No. 115728
IN THE
SUPREME COURT OF ILLINOIS

THE VENTURE-NEWBERG PERINI STONE AND WEBSTER, Respondent-Appellant	) Appeal from the Appellate Court of Illinois, Workers' Compensation Division, Fourth Judicial District; No. 4-11-0847WC
v.	) There on Appeal from the Circuit Court of Sangamon, Illinois, County Department, Chancery Division: No. 10 MR 509
ILLINOIS WORKERS' COMPENSATION COMMISSION ET AL., (RONALD DAUGHERTY) Petitioners-Appellees.	) The Honorable Patrick W. Kelley, Judge Presiding

BRIEF OF *AMICUS CURIAE* ABF FREIGHT SYSTEM, INC., CITY OF CHAMPAIGN, IL, CONCRETE STRUCTURES OF THE MIDWEST, INC., DAVIS STAFFING, INC., GARDA WORLDCASH SERVICES, HOMEWOOD DISPOSAL, INC., JAMES MCHUGH CONSTRUCTION CO., KROESCHELL INC., PEPPER CONSTRUCTION GROUP, PRESENCE HEALTH, SCHNUCK'S MARKETS, INC., AND THE VILLAGE OF OAK LAWN

IN SUPPORT OF RESPONDENT-APPELLANT

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II. LIST OF *AMICUS CURIAE* PARTIES

ABF Freight System, Inc. (Fort Smith, AR) is a national and regional trucking/transportation provider of general commodities freight, involving primarily LTL shipments. They have 13 different locations and 960 workers in Illinois.

City of Champaign, Illinois, was founded in 1855. Originally called "West Urbana," it was renamed Champaign in 1860. It has a blend of manufacturing, logistics, healthcare, university, and high-tech research industries provide opportunities to nurture, grow, and maintain a business. It has a workforce of over 500 workers and a city population of about 81,000.

Concrete Structures of the Midwest (West Chicago, IL) has been in continuous operation since 1961, completing such diverse construction projects as airport runways, tunnels, high rises, and water filtration plants. This long-time Illinois employer has several hundred Illinois workers in various trades working at locations across our state.

Davis Staffing (Olympia Fields, IL) provides quality clerical and light industrial staffing solutions to small and medium-sized businesses in the Greater Chicago Southland and Northwest Indiana areas, according to their individual needs. They have about 800 workers in their office and working for accounts across Illinois.

GardaWorld Cash Services (Broadview, IL) is one of the leading secure cash providers in North America offering armored transportation, ATM replenishment, and cash vault services (CVS). Thousands of local, regional and national firms from coast-to-coast rely on GardaWorld to provide the cash logistics safety, security and convenience they need. GardaWorld Cash Services has several hundred Illinois workers in various trades.

Homewood Disposal, Inc. (Homewood, IL) is a family owned business with over 500 employees and 200 trucks and has been based in Homewood, Illinois for over 50 years. Homewood Disposal has grown from a small scavenger service to a full range solid waste, transportation, recycling and disposal service company. Homewood Disposal provides residential, commercial, industrial, street sweeping, special waste hauling, recycling and portable restrooms services in Illinois and Indiana.

Intergovernmental Risk Management Agency (IRMA) (Westchester, IL) is a member-owned, self-governed public risk pool. IRMA exists solely to provide high quality risk management services to numerous Illinois municipalities. They have championed their members' needs for thirty years and are proud to be one of the nation's most highly regarded risk pools. IRMA had 70 Illinois public entity members in 2012.

James McHugh Construction Co. (Chicago, IL) is one of the largest construction managers and general contractors in the U.S. Today, McHugh is known for constructing some of Chicago's most recognizable landmarks and one-of-a-kind structures including Marina City, Water Tower Place and Trump Tower, all of which were the world's tallest reinforced concrete structures at the time.

Kroeschell, Inc. (Chicago, IL) was started just after the Great Chicago Fire by four industrious sons of Herman Kroeschell. Over 130 years later, Kroeschell, Inc. still remains an industry leader based in Illinois. Their team provides HVAC, maintenance and repair work for numerous major employers across our state for companies large and small, as well as schools, institutions and government facilities across the country.

Pepper Construction Group (Chicago, IL) is a general contracting and construction management firm that has served the non-residential, private and

government sectors since 1927. With offices in Illinois, Indiana, Ohio, and Texas, Pepper ranks as the third largest construction contractor in the Midwest and the nation's 45th largest contractor, 12th largest wastewater contractor and 25th largest general building contractor.

Presence Health (Chicago, IL) was created in November 2011 through the merger of Provena Health and Resurrection Health Care. Presence Health is the largest Catholic health system based in Illinois. They offer more than 150 locations around the state, in communities large and small, so health care access is convenient. With 12 hospitals, 27 long-term care and senior living facilities, dozens of physician offices and health centers, home care, hospice, behavioral health services and more, Presence Health cares for Illinoisans in all stages of life.

Schnuck's Markets, Inc. (St. Louis, MO) has been serving customers a unique combination of quality food, variety and value for more than seven decades. Founded in north St. Louis in 1939, the family-owned grocery company has grown to include 100 stores in five states: Missouri, Illinois, Indiana, Wisconsin, and Iowa. Schnuck's has 12 retail locations in Illinois.

The Village of Oak Lawn, Illinois, is a suburb of 57,000 residents located southwest of the city of Chicago. The Village was incorporated in 1909. The Village has 400 full-time employees, a state of the art library, and an excellent staff from finance to safety, providing top notch services to residents on a daily basis.

III. STATEMENT OF INTEREST OF *AMICUS CURIAE* PARTIES

The *amicus curiae* are a group of associations, business and government bodies deeply concerned about the matters at issue in the case before the Court. The various members of this group include some of the largest employers in Illinois. Many of the members have both union and non-union workers. Some of these parties are self-insured and self-administered for workers' compensation costs and some of them have outside workers' compensation insurance or claims handlers. The combined annual workers' compensation benefits paid by these parties to their workforce are well over $100 million. The mission of these parties is to ensure their injured workers receive fair, reasonable and predictable workers' compensation benefits in our state.

The *amicus curiae*'s interest in this case derives principally from the ruling currently before this Court and two other subsequent rulings from the Illinois Appellate Court, Workers' Compensation Division, that have completely changed the nature, coverage and cost of workers' compensation benefits in our state under the guise of the "traveling employee" label. The *amicus curiae* parties submit this brief in support of Appellant Venture-Newburg Perini Stone & Webster and urge this Court to reverse the decision of the Illinois Appellate Court, Workers' Compensation Division.

IV. ARGUMENT

In the case presently before this honorable Court, Petitioner was a construction worker who was injured in a car accident on his way to work. It is undisputed that Petitioner's injuries occurred when he was not on the clock, was not being paid, was not receiving any expense reimbursement, was not being supervised by his employer in any way, and was not driving a company vehicle or on a special assignment of his employer. Nonetheless, the Illinois Appellate Court, Workers' Compensation Division, held that Petitioner was a "traveling employee" because he was assigned to work at a location that was "not the premises of his employer." 2012 IL App (4th) 110847WC, ¶ 13. This dangerous precedent expands Illinois workers' compensation benefits beyond the scope intended by the legislature.

Two other rulings that may come before this Court are illustrative of the new legal trend set in motion by the case at bar. In *Mlynarczyk v. Illinois Workers' Compensation Commission*, 2013 IL App (3d) 120411WC, issued May 30, 2013, by the same appellate panel, a cleaning lady went home for lunch. In walking down her driveway to return to work, she fell, suffering an injury. Similar to Petitioner in the claim pending before this Court, Ms. Mlynarczyk was not on the clock, was not being paid either hours worked or expenses, was not under the supervision of her employer and was not back to work. Nonetheless, the appellate court held—repeatedly citing the case at bar in support—that Ms. Mlynarczyk was a traveling employee. *See id.* ¶¶ 14, 17, 19, 21.

Similarly, in *Kertis v. Illinois Workers' Compensation Commission*, 2013 IL App (2d) 120252WC, issued June 18, 2013, the appellate panel considered a claim from a bank manager who fell in a pothole on a city street. Past Illinois workers' compensation

law, including prior rulings by this honorable Court, would have denied benefits because the injury resulted from a "risk common to the general public." *See, e.g., Caterpillar Tractor v. Industrial Commission,* 129 Ill.2d 52, 58-59 (1989) ("if the injury results from a hazard to which the employee would have been equally exposed apart from the employment, or a risk personal to the employee, it is not compensable"). However, in *Kertis* the lower court panel ruled—again repeatedly citing the case at bar—that bank managers covering two work locations are traveling employees as a matter of law. *Kertis*, 2013 IL App (2d) 120252WC, ¶ 16.

These recent cases redefine the concept of "traveling employee" in a fashion that confusingly conveys the status on literally millions of Illinois workers in a way our legislature and this court have never contemplated. Under this new legal theory, a "traveling employee" may be entitled to benefits but does not have to (1) travel, (2) be in transit when injured, (3) be on a mission of the employer, or (4) be paid or otherwise be "on the clock." Instead, a traveling employee is any employee who is required to be "away from his employer's premises in order to perform his job." *Venture-Newberg,* 2012 IL App (4th) 110847WC, ¶ 13. Having redefined the concept in that fashion, the employee is covered for any injuries resulting from "reasonable and foreseeable" conduct from the time the employee leaves home until the time the employee returns. *See Kertis*, 2013 IL App (2d) 120252WC, ¶ 16. In effect, this new legal theory will provide global workers' compensation coverage for personal and non-work-related risks for hourly or salaried workers who work at two or more "premises" for injuries that occur on the way to and from work, on morning/afternoon breaks or at lunch. In other words, the statutory requirement that compensable injuries must "aris[e] out of and in the course of the

employment" has been vitiated for a whole new class of workers. *See* 820 ILCS 305/1(d). A newly defined class of "traveling employees" are entitled to workers' compensation coverage *as a matter of law* even if they are sitting in a restaurant and spill hot coffee on themselves, suffer a stroke or die of a heart attack. Such an expansion of the Workers' Compensation Act was never contemplated by our legislature.

The *amicus curiae* respectfully request the members of this Court carefully consider this unprecedented modification to workers' compensation law. This new legal theory will dramatically increase workers' compensation premiums and costs as it extends no-fault workers' compensation benefits for what were previously considered personal and non-work-related events.

A. The lower court's expansion of the "traveling employee" doctrine extends workers' compensation benefits beyond the scope intended by the legislature.

1. Historically, the traveling employee doctrine was limited to a small group of employees whose jobs involved extraordinary or exotic travel.

The term "traveling employee" does not appear in the Illinois Workers' Compensation Act or its corresponding rules. *See* 820 ILCS 305/1 *et seq.*; 50 Ill. Admin. Code § 7010 *et seq.* (2010). Rather, the concept of a "traveling employee" is a judicially created phenomenon. *See, e.g., Ill. Publ'g & Printing Co. v. Indus. Comm'n* , 289 Ill. 189, 197 (1921) (analyzing the doctrine in the context of a "traveling salesman"). The original intent of the "traveling employee" rule was to provide *extraordinary* global workers' compensation coverage for someone required by their employer to take on *extraordinary risk*—such as foreign travel. For example, as one court stated:

> When such travel is performed in foreign lands, where strange customs or abnormal conditions prevail, the risk involved in traveling from a place of reasonable personal diversion to the appointed place for service may also come within the coverage afforded by the employer's compensation insurance.

Davis v. Newsweek Magazine, 305 N.Y. 20, 110 N.E.2d 406, 409 (1953). Thus, if a worker was asked by their employer to go on a trip to post-war Germany or to conflict-ridden Israel, the worker would face new and unpredictable risks of dealing with new currency, food, disease, local laws and customs, kidnapping or other crimes. *See, e.g., Gianniny v. Camp Shows, Inc.*, 272 App. Div. 1089, 74 N.Y.S.2d 537 (1947) (awarding benefits to an entertainer of U.S. troops who was injured in a traffic accident while in Germany shortly after the war); *Lewis v. Knappen Tippetts Abbett Eng'g Co.*, 304 N.Y. 461, 108 N.E.2d 609 (1952) (awarding death benefits to an engineer sent to Israel for an assignment who was shot and killed by unidentified Arab men in uniform on a sightseeing tour).

Understanding that the "traveling employee" doctrine was not created by legislature, many observers nonetheless feel it makes sense to provide more protection through increased workers' compensation coverage for workers whose employment-related travel involves extraordinary and exotic risks. Indeed, in its traditional sense, the traveling employee concept is not unlike other common law doctrines that guide Illinois workers' compensation law. As an example, the Illinois workers' compensation rule about work injuries resulting from fighting between workers is the "aggressor" doesn't receive workers' compensation benefits but the "victim" of the aggressor does, if injured. *See, e.g., Ford Motor Co. v. Indus. Comm'n*, 78 Ill. 2d 260, 262 (1980). Another similar example is the "horseplay" rule where a worker injured as the result of unnecessary

boisterous or rowdy play at work will not receive workers' compensation benefits where an injury results from such play. *See, e.g., Payne v. Indus. Comm'n*, 295 Ill. 388, 394-95 (1920). In both examples, the legal concepts involving the fight or horseplay rule are not embodied in our Illinois Workers' Compensation Act or rules—they are used by administrators and later our reviewing courts to evaluate common behaviors and frame them within the context of the statutory requirements of "arising out of and in the course of employment." Because these common law doctrines have not extended beyond their intended scope, they serve as efficient and predicable guides to the administration of workers' compensation benefits—unfortunately, the same cannot be said for the traveling employee doctrine.

2. *Venture-Newberg* and similar rulings are expanding the traveling employee doctrine beyond its intended scope.

In contrast to the traditional view of the "traveling employee" concept, what our lower courts and Commission are now doing is providing *extraordinary* workers' compensation coverage for *normal risks* of daily life. Such an unwarranted expansion of coverage is not uncommon in the world of workers' compensation. As the leading treatise on workers' compensation law disapprovingly notes:

> It is a familiar sight in compensation law to observe a doctrine getting started in the form of an apparently exceptional concession in an unusual or limited class of cases, only to be followed by the necessity of extending the supposedly exceptional rule to more and more comparable cases, until ultimately the exception has become the rule.

Arthur Larson & Lex K. Larson, LARSON'S WORKERS' COMPENSATION § 25.05[3] (2009). As outlined below, the appellate court's recent rulings have done just that—the exception is becoming the rule.

First, in the *Venture-Newberg Perini Stone & Webster* ruling being considered by this Court, one attains "traveling employee" status simply by accepting an assignment from a union local and driving to the area of the work to be performed. The misleading aspect of calling Petitioner a "traveling employee" is not due to the fact he was in a car and on the way to work when injured—rather, according to our Appellate Court, Workers' Compensation Division, Petitioner is a "traveling employee" because the situs he was going to work was "not the premises of his employer." 2012 IL App (4th) 110847WC, ¶ 13. Once so labeled, the worker is globally covered under workers' compensation for any "reasonable and foreseeable" personal, professional, recreational, or romantic conduct—whether at work or play—for the entire time he or she is in the area of their job. *Id.* ¶ 14 ("The test of whether a traveling employee's injury arose out of and in the course of his employment is the reasonableness of the conduct in which he was engaged at the time of his injury and whether that conduct might have been anticipated or foreseen by Venture-Newberg.").

Likewise, the cleaning lady in *Mlynarczyk* was found to be traveling employee because she did not work at the premises of her employer or "at a fixed job site." *Mlynarczyk*, 2013 IL App (3d) 120411WC, ¶ 16. Illinois has never before provided workers' compensation benefits for the risks of falling in one's own driveway when going to and coming from work. To the contrary, benefits have been routinely denied under the "arising out of and in the course of employment" legislative requirements. *See, e.g., Osborn v. Indus. Comm'n*, 50 Ill. 2d 150, 151-52 (1971) ("the general rule [is] that injuries which occur to an employee while he is going to or coming from the place of his employment do not arise out of or in the course of employment").

Finally, in *Kertis* the bank branch manager was responsible for two bank branches. 2013 IL App (2d) 120252WC, ¶ 18. Because the manager's "job duties required him to travel between the two bank branch offices," the court found him to be a traveling employee. *Id.* Under this tortured logic, an employee who works at one employer premises is covered only for those injuries that arise out of and in the course of employment; but an employee who works at two or more employer premises is covered for all reasonable and foreseeable injuries from the moment he or she leaves home until the moment he or she returns.

Taken together, these cases raise numerous concerns that confuse Illinois workers' compensation law. For example:

- Is every hourly construction worker who is hired to work at a jobsite not owned by the construction company now a "traveling employee"?
- Is every worker in the transportation industry who drives a truck, school bus, cab, car, limousine or other vehicle now a "traveling employee" because they work in a moving vehicle that cannot legally be considered the "premises of their employer"?
- Are all stay-at-home workers now "traveling employees" because their homes are not the "premises of their employer"? Are they covered every day and all day for any risk?
- Are Illinois' state and municipal workers—including police, firefighters, streets/sanitation workers, public works employees, and others—all of whom are typically within our state or government boundaries, stripped of the potential to obtain "traveling employee" status because they are on the "premises of their employer" when working within those state or municipal boundaries?

The true import of these cases is that once an injured worker reaches the legal status of being a "traveling employee" simply because they do not work on the premises of their employer, the workers are fully covered under workers' compensation as a matter of law for injuries that have nothing to do with their status as "business travelers" or their

actual employment. In other words, once deemed a "traveling employee," the injured worker is no longer required to prove his or her injuries arose "out of and in the course of the employment," as required by the plain language of the statute. 820 ILCS 305/1(d). Instead, the injured worker is globally covered under workers' compensation for all activities he or she participated in, regardless of whether it occurred while working—and the coverage of non-work-related personal risks starts when they leave their home for work, during breaks until they return from work. *See, e.g., Kertis*, 2013 IL App (2d) 120252WC, ¶ 16 ("A traveling employee is deemed to be in the course of his employment from the time that he leaves home until he returns."). Such an expansion of workers' compensation benefits was never intended by our legislature.

In order to stem this tide, the *amicus curiae* parties urge this honorable Court to adopt the position articulated in Justice Hudson's dissent:

> I would hold that in cases such as this, where an employee is hired on a temporary basis only and is assigned by the employer to work at one specific jobsite for the duration of the employment, that assigned location becomes the employer's 'premises' for purposes of the application of the traveling-employee rule.

Venture-Newberg, 2012 IL App (4th) 110847WC, ¶ 26 (Hudson, J., dissenting). Thus, for a construction worker, the jobsite becomes the employer's premises; for the cleaning lady, the customer's residence becomes the employer's premises; for the transportation worker, the vehicle becomes the employer's premises; and so on. As Justice Hudson states, this would "be more consistent with the purpose of the traveling-employee rule," and would therefore provide some certainty and predictability to the traveling employee doctrine.

3. The expansion of the traveling employee doctrine defeats the legislature's attempts to rein in workers' compensation costs.

In the last decade alone, our legislature passed multiple sweeping legislative amendments to the Illinois Workers' Compensation Act. *See* H.B. 2137, 94th Gen. Assem. (Ill. 2005); H.B. 0928, 98th Gen. Assem. (Ill. 2007); H.B. 1698, 97th Gen. Assem. (Ill. 2011). If the legislature desired to expand coverage to the extent contemplated in these rulings, they certainly could have done so. To the contrary, our legislative leaders were reacting to business concerns that the Illinois workers' compensation system was anti-competitive and one of the top three in overall costs among the United States. *See, e.g.,* Steve Tarter & Dave Haney, *Illinois Among Top 3 States for Workers Compensation Costs*, JOURNAL STAR, Feb. 27, 2012. However, these three new legal rulings may eliminate any beneficial effect of the statutory changes and greatly increase workers' compensation costs in an unprecedented fashion because of dramatically expanded coverage of otherwise non-work-related injuries or deaths.

Indeed, one aspect crucial to the safety of workers and the effective administration of workers' compensation claims is the ability of the employer to investigate, prevent and control injuries and losses. Loss ratios play an important factor—if not the most important factor—in setting workers' compensation premiums. *See, e.g.,* Annmarie Geddes Lipold, *Workers' Comp Predictive Modeling Comes of Age*, CONTINGENCIES 34-41 (May/June 2012) (analyzing how loss ratios affect workers' compensation costs). Such controls will be considerably more difficult to manage—if not altogether absent—if several million workers are now able to walk into work and claim they were injured in their driveways as Ms. Mlynarczyk did. In addition, workers'

compensation fraud would undoubtedly increase, as no one will be able to tell if the "traveling employee" was injured playing recreational softball with their friends on the weekend and then limped to work on Monday to assert it happened in their driveway.

The *amicus curiae* parties assert this new and unprecedented expansion of Illinois workers' compensation coverage will dramatically increase workers' compensation costs and premiums for Illinois employers in critical industries such as transportation and construction during very difficult economic times. It will also put an increased burden on all Illinois government budgets and is almost certainly going to force increased taxes if all government workers will now be covered for personal risks on a global basis on breaks or away from work. In short, this new precedent will reverse all the improvements made in our workers' compensation system that were put into place by our legislature as a result of bipartisan amendments to the Illinois Workers' Compensation Act in 2005-2006 and 2011.

A strong concern of the *amicus curiae* parties about this new appellate ruling, if it remains Illinois law, is the response from the business community may be to minimize the size of the Illinois workforce, as no other state provides such global workers' compensation coverage of non-work-related injuries or deaths. As a large percentage of our workforce is becoming mobile, some employers may force such workers out of Illinois to have them work from surrounding states where such expansive workers' compensation coverage does not exist. To the extent this is happening at a time when Illinois' unemployment rates are at record-high levels, we hope this honorable Court will understand the potentially deleterious economic and fiscal impact of this unique and unmatched interpretation of workers' compensation law.

B. The expansion of the "traveling employee" doctrine would affect the entire workers' compensation litigation process.

In Illinois, adjudication of disputed workers' compensation benefits is achieved through an adversarial system, with an extensive history of litigation to protect the rights of injured workers and employers. For example, in a given year, Illinois workers' compensation arbitrators issue between 3,000 and 4,000 decisions. *See* Illinois Workers' Compensation Commission, Annual Report, at 14 (2012). In all such cases, the parties litigant have been required to either stipulate to, or to litigate, the following issues:

1. Jurisdiction;
2. Coverage of the Illinois Workers' Compensation Act;
3. Accident Arising Out of and In the Course of Employment;
4. Causal Connection;
5. Age, Marital Status and Dependents;
6. Medical Bills;
7. Wages;
8. TTD/TPD and/or Lost Time;
9. Nature and Extent of the Injury.

See Illinois Workers' Compensation Commission Request for Hearing, Form IC9 (2010); *see also* 50 Ill. Admin. Code § 7030.40 (2010) ("Before a case proceeds to trial on arbitration, the parties (or their counsel) shall complete and sign a form provided by the Industrial Commission called Request for Hearing.").

As defense lawyers who have handled literally thousands of hearings before the Illinois Workers' Compensation Commission over the years, it is our view a new issue will have to be added to these stipulations as the new Number 3: whether the employee is a "traveling employee."[1] Once the Arbitrator or Commission finds the worker is a

[1] Similarly, other Commission forms will have to be amended, including the Commission's arbitration decision forms and handbook, neither of which currently contains the word "traveling."

traveling employee, the requirement of demonstrating "Accident Arising Out of and In the Course of Employment" will be rendered meaningless. *See, e.g., Kertis*, 2013 IL App (2d) 120252WC, ¶ 16 ("The determination of whether an injury to a traveling employee arose out of and in the course of employment is governed by different rules than are applicable to other employees."). Stated differently, this single line of cases will have a profound effect on Illinois' workers' compensation litigation process.

In addition, we ask the members of this honorable Court to note the lower court made coverage of what were non-work-related risks into work-related claims, as a matter of law. This will make any employer or their insurance carrier/TPA subject to penalties and fees if they challenge any situation involving a "traveling employee" at present or at any future time. This cannot be the intent of our legislature and we ask this Court to rule accordingly.

C. The expansion of the "traveling employee" doctrine violates the guarantee of equal protection for many workers.

The guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner. *People v. R.L.,* 158 Ill. 2d 432, 437 (1994). Two hypotheticals based on the *Mlynarczyk* and *Ketris* rulings demonstrate how the new expansion of the traveling employee concept will violate the doctrine of equal protection.

Based on *Mlynarczyk*, two cleaning ladies—one who is going to clean a building owned by her employer, the other who is going to clean a customer's residence—could be walking side-by-side when they fall on the same patch of ice. The first cleaning lady would receive workers' compensation benefits as a traveling employee because she was not going to clean on the premises of her employer, but the second cleaning lady would

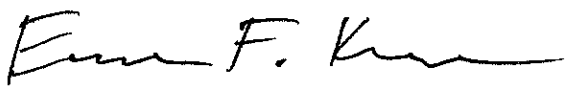
not. Similarly, based on *Kertis*, two bank managers—one who manages one branch, the other who manages two branches—could be walking on the same city street and fall down. The bank manager responsible for two branches would receive workers' compensation benefits, but the bank manager who only worked at one branch would be denied benefits. In both hypotheticals, employees who do the same work with precisely the same challenges and risks suffer identical injuries, yet the outcomes would be dramatically different.

These examples point out how completely arbitrary this new concept will be moving forward. Identical workers with nearly identical jobs will receive vastly different workers' compensation coverage and benefits. The anomaly goes back to the misleading definition of "traveling employee"—why does it make any difference if the worker is going to work at the "premises of the employer" or while going to not one but multiple locations for the same employer, as in *Kertis*? At present, this difference is certain to result in unusual, unpredictable and unfair outcomes for Illinois injured workers and their employers.

V. CONCLUSION

For all the reasons outlined above, we urge this honorable Court to carefully review this matter as it will cause dramatic changes first at the Illinois Workers' Compensation Commission and then at the boardrooms of the businesses and governments across our state.

The *amicus curiae* parties join with Appellant Venture-Newburg Perini Stone & Webster in seeking to have the decision of the Appellate Court reversed.



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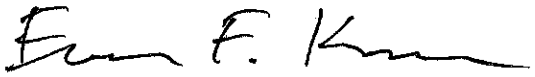
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance and certificate of service, and those matters to be appended to the brief under Rule 342(a) is 18 pages.



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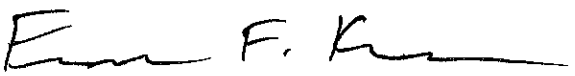
I, Eugene F. Keefe, certify that on July 3, 2012 copies of this brief were served on counsel listed below in accordance with Illinois Supreme Court Rule 341.



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