

BELOW THE RED LINE

HEYL...
ROYSTER

WORKERS' COMPENSATION UPDATE

"WE'VE GOT THE STATE COVERED!"

A Newsletter for Employers and Claims Professionals

September 2015

A WORD FROM THE PRACTICE GROUP CHAIR

As we end September and move into fall, we pause to report on a few developments in Illinois Workers' Compensation law. In this issue, we provide a short update on the new arbitrator appointments by Governor Bruce Rauner. New Zone assignments should be made soon and will follow in subsequent issues of *Below the Red Line*.

Also, we are pleased to note the release of the 2015-2016 edition of Illinois Workers' Compensation Law (Volume 27, Illinois Practice Series), co-authored by Heyl Royster's own Kevin Luther and Bruce Bonds. This volume is the most comprehensive work on Illinois workers' compensation law available today.

This edition of *Below the Red Line* also highlights some recent victories by Heyl Royster attorneys before arbitrators and tribunals across the state. We also provide a helpful practice pointer from Bruce Bonds on dealing with claims seeking separate permanency awards where the injury involves both the biceps tear (claimed loss of use of the arm) and rotator cuff issues.

Finally, we are excited to announce our joint Governmental Practice/Workers' Compensation seminars, which are scheduled for October 28 in Springfield and November 3 in Naperville. Please mark the dates as invitations will follow soon, and we hope to see many of you there.

With the recent oral argument call at the appellate court earlier this month, we anticipate a number of new decisions to report on in October and November. In the meantime, let's hope the beautiful fall weather lasts, and winter holds off for a good long while.


Craig S. Young
Chair, WC Practice Group
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COMMISSION NEWS

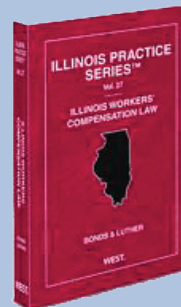
Governor Rauner has reappointed the following individuals as arbitrators:

Molly Dearing, Maria Bocanegra, Ketki Steffen, George Andros, Maureen Pulia, Gerald Granada, Nancy Lindsay, Jeffrey Huebsch, Stephen Friedman, Jessica Hegarty.

He has also appointed four new arbitrators:

Christina Hemenway, Christine Ory, Douglas Steffenson, and Melinda Rowe-Sullivan.

New Edition in Print!!



The ILLINOIS WORKERS' COMPENSATION LAW, 2015 Edition (Vol. 27, Illinois Practice Series, Thomson Reuters) is now available. Authored by Heyl Royster partners Kevin Luther and Bruce Bonds, this work can be purchased at:

<http://legalsolutions.thomsonreuters.com/law-products>

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PRACTICE POINTER

By: *Bruce Bonds*, bbonds@heyloyroyster.com

Petitioner's attorneys are seeking separate permanency awards where the injury involves both the biceps tear (claimed loss of use of the arm) and rotator cuff issues (settle as a man as a whole subsequent to the Will County case). The argument is often that the purpose of the biceps tendon is to control and move the arm and thus a separate award would be warranted.

Commission decisions including *Alvey v Menard Correctional Center*, 2003 Ill. Wrk Comp. LEXIS 759, 13 IWCC 758 and *Lescody v. Giuffre Buick & Volvo*, 2015 Ill. Wrk Comp. LEXIS 487, 15 IWCC 486, suggests where the pathology to the biceps tendon is proximal (that is, at or near the shoulder area) as opposed to distal (at or near the elbow) the appropriate award is based on person as a whole and would be combined with the award for the rotator cuff pathology. It would be probable that in many cases the man as a whole award for both injuries might be greater than it would be if only one of the pathologies existed. Factors to consider would be: (1) were the complaints to the shoulder as opposed to the arm; (2) was the mechanism of injury to the shoulder; (3) was there a diagnosis of pain in the "shoulder region;" (4) was the diagnosis based on an MRI of the shoulder that encompassed several separate pathologies; and (5) was the surgery classified as a "shoulder" arthroscopy.



Bruce Bonds

Urbana Office

Bruce is a past Chair of our state-wide workers' compensation practice group and has spent his entire legal career with Heyl Royster beginning in 1982 in the Peoria office. He concentrates his expertise in the area of workers' compensation, third-party defense of employers, and employment law. With extensive experience before the Illinois Workers' Compensation Commission, Bruce has defended employers in thousands of cases during the course of his career. As a result of his experience and success, his services are sought by self-insureds, insurance carriers, and TPAs. Bruce is an Adjunct Professor of law at the University of Illinois College of Law where he has taught Workers' Compensation Law to upper-level students since 1998.

RECENT VICTORIES

Jim Manning (Peoria) received a favorable ruling in a repetitive trauma, carpal tunnel claim he recently tried for one of our school district clients. The claimant, a custodian at an elementary school, alleged that her job duties were very hand intensive and caused her to develop bilateral carpal tunnel syndrome. Both the claimant's treating surgeon and an orthopedic physician hired by claimant's attorney to do an IME provided causal connection opinions. However, Jim retained a top notch hand surgeon who specializes in the diagnosis and treatment of carpal tunnel conditions who went out to the claimant's school to not only observe the work performed by the custodians, but he also actually performed the work himself and operated the various equipment used by the claimant (including floor scrubbers, vacuum cleaners, mops, brooms, etc.). Our examining physician unequivocally testified that the claimant's custodial work did not expose her to sustained, forceful gripping, vibration or other stress to the hands and wrists which would have caused or aggravated an underlying carpal tunnel condition. The arbitrator agreed and denied benefits.

Brad Elward (Peoria) obtained a modification and reduction of a person-as-a-whole permanency award as part of a recent judicial review to the circuit court. The Commission, which had originally awarded a percent of an arm for bilateral shoulder injuries, on remand following the *Will County* decision, issued a single person-as-a-whole award, but used the current 253 week shoulder measure as its basis, rather than the 235 weeks that applied at the time of the accident. The circuit court applied the 235 week basis.

Vince Boyle (Peoria) successfully defended a workers' compensation case regarding entitlement to vocational rehabilitation. In this case, the petitioner sustained a hernia and was unable to return to his pre-injury employment. The respondent initiated vocational rehabilitation, but later terminated efforts, along with maintenance benefits, due to petitioner's noncompliance. The petitioner specifically refused to comply with recommendations regarding his personal appearance and missed a number of scheduled appointments during a two month period. The case was tried and the arbitrator found in favor of the respondent on the issue of vocational rehabilitation

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and instead of reinstating vocational rehabilitation, rendered a permanency award. The award was lower than respondent's settlement proposal prior to arbitration. The petitioner appealed this decision, but it was unanimously affirmed by the Commission and was confirmed on judicial review. The case is currently pending before the Illinois Appellate Court.

Brad Antonacci (Rockford) reported a victory in a disputed bilateral carpal tunnel and right shoulder claim with injuries allegedly due to repetitive work duties. The claimant worked as a sewing machine operator for the employer and claimed the repetitive, forceful gripping with her hands while operating her sewing machine caused her injuries. The employer's IME physician reviewed a written job description and job duties video provided by the employer and found that the claimant's work duties were not activities known to cause, aggravate or accelerate the claimant's upper extremity conditions. The arbitrator denied all benefits and found that the claimant had failed to prove an accident occurred that arose out of and in the course of employment, and also failed to prove causal connection. In so finding, the arbitrator relied on the testimony of the claimant's supervisor and the opinions of the employer's IME physician. The claimant had demanded \$50,000 plus payment of a right shoulder arthroscopic surgery. This case is currently on review before the Commission.

Brad Peterson (Urbana) recently obtained a favorable decision on a disputed average weekly wage issue, persuading the arbitrator to adopt our calculations to exclude claimed overtime. The claimant had sought an average weekly wage determination of \$1,066.82; the employer maintained it was \$883.55. The arbitrator concluded that the claimant was not required to perform overtime, and that any overtime worked was voluntary and requested by the claimant based on his seniority.

John Flodstrom (Urbana) recently tried a case on an agreed permanent total, but litigated the claimant's request for a house addition and out building, and roughly \$300,000 for services provided by the claimant's wife. The arbitrator awarded only a portion of these expenses and ordered payment of \$66,000 to construct a 20x24 foot addition and payment of \$10 per hour for four hours per day to the claimant's spouse for medical services provided. All remaining claims were denied. The case is on review.

Upcoming Seminars!

Combined Workers' Compensation & Governmental Seminars

Springfield Session

DATE: Wednesday, October 28

TIME: Seminar: 1:00 pm – 4:00 pm

Reception @ 4:00 pm

LOCATION: Erin's Pavilion – Southwind Park

4965 S. 2nd Street

Springfield, IL 62703 Illinois

Naperville Session

DATE: Tuesday, November 3

TIME: Seminar: 12:00 pm – 3:00 pm

Reception @ 3:00 pm

LOCATION: Hotel Arista

2139 CityGate Lane

Naperville, IL 60563

Registration & Agendas to come!

ILLINOIS WORKERS' COMPENSATION RATES

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TTD, DEATH, PERM. TOTAL & AMP. RATES

ACCIDENT DATE	MAX. RATE TTD, DEATH, PERM. TOTAL, AMP.	MIN. RATE DEATH, PERM. TOTAL, AMP.
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
7/15/15 to 1/14/16	1379.73	517.40

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

MINIMUM TTD & 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- 1/14/16
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	1/15/12 to 7/14/12	966.72
7/1/09 to 6/30/10	664.72	7/15/12 to 1/14/13	971.60
7/1/10 to 6/30/11	669.64	1/15/13 to 7/14/13	990.02
7/1/11 to 6/30/12	695.78	7/15/13 to 1/14/14	998.40
7/1/12 to 6/30/13	712.55	1/15/14 to 7/14/14	1002.68
7/1/13 to 6/30/14	721.66	7/15/14 to 1/14/15	1005.80
7/1/14 to 6/30/15	735.37	1/15/15 to 7/14/15	1021.34
		7/15/15 to 1/14/16	1034.80

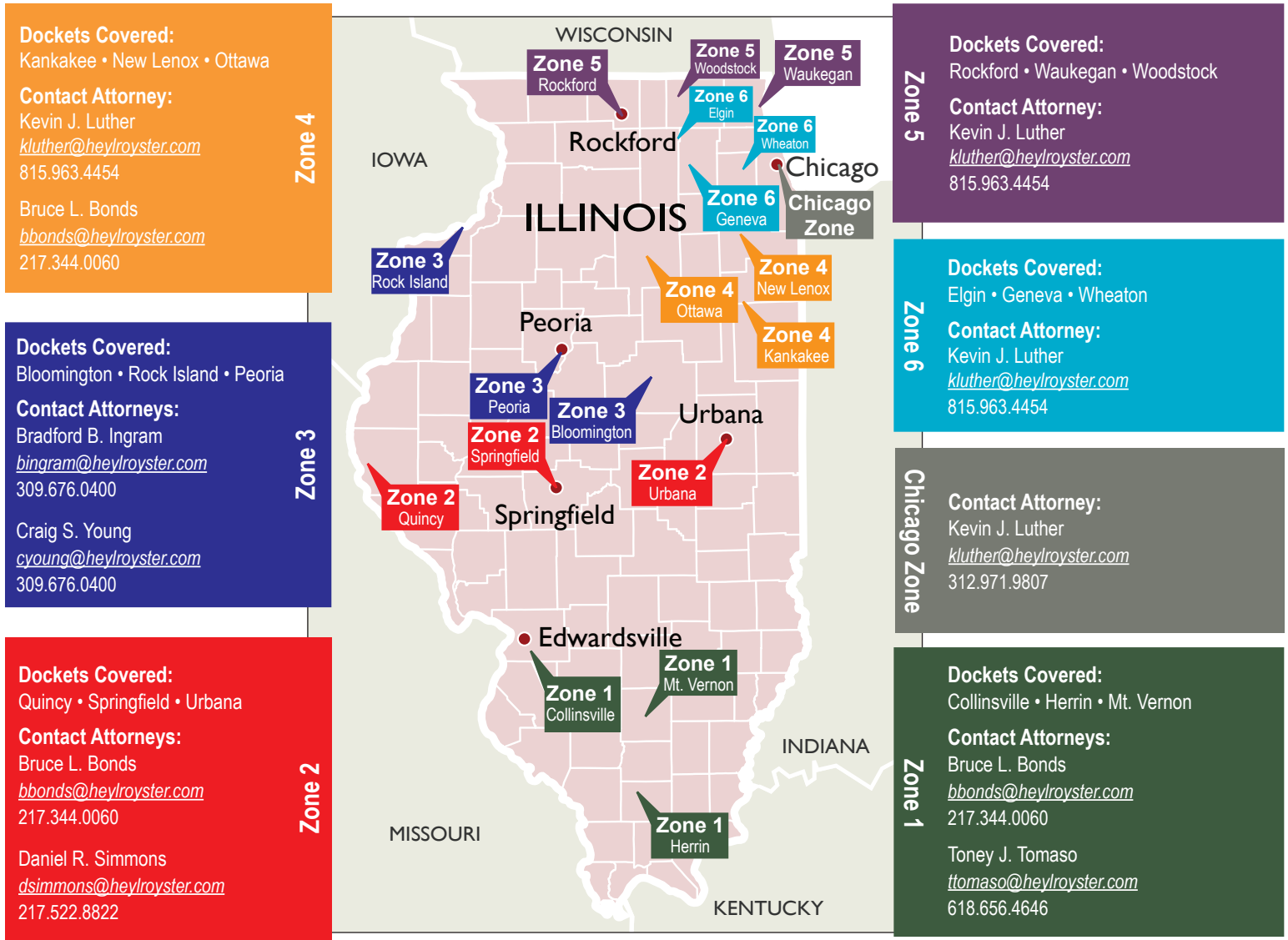
SCHEDULED LOSSES (100%)

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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Below is a sampling of our practice groups highlighting a partner who practices in that area – For more information, please visit our website
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Workers' Compensation

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