

Nos. 1-08-3304, 1-09-0165, 1-09-0188 (cons.)

RAUL SANCHEZ,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	
	)	
RENTAL SERVICE CORPORATION,	)	
	)	
Defendant and	)	No. 08 L 6319
Third Party Plaintiff	)	
	)	
(Paul’s Welding Service, Inc.,	)	Honorable
	)	Jennifer Duncan-Brice,
Third-Party Defendant-Appellant).	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court, with opinion.  
Presiding Justice Gallagher and Justice Lavin concur in the judgment and opinion.

**OPINION**

Third-party defendant Paul’s Welding Service, Inc. (PWS), appeals from an order of the circuit court restricting its recovery on a workers’ compensation lien against the proceeds of a settlement obtained by its former employee, plaintiff Raul Sanchez. The order limited PWS’s recovery to the amount paid by the Illinois Insurance Guaranty Fund (the Fund), but barred recovery of the amount paid by PWS’s workers’ compensation carrier, Legion Insurance Company (Legion), before Legion went into liquidation. On appeal, PWS contends the court

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should have enforced the entire lien. We agree and reverse and remand.

## I. BACKGROUND

This case has previously been before this court on a ruling concerning PWS's attempt to recover on its lien. The factual background was fully set forth in our earlier order, *Sanchez v. Rental Service Corp.*, No. 1-06-2915 (2008) (unpublished order under Supreme Court Rule 23), and the facts here are undisputed. We provide here only the facts necessary to an understanding of this appeal.

In sum, after plaintiff was injured in 2001, he filed a claim for workers' compensation benefits and he also filed a personal injury action against defendant Rental Service Corporation (RSC), the company that rented to PWS the piece of equipment involved in his accident. Ultimately, plaintiff received a workers' compensation settlement from PWS in the amount of \$265,205. Of that amount, \$145,019 was paid by Legion, which subsequently went into liquidation. The Fund assumed responsibility for Legion's outstanding claims and paid plaintiff \$120,186. Plaintiff later received \$300,000 in settlement of his personal injury action against RSC.

Pursuant to its statutory lien, PWS moved to recover from the \$300,000 settlement the \$262,205 it had paid to plaintiff in workers' compensation benefits. Plaintiff filed a motion to extinguish PWS's lien, which the court granted, finding waiver of the lien. PWS appealed and this court reversed and remanded in an order pursuant to *Gallagher v. Lenart*, 226 Ill. 2d 208, 239 (2007), in which the supreme court held that any such waiver of a workers' compensation lien must be explicitly stated in the settlement agreement.

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On remand, PWS again moved to enforce its statutory lien in the amount of \$265,205 less attorney fees and expenses. Plaintiff moved to strike, arguing, among other things, that there was no statutory authority for the Fund or PWS, acting on behalf of the Fund, to recover the amount paid by the liquidated carrier, Legion. On October 29, 2008, the court issued an order enforcing part of PWS' statutory lien. In that order, the court allowed PWS to recover the amount paid by the Fund, \$120,186, but barred recovery of the money paid by Legion, \$145,019, finding no statutory authority for such recovery. On December 19, 2008, the court issued an order disposing of the case and ruling on attorney fees and costs, finding that the Illinois Insurance Guaranty Fund Act (215 ILCS 5/532 et seq. (West 2008)) did not provide for recovery of attorney fees or costs.

PWS filed three separate notices of appeal. First, on December 1, 2008 (appeal No. 1-08-3304), it appealed the October 29 ruling "out of an abundance of caution" concerning questions about the finality of the order. PWS then filed a second notice of appeal on January 16, 2009 (appeal No. 1-09-0165), to include the order of December 19 on attorney fees. On January 20, 2009, PWS's co-counsel filed a third notice of appeal (No. 1-09-0188) to preserve the timeliness of its appearance. The appeals were later consolidated.

Plaintiff later filed a cross-appeal of both the October 29 and December 19 orders.

## II. ANALYSIS

PWS contends that the court improperly adjudicated its workers' compensation lien on remand. It contends that section 5(b) of the controlling statute, the Workers' Compensation Act (Act), provides for recovery to the employer of the amount of compensation paid regardless of

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the identity of the actual party to make the payment. See 820 ILCS 305/5(b) (West 2008). We agree.

As PWS notes, review of the court's interpretation of the controlling statute is *de novo*. *Kankakee County Board of Review v. Property Tax Appeal Board*, 226 Ill. 2d 36, 51 (2007).

In the instant case, this court previously directed the circuit court to proceed on remand in a manner consistent with our order reversing the ruling that extinguished PWS's workers' compensation lien. In that earlier order, this court considered the waiver of the lien pursuant to provisions of the Act. The order stated:

“The Act provides that an employee who has received workers' compensation benefits must reimburse his employer up to the amount of those benefits received from a third-party legally responsible for the employee's injuries. Specifically, section 5(b) of the Act, in relevant part, provides: \*\*\* [citation].

The Act further provides that if an employee agrees to a workers' compensation settlement, the employer may claim a lien upon any award or judgment that the employee ultimately receives from a third party. 820 ILCS 305/5(b) (West 2006). Our supreme court has recognized that the workers' compensation lien provided for in section 5(b) prevents the employee from obtaining a double recovery and is crucial to the Act's overall scheme. *Gallagher*, 226 Ill. 2d at 238-39, quoting *In re Estate of Dierkes*, 191 Ill. 2d

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326, 331-33 (2000). It is therefore of the utmost importance that the circuit court protect the employer's workers' compensation lien. *Gallagher*, 226 Ill. 2d at 239, quoting *Dierkes*, 191 Ill. 2d at 333." *Sanchez*, No. 1-06-2915, slip op. at 9.

Thus, the order directing the circuit court's remand action was made pursuant to section 5(b) of the Act. Yet, on remand, the court relied on federal authority (which it acknowledged was not binding) and language in the Illinois Insurance Guaranty Fund Act (215 ILCS 5/537.4 (West 2008)) as the basis for its finding that "the Fund is only entitled to the amount that it paid out and not to the payments made by Legion."

As PWS correctly asserts, the Act allows an injured employee to sue a party other than his employer for damages arising from his injury, even though the employer paid the employee workers' compensation for his injuries, but the employer receives the statutory right to recover the amount it paid in workers' compensation from any tort judgment or settlement the employee receives. The basis for this recovery is section 5(b) of the Act:

"Where the injury or death for which compensation is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some person other than his employer to pay damages, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act. In such case, however, if the action against such other person

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is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer 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) (West 2008).

As set forth in our previous order, section 5(b) of the Act provides “that an employee who has received workers’ compensation benefits must reimburse his employer up to the amount of those benefits received from a third-party legally responsible for the employee’s injuries.” *Sanchez*, No. 1-06-2915, slip op. at 8. This requirement “serves the important purpose of allowing both the employer and the employee an opportunity to reach the true offender while preventing the employee from obtaining a double recovery.” *Gallagher*, 226 Ill. 2d at 238 (quoting *In re Estate of Dierkes*, 191 Ill. 2d 326 331-32 (2000)). Thus, section 5(b) of the Act requires reimbursement to PWS of the workers’ compensation benefits received by plaintiff. See *Gallagher*, 226 Ill. 2d at 238-39.

In response, plaintiff provides no pertinent authority to support the proposition that the statutory right of reimbursement given in section 5(b) is restricted by the identity of the party making the payment. Plaintiff’s argument concerns solely statutory provisions of the Fund and, thus, is unavailing. Whether the employee was paid workers’ compensation benefits by the Fund

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or an insurance carrier, the employer has the statutory right to reimbursement as provided in section 5(b) of the Act. 820 ILCS 305/5(b) (West 2008). Accordingly, PWS has the right to recover on the entirety of its workers' compensation lien.

In so finding, we observe this ruling effectuates the purposes served by this provision, which include: providing for compensation to the injured employee regardless of fault; protecting the employer by allowing the employer and employee to reach the true tortfeasor; and prohibiting the employee from obtaining a double recovery. See *Smith v. Louis Joliet Shoppingtown L.P.*, 377 Ill. App. 3d 5, 7 (2007). Indeed, PWS was paying insurance premiums to Legion to provide coverage for the type of injury that occurred in this case. The Fund, in turn, was established, in part, as a backup plan to provide coverage when an insurance carrier is not able to meet its full obligation to an injured employee and is funded by the payments made to it by insurance carriers, not public money. 215 ILCS 5/532 (West 2008). Any shortfall in the Fund would require it to borrow public money to make up that deficiency, while any overpayment received by an injured employee would be returned to the Fund. 215 ILCS 5/538.3 (West 2008). Here, Sanchez recovered more money than he was entitled to receive. Our ruling makes Sanchez whole and prevents him from recovering a windfall, replenishes the Fund, effectuates the purposes of the Act and the Fund, and is thus good public policy.

Plaintiff's additional arguments are equally unavailing. He asserts that the order of October 29, 2008, from which PWS filed its initial notice of appeal on December 1, 2008, was not final or appealable and that, with the filing of the notice of appeal, the circuit court was divested of its jurisdiction, therefore rendering the order of December 19, 2008, a nullity. In fact,

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PWS recognizes that the order of October 29, 2008, did not dispose of the case and the issue of attorney fees remained. In such instance, the circuit court retains jurisdiction and the notice of appeal filed before the entry of the final disposition became effective when the order disposing of the claim was entered. Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008); *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 983 (1994). Plaintiff also claims that PWS was the wrong party to take this appeal. Yet, PWS was the party attempting to recover on its workers' compensation lien and, therefore, was the proper party to appeal the judgment denying a portion of that recovery. Finally, plaintiff contends that the court improperly denied him credit for attorney fees and costs in its order of December 19, 2008. PWS does not challenge this and, in fact, provides for deduction of attorney fees and costs. Accordingly, we direct the court upon remand to follow the reimbursement formula set forth in section 5(b) of the Act: 25% in attorney fees must be deducted from the gross amount of the reimbursement, then a *pro rata* share of plaintiff's costs and expenses. 820 ILCS 305/5(b) (West 2008); *Overlin v. Windmere Cove Partners, Inc.*, 325 Ill. App. 3d 75, 78 (2001).

### III. CONCLUSION

For the reasons stated, we reverse the order of October 29, 2008, to the extent it denied recovery of the lien on the amount paid by the Fund, and we reverse the order of December 19, 2008, to the extent it denied recovery of attorney fees and costs. We remand for further proceedings consistent with this opinion.

Reversed and remanded.

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REPORTER OF DECISIONS - ILLINOIS APPELLATE COURT

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(Paul's Welding Service, Inc.,

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**Appellate Court of Illinois  
First District, FOURTH DIVISION**

**March 10, 2011**

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**Justice Pucinski delivered the opinion of the court with opinion.**

**Presiding Justice Gallagher and Justice Lavin concurred in the judgment and opinion.**

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Appeal from the Circuit Court of Cook County.  
The Hon. Jennifer Duncan-Brice, Judge Presiding.

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