

2016 SUPPLEMENT TO CHAPTER 32: SECTION 5(b) LIENS:  
WORKERS' COMPENSATION LIENS AND EMPLOYERS' RIGHT TO  
REIMBURSEMENT

*To Section V ("The Employer's Options for Enforcing the Lien"), add the following paragraph:*

If an employer is sued for contribution in a third-party action brought by an injured employee, the employer's liability is limited to the amount of the employer's statutory liability under the Workers' Compensation Act. *Kotecki v. Cyclops Welding Corp.* 146 Ill.2d 155 (1991). An employer need not plead and prove the *Kotecki* limitation as an affirmative defense. *Burhmester v. Steve Spiess Construction, Inc.*, 2016 IL App (3d) 140794. The *Kotecki* limitation is a set-off which can be raised before or after verdict. *Id.*

*In Section VI ("Escaping the Lien"), at the conclusion of the second paragraph, add:*

In *Cozzone v. Garda GL Great Lakes, Inc., et al.*, 2016 IL App (1<sup>st</sup>) 151479, the Appellate Court followed *LaFever v. Kemlite Co.*, 185 Ill. 2d 380 (1998), *supra*, and held that an employer can waive its Section 5(b) lien even after being found liable for contribution in a third-party action.

*To Section VII A ("Attorneys Fees"), add the following paragraph:*

In *Bayer v. Panduit Corporation*, 2016 IL 119553 (2016), decided September 22, 2016, the Illinois Supreme Court held that, when an employer is relieved from paying an injured employee's future medical expenses as a result of its employee successfully pursuing a third-party action, then that employer is required to pay the 25% attorney's fees specified by Section 5(b) on those future medical expenses. In so ruling, the Supreme Court affirmed the decision of the circuit court, and reversed that of the appellate court (noted in last year's supplement). The Supreme Court held that Section 5(b) and its statutory attorney's fees encompass not only past benefits already paid, but also future benefits from which the employer is relieved. The Court noted that it had earlier so held in a case involving relief from future wage payments, *Zuber v. Illinois Power Co.*, 135 Ill. 2d 407 (1990) (cited in Section VII C below).

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