

HEYL...
ROYSTER

BELOW THE RED LINE

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

December 2022

A WORD FROM THE PRACTICE CHAIR

I hope this holiday season has brought you nothing but joy and laughter. I realize the weather outside is frightful, but I hope we all have done our best to stay warm and cheery. My family will gather from near and far for games (we are a competitive bunch), food, drink, and more food. There will be over thirty of us this year, and the family keeps growing. As they say, the more, the merrier. On behalf of the entire Heyl Royster Team, I wish you and yours a wonderful and cookie-filled holiday season! Oh, and the answer to that age-old question is "yes," you should eat that second cookie!

Chairman Michael Brennan recently announced Arbitrator re-assignments for some, but not all, of his Arbitrators in the State of Illinois that will take effect on January 1, 2023. Your Heyl Royster workers' compensation attorney knows about these changes and will update you as it applies to your claim and what impact you will see from any Arbitrator changes.

This month's newsletter author is firm partner John Flodstrom. John manages the Champaign office and has helped mentor me over the years. He handles workers' compensation matters in Central and Southern Illinois. Although vision loss cases are not typical workplace injuries, we realize they come up from time to time. And, because we do not see them on a regular basis, John's article walking you through handling and valuing these cases will be your helpful guide. File this one away because sometime in the future, I would bet you will encounter one, and this article will help you assess, reserve, and manage it.

As always, if you have any questions or requests for you or your Team, don't hesitate to contact me or any of your Heyl Royster Workers' Compensation attorneys.

WORKERS' COMPENSATION PUBLICATION TEAM

Practice Chair

Toney Tomaso

Editor

Amber Cameron

Featured Author

John Flodstrom



[Toney Tomaso](#)



FEATURE ARTICLE

YOU'LL SHOOT YOUR EYE OUT! DEFENDING EYE INJURY CLAIMS

By John Flodstrom



In the movie “A Christmas Story”, Ralphie is repeatedly admonished by adults that he should not get a BB gun

for Christmas at the risk of shooting his eye out. As it turns out, Ralphie does receive a BB gun on Christmas morning and is spared a serious injury to his eye thanks to his large eyeglasses. Fortunately, incidences of work related eye injuries in Illinois are also low due to the use of safety goggles and other safety measures. However, traumatic injuries to the eyes do occur and can present unique challenges to claims professionals.

The initial stage of the handling of an eye claim is similar to other types of injury claims. The employee is owed temporary total disability for any lost time. Any reasonable, necessary, and related medical bills, including vision treatment, should be covered by the employer. Eye injury claims differ from other claims because there are unique guidelines for determining the amount of exposure for disability for permanent vision loss and related problems.

Statutory Guidelines

The framework for permanent disability for vision loss is found in Section 8(e)(13) of the Illinois Workers’ Compensation Act; (820 ILCS 305/8(e) (13)). This provides for up to 162 weeks for loss of sight of an eye plus an additional 11 weeks if there is enucleation (removal of the entire globe of the eye). The Act does not provide any guidance for calculating the percentage of disability and the approach for assessing disability is largely based on a series of judicial opinions. It is a question of fact

and within the jurisdiction of the Illinois Workers’ Compensation Commission to decide the extent of the loss of use of an eye. *Walker v. Industrial Comm’n*, 72 Ill. 2d 408, 413 (1978).

Use of Vision Tests

Since an employee is entitled to permanent disability for any loss of vision due to the work injury, the pre-accident level of vision must be determined. Typically, the employee has undergone prior vision tests and those tests establish the baseline for the employee’s visual acuity. A comparison is then made to a post-accident test to measure the loss of vision from the work injury.

Corrected vs. Uncorrected Vision

The Act does not address whether corrected or uncorrected vision should be considered for the vision loss analysis. Generally, the determination is based on how the eyes were used at the time of the injury. If the employee did not use corrective lenses, then the discrepancy between uncorrected vision before and after the injury is calculated. If corrective lenses were used, then the measure of damages is the difference between the corrected vision. *Motor Wheel Corporation v. Industrial Comm’n*, 75 Ill. 2d 230, 237 (1979).

In *Gilbert & Shughart Painting Contractors v. Industrial Comm’n*, 136 Ill. App. 3d 163 (3rd Dist. 1985), the employee did not wear glasses before the accident and did not have any problems with his vision. *Id.* at 165. He experienced a small laceration of his eyelid and a hemorrhage in the interior chamber of the eye. *Id.* at 164. His uncorrected vision after the injury was 20/400. He was fitted with a contact lens that gave him corrected vision of 20/30. *Id.* The Appellate Court affirmed an award of 100% loss of use of the left eye by making a comparison of the employee’s uncorrected vision from before and after the accident. *Id.* at 169. Since the post-accident vision was 20/400, the employee was essentially sightless without the use of a contact lens.

Wisconsin Vision Table

There is not a standard formula for awarding disability for vision loss, but the Wisconsin Vision Table is widely used as a factor. This Table converts loss of vision to a particular disability percentage. The Table sets forth the following for conversions of vision loss to disability percentages based on uncorrected vision:

Vision Impairment Conversation Table			
Uncorrected Vision	Disability Percentage	Uncorrected Vision	Disability Percentage
20/20	0%	20/60	35%
20/25	5%	20/70	40%
20/30	10%	20/80	50%
20/40	20%	20/100	75%
20/50	25%	20/150	85%
		20/200	100%

Other Factors

There are other factors besides loss of vision that can affect the disability value of an eye injury. These can include dry eye, discharge from the eye, “sticky” eyelids, and sensitivity to light. *Oscar Mayer & Co. v. Industrial Comm’n*, 79 Ill. 2d 254 (1980). Seeing floaters, white circles, or having blurry vision around the edge of the eye are additional factors that come into play. *Brooks v. Industrial Comm’n*, 263 Ill. App. 3d 884 (3rd Dist. 1993). While these conditions do not necessarily limit the employee’s vision, they can be annoying, ongoing problems that can affect the employee’s quality of life. Arbitrators will tend to award more disability if these other conditions are present.

In *Oscar Mayer*, the employee wore eyeglasses before the work injury and had corrected vision of close to 20/20. *Oscar Mayer* at 255. He suffered a corneal abrasion in the work accident that was treated with medication and antibiotics. *Id.* He was given a new eyeglass prescription that gave him 20/20 vision, the same vision he had before the accident. *Id.* Despite that, the Arbitrator awarded 10% loss of use the eye. *Id.* This award was affirmed by the Illinois Supreme Court based on additional evidence that the employee’s eyelids were sticky and full of “matter”. *Id.* at 256. There was also testimony at arbitration that bright light caused the employee to lose vision in his eye. *Id.* As a result, the employee was entitled to 10% loss of use of vision for his eye despite the fact his corrected vision remained the same following the work accident.



Future Vision Care

Eye injury claims can also entail exposure for future care, particularly if glasses or contact lenses are needed to correct the employee’s vision. The ongoing expenses would include eye examinations, prescription updates, eyedrops, ointment and medication.

Conclusion

Eye injury claims have a unique set of guidelines compared to other types of work related injuries. In most instances, there is an analysis of the employee's pre-accident visual acuity compared to the loss of acuity as a result of the accident. The Wisconsin Vision Table can be used to convert the loss of vision to a disability percentage. In addition, there are many other factors that come into play in determining the exposure for disability. To properly defend these claims, it is necessary to obtain information regarding the state of the employee's vision prior to the accident and whether the employee wore eyeglasses or contact lenses. There is also potential exposure for future vision care if the employee has ongoing symptoms in his eyes or if corrective lenses are needed to improve vision.



ABOUT THE AUTHOR



[John Flodstrom](#)

Office Managing Partner in Champaign, IL

- Casualty/Tort Litigation
- Utilities
- Workers' Compensation

John divides his practice between the defense of employers in cases pending before the Illinois Workers' Compensation Commission and the representation of defendants in civil litigation in state and federal court at the trial and appellate court levels.

John has tried over 100 cases before numerous Workers' Compensation Commission Arbitrators and handled appeals at the Commission, Circuit Court, and Appellate Court levels. He has represented employers of all sizes, including utility companies, trucking companies, agri-business enterprises, and manufacturing and retail businesses at Central and Southern Illinois dockets. John frequently lectures on workers' compensation issues, provides in-house training to employers and insurers, and has authored several articles regarding issues faced by employers and insurers in workers' compensation matters.

Additionally, John has represented defendants in tort and other civil claims in Central and Southern Illinois. This work includes defending property owners in premises liability claims, the defense of manufacturers and distributors in products liability matters, and professional liability and construction litigation cases. He has also defended trucking companies, businesses, and private individuals in litigation arising from motor vehicle accidents. John has experience defending claims under the Consumer Fraud Act and has also handled various commercial litigation matters, including breach of contract, breach of warranty, and trade secret claims.

In his legal tenure, John has represented individuals and entities in Civil Rights litigation in Federal Court, represented defendants in the Illinois Court of Claims, and defended the interests of employers in ancillary civil matters, including third-party claims for contribution and subrogation claims. John has also represented insurers in uninsured and underinsured motorist claims.

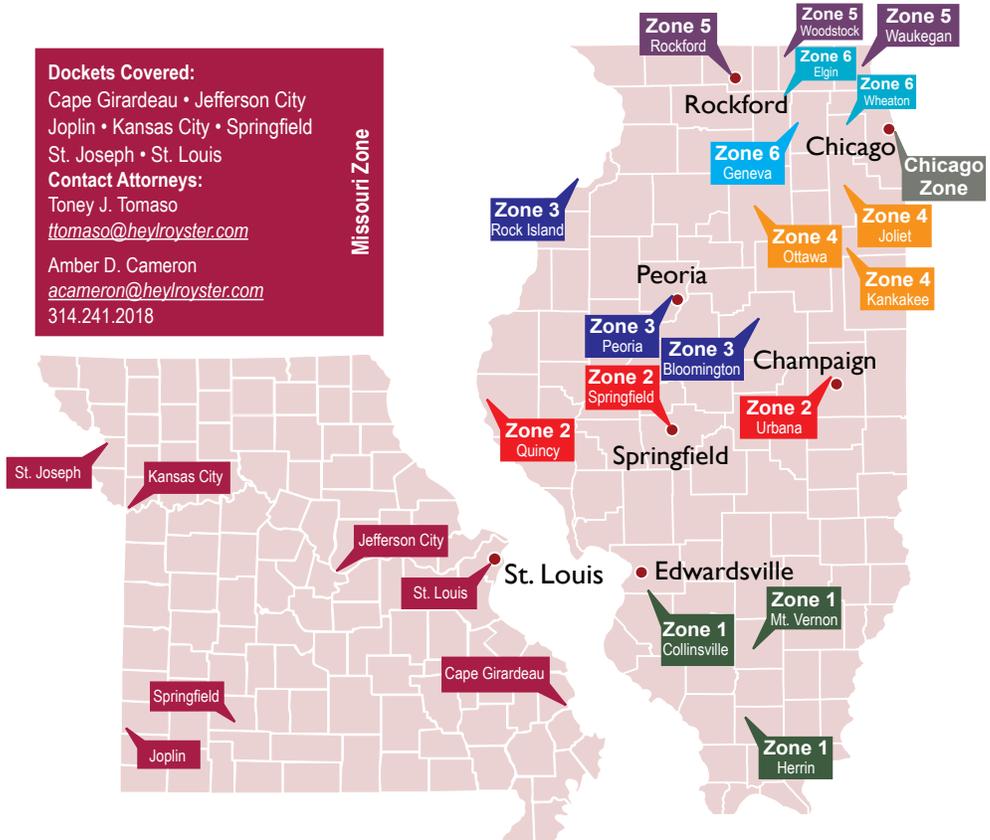
John graduated from the University of Illinois in 1983 with a Bachelor's degree in Political Science. He attended Northern Illinois University College of Law and received a JD, *cum laude*, in 1986.

REGIONAL ZONE MAPS

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 815.963.4454	Zone 5
Dockets Covered: Kankakee • Joliet • Ottawa Contact Attorney: Kevin J. Luther kluther@heyloyroyster.com 815.963.4454	Zone 4
Dockets Covered: Bloomington • Rock Island • Peoria Contact Attorney: Jessica M. Bell jbelle@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

Dockets Covered:
Cape Girardeau • Jefferson City
Joplin • Kansas City • Springfield
St. Joseph • St. Louis
Contact Attorneys:
Toney J. Tomaso
ttomaso@heyloyroyster.com
Amber D. Cameron
acameron@heyloyroyster.com
314.241.2018

Missouri Zone



Workers' Compensation Practice Chair

Contact Attorney:
Toney Tomaso - ttomaso@heyloyroyster.com
217-344-0060

Workers' Compensation Appellate

Contact Attorneys:
Toney Tomaso - ttomaso@heyloyroyster.com
217-344-0060
Christopher Drinkwine - cdrinkwine@heyloyroyster.com
815-963-4454

State of Wisconsin

Contact Attorney:
Kevin 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	Chicago	Edwardsville	Peoria	Rockford	Springfield	St. Louis
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 Edwardsville, IL 62025 618.656.4646	300 Hamilton Blvd. Second Floor Peoria, IL 61602 309.676.0400	120 W. State St. Second Floor Rockford, IL 61101 815.963.4454	3731 Wabash Ave. Springfield, IL 62711 217.522.8822	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



Toney Tomaso
ttomaso@heyloyroyster.com



Samuel Brolley
sbrolley@heyloyroyster.com

Peoria Office



Contact Attorney:
Jessica Bell
jbelle@heyloyroyster.com



Bruce Bonds
bbonds@heyloyroyster.com



Craig Young
cyoung@heyloyroyster.com



James Manning
jmanning@heyloyroyster.com



Ashley Broadstone
abroadstone@heyloyroyster.com

Chicago Office



Contact Attorney:
Brad Antonacci
bantonacci@heyloyroyster.com



Kevin Luther
kluther@heyloyroyster.com



Meg Bentley
mbentley@heyloyroyster.com



Joseph Rust
jrust@heyloyroyster.com



Leah Nolan
lnolan@heyloyroyster.com



Yu Ma
yuma@heyloyroyster.com

Rockford Office



Contact Attorney:
Kevin Luther
kluther@heyloyroyster.com



Heidi Agustsson
hagustsson@heyloyroyster.com



Jordan Emmert
jemmert@heyloyroyster.com



Steve Getty
sgetty@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

St. Louis Office



Contact Attorneys:
Toney Tomaso
ttomaso@heyloyroyster.com



Amber Cameron
acameron@heyloyroyster.com



Jenna Scott
jscott@heyloyroyster.com

Appellate



Contact Attorney:
Toney Tomaso
ttomaso@heyloyroyster.com



Christopher Drinkwine
cdrinkwine@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

Ann Barron
abarron@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/Section 1983 & Correctional Healthcare

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

Katie H. Anderson
kanderson@heyloyster.com



Insurance Services

Patrick Cloud
pcloud@heyloyster.com



Long Term Care/Nursing Homes

Tyler Robinson
trobenson@heyloyster.com



Professional Liability

Renee Monfort
rmonfort@heyloyster.com



Toxic Torts & Asbestos

Jennifer Johnson
jbjohnson@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

300 Hamilton Blvd.
Second Floor
Peoria, IL
61602
309.676.0400

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
Edwardsville, IL
62025
618.656.4646

Rockford

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

Springfield

3731 Wabash Ave.
Springfield, IL
62711
217.522.8822

St. Louis

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

Jackson

200 W. Jackson St.
Suite 200
Ridgeland, MS
39157
800.642.7471

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