."

Speaker Turner: "Seeing no questions, the question is, 'Does... Will the House concur in Senate Amendment 1 to House Bill 1149?' All those in favor should vote 'aye'; all those opposed say 'nay'. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Kosel. The Clerk shall take the record. On this question, there are 116 voting 'aye', 0 'noes', 0 'presents'. And this Bill, having received the Constitutional Major... and the House does concur in Senate Amendment 1 to House Bill 1149. And this Bill, having received the Constitutional Majority, is hereby declared passed. Is Representative Hoffman in the chamber? Supplemental Calendar #2, on the Order of Concurrences, we have House Bill 2137. Representative Hoffman. The Gentleman from Madison, Representative Hoffman."

Hoffman: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House. I move that we concur in Senate Amendments 1, 3, and 5 to House Bill 2137. House Bill 2137 is a historic agreement between business and labor regarding the issue of workers' compensation. I would like to... to commend everyone who worked on this process. And I would ask for a favorable Roll Call. If I might, I would like to just go through the history of this agreed Bill process. First of all, this is the first such agreed Bill process regarding workers' compensation in over 20 years. This historic agreement was reached through hard work from the Governor's Office, hard work with the head of the Industrial Commission or Workers' Compensation Commission, Mr. Dennis Ruth. I'd like to commend the Governor for in his State of the State speech calling the parties together to help reduce costs to businesses and workers' compensation and provide an update to our Workers' Compensation Act to bring us competitive in the twenty-first cent... to make us competitive in the twenty-first century. I would also like to commend Senator Terry Link who worked so hard on this stuff for over 2 years. And I believe did a wonderful job at helping this agreement come together. Also, the House Members and the caucus Members other than myself that were involved in the negotiations, Representative Kurt Granberg and Representative Dan Brady, all worked very hard to... to attempt to get an agreement. This agreement is an agreement between business and labor, the major organizations that represent business in this state believe the syste... that this will provide a benefit in the 6½ percent savings to their cost of workers' compensation. For those of you who live on the borders, and the borders of Illinois and we have to be competitive with neighboring states, know that workers' compensation... the cost to businesses has always been an important factor in businesses locating here in Illinois. This reduces their costs. Yet, it brings labor onboard by updating benefits that needed to be updated for many, many years. In addition to the businesses being onboard, the... all of the organizations that make up the AFL-CIO in Illinois have agreed to this House Bill these... this House Bill 2137. This would pre... would provide for the first time in Illinois fraud prevention, a fraud prevention unit in the Department of Insurance that would investigate charges of fraud including uninsured employers and fraudulent claims by employees. When you talk to people about workers' compensation the one thing they bring up is they would just like to make sure that we get some of the fraud out of the system. This for the first time in Illinois we follow other states of providing for a fraud prevention unit. In addition, this joins 44 other states in the nation in providing for a medical fee schedule and prohibits the action what is called balance billing. The Bill would also require that employers pay providers of medical... medical care within 60 days or pay 1 percent interest per month after 60 days of an unpaid medical bill. This also would streamline some of the procedures in the Workers' Compensation Commission, provide for a third paid to move cases through the system quicker. Ensure that... that cases be resolved within a hundred and eight days in case of emergency hearings and provide for other dispute mechanisms and penalties. Finally, on the benefits side this would bring benefits up to twenty-first century levels by insuring that survivors of an individual who dies on the job while he is working would receive an increase in death benefits and brings them more into line with the actual loss. It would also increase burial benefits for the first time in a long time from 42 hundred to 8 thousand dollars so that it would bring the cost... the reimbursement closer to the cost of the burial. Finally, in cases of extreme disfigurement, in cases of amputation and other serious injuries, it increases the amount that an individual would receive by 7½ percent and also makes the maximum wage differential rate increase to a hundred percent of the statewide average weekly wage. I would li... like to once again commend all the people who worked so hard to get this agreed Bill completed. I believe it's a step in the right direction for working men who are injured on the job as well as a step in the right direction making sure that businesses in this state can be competitive with businesses of other state. I ask for a favorable Roll Call."

Speaker Turner: "The Gentleman from McLean, Representative Brady, for what reason do you rise?"

Brady: "To the Bill, Mr. Speaker."

Speaker Turner: "To the Bill."

Brady: "First off, Ladies and Gentlemen of the House, I wanna thank Representative Hoffman and Leader Cross for appointing me to this task force of the workers' compensation issue. It's been quite a learning experience. And I wanna thank all the others, labor, business, and others involved for their hard work and their valuable insight on this issue. Clearly, this legislation strengthens the injured workers in their recovery process. And I think we all want to be as fair to the injured worker that we possibly can. But I also worry that the increased payouts under the Bill are not offset by the savings. But I'm aware of the projected savings, but these are guesses and estimates and they're educated guesses. But they're made by people and groups who are professed to be experts in the field of workers' compensation. They envision cost reductions due to the business-friendly provisions of this Act. This Bill is presented to us in an agreed Bill most... most of the groups who operate within the system tell us that this is the best way to address this issue. I'm gonna take them at their word, Ladies and Gentlemen of the House and I'll be voting 'yes' on the concurrence to House Bill 2137. Thank you."

Speaker Turner: "The Gentleman from Lake, Representative Washington, for what reason do you rise?"

Washington: "Thank you, Mr. Speaker. Mr. Speaker, to the Bill."

Speaker Turner: "To the Bill."

Washington: "Mr. Speaker, I rise in support of this Legislation because I think it has a lot of many... a lot of good points in it, especially when it talked about cost containment and the savings that it would create for the state. And I want to thank the Sponsors for the efforts that they put in and shows you what collaboration and coordination can do. And I urge for an 'aye' vote of support for House Bill 2137."

Speaker Turner: "The Gentleman from Clinton, Representative Granberg, for what reason do you rise?"

Granberg: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House. I just wanna take a minute to commend the parties involved. Without the perseverance of people like Mike Carrigan, Greg Baise and Dave Vite, this Bill would not be a reality here tonight. I have dealt with this issue for a number of years on balanced billing and that issue alone was difficult, but to reform the whole Workers' Compensation Act is unprecedented and I think the last major one was actually 1975. So, they did a tremendous job and their commitment was absolutely fantastic. And I wanna thank the Governor for his leadership in initiating this idea. He grabbed it and took it and... I want... there's also another person I want to commend although it pains me, and that is Representative Jay Hoffman. Without Jay's commitment through this arduous and difficult task we would not be realizing the gain from this Bill. As a downstater and one who borders some states like Indiana, we've always been at a competitive disadvantage. This will help address that. It is a very serious move. And Hoffman told me to say that by the way. So, thanks to all of you. And I urge support for the Bill."

Speaker Turner: "The Lady from Kane, Representative Chapa LaVia, for what reason do you rise?"

Chapa LaVia: "Thank you, Speaker. Will the Sponsor yield?"

Speaker Turner: "He indicates he will."

Chapa LaVia: "Jay, in Senate Amendment 3 which is... my question's on, this legislation authorizes the use of standardized treatment guidelines. However, there may be gaps when new treatment technologies emerge that are not addressed in the treatment guidelines. And I just want you to clarify for me and for the record that the lack of new treatment not being addressed in the guidelines does not constitute a basis for denial of treatment. If you could answer that for me."

Hoffman: "Yes, and... and that's one of the reasons I'm sure that business agreed to... or labor agreed to these provisions. If... It does provide for what's called outlier payments, in other words, may be treatment center unique, treatment center different, treatments that wouldn't be... wouldn't fit in the... in the medical fee schedule. So, yes, it does provide for that... that and treatment would not be denied."

Chapa LaVia: "And could you clarify what health care providers is?"

Hoffman: "It would mean anyone whether it's a doctor, a chiropractor, a physical therapist, a neurosurgeon, individuals who provide health care to the people of the State of Illinois or to injured workers, I apologize."

Chapa LaVia: "I want to commend you on an outstanding piece of legislation. I'm happy and proud to

be a Sponsor and good luck with the piece."

Speaker Turner: "The Gentleman from Vermilion, Representative Black, for what reason do you rise?"

Black: "Thank you very much, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "He indicates he will."

Black: "Representative, I, too, will commend you for this. But let's not oversell it. There's one thing that I'm glad to see in here and that's the rate adjustment fund stability. About 5 years ago when I brought a Bill like that to the floor I don't think... I think I got four Democrat votes on trying to fix the Rate Adjustment Fund. I have six widows in my district that rely on the Rate Adjustment Fund to keep them above water. I'm glad to see that language in there. Let me quote from the Governor's State of the State Address, 'Illinois is the nineteenth most expensive state in the nation when it comes to workers' compensation premium. In fact, Illinois companies pay 40 percent more for workers' comp than Michigan, Wisconsin, and Indiana. We have to bring those costs down and we can if we're willing to embrace reform.' I agreed with the Governor, but you're not about to tell me that this is going to reduce our cost by 40 percent, are ya?"

Hoffman: "I apologize. Could you repeat the question?"

Black: "I didn't wanna interrupt the love fest. I quoted from the Governor's State of the State Address in which he currently pointed out that we have the highest workers' comp premium costs in the Midwest, 40 percent higher than Michigan, Wisconsin and Indiana. Now, you're not gonna tell me that this Bill is gonna lower those costs by 40 percent?"

Hoffman: "I believe that business believes that it will lower the costs substantially. I don't... I'm not going to stand here and tell you..."

Black: "Yah."

Hoffman: "Definitely, it's gonna lower it by 40 percent but I will... what isn't in this Bill is the continued commitment by business and labor to sit down and address other issues that are outstanding, issues such as the PPD rate, issues such as repetitive trauma, issues such as some of the average weekly wage calculations. And other outstanding issues that we couldn't necessarily get to an agreement here. We have a commitment on behalf of business and labor and I know Representative Brady and Representative... Representative Granberg are gonna be a part of this again to come back together and make sure that we address even further workers' compensation reform."

Black: "So, I think it would be fair to call this an incremental step in a long journey."

Hoffman: "Well, I would not care... I would... I would categorize it as a substantial step in a journey."

Black: "Well, we... we can disagree on... on... on the terminology. And I think it's... I think it's incorrect to call this an agreed Bill as you and I have been here awhile. Under the old agreed Bill process this is not an agreed Bill under the old agreed Bill process."

Hoffman: "I can tell you my understanding of history and my understanding of history is, during the Thompson administration he brought together for the issue of workers' compensation, as well as the issue of unemployment insurance, what is a term of art, the agreed Bill process. And at that time, as it was today, it was the business organizations and the labor organizations sitting down on those issues. This is not agreed by all parties. There are opponents. The Illinois State Medical Society is opposed. The Illinois Hospital Association is neutral. There are... there are, I'm sure, other opponents. But by the term of art that as I understand historically on these issues who is involved at the table of the agreed Bill process, I believe that's what was followed."

Black: "Thank you very much, Representative. Mr. Speaker, to the Bill. The City of Chicago stands in opposition of this Bill. Gee, I don't understand that at all. But let me just join with the Sponsor. I... I don't... I don't think we should oversell this. I'm gonna vote for it. I think it's a positive step forward. But I just went through in my hometown a long process where we were in competition with Marianne, Indiana, for a substantial investment in a company that would employ 600 workers. Now we haven't had the exit interview. I don't know all of the factors involved in them picking Indiana over the site in Illinois. But let me tell you this. One of the reasons they told us up front was that first-year costs on workers' compensation were $500 thousand higher than Indiana. The second-year costs they would estimate to be considerably higher because then they would have an experience rate and because they were in the distribution of loading and unloading of the trucks, they would assume they would have back and knee injuries. This is a positive step. It's one we've needed to take for a long time. But there is still a great deal of work to do. I congratulate those that have started on this journey. I hope they continue the journey. I intend to vote 'aye'.'DDD'

Speaker Turner: "The Gentleman from DuPage, Representative Meyer, for what reason do you rise?"

Meyer: "Thank you, Mr. Speaker. Would the Sponsor yield, please?"

Speaker Turner: "Indicates he will."

Meyer: "Representative, the issue is somewhat clouded, I think, when you indicate that it's an agreed Bill process. But others... there are some that were not part of that agreement. If I could get you to comment, because I'm getting today just this afternoon during the recess that we had. I had a fax from one of the communities that I represent. And when I checked my analysis I saw that the Illinois Municipal League along with a number of county organizations and different communities had logged on now as... as opposing this version of House Bill 2137. And just... I wanted to read a couple comments that were made here and I just wanted you to react to it because certainly I do wanna support the agreed Bill process if it truly is. Just give you part of a quote here. 'This version of House Bill 2137, as put forth by the Senate, will significantly raise employment-related costs of the villages and municipalities.' Can you give me a comment on that?"

Hoffman: "I dis... I disagree. And I... I just think there's been misinformation about a Bill that was out there last year, over in the Senate, that I think may have had an adverse effect on some... on some entities. This... I can tell you what CMS says and what they have indicated to us. And they are not unlike municipalities or City of Chicago. They believe there could be as much as a 10 percent savings on the medical side regarding the... by having the fee schedule in place and the utilization review in place in the area of workers' compensation medical costs. I don't see any difference between what our experience here would be and what other municipalities and counties would experience. In addition, under the fee schedule provisions of this Bill, it's indicated that if you have a separate contract with health care providers that that is still in place. It's up to you. If you're a self-insured provider, if you're a big employer and you can get a better deal and you make a contract directly with the provider, that's up to you. You don't have to go by the medical fee schedule. So, I believe that we've attempted to put safeguards in place in order to address some of those concerns. So, I just respectfully disagree with the comments that were made by some of the municipalities as well as I disagree with the conclusion that has been made by the City of Chicago that it's gonna cost them money. I think it's gonna save them money."

Meyer: "Are there fees that will be increased under this legislation?"

Hoffman: "There... while... while you do receive reductions in the area of medical costs, and I believe there will be reductions in some of the procedural changes that we made because we'll get a case through the system faster and not have the cost of defense. Also, we're cracking down on any fraud in the system which I think will bring savings. There are benefit increases to injured workers. They're not permanent partial-disability benefit increases that were in the Bill last year. But they are..."

Meyer: "Okay. If I could get..."

Hoffman: "...but they are increases in the neighborhood of 7½ percent on the most serious cases."

Meyer: "If in this last minute and half, I could get your comments on this final sentence. In addition, this version is not really an agreed to version of the House Bill. Were all parties including the municipalities and others that might be opposed to this a part of this agreed Bill process?"

Hoffman: "The people in the room of the agreed Bill process as I indicated in my comments earlier were modeled after what was done under the traditional agreed Bill processes on workers' compensation and unemployment insurance. And that in 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. We did bring in..."

Meyer: "Well, one of my concerns..."

Hoffman: "...we did bring in other individuals to come and testify to the group, to talk to the group. We had open hearings where they were able to testify here. Were they actually in the room? No. Were they consulted? And cons..."

Meyer: "One of my concerns, if I could, Sir, is..."

Hoffman: "But..."

Meyer: "...that there are just a growing number of municipal workers in this state. And to exclude them, of course, takes a very part of a... very, very large part of the state workers out of the equation in terms of reaching the agreed Bill process. I... I think that certainly in the future those people oughta be in room and very strongly in the room because for us to say..."

Speaker Turner: "You'll get one more minute."

Meyer: "For us to say that this is truly a... a true agreed Bill process, I would suggest that maybe the municipalities have a point to make... to be made here. And I... I certainly will listen to the rest of the... the rest of the comments on this Bill. Thank you."

Speaker Turner: "The Gentleman from Jasper, Representative Reis."

Reis: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "He indicates he will."

Reis: "Thank you. Representative, is there anything in this legislation that repeals the workmen's comp premium tax that the Governor imposed on businesses last year?"

Hoffman: "No."

Reis: "I have a Bill available if you wanna make this Bill even better. We'll be glad to run it in the next couple days. 'Cause if you're wantin' to reduce costs that's an added cost, but to the Bill. My district borders Indiana. And we've been getting... we've been getting hurt bad by the lower workmen's comp rates in Kentucky, and Tennessee, and Indiana. And I know there's other bordering states on the other side. This is a great first step. We didn't hit a home run here. We got a... we got a single. We got a double. And I hope that... that the committee, I thank you for your time. I commend you. All the business groups and the hospitals and the trial lawyers that have worked on this. But I hope we can continue to make this a work in progress so that Illinois can become competitive with their workmen's comp rates. Thank you."

Speaker Turner: "Seeing no further questions, Representative Hoffman to close."

Hoffman: "If I might just address some of the procedural issues. Again, the agreed Bill process that was followed here is the agreed Bill process on these issues that we have used traditionally here in the State Capitol regarding workers' compensation and unemployment insurance. So, this is the second time in the short time that we... the Governor's been in office that the agreed Bill process has worked. First, we solved an unprecedented unemployment compensation crisis here in Illinois and now this is a substantial step, I believe, in reforming the workers' compensation... the Workers' Compensation Act here in Illinois and insuring the businesses are competitive. What... would... would we like to do more and solve every problem of the whole world? Well, yeah, of course we would. But this isn't small changes. This isn't just changes in forms. This isn't just changes in procedure. These are substantial changes that are going to reduce substantially costs of businesses and make them competitive here in Illinois. But at the same time we're doing good things. We're cracking down on fraud. We're saying if you are killed on a job site that you're going to get a decent benefit. We're saying if you're killed on a job site we're going to allow you to have a decent burial. And we're raising the costs of burying... the costs of burial benefits under this Bill. We're also saying if you lose an arm you're going to... and it gets cut off at work, you're going to get a 7½ percent increase. That's in here. I'll admit it. It's a positive thing for people who are injured on the work site. Is that a small step? No, it's not. It's substantial. And making sure that we hold the line on medical costs. And making sure that for the first time here in Illinois we have utilization review for medical costs and making sure we do something that people have been trying to do for 20 years and that's get rid of what's called balanced billing is substantial. These are substantial changes. That's why all of business is supportive. And that's why all of labor is supportive. And I ask for a favorable vote."

Speaker Turner: "Time. The question is, 'Shall the House concur in Senate Amendments 1, 3, and 5 to House Bill 2137?' All those in favor should vote 'aye'; all those opposed vote 'no'. The voting is now open. Have all voted who wish? Have all voted who wish? The Clerk shall take the record. On this question, there are 113 voting 'aye', 2 voting 'no', 1 voting 'present'. And the House does concur in Senate Amendments 1, 3, and 5 to House Bill 2137. And this Bill, having received the Constitutional Majority, is hereby declared passed. On Supplemental Calendar #1, we have Senate Bills-Second Reading. Mr. Clerk, would you read Senate Bill 14. Representative Hannig."

Clerk Bolin: "Senate Bill 14, a Bill for an Act concerning State Government. Second Reading of this Senate Bill. Amendment #1 was adopted in committee. No Floor Amendments. No Motions filed."

Speaker Turner: "Hold the Bill on Second. Mr. Clerk, we have Senate Bill 157. Read the Bill."

Clerk Bolin: "Senate Bill 157, a Bill for an Act concerning hospitals. Second Reading of this Senate Bill. Amendment #1 was adopted in committee. No Floor Amendments. No Motions filed."

Speaker Turner: "Hold the Bill on Second. Mr. Clerk, we have Senate Bill 230. Read the Bill, Mr. Clerk."

amendments approved for consideration?

ACTING SECRETARY KAISER:

Floor Amendment No. 3, offered by Senator Link.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Link, to explain Amendment No. 3.

SENATOR LINK:

Thank you, Madam President. This is the Workers' Compensation Act. I'll be more than happy to explain it on 3rd Reading.

PRESIDING OFFICER: (SENATOR HALVORSON)

Is there any discussion on the amendment? Seeing none, Senator Link moves the adoption of Amendment No. 3 to House Bill 2137. All those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

ACTING SECRETARY KAISER:

Floor Amendment No. 5, offered by Senator Link.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Link, to explain Amendment No. 5.

SENATOR LINK:

Thank you, Madam President. That's a technical amendment that I'll explain on 3rd Reading. Thank you.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Link moves the adoption of Amendment No. 5 to House Bill 2137. All those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

ACTING SECRETARY KAISER:

No further amendments reported, Madam President.

PRESIDING OFFICER: (SENATOR HALVORSON)

3rd Reading. And now on the Order of 3rd Reading is House Bill 2137. Mr. Secretary, read the bill.

ACTING SECRETARY KAISER:

House Bill 2137.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Link.

SENATOR LINK:

Thank you, Madam President. This is probably one of the longest working bills that we've had in the Senate. It's only taken about twenty years to come to here. These last efforts represent approximately a year and a half of work to adopt major comprehensive reforms on workers' compensation. What will this bill do? At heart, I hope it will improve the business environment in Illinois and in result bring more jobs to the State. It establishes a medical fee schedule that increases every year by the Consumer Price Index for urban areas, not that much faster growing medical care CPI. The bill permits utilization review standards in processing claims, hopefully reducing the cost of litigation by providing further avenues for quicker determination by the commission in arbitration of disputes. It calls for employers to pay providers directly when there are no disputes about payment. When an employer has the necessary information, payment of a bill, such as payment required within sixty days or a one-percent per month penalty applies. With certain exceptions, the litigation prohibits balance -- billing so that injured workers will no longer receive bills for balancing -- balance of charges on comprehensible {sic}

(compensable) services to treat injuries that are not paid by workers' employer. Injured workers will see some increase in benefits, some of which have not increased since the last major reforms of these Acts. There is a seven-and-a-half-percent increase in weeks of comprehensive benefits for injured workers received as outlined by existing schedules according to types of injury. Burial benefits are increased from forty-two hundred to eight thousand. There's an increase in death benefits. A revision in existing laws regarding vocational rehabilitation. It establishes a unit within the Division of Insurance to investigate reports of workers' compensation insurance fraud and noncompliance. There are new offenses and penalties when a person makes false statements or submits false information regarding workers' compensation benefits and for when employers fail to cover comprehensible {sic} (compensable) workers insurance -- injuries. It has taken a long time to get here. I believe this is a fair agreement. I believe this will help our State and I urge your support. I will be more than happy to answer any questions.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Dillard.

SENATOR DILLARD:

Thank you, Madam President. I rise in support of House Bill 2137. One of the good things about the Illinois General Assembly is we are a citizen legislature and for the past number of months I've had the privilege and it's been my fortune and our fortune here in the Body, and I think Senator Link would agree. My seatmate, Dan Cronin, does a lot of workers' compensation law - and knows workers' compensation - for a living. And it is -- I just want to commend Dan for the time he has put into this, giving us his expertise as it is in the real world. And we have people like Senator Gary Dahl, and I don't know how Gary's going to vote, but Gary is a businessman and certainly knows this, as well. So, we are fortunate when it comes to this topic to have people who really have life experiences. Some of us visited and saw Arnold Schwarzenegger, the Governor of California, this week in Chicago. And Senator -- or Governor Schwarzenegger had a four-point plank that he won his election on in California. And number one was workers' compensation reform. Why is that important? It's important, because Illinois is in a competitive environment with all fifty states. And we have a perception, right or wrong, that our workers' compensation laws were somehow unfavorable to Illinois business. And I think this, if nothing else, from a -- a -- a perception standpoint, helps Illinois, whether the dollars pan out to help Illinois business or not. One very, very positive thing in here that I have heard for my twelve years in the Legislature from businesses in my area is the topic of fraud. And there is a provision, and a major provision, in this bill dealing with fraud, not only on the -- part of employers, but employees. And I think that provision alone should give us reason to be for this bill. And I would hope that the Commission would use their powers, when it comes to that provision, judiciously and not go on any kind of witch hunts. So, I thank my colleague, Senator Cronin. I thank Senator Link for his work on this. I believe that this is good for Illinois. Hopefully, the dollars will pan out and it will help our business climate. But even if it doesn't, perception is important and states like California and our competitors are trying to improve their workers' comp climate. We should do so here in Illinois and I urge a favorable vote.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Geo-Karis.

SENATOR GEO-KARIS:

I would like to move the previous question.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Geo-Karis, there are still one, two, three, four speakers. Senator Cronin.

SENATOR CRONIN:

Thank you, Madam President, Ladies and Gentlemen of the Senate. And thank you to Senator Dillard. Yes, I do, as a lawyer/legislator, practice law in the area of workers' comp and I'm voting my conscience. And I've been participating in the negotiations, driven by what I believe is the right thing to do. I rise in support of this bill. My support, however, is careful and it is measured. I, first, would like to -- to recognize the -- the process. I want to -- I want to acknowledge the Governor, Legislative Leaders, business and labor and to commend them for convening a process that led to this product. This process that led to this product was a vast improvement over the last process. The product, namely House Bill 2137, is -- is -- is a -- is a -- is a much better bill than the bill we considered earlier. And that's what this is about. This -- this legislative process is about debate and discussion and -- and compromise and we've come up with a better bill, and I'm pleased to be part of it. There are three very important components to this bill. And those three components, I believe, can lead to cost savings for the business community. And why is that important? Because that will help the economic climate in the State of Illinois and that

will stimulate job growth and that's vitally important for all of us here. Those three components that are in this bill is a medical fee schedule, which seeks to hold down the cost of -- of health care providers or medical costs to injured workers. And we think we've done it in a way that does not harm the injured workers' ability to access quality health care. Secondly, there is a utilization review component to that fee schedule which basically says that you can't -- you can't over-utilize these -- these medical services thereby driving up fees and costs. And lastly, there's a ban on balance billing, which has been around here for some time and has been very, very important to the business community and that is included in this bill. Those three main components, along with the fraud provision, offer a lot of hope and promise to the business community. And I am hopeful that it is implemented and practiced in the way that the legislature and the sponsor and those who were part of this negotiation intend, and that it will, indeed, save money for business. But those three components, Ladies and Gentlemen, came at a price. And there was a price. And let me be clear, this is not an ideal bill. Enlightened leadership in other states - neighboring states - are -- reforming workers' compensation and actually impacting job growth. I appreciate that there are those courageous souls from the City of Chicago and Federal Express who have spoken out. But, given the players and the political realities, I believe this is the best we can achieve and I urge my colleagues to vote Yes.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Jacobs.

SENATOR JACOBS:

Madam President, I rise just to thank the sponsor for his work on this legislation. I know he's been working on it long and hard. It's a compromise and I just want to tip my hat to him and urge an Aye vote.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Righter.

SENATOR RIGHTER:

Thank you, Madam President. Will the sponsor yield, please?

PRESIDING OFFICER: (SENATOR HALVORSON)

Sponsor indicates he'll yield.

SENATOR RIGHTER:

Senator Link, as has already been recognized, there's no question that this is a vastly improved product from what we saw last year in 805. There are some -- there are some opponents. You know that. There's some lingering doubts about this legislation and I just want to explore one area with regards to those concerns and that has to do with the entities that are self-insured. As you know, Senator, a number of them -- many of them are large enough that they're able to negotiate their own fee schedule that is better for them than what is laid out in this bill. And so for them, they're going to pay out the increased benefits that you've got in here for labor, but they are not going to see any savings from the fee schedule because their fee schedule is already better than what you put forward. What -- what -- for those people who are going to vote Yes in this Chamber and they have employees who work for those self-insured entities, what would you suggest that they tell those individuals?

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Link.

SENATOR LINK:

Must -- must have knew what you were going to ask. The fee schedule does not apply to large employers and because of that, they are excluded from negotiated fees of fee schedules.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Righter.

SENATOR RIGHTER:

Thank you, Madam President. One final question. And, Senator Link, you're far more experienced at legislating -- and dealing with -- with these kinds of issues than I, but it's my understanding there's a concern being voiced - a legitimate concern - that by putting this fee schedule into law as it is now, that in their negotiations, the self-insured entities that that fee schedule will eventually gravitate up toward that. People will sit down at the negotiating table the next time those fee schedules are up for negotiating and say, well this is what the State does, so you should raise our reimbursements to this schedule here. I

mean, do you see that as a concern and further eroding their ability to get savings out of this bill? Thank you, Madam President.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Link.

SENATOR LINK:

I think what we look at, Senator Righter, is that those that are purchasing insurance right now are having the rising costs right now on these fees and -- and that these negotiated self-insurers will see a leveling out in a very short period of time and that actually they will have more of a negotiating situation with the hope of -- of the lowering of prices on this after a while.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Dahl.

SENATOR DAHL:

Thank you, Madam President. To the bill and -- and a comment. Senator Link made reference that this is a twenty-year work in progress and it's -- it's twenty years this June 1st since I've had my business going. And I -- and I have to agree, it's been a twenty-year work in progress. This is definitely an improvement from where we've been in the past; however, I have a difficult time with the fact that it's been a -- twenty years in progress and this bill comes out of committee today and we've only got two hours to think about it -- three hours -- four hours to think about it. This -- this doesn't give our constituents time to look at it. It doesn't give anybody time to look at it. The people in the Senate, we have to rely upon the lobbyists to tell us if this is a good bill, if this is a bad bill. Everybody here has done a great job on it. Senator Cronin, Senator Link, everybody that's been in it has done a great job and I appreciate that. But I -- I think the -- the -- the system where we have a bill that is as important as this, and we put it out here and ram it through without having time for our constituents back home to have an opportunity to call us and tell us what they think about a bill this important, we're doing an injustice. However, I am going to vote Yes. Next time -- next time around I -- I hope we can have a little more time to decipher this. Thank you.

PRESIDING OFFICER: (SENATOR HALVORSON)

Senator Link, to close.

SENATOR LINK:

Thank you, Senator Dahl. If -- if I had anymore time I -- I -- I might not have any hair left with this thing going. First of all, I want to read something in for a legislative intent. In Section {sic} (Sec.) 13, third commission panel. The increase of the size of Workers' Compensation Commission by adding a third panel does not affect the existing commissioners, other than to add one more panel of commissioners to speed up the handling of cases and delivering of benefits. I just wanted to read that into legislative intent. Before I continue, we've been working on this for a long, long time. I want to thank -- first, I want to thank President Jones, I think, for having me do this. I don't know if I want to thank him or -- or say something to him later what I really think, but I want to thank him. I want to thank a staff person in Mitch Lifson who probably spent more time on this than I did and I want to thank him for all his endless hours. I want to thank Dennis Ruth from the -- commissioner -- the Director {sic} (Chair) of the Illinois Commerce {sic} (Workers' Compensation) Commission, who was there with us and answered all the questions. I want to thank the IMA, the AF of L-CIO, the Illinois -- Retailers, the -- the National Federation of Independent Businesses, the Chambers and all the other groups that were there adding to this. This is a bill that will help labor. It will help businesses. As was indicated in committee today -- that was indicated in committee today, will be a five-percent increase for the working men and women of this State, but will be a six-and-a-half-percent increase for the businesses of this State. And any individual who has walked and talked to the people of their district, be they small businesses from a restaurant to the larger businesses, have heard one common thread of why they're leave the State of Illinois and it's workers' compensation. That the cost is driving them out of the State of Illinois. With passing of this bill, we may be bringing 'em back into the State of Illinois. I ask for affirmative vote on this. And thank you for this. And it's my last bill of the night.

PRESIDING OFFICER: (SENATOR HALVORSON)

The question is, shall House Bill 2137 pass. Those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 49 Yeas, 4 voting Nay, 6 voting Present. And House Bill 2137, having received the required constitutional majority, is declared passed. Senator del Valle in the Chair.