

# BELOW THE RED LINE

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ROYSTER

## WORKERS' COMPENSATION UPDATE

“WE’VE GOT THE STATE COVERED!”

*A Newsletter for Employers and Claims Professionals*

*June 2014*

### A WORD FROM THE PRACTICE GROUP CHAIR

Welcome to the June edition of *Below the Red Line*. We hope your summer is going well and that you will be able to get some time away for rest and relaxation. As the summer progresses, we turn our attention to some recent legislation from the Illinois General Assembly.

On June 5th, Illinois Governor Pat Quinn signed into law Senate Bill 3287 titled “An Act Concerning Employment.” After reading the text of this legislation, one must wonder whether or not the true intent of the bill is to actually reduce employment in the State of Illinois. In this edition, we outline the details of this Act, which removes the exclusive remedy provision protection for safety service organizations providing advice and counsel to employers in Illinois. The impact of this legislation on workers’ compensation and insurance costs for employers and businesses in Illinois could be significant. We will be sure to keep you updated on these developments and we will be available to walk you through issues associated with this legislation as they develop.

Next month our July issue will be reporting on the recently enacted Compassionate Use of Medical Cannabis Pilot Program. While this legislation, on its face, is not focused on workers’ compensation, in reality, it could have significant impact. Based upon the language of the statute, the prescription of cannabis for medical purposes could impact many workers’ compensation injuries. Our firm is closely tracking this issue and has presented seminars in numerous locations across the state regarding this new legislation. We will report next month on the wide-ranging impact this legislation could have on workers’ compensation claims.

Enjoy your summer, and as always, if we can be of any assistance on your claims, please do not hesitate to contact us.

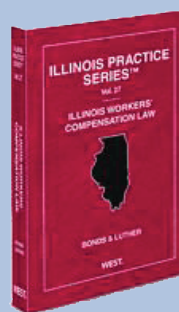


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### *In this issue . . .*

- **Senate Bill 3287 Signed into Law**
- **Heyl Royster Attorneys Author Articles for 2014 IDC Quarterly Issue No. 2**



### **New Edition in Print!!**

The Third Edition of ILLINOIS WORKERS’ COMPENSATION LAW, 2013-2014 (Vol. 27, Illinois Practice Series, West) is now available. Authored by Heyl Royster partners Kevin Luther and Bruce Bonds, this work can be purchased from West at [store.westlaw.com](http://store.westlaw.com).

### *Next Month . . .*

- **An Analysis of the Compassionate Use of Medical Cannabis Pilot Program**

# HEYL ROYSTER WORKERS' COMPENSATION UPDATE

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Brad Elward, Editor

## SENATE BILL 3287 SIGNED INTO LAW

### Employer's Exclusive Remedy Provision Eroded

Earlier this year both houses of the Illinois General Assembly passed Senate Bill 3287, which affects the application of section 5's exclusive remedy provision to safety service organizations. 820 ILCS 305/5. An effort was mounted to lobby Governor Quinn to veto this bill, but he quickly signed it into law on June 5, 2014. Although not directly affecting the benefits paid by employers in workers' compensation cases, it will nevertheless increase workers compensation liability and costs due to erosion of the exclusive remedy protections afforded by section 5 of the Workers' Compensation Act.

Prior to this recent legislation modification, many in Illinois were unaware that in addition to protecting employers from liability and civil litigation, section 5 also protected a safety service organization providing safety advice to employers. Prior to Senate Bill 3287 becoming law earlier this month, section 5 of the Act provided in part:

No common law or statutory right to recover damages from the employer, his insurer, his broker, any service organization retained by the employer, his insurer, or his broker to provide safety service, advice or recommendations for the employer or the agents or employees of any of them for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act.... 820 ILCS 305/5 (2013).

For virtually the entire existence of the Illinois Workers' Compensation Act, section 5 has been generally recognized as protecting the employer, his insurer or broker, and any safety service organization the employer or his insurer or broker might retain, from civil liability. Although not artfully drafted, the new law purports to modify section 5 to protect only those service organizations that are wholly owned by the employer. The modified statute now reads:

No common law or statutory right to recover damages from the employer, his insurer, his broker, any service organization that is wholly owned by the employer, his insurer, or his broker and that provides

safety service, advice or recommendations for the employer or the agents or employees of any of them for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act... 820 ILCS 305/5 (2014).

While the language of these amendments is confusing, and some interpretation by the courts will undoubtedly be necessary, some aspects of this legislation are relatively clear. And, while the manner in which the amendments were drafted leave some concern about those entities who will retain section 5 protection, it is clear that the *employer's* insurer, or broker will continue to be protected. The language would appear, however to contemplate that safety organizations retained by an insurer or broker will not be protected.

An unanswered question involves insurers or brokers who provide safety services, either as a requirement for their policy holders, or as a value added to the insurance and brokerage services provided. Presumably, as long as the safety services are being offered as part of the insurer or broker's function in providing insurance, the insurer or broker will maintain the protections of section 5. If, however, an insurer or broker offers safety services above and beyond its capacity of providing insurance coverage (for example: in exchange for an additional fee), that insurer or broker could now be subject to liability in civil court resulting in workplace injuries.

It also is equally clear from this legislation that an employer who has its own safety director or own safety department addressing safety concerns will not lose their section 5 protections. Again, the language of the statute is not as unambiguous as it should be, but it appears as if it is only those organizations that are retained independently by the employer who will now be subject to common law suit. The language is also very explicit that if a safety service organization is wholly owned by the employer, they will also maintain exclusive remedy protections.

What is abundantly apparent from this legislation, however, is that safety service organizations that provide independent advice, counsel or services to employers in support of the employer's workplace will now be subject to liability in civil court. While this creates liability that did not previously exist for safety service organizations, this legislation also expands liability and workplace injury

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costs for the employer. Any safety service organization sued in civil court as a result of the work-related injury will have the ability to file a third party complaint against the employer. By expanding the universe of those entities who can be sued by the injured worker, there will be more opportunities created for employers to be third parties into civil suits.

Clearly, the employer community in Illinois has reason to be concerned about this legislation. The motives of those passing this legislation should be questioned, given the fact that the net result has to be decreased workplace safety. It is also clear that one of the main intents of this bill is to increase those situations where an employer can be brought into a civil lawsuit via a third-party complaint for contribution. While the petitioner's bar argues that there is nothing about this legislation which increases the workers' compensation benefits paid by the employer, there is little doubt the overall cost associated with workers' compensation injuries will increase for employers, as well as for many other entities in Illinois.

We will be keeping an eye on this legislation and the inevitable resulting litigation. If you have any question on how this new legislation impacts the cases you are handling, please feel free to contact any of our attorneys.

### HEYL ROYSTER ATTORNEYS AUTHOR ARTICLES FOR 2014 IDC QUARTERLY ISSUE No. 2

Two Heyl Royster attorneys were featured in the most recent edition of the Illinois Association of Defense Trial Counsel's *IDC Quarterly* publication. In the feature article, "Recent Cases Emphasize Need for Reform with Section 19(f) Appeal Bonds in Workers' Compensation Judicial Reviews," Brad Elward (Peoria) addressed two Illinois appellate court decisions that illustrate why the Act should be amended to allow employers and insurance companies more leeway to provide satisfactory bonds to secure judicial review of decisions from the Commission.

In "Are All Workplace Stairway Falls Now Compensable in Illinois?" Brad Peterson (Urbana) focused on the Illinois Appellate Court case of *Village of Villa Park v. Illinois Worker's Compensation Commission*, where the court held that an employer had to compensate a village employee with a pre-existing knee condition who fell in the stairwell

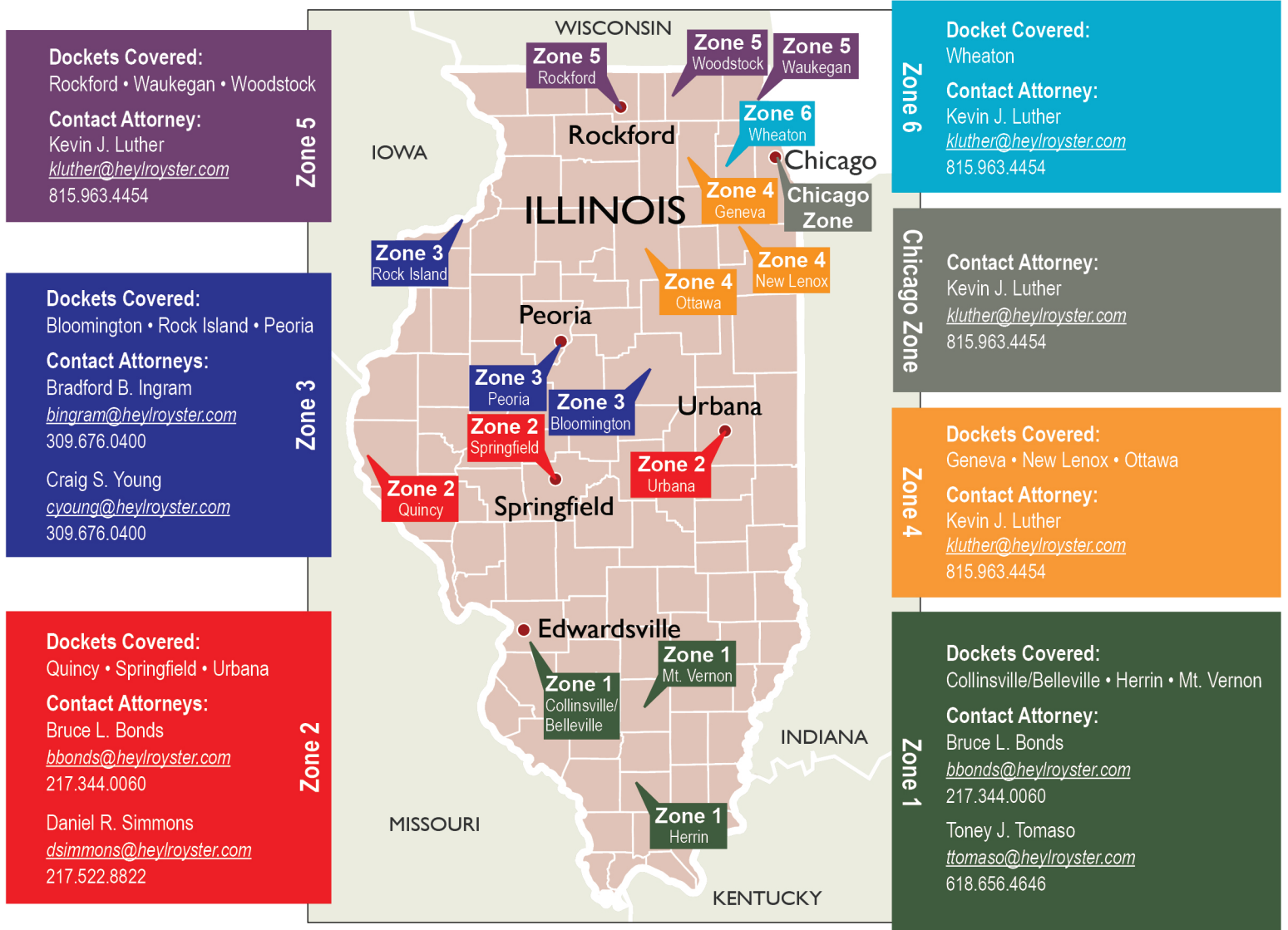
at work. In the article, Brad raises a number of questions about the scope of the court's ruling and notes that the decision is of "great concern" to Illinois employers and the workers' compensation defense bar.

Both articles can be accessed through the Heyl Royster website.

# WORKERS' COMPENSATION GROUP

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