

# BELOW THE RED LINE

HEYL...  
ROYSTER

## WORKERS' COMPENSATION UPDATE

"WE'VE GOT THE STATE COVERED!"

*A Newsletter for Employers and Claims Professionals*

*June 2015*

### A WORD FROM THE PRACTICE GROUP CHAIR

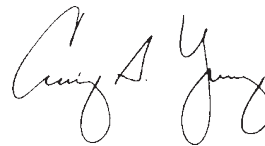
It was a pleasure seeing many of you at our 30th annual claims handling seminar this past week in Bloomington. We enjoy presenting in this format, and it is always good when we get to spend face-to-face time with our clients. For those who were able to attend, we hope you found it beneficial. If anyone in your organization would benefit from additional written materials, please let me know. We are also available to present on similar or different topics in house, if that would be helpful to you.

One of the cases we highlighted at the seminar is the recent appellate court decision of *Bell v. Illinois Workers' Compensation Commission*. Vince Boyle of our Peoria office provides a more detailed analysis of that case in this edition of *Below the Red Line*. This case represents another effort by the appellate court to find new avenues to compensate petitioners. The court's extension of PPD benefits to the estate of a deceased petitioner is novel. Please note Vince's interesting suggestions as to the unanswered questions which remain, and the strategies we can employ to minimize the impact of this decision.

We delayed this issue of our newsletter on the chance there would be some legislative news to address as the Legislature was originally scheduled to adjourn at the end of May. As expected, nothing definitive has yet to develop. In fact, the session was extended, and discussions in Springfield are continuing even today. We will continue to monitor these developments and provide you with immediate updates in the event action is taken. Please note that PPD, TTD, permanent total disability and wage differential benefits rates have been modified recently, and you will find an updated copy of

our rate card attached to this newsletter. If you need new hard copies of the rate card please do not hesitate to contact me.

Enjoy the summer and, as always, we appreciate the opportunity to help you defend and manage your workers' compensation issues.



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### UPDATE TO 2015 RATES

As we strive to bring you updates from the Illinois Workers' Compensation Commission, we note the additional benefit rate information available from the Illinois Workers' Compensation Commission. To ensure you are utilizing the proper benefit rates in your claims handling, please refer to our updated rate card at the back of this newsletter for the new and current maximum rates for PPD, TTD and wage differential benefits, as well as minimum rates for death, permanent total disability and TTD benefits.

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**Update to 2015 Rates**

**New Appellate Court Ruling on Entitlement to  
Permanency Where the Claimant Dies Before  
Arbitration**

# HEYL ROYSTER WORKERS' COMPENSATION UPDATE

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Editors, Brad A. Elward and Dana Hughes

## NEW APPELLATE COURT RULING ON ENTITLEMENT TO PERMANENCY WHERE THE CLAIMANT DIES BEFORE ARBITRATION

By: Vince Boyle, [vboyle@heyloyroyster.com](mailto:vboyle@heyloyroyster.com)

The Appellate Court, Workers' Compensation Commission Division, issued a 5-0 opinion holding the estate of an unmarried claimant who died from unrelated causes without leaving any dependents could recover PPD benefits that accrued prior to the claimant's death.

### Relevant Facts

In *Bell v. Illinois Workers' Compensation Comm'n*, 2015 IL App (4th) 140028 WC, the claimant sustained accidental injuries arising out of a slip and fall accident that occurred in the employer's parking lot. *Bell*, 2015 IL App (4th) 140028WC, at ¶14. The accident occurred on January 30, 2008. *Id.* The claimant suffered a fractured femur which required surgical repair. *Id.* Following surgery, she remained too weak to walk without assistance and required the use of a wheelchair to ambulate. *Id.* at ¶15.

The claimant was evaluated by a neurologist who, on January 28, 2010, determined she had an underlying form of muscular dystrophy. *Id.* at ¶19. The neurologist determined the work accident accelerated the clinical symptoms of her muscle disease, but ultimately concluded that she reached maximum medical improvement for her work related injury as of August 27, 2008. *Id.* This was confirmed by an independent medical examiner. *Id.* at ¶16.

An application for adjustment of claim was filed and the claimant sought an underpayment of temporary total disability (TTD) benefits, medical expenses, and permanent partial disability (PPD) benefits. *Id.* at ¶¶12-13. On August 19, 2010, prior to the arbitrator hearing, the claimant died of causes unrelated to the work accident. *Id.* at ¶10. Moreover, she had no beneficiaries.

### Arbitration and Commission Rulings

The claimant's sister, as administrator of the estate, filed an amended application substituting herself as the claimant, and the case proceeded to arbitration, at which time the administrator provided testimony regarding

the effects of the injury on the claimant and the fact she required a wheelchair at all times after the accident. *Id.* at ¶11. The arbitrator awarded medical expenses and the underpayment of TTD benefits. *Id.* at ¶1. As to the requested PPD benefits from the date the claimant reached maximum medical improvement until her death, although the arbitrator found that the decedent had sustained a permanent partial disability from the work injury, no PPD benefits were awarded.

In denying the PPD benefits, the arbitrator relied on sections 8(e)(19) and 8(h) of the Act, finding these sections allow recovery of PPD benefits only if there is a surviving spouse or dependents at the time of an employee's death. *Id.* at ¶14. Because no eligible dependents existed at the time of the claimant's death, the arbitrator ruled that any PPD benefits that had accrued abated with her death. *Id.* The decedent's administrator appealed the denial, but it was unanimously affirmed by the Workers' Compensation Commission and was confirmed by the circuit court on judicial review. *Id.* at ¶15.

### The Appellate Court

On appeal, the appellate court was faced with the issue of whether the estate of an unmarried claimant who dies without leaving any dependents may recover PPD benefits that accrued prior to the employee's death. *Id.* at ¶17. The court reversed the Commission's decision, finding that the claimant's estate may seek and obtain accrued benefits regardless of dependency.

The appellate court ruled the Commission erred in relying on these provisions to deny recovery of PPD benefits by the claimant's estate.

Section 8(e)(19) provides:

In a case of specific loss and the subsequent death of such injured employee from other causes than such injury leaving a widow, widower, or dependents surviving before payment or payment in full for such injury, then the amount due for such injury is payable to the widow or widower and, if there be no widow or widower, then to such dependents, in the proportion which such dependency bears to total dependency. 820 ILCS 305/8(e)(19).

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In addition, Section 8(h) provides:

In case death occurs from any cause before the total compensation to which the employee would have been entitled has been paid, then in case the employee leaves any widow, widower, child, parent (or any grandchild, grandparent or other lineal heir or any collateral heir dependent at the time of the accident upon the earnings of the employee to the extent of 50% or more of total dependency) such compensation shall be paid to the beneficiaries of the deceased employee and distributed as provided in paragraph (g) of Section 7. 820 ILCS 305/8(h).

The appellate court concluded that the plain language of these provisions merely establish to whom benefits will be paid if an employee dies with a spouse or dependents before he or she has been fully compensated for the work related injury. *Id.* at ¶19. The court held these provisions did not limit the ability of a deceased employee's estate to collect accrued, unpaid benefits that were due and owing to an employee while he or she was still alive. *Id.* The court went on further to state that neither provision addresses what happens when an employee dies without leaving a surviving spouse or any surviving dependents, so neither provision should be read as barring an employee's estate to collect accrued benefits under such circumstances. *Id.* at ¶19. The appellate court's opinion relied upon two prior decisions concerning the abatement of benefits. In *Republic Steel Corp. v. Industrial Comm'n*, 26 Ill. 2d 32 (1962), an administrator was allowed by the circuit court to substitute into an appeal of the Commission's award following the death of the employee.

The circuit court ordered the employer to pay the award to the administrator of the estate. The Supreme Court agreed, ruling that although an employee's death extinguishes all payments falling due after the employee's death, an administrator of the claimant's estate may recover for the payments accrued to the date of death. *Republic Steel*, 26 Ill. 2d at 46. The *Bell* court also discussed *Nationwide Bank and Office Management v. Industrial Comm'n*, 361 Ill. App. 3d 207 (1st Dist. 2005), in which the court held that benefits that accrued prior to an employee's death are payable to the employee's estate. In *Nationwide*, the only benefits at issue were medical expenses and TTD benefits.

The *Bell* court disagreed with the Commission's finding that these cases suggested that an employee's estate lacks standing to collect accrued benefits because such benefits could only be paid to dependents. *Bell*, 2015 IL App (4th) 140028WC, at ¶24. The court noted *Republic Steel* stood for the proposition that benefits that accrued up to the date of death are payable to an employee's estate regardless of dependency. *Id.* at ¶26. The court also rejected the argument that the enactment of section 8(h) overruled the holding in *Republic Steel* because the language did not address accrued benefits. *Id.* at ¶24.

The appellate court differentiated its ruling from future installment payments and payments that would have accrued and become payable to the claimant on some future date had she survived, and limited recovery to only those benefits that have accrued before the date of death. *Id.* at ¶25. Even so, the court did not define what it meant by "accrued."

The *Bell* court also took issue with the Commission's finding that allowing the claimant's estate to collect PPD benefits when she had no dependent's "really serves no purpose." ¶ 28. The court concluded that "contrary to the Commission's assertion, there are good policy reasons to allow estates to collect such unpaid, accrued benefits." *Id.* at ¶28. It stated, citing *Republic Steel Corp.*, "a contrary rule would encourage employers to 'litigate and delay the payment of compensation due a legitimately disabled individual to a point beyond his death and thereby defeat his right to compensation.'" *Id.* at ¶28 (citing *Republic Steel Corp.*, 26 Ill. 2d at 47).

### Implications

The *Bell* decision permits the recovery of accrued benefits, including PPD benefits, regardless of dependency. This conclusion appears to be inconsistent with the clear language and intent of sections 8(e)(19) and 8(h) of the Act and may potentially lead to other results that appear to be contradictory with the Act. For example, if a decedent died without a surviving spouse, but was survived by a non-dependent child, the statutory language suggests that non-dependent children should be precluded from recovery. However, under *Bell*, the appellate court appears to have created a loophole that would entitle non-dependent children to recover benefits, although only to the extent the benefits accrued prior to the decedent's passing.

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One of the problems of the *Bell* case is the court's failure to reconcile the different nature of PPD benefits versus other economic-driven benefits, such as TTD, medical, and wage-based permanency. Each of these benefits has a definitive economic aspect that can be readily measured. PPD benefits are different and more personal in nature, and presume the claimant has returned to his or her former employment, but with some level of impairment. In most cases, there is no impairment of earnings at all.

In its ruling, the appellate court stated that, "PPD benefits serve as compensation for the diminishment of the employee's earning capacity which was caused by a work-related injury. Thus, unpaid PPD payments that accrued while the claimant was alive are payable to his estate, just like unpaid but accrued TTD benefits." *Id.*, at ¶128. Yet this is not true. TTD benefits represent actual lost wages and medical benefits represent medical bills reasonably and necessarily related to the accident and injury. PPD benefits do not, as they factor in other such concerns such as lingering disabilities that the employee retains even after MMI. Those may or may not reduce what the claimant earns.

It can be presumed from the appellate court's decision that the court may have intended that the estate be able to collect the *entire* PPD awarded. However, the decision stops short of providing any means for calculating the so-called "accrued" PPD award. How does the court presume that the Commission will quantify the accrued PPD?

How does the Commission calculate PPD where the claimant dies after MMI but before arbitration? If a claimant's injury would typically result in a 20 percent of a person award, should the estate be entitled to the entire 20 percent? Or should the PPD award be prorated based on the individual's life expectancy? If the claimant, at the time of death, had a 15 year life expectancy, and lived 2 years of that expectancy, should not the award be prorated to reflect that – therefore, the estate would recover 13.3 percent of the total PPD award reflecting the decedent having lived 2 out of the 15 projected years.

Such an approach seems reasonable, especially when one considers that section 8.1b(b) requires consideration of the employee's age when determining permanency. 820 ILCS 305/8.1b(b).

Equally perplexing is the question of how the Commission should calculate PPD when the claimant dies of unrelated causes *prior* to reaching MMI. In that case, a strong argument can be made that no PPD accrued.

*Bell* should not be read as requiring an employer, under similar circumstances to *Bell*, to simply pay the entire PPD award, irrespective of the employee's death. Future cases will undoubtedly have to litigate exactly what constitutes "accrued" and how such accrued benefits are to be weighted. The appellate court could not have meant that the claimant in such a case receives a windfall.

If you have any questions concerning how *Bell* may impact your claim, please feel free to contact any of our Workers' Compensation attorneys across the state.



**Vince Boyle**

*Peoria Office*

Vince focuses his practice on defending workers' compensation claims. He joined Heyl Royster in 2013. Prior to joining the firm, he worked for three years as an associate in a Peoria law firm, where he practiced in the areas of tort litigation, will contests, and workers' compensation defense.

Vince received his B.S. in 2006 from Bradley University and went on to earn his J.D. in 2009 from the University of Illinois College of Law. During law school, Vince participated in the Frederick Green Moot Court Competition, served as an articles editor for the Illinois Business Law Journal and was a Pro Bono Honors recipient.

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## TTD, DEATH, PERM. TOTAL &amp; AMP. RATES

ACCIDENT DATE	MAX. RATE TTD, DEATH, PERM. TOTAL, AMP.	MIN. RATE DEATH, PERM. TOTAL, AMP.
7/15/09 to 7/14/10.....	1243.00.....	466.13
7/15/10 to 1/14/11.....	1243.00.....	466.13
1/15/11 to 7/14/11.....	1243.00.....	466.13
7/15/11 to 1/14/12.....	1261.41.....	473.03
1/15/12 to 7/14/12.....	1288.96.....	483.36
7/15/12 to 1/14/13.....	1295.47.....	485.80
1/15/13 to 7/14/13.....	1320.03.....	495.01
7/15/13 to 1/14/14.....	1331.20.....	499.20
1/15/14 to 7/14/14.....	1336.91.....	501.34
7/15/14 to 1/14/15.....	1341.07.....	502.90
1/15/15 to 7/14/15.....	1361.79.....	510.67

Death benefits are paid for 25 years or \$500,000 whichever is greater.  
As of 2/1/06, burial expenses \$8,000

## MINIMUM TTD &amp; PPD RATES

# of dependents, including spouse	7/15/07- 7/14/08	7/15/08- 7/14/09	7/15/09- 7/14/10	7/15/10- 7/14/15
0.....	200.00.....	206.67.....	213.33.....	220.00
1.....	230.00.....	237.67.....	245.33.....	253.00
2.....	260.00.....	268.67.....	277.33.....	286.00
3.....	290.00.....	299.67.....	309.33.....	319.00
4+.....	300.00.....	310.00.....	320.00.....	330.00

## MAXIMUM PERMANENT PARTIAL DISABILITY RATES

## MAXIMUM 8(D)(1) WAGE DIFFERENTIAL RATE

7/1/08 to 6/30/09.....	664.72	7/15/11 to 1/14/12.....	946.06
7/1/09 to 6/30/10.....	664.72	1/15/12 to 7/14/12.....	966.72
7/1/10 to 6/30/11.....	669.64	7/15/12 to 1/14/13.....	971.60
7/1/11 to 6/30/12.....	695.78	1/15/13 to 7/14/13.....	990.02
7/1/12 to 6/30/13.....	712.55	7/15/13 to 1/14/14.....	998.40
7/1/13 to 6/30/14.....	721.66	1/15/14 to 7/14/14.....	1002.68
7/1/14 to 6/30/15.....	735.37	7/15/14 to 1/14/15.....	1005.80
		1/15/15 to 7/14/15.....	1021.34

## SCHEDULED LOSSES (100%)

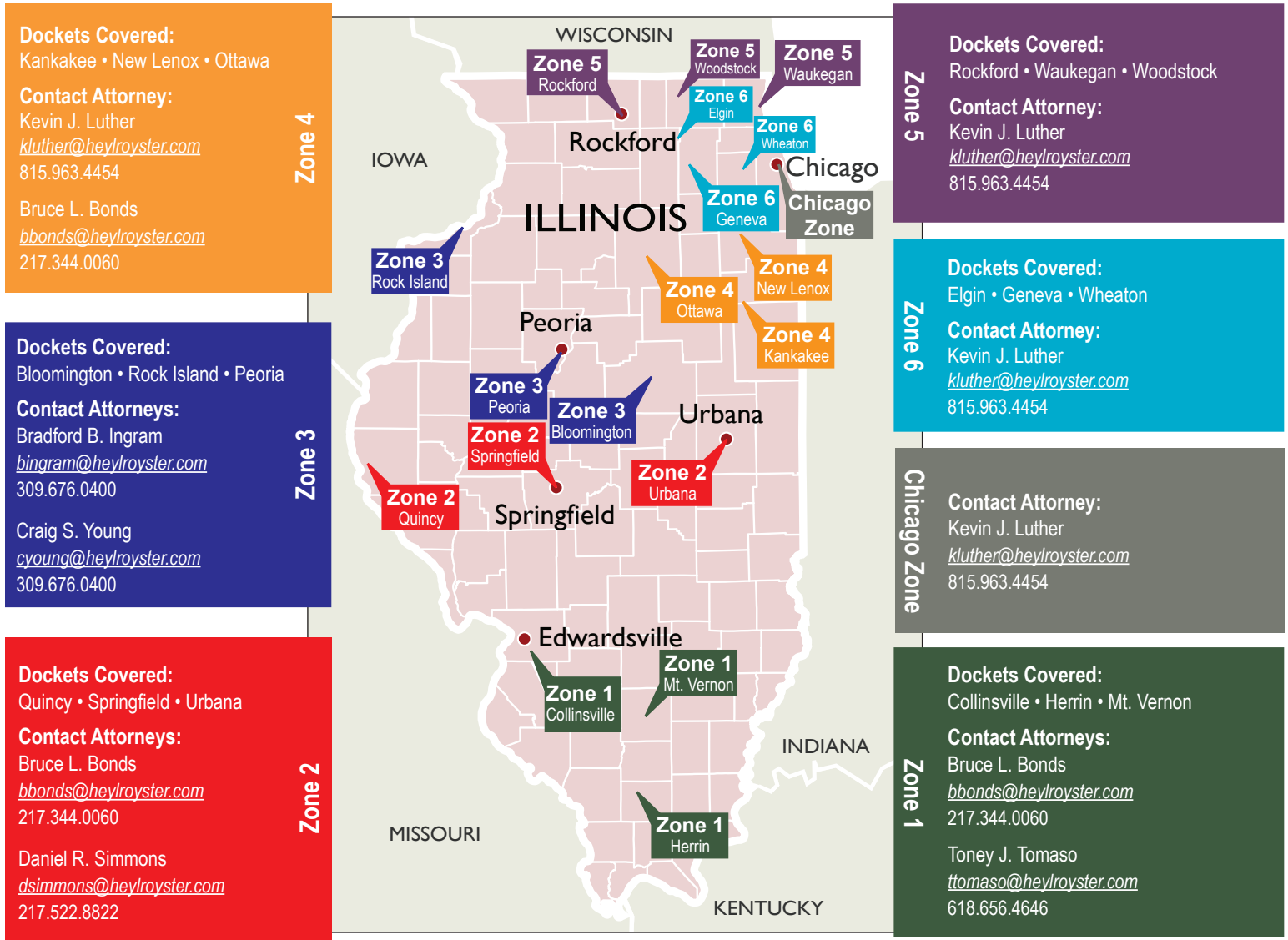
Effective 2/1/06 (and 7/20/05 to 11/15/05)	Effective 2/1/06 (and 7/20/05 to 11/15/05)
Person as a whole.....500 wks	Leg.....215 wks
Arm.....253 wks	Amp at hip joint.....296 wks
Amp at shoulder joint.....323 wks	Amp above knee.....242 wks
Amp above elbow.....270 wks	Foot.....167 wks
Hand.....205 wks	Great toe.....38 wks
Repetitive carpal tunnel claims.....190 wks	Other toes.....13 wks
Benefits are capped at 15% loss of use of each affected hand absent clear and convincing evidence of greater disability, in which case benefits cannot exceed 30% loss of use of each affected hand.	Hearing
Thumb.....76 wks	Both ears.....215 wks
Index.....43 wks	One ear.....54 wks
Middle.....38 wks	Eye
Ring.....27 wks	Enucleated.....173 wks
Little.....22 wks	One eye.....162 wks
	Disfigurement.....162 wks



# WORKERS' COMPENSATION GROUP

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## ILLINOIS ZONE MAP



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