UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

# Williams, McCarthy, Kinley, Rudy & Picha v. Northwestern National Insurance Group

750 F.2d 619 (7th Cir. 1984) · Decided December 19, 1984

## SUMMARY

The Seventh Circuit interprets Section 5(b) of the Illinois Workers’ Compensation Act concerning an employer’s obligation to pay a statutory attorney’s fee when an employee’s tort recovery creates a credit against future workers’ compensation payments. The court holds that the fee should be paid as the employer realizes benefits from the credit, rather than deducted in advance from the credit based on the maximum potential compensation award. The judgment affirming the district court is affirmed.

## CASE DETAILS

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| COURT | United States Court of Appeals for the Seventh Circuit |
| WRITING FOR THE COURT | Richard A. Posner |
| JURISDICTION | Federal |
| DECIDED | December 19, 1984 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Diversity appeal from a district court judgment concerning the timing and method of paying an attorney's fee under section 5(b) of the Illinois Workers' Compensation Act. |
| STANDARD OF REVIEW | De novo review of the legal interpretation of Illinois law in a diversity action. |
| PRECEDENTIAL VALUE | Published precedential federal appellate decision |
| PARTIES | Northwestern National Insurance Group v. Williams, McCarthy, Kinley, Rudy & Picha |

## TOPICS

workers compensation · statutory interpretation · remedies · employment law

## PRACTICE AREAS

workers compensation · statutory interpretation · employment law · remedies

## QUESTIONS PRESENTED

1. Under section 5(b) of the Illinois Workers' Compensation Act, when an employee's tort recovery creates a credit against uncertain future workers' compensation payments, must the employer pay the attorneys' statutory 25 percent fee as the employer receives the benefit of the credit, or may the employer deduct the projected fee immediately from the credit?
2. How should a federal court sitting in diversity predict the Illinois Supreme Court's interpretation of an Illinois statute when Illinois intermediate appellate decisions provide incomplete or nonbinding guidance?

## HOLDINGS

1. The employer must pay the attorneys 25 percent of the reimbursement as the benefit from the tort recovery accrues—here, periodically as the employer's credit eliminates weekly compensation obligations—rather than deducting the projected fee immediately from the credit.
2. The federal court was not bound by Illinois intermediate appellate decisions that did not directly decide the disputed fee method or were poor predictors of what the Illinois Supreme Court would hold.

## KEY QUOTATIONS

> *"The purpose is evident; it is to give lawyers who confer a benefit on a third party, as these lawyers quite plainly did, a claim against the third party for a 25 percent fee."* (623)

> *"The statute's purpose is clear: it is to make the employer pay 25 percent of the benefits which he derives from the employee's tort recovery against a third party, as compensation for conferring those benefits."* (625)

## FACTUAL BACKGROUND

In 1979, Mr. Dunbar was killed under circumstances making his employer liable for workers' compensation benefits, and the Illinois workers' compensation commission ordered payments to his widow for burial expenses and weekly compensation over a potentially lengthy period, subject to remarriage or death. The widow's attorneys obtained a $325,000 tort settlement, which gave the employer a credit against future compensation obligations after reimbursement for payments already made. The parties agreed that the attorneys were entitled to a statutory fee equal to 25 percent of the employer's reimbursement but disputed whether the fee should be paid periodically as the credit produced benefits or deducted upfront from the credit.

## PROCEDURAL HISTORY

An Illinois workers' compensation claimant's attorneys obtained a tort settlement that reimbursed the employer through a statutory credit against future compensation payments. The district court held that the attorneys' statutory 25 percent fee should be paid as the employer's credit was used, rather than deducted immediately from the credit. The employer appealed, and the Seventh Circuit affirmed.

## DISPOSITION

affirmed

## CASES CITED

- O'Shea v. Riverway Towing Co., 677 F.2d 1194, 1199 (7th Cir. 1982)
- Reno v. Maryland Casualty Co., 27 Ill. 2d 245, 247-48, 188 N.E.2d 657, 658 (1963)
- West v. American Telephone & Telegraph Co., 311 U.S. 223, 237, 61 S. Ct. 179, 183, 85 L. Ed. 139 (1940)
- White v. United States, 680 F.2d 1156, 1161 (7th Cir. 1982)
- Vandygriff v. Commonwealth Edison Co., 68 Ill. App. 3d 396, 25 Ill. Dec. 47, 386 N.E.2d 318 (1979)
- Denius v. Robertson, 98 Ill. App. 3d 83, 53 Ill. Dec. 701, 424 N.E.2d 336 (1981)
- Jones v. Melroe Division, 102 Ill. App. 3d 1103, 58 Ill. Dec. 934, 430 N.E.2d 1385 (1981)
- Lewis v. Riverside Hospital, 116 Ill. App. 3d 845, 72 Ill. Dec. 358, 452 N.E.2d 611 (1983)