No. 119553

In the
SUPREME COURT OF ILLINOIS

RONALD L. BAYER,	)	
	)	**On Petition for Leave to Appeal**
Plaintiff-Appellant,	)	**From the Appellate Court of**
	)	**Illinois, First Appellate District**
v.	)	**No. 1-13-2252**
	)	
PANDUIT CORP.,	)	
	)	**There heard on appeal from the**
	)	**Circuit Court of**
	)	**Cook County, Illinois**
Defendant,	)	**County Department,**
	)	**Law Division**
	)	**No. 07 L 9877**
v.	)	
	)	
AREA ERECTORS, INC.,	)	**The Honorable**
	)	**William J. Haddid**
Third-Party Defendant-Appellee.	)	**Judge Presiding**
	)	

BRIEF OF AMICUS CURIAE OF ILLINOIS TRIAL LAWYERS ASSOCIATION

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POINTS AND AUTHORITIES

STATEMENT OF INTEREST OF AMICUS CURIAE

The Illinois Trial Lawyers Association (hereinafter referred to as "ITLA") is an amicus curiae, not a party to the underlying action. It does not have immediate access to the Record on Appeal; it has no concern with the minutiae of evidence that is reflected therein.

The ITLA is instead concerned with the broad proposition of law that is evidenced from the opinion of the Appellate Court: that the employer in a workers' compensation claim is not required to pay 25% attorney fees to the employee's attorney for suspended future medical expenses under section 5(b) of the Illinois Workers' Compensation Act (hereinafter referred to as "WCA") (820 ILCS 305/5(b)), as a result of a corresponding third-party verdict or settlement. *Bayer v. Panduit,* 39 N.E.2d 1013, 1031, 396 Ill.Dec. 187, 205 (1st Dist. 2015).

The underlying construction negligence case was tried in front of a jury at the Circuit Court of Cook County, with a verdict returned in the amount of $80 million, reduced by 20% comparative negligence, resulting in a $64 million dollar judgment. *See id.* at 190. Thereafter, the parties settled the case for an undisclosed amount, with Plaintiff's employer, Defendant Area Erectors, Inc., receiving reimbursement of its workers' compensation lien pursuant to section 5(b) of the Act for amounts previously paid, and, concomitantly will continue to receive millions of dollars in future credits, as Area will no longer be obligated to pay future weekly indemnity benefits and future medical expenses.

After the verdict and settlement, Plaintiff Bayer moved for the payment of attorney fees by Defendant Area for Area's future saved payments for medical expenses

and lost wages pursuant to section 5(b) of the WCA and *Zuber v. Illinois Power Company*, 135 Ill.2d 407, 535 N.E.2d 385 (1990), with the understanding that any such fees would be credited toward fees owed by Plaintiff to his attorneys, in order that no windfall would inure to the benefit of Plaintiff's attorneys. *See Bayer,* 396 Ill.Dec 187 at 190. The Circuit Court granted Plaintiff's motion. *See id.* at 191. Thereafter, Defendant Area appealed the Circuit Court order to the Appellate Court—but only insofar as the order applied to future medical payment savings. *See id.* at 200. The Appellate Court subsequently issued its Order, reversing the trial court as to future medical payments. *See id.* at 205. Ultimately, the Appellate Court determined that while the employer's section 5(b) lien and its associated fee obligation apply to future weekly compensation benefits, the lien does not include protection related to future medical expense payments; thus, the Court found that Defendant Area owed only the 25% attorney fee relating to its saving as to future weekly compensation benefits, but owed no attorney fees for savings as to any type of future medical payments. *See id.*

From that holding, Plaintiff Bayer filed an appeal to this Court.

ARGUMENT

I. The Appellate Court's interpretation of Section 5(b) of the WCA directly conflicts with prior decisions of this Court, and is contrary to the rules of statutory construction by arbitrarily eliminating the 25% attorney fees payable by the employer for suspended future medical payments after a third-party settlement or verdict.

At issue in this appeal is the interpretation of section 5(b) of the WCA as it relates to suspended future medical benefits. The Appellate Court found that the "plain language" of section 5(b) does not require an employer to pay attorney fees for suspended future medical payments, and in doing so, relied upon the phrase that the "pool of money from which an employer has a right to reimbursement is '*the amount of compensation paid or to be paid by him* ***to such employee*** ** * * including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act.*'" 820 ILCS 305/5(b) (emphasis supplied by the Court). *See Bayer*, 396 Ill.Dec. at 201. Section 8(a) of the WCA governs payment of medical expenses, and the Appellate Court interpreted section 8(a) to only require the payment of medical services to be made "*to the provider on behalf of the employee,*" instead of directly to the employee, and as a result, found that section 5(b) and 8(a) together do not require the employer to pay attorney fees on suspended future medical payments. *See id.* However, the Appellate Court's "plain language" reading of section 5(b) and section 8 of the WCA leads to absurd and illogical results, directly contradicting the purpose and intent of section 5(b) of the WCA.

Such interpretation arbitrarily establishes a date in which the employer is entitled to recover its lien for its prior payment of medical benefits, and capriciously establishes a date in which the 25% attorney fee entitled by the attorney for the employee *ends* for its efforts in obtaining a recovery for past *and* future medical expenses. Thus, there is no

definitive set cutoff date, as the date would be contingent upon the date of the third-party settlement or verdict. To uphold this interpretation would tie the employer's liability to pay attorney fees directly and solely to the fortuity of when the third-party case is settled or adjudicated—which is clearly not contemplated by section 5(b) or contained in the plain language of the statute.

In fact, this interpretation completely contradicts the "plain language" of the statute. The Appellate Court is effectively setting forth that the employer is now completely relieved of its responsibility to pay future medical expenses as a result of a third-party verdict or settlement, and has no obligation under section 5(b) to share in the costs and attorney fees in obtaining that verdict or settlement only for **future** medical benefits from a liable third party.

Clearly, this is not the purpose of section 5(b), which expressly protects the employer's lien rights to "include amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act." 820 ILCS 305/5(b). This particular phrase makes it perfectly clear that medical expenses contemplated in section 5(b) that are "paid or to be paid" pursuant to section 8 are recoverable by the employer pursuant to its protected lien rights under section 5(b). As such, section 8(a) medical benefits are therefore part of "the pool of money from which an employer has a right to reimbursement," as set forth in section 5(b). This statement is unequivocal. Yet, the Appellate Court's decision completely ignores the medical expense phrase or "plain language" of section 5(b), rendering it meaningless. The legislature would not have included the reference to medical benefits (section 8(a) benefits) "paid or to be paid" in section 5(b) unless it determined that the employer retained its right of reimbursement for past medical benefits, as well as future

medical benefits yet to be paid. Thus, the Appellate Court's interpretation is unreasonable by focusing in on the words "to such employee" and is in complete disregard to the plain language contained in the statute itself.

Furthermore, the plain language of section 5(b) makes no distinction regarding the employer's obligation to share in the third-party attorney fees for all types of compensation, whether the compensation relates to past or future benefits, or whether the compensation is weekly benefits or medical benefits.

More specifically, consistent with the provisions of the WCA, this Court has set forth that the meaning of "compensation" under the WCA includes medical expenses, and not just weekly benefits paid to the employee. In *McMahon v. Industrial Commission,* this Court found that

> "[u]nder section 8, the amount of 'compensation' an injured employee is entitled to receive for an accidental injury not resulting in death is expressly defined to include not only compensation for lost wages, **but also payment for medical services** (820 ILCS 305/8(a))(West 1992))." *McMahon v. Industrial Commission,* 183 Ill.2d 499, 512, 702 N.E.2d 545, 551 (1998) (citation omitted) (emphasis added).

This Court further stated that

> If the term "compensation" embraces payments for medical expenses for the purposes of section 19(g), it should also include payments for medical expenses under section 19(k). Under basic rules of statutory construction, where the same words appear in different parts of the same statute, they should be given the same meaning unless something in the context indicates that the legislature intended otherwise. Further supporting our conclusion is the principle that no statute should be construed in a manner which will lead to consequences which are absurd, inconvenient, or unjust. The refusal of an employer to pay for an injured employee's medical expenses is as contrary to the purposes of the Workers' Compensation Act as an employer's refusal to compensate the employee for lost earnings. * * * Under these circumstances, it would make no sense to say that employees should be allowed to recover their attorney fees when they are forced to retain counsel to obtain compensation for their lost earnings, but not when whey have to hire a lawyer to compel payment of their medical

> expenses. In our view, the legislature could not have intended such an absurd and unjust result.

See McMahon, 183 Ill.2d at 513 (citations omitted). Thus, the Appellate Court's interpretation that the term "compensation" "paid or to be paid" does not include future medical benefits leads to an absurd and unjust result. This Court has made it perfectly clear that there is no distinction in lost wages or medical benefits as being considered compensation paid to an employee. Nevertheless, in reversing the Circuit Court, the Appellate Court was unable to point to any term contained in section 5(b) that allows them to differentiate between past and future medical expenses. For the Appellate Court to read that difference into the statute conflicts with all other interpretations of the term "compensation" and goes against the legislative intent of section 5(b), as set forth above by this Court.

Logically, since compensation includes both weekly wages and medical expenses, the employer is obligated to pay fees on both types of payments, as the second paragraph of section 5(b) requires the employer to pay its proportionate share of costs from "**any reimbursement** received by the employer pursuant to this Section" and to pay as an attorney fee "25 percent of the gross amount of such **reimbursement.**" 820 ILCS 305/5(b) (emphasis added). Again, the plain language of this section does not differentiate between past and future benefits and certainly does not differentiate between weekly benefits and medical benefits. Thus, section 5(b) of the WCA provides that a compensation beneficiary who succeeds in a related third-party claim must pay to the employer, from the proceeds of that recovery, the amount of compensation **"paid or to be paid."** 820 ILCS 305/5(b) (emphasis added). Nothing exists in this statement that excludes future medical benefits and/or attorney fees associated with those benefits.

If the Appellate Court's interpretation were correct, in practice, an employer would have to pay attorney fees only as to medical benefits that accrued **prior** to the date of a third-party settlement or verdict, but would have to pay zero attorney fees in spite of receiving reimbursement for medical benefits "to be paid" in the future. As expressed earlier, this is not only arbitrary based upon the random date of a settlement or verdict—which is the only element that determines when the employer would no longer have to pay attorney fees for getting reimbursement on medical expenses—it is directly contrary to the plain language of section 5(b) and this Court's interpretation of compensation in *McMahon*. The Appellate Court has randomly carved out an exception to the employer's liability for attorney fees on the savings it realizes from being relieved of future payment obligations, which is not the purpose or intent of the General Assembly in enacting section 5(b).

Furthermore, taking the Appellate Court's exception to its logical conclusion leads to the unimaginable result of eliminating an employer's section 5(b) lien to **any** medical expenses paid pursuant to section 8 of the WCA, thereby leaving the employer with no lien rights to recover those medical expenses. The Appellate Court's interpretation effectively terminates the employer's section 5(b) lien rights for section 8 medical expenses, resulting in employers having to reimburse employees for improper lien recoveries, as well as leaving all employers liable for 100% of future medical expenses after a third-party verdict or settlement, as such medical expenses would no longer be protected under section 5(b). Again, this interpretation leads to an absurd result not contemplated under section 5(b) or by this Court.

Similarly, the Appellate Court's opinion would then also be in direct contrast to this Court's decision in *Cole v. Byrd,* 167 Ill.2d 128, 656 N.E.2d 1068 (1995), which confirmed that the pool of money from which an employer has a right to reimbursement, includes medical expense payments: "[Section 8(a)] requires an employer to pay for necessary medical and rehabilitative services. In turn, the employer is entitled to reimbursement if the employee recovers from a third party. (See 820 ILCS 305/5(b))." *Cole,* 167 Ill.2d at 136. This statement could not be more clear confirming that employers are "entitled to reimbursement" of payments for medical benefits under section 5(b).

Moreover, contrary to the assertions of the Appellate Court, this Court's decision in *Zuber v. Illinois Power Co.*, 135 Ill.2d 407, 553 N.E.2d 385 (1990), is directly on point and instructive on this issue. In *Zuber,* the parties were unable to agree on the amount of attorney fees and costs to be paid by the employer pursuant to section 5(b) of the WCA. *Id.* 135 Ill.2d at 411. This Court noted in *Zuber* that

> Section 5(b) permits an employer or his representative to bring a separate action for damages against a third party; against any sum obtained as a consequence of the action, the employer may be reimbursed for the amount of workers' compensation benefits paid or to be paid by it. Such reimbursement may take the form of a lien, on past payments of compensation, or a credit, on future payments. *See Freer v. Hysan Corp.,* 108 Ill.2d 421, 92 Ill.Dec. 221 (1985). From the "reimbursement received by the employer pursuant to" the statute, the employer must pay his proportionate share of the costs and expenses of the third-party action. In addition, the employer must pay an attorney fee of 25% "of the gross amount of such reimbursement."

Zuber, 135 Ill.2d at 411. Once the workers' compensation payments are suspended, the employer is required to make weekly payments of attorneys' fees on the amounts of future, saved workers' compensation benefits. *See* 820 ILCS 305/5(b); *Zuber*, 135 Ill.2d at 416-19. The employer's workers' compensation benefit payments will be suspended

until Plaintiff's settlement monies are exhausted. *See Freer v. Hysan Corporation*, 108 Ill.2d 421, 423-424, 484 N.E.2d 1076 (1985). During this period of time, the employer will be relieved of payments for Plaintiff's weekly wages and future medical expenses.

In *Zuber,* this Court specifically quoted the above section 5(b) language, and based upon that language, ordered the employer to make payments of attorney fees and costs on the saved workers' compensation benefits in weekly installments, on the same schedule as the suspended workers' compensation benefits were to have been paid. 135 Ill.2d at 417-19.

Nevertheless, the Appellate Court found *Zuber* irrelevant because the "compensation" paid out in *Zuber* did not include medical expenses, but only included wrongful death wage loss benefits. However, the Appellate Court failed to cite to any precedent to support its position, alleging that this is an issue of first impression, completely failing to follow the precedent set forth by this Court in numerous prior decisions, including *Zuber*, which is not only applicable, but controlling. The *Zuber* Court confirmed that as the result of a third-party action, the employer is to be "reimbursed for the ***amount of workers' compensation benefits*** *paid or to be paid by it.*" *Id.* at 411 (emphasis added). As this Court held, the reimbursement for such benefits takes the form of "*a credit on future payments.*" *Id.* (emphasis added). The Court did not limit reimbursement to benefits for future lost wages only, to the exclusion of medical benefits. By doing so, the Appellate Court is reading into section 5(b) what does not exist.

The *Zuber* Court further verified that from the "reimbursement received by the employer" pursuant to the Act, the employer "must pay" his proportionate share of costs

of the third-party action and an attorney fee of 25% "of the gross amount of such reimbursement." *Id.* at 411. As this Court held:

> An employer benefits from the third-party recovery both when it is repaid workers' compensation benefits already paid to the plaintiff and when it is relieved of its obligation to make compensation payments in the future. It is appropriate to impose fees and costs in relation to both benefits, and clearly section 5(b) was intended to achieve that end.

Id. at 416.

Zuber makes clear that all workers' compensation benefits paid out or to be paid out in the future—regardless of the type of benefits—are subject to either reimbursement or credit. As such, the reimbursement and/or credit requires a mandatory employer contribution for attorney fees.

The WCA recognizes that a workers' compensation lien is not sacrosanct. Recovery of that lien is to be reduced by attorney fees in the amount of 25%, absent some other agreement, and by the employer's *pro rata* share of the litigation expenses. It is also important to note that section 5 of the WCA also gives the employer the right to pursue its own recovery, assuming the employee declines to do so. For an employer to avail itself of that right, it would certainly incur attorney fees, most certainly more than 25%, and not *pro rata* expenses, but the full cost of prosecuting a claim against a third-party tortfeasor.

Based upon this Court's decision in *Zuber*, as well as the plain language and legislative purpose of section 5(b), the Appellate Court's decision is significantly flawed and its interpretation of that section is clearly in error and should be reversed accordingly.

II. Payment of attorney fees on future medical does not result in a double recovery, as the fees contribute to the employer's proportionate share of fees paid out of a third-party recovery under section 5(b).

The risk of double recovery for plaintiff's attorney fees when a fee on future medical is imposed simply does not exist. Therefore, the Appellate Court incorrectly found that the employer paying a fee on future medical would result in a windfall to Plaintiff's counsel. In doing so, the Appellate Court ignored this Court's long-standing precedence on the issue and misinterpreted the plain language of section 5(b).

In re Dierkes clearly establishes that there is no such double recovery, as the fee on past and future benefits is to be applied to the overall one-third fee Plaintiff's attorneys are owed per their contingency agreement. *In re Estate of Dierkes*, 191 Ill.2d 326, 730 N.E.2d 1101 (2000). In *In re Dierkes*, the decedent's widow, who was the administrator of his estate, pursued a third-party action and workers' compensation claim after he was fatally injured by a third party while working for the Department of Transportation. *Id.* at 329. Decedent's widow hired one law firm to pursue both claims. *Id.* She had an agreement with the firm to pay fees in the amount of one-third of any recovery from the third-party claim. *Id.* A settlement was reached for $100,000 in the third-party action and $2,176.11 per month in the workers' compensation claim. *Id.*

This Court held that section 5(b) requires that the 25% fee is contribution to the overall employee's attorney fees. *Id.* at 336. There is no difference between said fee and that from the resolution of the third-party claim even though the statutory fee is being paid by the employer. *Id.* "While the employee's counsel is entitled to part of his fee from the employee and a part from the employer, the total fee is in essence a single fee based on the single recovery from the third party." *In re Dierkes*, 191 Ill.2d 326, 336, 730

N.E.2d 1101, 1106 (2000) (citing *Reno v. Maryland Casualty Co.*, 27 Ill.2d 245, 248-249, 188 N.E.2 657 (1962)). This Court also reasoned that the statutory construction requires the fee under 5(b) to be applied to the overall fee from the third-party recovery. "The requirement that the employer bear 'a proportionate amount' of the attorney fees indicates that the 25% statutory fee is a contribution to the injured employee's attorney fees and not a separate fee." *Id.* "It does not constitute a second fee." *Id.* Thus, a fee on future medical benefits would not constitute a "double recovery" because it would be applied to the complete one-third fee based on the recovery in the third-party action. The fees are undeniably one and the same.

In this case, the Circuit Court entered an order specifically stating that there was to be no double recovery in attorney fees and that the statutory fee paid by the employer was to assist the plaintiff in the one-third payment of attorney's fees pursuant to *In re Dierkes*. Moreover, Plaintiff's attorneys were in agreement to do so to ensure compliance with this Court's ruling in *In re Dierkes*.

The interpretation of section 5(b) in *In re Dierkes* should be applied to the case hand as the issues are analogous. In this case, pursuant to section 5(b), Plaintiff's attorneys are entitled to a 25% attorney fee from the past and future workers' compensation benefits paid or to be paid by his employer following settlement of his third-party action. The fee was to go toward contribution of his one-third attorney fee to be paid from his third-party action. Regardless of what *future* benefit was at issue, *In re Dierkes* is on point. This Court has clearly established that the employer's statutory fee is to be applied to the overall fee owed by the injured employee in the third-party action.

As such, the Appellate Court's dismissal of the long-standing precedent of *In re Dierkes* was erroneous. There is no risk of double recovery—regardless of whether the fee is being awarded on future medical compensation—because the overall fee remains the same. The statutory fee simply reduces the amount the plaintiff will pay to his/her attorney toward the one-third fee from the third-party settlement. The Appellate Court missed the mark by dismissing *In re Dierkes* on the basis that it was not factually analogous because no future medical benefits were at issue. The common thread woven in both the case at issue and *In re Dierkes* is that the statutory fee—whether it be based on death benefits, permanent disability, medical or wage loss benefits—is attributed to the fee the employee is to pay to his attorneys for recovery in the third-party action.

Given this Court's holding in *In re Dierkes*, the Appellate Court's reasoning that section 5(b) does not allow for attorney fees to be paid on future medical benefits because of its reading of section 5(b) in conjunction with section 8(a), which provides medical expenses are to be paid "to the provider on behalf of the employee," is misdirected. 820 ILCS 305/8(a). Section 5(b) establishes an employer's right to reimbursement out of a third-party action for the "the amount of compensation paid or to be paid by him to such employee or personal representative including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act." 820 ILCS 305/5(b). The Appellate Court simply construed the two sections too literally by disregarding future medical benefits as being inclusive of compensation *paid or to be paid to the employee* simply because medical expenses are to be paid directly to the provider pursuant to section 8(a). The Appellate Court failed to recognize that the fee the employer pays on future medical goes to the

benefit of the employee regardless of where the payment would have been sent. Thus, the Appellate Court's reasoning in this regard should be dismissed.

Moreover, the plain language of section 5(b) requires this Court to find that no potential for double recovery exists.

> Out of any reimbursement received by the employer pursuant to this Section *the employer shall pay his pro rata share* of all costs and reasonably necessary expenses in connection with such third-party claim, action or suit and where the services of an attorney at law of the employee or dependents have resulted in or substantially contributed to the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement.

820 ILCS 305/5(b) (emphasis added).

"In construing the Workers' Compensation Act, all portions thereof must be read as a whole and in such a manner as to give them the practical and liberal interpretation intended by the legislature." *In re Dierkes* at 326. It is easily contemplated that the legislature intended the employer pay its proportionate share of fees and expenses relative the to third-party claim. There is no mention of a separate – or second – fee to be paid to the employee's attorney. Rather, the statute on its face suggests a singular attorney fee that includes the employer's proportionate share. The statute clearly establishes that the employer's proportionate share of the attorney fees amounts to 25% of the employer's reimbursement for past and future compensation. Whether the past benefits paid or future benefits were those allocated in the settlement or verdict of a third-party action does not defer the employer's payment of the statutory 25% attorney fee because they are one and the same. The employer is simply paying his proportionate fee on those benefits regardless of any overlap.

It is counterintuitive to consider payment of a fee on future medical would constitute double recovery if future medical benefits were included in the resolution of the third-party claim. If that were the case, then the argument could be made that the statutory attorney fee could only apply to those benefits not contemplated in the third-party settlement or verdict. A prime example would be in a case where an injured worker suffered an amputation, which requires the employer to pay a statutory amount of permanent partial disability benefits. If the employee's attorney successfully pursued a third-party action, he may not be entitled to the 25% statutory fee on reimbursement of those statutory permanent partial disability benefits previously paid if the settlement or verdict allocated an amount towards the permanency of his injury – which it obviously would. The Appellate Court's narrow interpretation of section 5(b) could easily open the door for employers to fight paying their fair share of the fee in nearly every third-party recovery. This would effectively obliterate the purpose of section 5(b).

As referenced previously, this Court dealt with this issue in *Zuber v. Illinois Power Co.*, which has long-established that payment of statutory attorney fees on suspended future benefits does not result in a double recovery for plaintiffs' attorneys. In *Zuber*, the Industrial Commission awarded the plaintiff, the surviving spouse of a deceased employee, statutory weekly death benefits for 20 years. *Zuber v. Illinois Power Co.*, 135 Ill.2d 407, 409-410, 553 N.E.2d 385, 386 (1990). The plaintiff also brought a third-party action, which settled for a lump sum and a monthly life-time annuity. *Id.* at 410. The attorneys were paid the one-third fee on the lump sum payment, but did not claim a fee on the annuity allocation of the settlement. *Id.*

The Appellate Court found that the suspension of future workers' compensation benefits constituted a "reimbursement" under section 5(b). *Id.* at 420. Thus, the employer was ordered to pay a fee on those benefits, as well as a proportionate share of the costs in the third-party action. *Id.* Yet, the Appellate Court ordered those fees be paid directly to the plaintiff rather than her attorneys. *Id.* The Appellate Court reasoned that paying plaintiff's counsel would result in a double recovery because the one-third fee was already taken on the lump sum third-party settlement. *Id.* This Court reversed the Appellate Court's decision on this issue and held that there was no potential for double recovery. *Zuber*, 135 Ill.2d at 422. This Court reasoned that the plaintiff's attorneys were entitled to one-third of all recoveries, which included suspended future benefits even though plaintiff's attorneys declined to take a fee on the annuity portion of the settlement that was intended to replace the future death benefits. *Id.* Thus, the risk of double recovery does not exist where the allocation of a third-party settlement and suspension of future benefits overlaps in purpose.

Here, the Appellate Court dismissed this Court's holding in *Zuber*, finding that the cases were factually dissimilar. The Appellate Court's disregard for *Zuber* is unfounded.

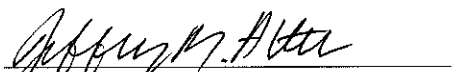
The Appellate Court's blatant disregard for decades' worth of case law demonstrates an obvious lack of understanding of this Court's previous holdings. Both *Zuber* and *In re Dierkes* are on point and confirm the status of the law on this issue. The Appellate Court's seemingly superficial interpretation of both cases ignores precedence on the issue that has long been established by this Court. Based on the aforementioned,

this Honorable Court should reverse the Appellate Court's finding that a fee on future medical benefits to be paid would result in a double recovery for plaintiff's attorney fees.

CONCLUSION

Based upon the foregoing, the amicus curiae respectfully urges this Honorable Court to reverse the decision of the Appellate Court and reinstate the decision of the Circuit Court, re-affirming the long-held and proper interpretation of section 5(b) of the Workers' Compensation Act, that the employer is liable for the 25% attorney fees for saved future medical benefits as a result of a third-party settlement or verdict.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in 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 18 pages.

Jeffrey M. Alter