

BELOW THE RED LINE

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WORKERS' COMPENSATION UPDATE "WE'VE GOT YOU COVERED!"

A Newsletter for Employers and Claims Professionals

January 2020

A WORD FROM THE PRACTICE CHAIR

I know it has been a full month, but WELCOME TO 2020! I trust the new year is treating you well, and you have gotten back into the groove after the holiday season. It is about this time you are thinking about what that crazy groundhog in Punxsutawney, PA is going to do, what will be on your menu for Superbowl Sunday, and a Valentine's gift for that special someone (which could be yourself by the way)! It's always a good idea to have something to look forward to on these gray and dreary winter days.

My partner Brad Peterson, our resident Medicare/MSA guru, authored our January article. It comes as a fair warning to all claims managers, business owners, and attorneys about how the shadow of Medicare and our federal government is not just some "story" we tell our clients as a warning of what could happen. Some choose to listen and others roll the dice. Well, it seems a firm in Pennsylvania rolled the dice, did not follow recommended practices, and lost. Brad outlines the tale for us, and reminds us of the rules which we should follow. Our firm is always prepared, upon request, to make a house call for you and discuss how best to deal with Medicare complications in your claims handling. This case which Brad highlights, serves as a warning as to what the government expects from all of us when we settle a claim.

I would like to announce on behalf of the Heyl Royster Workers' Compensation Practice Group (as well as our entire firm) our Annual Claims Handling Seminar will be back and better than ever. We have

done our research, we have looked at the input we have received, and a decision has been made. We are moving our Spring Seminar back in time to the Fall. You will be seeing a save the date card and announcement soon, but we have decided to push the date out; it will be taking place in October/November 2020. I promise details will be coming soon. We want to see all of your faces there because we miss you! I for one am very much looking forward to the opportunity to talk workers' compensation with you. If you have any new Team members that you want to have access to this newsletter and the future invite to the Fall Seminar, please send me their name and e-mail address, and we can get them signed up.



Toney J. Tomaso
Workers' Compensation Practice Chair
ttomaso@heyloyroyster.com



HEYL ROYSTER WORKERS' COMPENSATION UPDATE

January 2020

Editor, Lynsey Welch

PHILADELPHIA PERSONAL INJURY FIRM SETTLES WITH FEDERAL GOVERNMENT FOR FAILURE TO REIMBURSE CONDITIONAL PAYMENTS TO MEDICARE

By: Brad Peterson, Champaign Office

A recent settlement between the United States Department of Justice and a Philadelphia personal injury firm serves as a stark reminder how careful litigants must be when it comes to potential Medicare conditional payments. Medicare has a priority right of reimbursement for any medical expenses it paid that should have been paid under workers' compensation or which was recovered in a civil settlement. Responsibility for satisfying the conditional payments is demonstrated by (1) a judgment; (2) a payment conditioned upon receipt of compromise, waiver or release; (3) any other means including, but not limited to a settlement award or contractual obligation. 42 CFR § 411.22 (b). The legal duty to reimburse Medicare for its conditional payments applies not only to insurers, but to anyone receiving proceeds from the settlement or judgment including claimants and their attorneys. As a Philadelphia law firm has recently learned, the amounts need not be significant to trigger the U.S. Attorney's Office to seek enforcement of the Medicare Secondary Payer Act.

On January 8, 2020, United States Attorney for the Eastern District of Pennsylvania announced a settlement with the firm of Simon and Simon, PC, for the firm's failure to reimburse conditional payments. Between 2014 and 2019, Medicare made conditional payments satisfying injury related medical bills for 8 of the firm's clients. The U.S. Attorney noted that any entities who receive the settlement or judgment proceeds, such as the injured party's attorney, are obligated to repay Medicare within 60 days for its conditional payments. According to the press release, Simon and Simon failed to reimburse conditional payments totaling \$6,604.59. Take note that this amount involved 8 clients and therefore the average amount per client was less than \$1,000. Notwithstanding the U.S. Attorney's

Office pursued Simon and Simon for their failure to reimburse conditional payments. According to the press release of January 8, 2020, the firm agreed to reimburse Medicare for the sum of \$6,604.59. In addition, the settlement agreement obligated the firm to "(1) name a person responsible for paying Medicare Secondary Payer debts; (2) train the employee to ensure that the firm pays these debts on a timely basis; (3) review any outstanding debts to insure compliance; and (4) provide written certification of compliance."

The press release from U.S. Attorney William McSwain concludes with the following reminder: "This settlement agreement should remind personal injury lawyers and others of their obligation to reimburse Medicare when they receive settlement or judgment proceeds for their clients. Lawyers need to set a good example and follow the rules of the road for Medicare reimbursement. If they don't, we will move aggressively to recover the money for taxpayers."

It should be noted that the U.S. Attorney apparently did not seek double damages under the settlement as could have been sought under the Medicare Secondary Payer Act. This case serves as a valuable reminder for all that potential conditional payments must be explored in every case and taken very seriously.



Brad Peterson
bpeterson@heyloyroster.com
Champaign Office

Brad's practice is divided between workers' compensation, civil litigation and Medicare Secondary Payer Act compliance. For over a decade Brad has had a special interest in Medicare Set-Aside Trusts and the Medicare Secondary Payer Act. He has written and spoken extensively on these issues. Brad was one of the first attorneys in the State of Illinois to publish an article regarding the application of the Medicare Secondary Payer Act to workers' compensation claims. He has also closely followed developments regarding the need for Medicare Set-Aside accounts in liability cases.

Contact Attorney:

Brad A. Antonacci
bantonacci@heyloyroyster.com
Kevin J. Luther
kluther@heyloyroyster.com
312.971.9807

Chicago Zone

Dockets Covered:

Elgin • Geneva • Wheaton

Contact Attorney:

Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 6

Dockets Covered:

Rockford • Waukegan • Woodstock

Contact Attorneys:

Kevin J. Luther
kluther@heyloyroyster.com
Lynsey A. Welch
lwelch@heyloyroyster.com
815.963.4454

Zone 5

Dockets Covered:

Kankakee • New Lenox • Ottawa

Contact Attorney:

Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 4

Dockets Covered:

Bloomington • Rock Island • Peoria

Contact Attorney:

Dana J. Hughes
dhughes@heyloyroyster.com
309.676.0400

Zone 3

Dockets Covered:

Quincy • Springfield • Urbana

Contact Attorney:

Bruce L. Bonds
bbonds@heyloyroyster.com
217.344.0060

Zone 2

Dockets Covered:

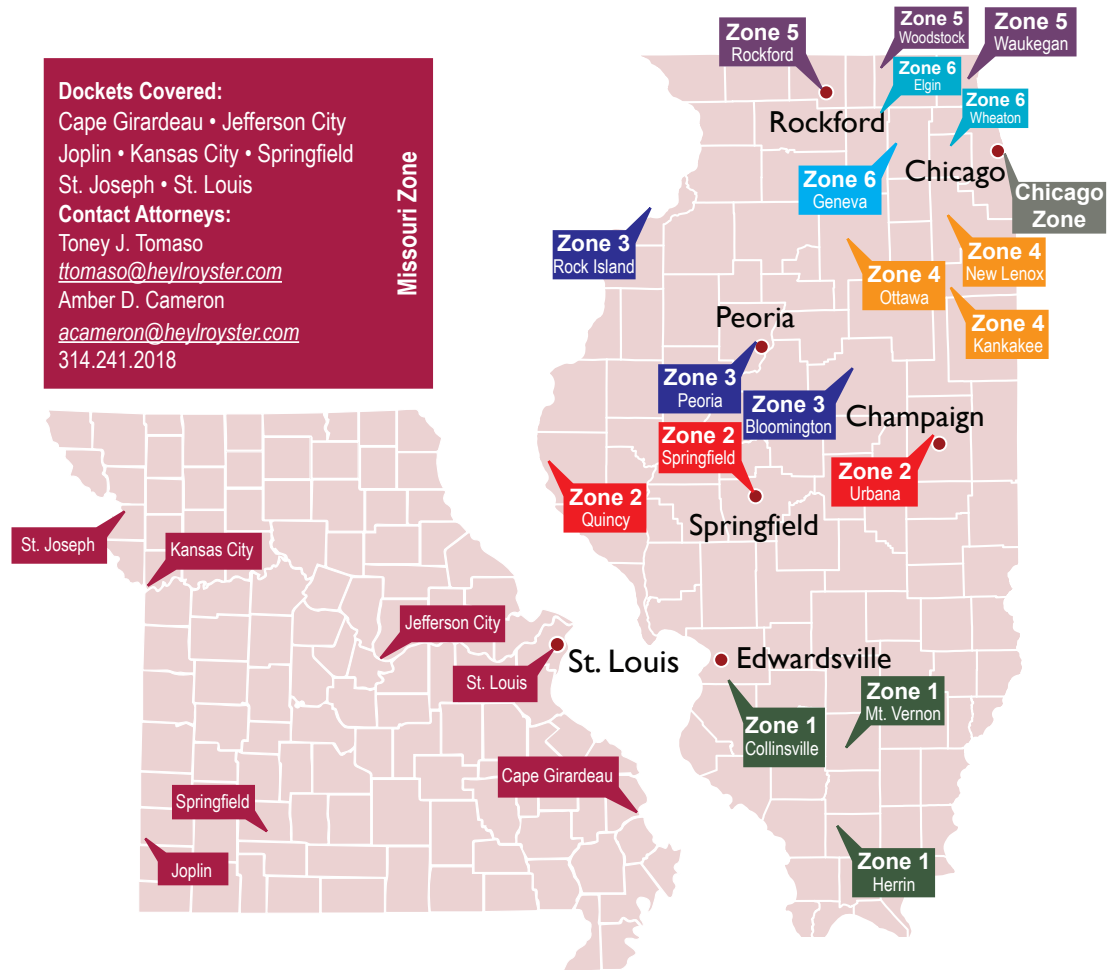
Collinsville • Herrin • Mt. Vernon

Contact Attorneys:

Toney J. Tomaso
ttomaso@heyloyroyster.com
618.656.4646

Zone 1

REGIONAL ZONE MAPS



Workers' Compensation Practice Chair

Contact Attorney:

Toney Tomaso - ttomaso@heyloyroyster.com
217-344-0060

Workers' Compensation Appellate

Toney Tomaso - ttomaso@heyloyroyster.com
Dana J. Hughes - dhughes@heyloyroyster.com
217-344-0060

State of Wisconsin

Contact Attorney:

Kevin J. Luther - kluther@heyloyroyster.com
815-963-4454

Jones Act Claims

Contact Attorney:

Ann Barron - abarron@heyloyroyster.com
618-656-4646

WORKERS' COMPENSATION OFFICE LOCATIONS

Champaign

301 N. Neil St.
Suite 505
Champaign, IL
61820
217.344.0060

Chicago

33 N. Dearborn St.
Seventh Floor
Chicago, IL
60602
312.853.8700

Edwardsville

105 W. Vandalia St.
Mark Twain Plaza III
Suite 100
PO Box 467
Edwardsville, IL
62025
618.656.4646

Peoria

300 Hamilton Blvd.
PO Box 6199
Peoria, IL
61601
309.676.0400

Rockford

120 W. State St.
Second Floor
Rockford, IL
61101
815.963.4454

Springfield

3731 Wabash Ave.
PO Box 9678
Springfield, IL
62791
217.522.8822

St. Louis

701 Market St.
Peabody Plaza
Suite 1505
St. Louis, MO
63101
314.241.2018

WORKERS' COMPENSATION PRACTICE GROUP



Practice Group Chair

Toney Tomaso

ttomaso@heyloyroyster.com

Champaign Office



Contact Attorney:

Bruce Bonds

bbonds@heyloyroyster.com



John Flodstrom

jflodstrom@heyloyroyster.com



Joseph Guyette

jguyette@heyloyroyster.com



Bradford Peterson

bpeterson@heyloyroyster.com



Toney Tomaso

ttomaso@heyloyroyster.com



Joshua Lawson

jlawson@heyloyroyster.com

Chicago Office



Contact Attorney:

Brad Antonacci

bantonacci@heyloyroyster.com



Kevin Luther

kluther@heyloyroyster.com



Lynsey Welch

lwelch@heyloyroyster.com



Reginald Lys

rlys@heyloyroyster.com



Joseph Rust

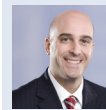
jrust@heyloyroyster.com



Jacque Donahue

jdonahue@heyloyroyster.com

Edwardsville Office



Contact Attorney:

Toney Tomaso

ttomaso@heyloyroyster.com



John Flodstrom

jflodstrom@heyloyroyster.com



Amber Cameron

acameron@heyloyroyster.com

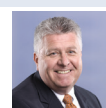
Springfield Office



Contact Attorney:

Dan Simmons

dsimmons@heyloyroyster.com



John Langfelder

jangfelder@heyloyroyster.com



Jessica Bell

jbelle@heyloyroyster.com

Peoria Office



Contact Attorney:

Dana Hughes

dhughes@heyloyroyster.com



James Manning

jmanning@heyloyroyster.com



Jessica Bell

jbelle@heyloyroyster.com



Devin Taseff

dtaseff@heyloyroyster.com

Rockford Office



Contact Attorney:

Kevin Luther

kluther@heyloyroyster.com



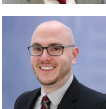
Lynsey Welch

lwelch@heyloyroyster.com



Jordan Emmert

jemmert@heyloyroyster.com



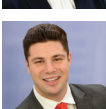
Scott Hall

shall@heyloyroyster.com



Wendi Werren

wwerren@heyloyroyster.com



Adam Rosner

arosner@heyloyroyster.com

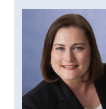
St. Louis Office



Contact Attorneys:

Toney Tomaso

ttomaso@heyloyroyster.com



Amber Cameron

acameron@heyloyroyster.com

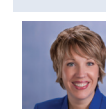
Appellate



Contact Attorney:

Toney Tomaso

ttomaso@heyloyroyster.com



Dana Hughes

dhughes@heyloyroyster.com

Below is a sampling of our practice groups highlighting a partner who practices in that area – For more information, please visit our website
www.heyloyster.com



Appellate Advocacy

Craig Unrath
cunrath@heyloyster.com



Business and Commercial Litigation

John Heil
jheil@heyloyster.com



Business Organizations & Transactions

Ken Davies
kdavies@heyloyster.com



Casualty/Tort Litigation

Nick Bertschy
nbertschy@heyloyster.com



Civil Rights Litigation/Section 1983

Keith Fruehling
kfruehling@heyloyster.com



Construction

Mark McClenathan
mmcclenathan@heyloyster.com



Employment & Labor

Brian Smith
bsmith@heyloyster.com



Governmental

Andy Keyt
akeyt@heyloyster.com



Healthcare

Roger Clayton
rclayton@heyloyster.com



Insurance Services

Patrick Cloud
pcloud@heyloyster.com



Long Term Care/Nursing Homes

Tyler Robinson
trobinson@heyloyster.com



Product Liability

Mark Hansen
mhansen@heyloyster.com



Professional Liability

Renee Monfort
rmonfort@heyloyster.com



Toxic Torts & Asbestos

Kent Plotner
kplotner@heyloyster.com



Trucking/Motor Carrier Litigation

Matt Hefflefinger
mhefflefinger@heyloyster.com



Workers' Compensation

Toney Tomaso
ttomaso@heyloyster.com



Scan this QR Code
for more information about
our practice groups and attorneys

Peoria	Champaign	Chicago	Edwardsville	Rockford	Springfield	St. Louis	Jackson
300 Hamilton Blvd. PO Box 6199 Peoria, IL 61601 309.676.0400	301 N. Neil St. Suite 505 Champaign, IL 61820 217.344.0060	33 N. Dearborn St. Seventh Floor Chicago, IL 60602 312.853.8700	105 W. Vandalia St. Mark Twain Plaza III Suite 100 PO Box 467 Edwardsville, IL 62025 618.656.4646	120 W. State St. Second Floor Rockford, IL 61101 815.963.4454	3731 Wabash Ave. PO Box 9678 Springfield, IL 62791 217.522.8822	701 Market St. Peabody Plaza Suite 1505 St. Louis, MO 63101 314.241.2018	1000 Highland Colony Pkwy. Suite 5203 Ridgeland, MS 39157 800.642.7471