

BELOW THE RED LINE

HEYL ROYSTER

WORKERS' COMPENSATION UPDATE

“WE’VE GOT THE STATE COVERED!”

A Newsletter for Employers and Claims Professionals

October 2013

A WORD FROM THE PRACTICE GROUP CHAIR

Fall is now upon us and is a reminder that we are only a few months from 2014. With that in mind, we wanted to let you know of the new arbitrator venue assignments that will take place on January 1. The new venue assignments are listed in this issue.

We were sorry to learn of the recent passing of Arbitrator Holland, and of course he will need to be replaced. We will keep you informed of any other changes to these arbitrator assignments as we head into 2014.

We have also provided a summary of a few of the recent Commission changes with the fee schedules and a reminder concerning a new Concealed Carry Law seminar being offered by our firm. The seminar will focus on how the new laws might impact Illinois businesses and employers.

Of significance as well is the recent Illinois Supreme Court argument in early September of the traveling employee case, *Venture-Newberg*, which depending on how the decision is written, may have a major impact on the traveling employee doctrine in this state. Our firm will continue to monitor that case as it concludes in the court system and will report to you with a full analysis as soon as a decision is handed down.

Finally, we provide a brief report on a recent appellate court victory wherein the court unanimously reversed a circuit court ruling, which had reversed a previously unanimous Commission decision favorable to the employer.

Have a Happy Halloween and as always, please let us know how Heyl Royster can help you manage your workers' compensation claims.



Craig S. Young
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Lunch & Learn!

The Effect of the Illinois Concealed Carry Act on Employers

Illinois' new Concealed Carry law goes into effect 1/5/14. How will the new law impact employers and employees? In what locations does **the law prohibit** concealed carry, and in what locations can **employers elect to prohibit** concealed carry? What issues should an employer consider in determining whether to prohibit concealed carry? What are the most recent developments from around the state?

Please join us for a discussion that will address these and related topics:

Urbana

ILEAS (Illinois Law Enforcement Alarm System)
1701 E. Main Street

Wednesday, November 6, 2013

The seminar will be held from Noon - 1:00 p.m. Lunch will be provided.

Please RSVP to sgullette@heyloyroyster.com or 309-676-0400 x277. Space is limited.

In this issue . . .

Traveling Employee Case Argued Before
Supreme Court

Commission Updates Fee Schedule Replacing
Many "POC" Codes

2014 Fee Schedule Rates Will Increase 1.52% –
7% lower than 2006

New Arbitrator Venue Assignments for 2014

Appellate Victory

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Brad Elward, Editor

TRAVELING EMPLOYEE CASE ARGUED BEFORE SUPREME COURT

The travelling employee case of *Venture-Newberg Perini Stone and Webster v. Illinois Workers' Compensation Comm'n (Ronald Daugherty)*, No. 115728, was argued before the Illinois Supreme Court on September 18, 2013. In that case the Appellate Court, Workers' Compensation Commission Division, found that the claimant, a union pipefitter who was working at a power plant some 200 miles from his home, was a traveling employee at the time of his injury while driving from the motel to the jobsite. Venture-Newberg was a contractor hired to perform maintenance and repair work at a nuclear power plant in Cordova, Illinois. Venture-Newberg hired the claimant out of a Springfield union local for the job some 200+ miles north of Springfield. The employment was temporary and limited to the Cordova site. The claimant had temporarily moved into a motel near the plant and was injured while driving to work at the power plant one morning. The Commission had awarded benefits, finding that the accident arose out of and in the course of the employment. The circuit court reversed, and the Commission's decision was reinstated by the a 3-2 majority of the appellate court. The majority concluded that the claimant was a traveling employee and that it was reasonable for the employer to anticipate the claimant would obtain motel lodging that was closer to the jobsite versus traveling from Springfield. Two justices dissented, arguing that where an employee is hired on a temporary basis only and is assigned by the employer to work at one specific jobsite other than the employer's premises, the assigned location becomes the employer's premises for purposes of applying the traveling-employee rule.

Following a finding by the appellate court that the decision involved a question of significant importance that warranted supreme court consideration, the Illinois Supreme Court allowed the employer's petition for leave to appeal. The appellate court decision is reported at 2012 IL App (4th) 110847WC.

The Illinois Supreme Court's decision in *Venture-Newberg* will be significant, as the issues of traveling employees and work-at-home employees continue to be at the forefront of workers' compensation law. Two other traveling employee cases have been handed down by the appellate court this past year: *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App(2d) 120252WC, and *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, both of which found the claimant to be a traveling employee.

A decision is expected by February 2014.

COMMISSION UPDATES FEE SCHEDULE REPLACING MANY "POC" CODES

The Workers' Compensation Medical Fee Advisory Board and Optuminsight have added fee schedule amounts for roughly 16,000 codes that previously defaulted to POC53.2, in which payment is 53.2 percent of charge. Business representatives on the WCMFAB had long lobbied for removal of as many POC defaults as possible. The new fee schedule can be viewed on the fee schedule web page under the new button, "2013 Professional (10-11-13)."

2014 FEE SCHEDULE RATES WILL INCREASE 1.52% – 7% LOWER THAN 2006

Medical fee schedule rates will increase 1.52% on January 1, 2014. If the fee schedule had tracked medical inflation, rates would be 30% higher than in 2006; instead, rates are 7% lower than 2006.

Annual Adjustments			
Effective Date	CPI-Medical	CPI-U/IL Fee Sch.	Annual Difference
February 1, 2006	4.37%	4.90%	0.53%
January 1, 2007	4.26%	3.80%	-0.46%
January 1, 2008	4.52%	1.97%	-2.55%
January 1, 2009	3.26%	5.37%	2.11%
January 1, 2010	3.31%	-1.48%	-4.79%
January 1, 2011	1.03%	1.01%	-0.02%
September 1, 2011*		-30.00%	-30.00%
January 1, 2012	3.19%	3.77%	0.58%
January 1, 2013	4.05%	1.69%	-2.36%
January 1, 2014	2.34%	1.52%	-0.82%
Cumulative	30.33%	-7.45%	-37.78%

*Effective 9/1/11, pursuant to HB1698, all fees were reduced by 30%.

Section 8.2(a) of the Illinois Workers' Compensation Act provides that, each year, fee schedule rates shall increase or decrease by the percentage change in the Consumer Price Index-U (CPI-U) in the previous year.

The 2014 rates will be posted soon, hopefully by the end of the year.

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Brad Elward, Editor

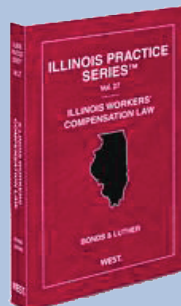
NEW ARBITRATOR VENUE ASSIGNMENTS FOR 2014

Effective January 1, 2014, arbitrators will have the following assignments:

Zone	Hearing sites	Arbitrators
1	Collinsville, Herrin, Mt. Vernon	Lee, Lindsay, Zanotti
2	Springfield, Quincy, Urbana	Dearing, Gallagher, Pulia
3	Bloomington, Peoria, Rock Island	Erbacci, Holland, McCarthy
4	Geneva, New Lenox, Ottawa	Granada, Mathis, O'Malley
5	Rockford, Waukegan, Woodstock	Andros, Falcioni, Fratianni
6	Chicago, Wheaton	Cronin, Doherty, Luskin
7	Chicago	Black, Carlson, Dollison, Flores, Huebsch, Kane, Kelmanson, Mason, Simpson, Steffen, Thompson-Smith, Williams

APPELLATE VICTORY

Heyl Royster obtained a reversal before the Appellate Court, Workers' Compensation Commission Division, in *Decatur Overhead Door v. Illinois Workers' Compensation Commission*, 2013 IL App (4th) 120639WC-U. In that case, the Commission had awarded 50 percent of a person and specifically found the claimant had failed to prove entitlement to permanent total disability (PTD) benefits. The circuit court reversed and remanded. On remand, and due to the wording of the remand language, the Commission awarded PTD benefits. In doing so, the Commission specifically noted that it had reviewed the entire record and had reached the same conclusion as before – that the claimant failed to establish PTD benefits. However, based on the remand language, the Commission felt compelled to find otherwise and awarded PTD benefits. On further appeal, the same circuit court confirmed. The appellate court, however, reversed, finding that the record amply supported the original Commission decision to award permanent partial disability benefits and to deny PTD benefits. In a 5-0 unpublished Rule 23 decision, the appellate court reversed the circuit court and the second Commission decision and reinstated the original award of 50 percent of a person.



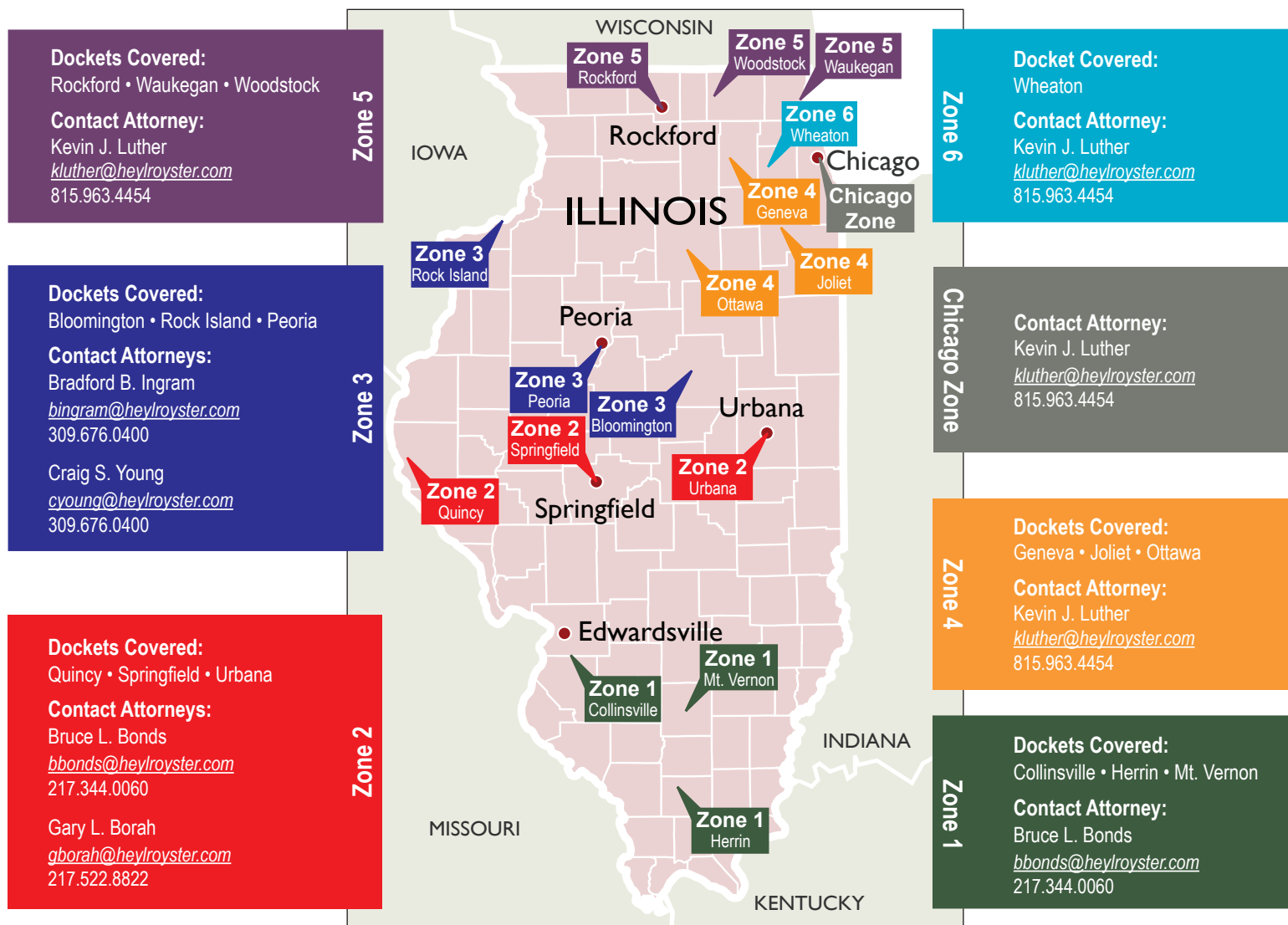
New Edition in Print!!

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 at store. westlaw.com.

Heyl Royster

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