

BELOW THE RED LINE

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

March 2023

A WORD FROM THE PRACTICE CHAIR

Did you get to recharge your battery with a fun-in-the-sun Spring Break? Maybe a staycation? In either case, I hope you enjoyed your time away, at least for a little while, and you returned with memories to get you through to your next break. We stayed put, and to my assistant's chagrin, I worked through the break. Now, did I take some time away to go and participate in some fun activities. You bet I did. When you can manage it, it is always a good idea to take those necessary breaks and enjoy life to remind you why you work so hard.

I just celebrated another successful trip around the sun. Yes. That's right. I admit it. I am getting older and realize I am not getting faster, stronger, or better looking. The trick is to make sure you absorb wisdom and experience along the way. So, I better get something good out of this deal. My family and friends get me through the tough days and make me cherish the great days. There will always be both. It is how you manage the prior which will allow you to really enjoy the latter. So, a big thank you to all of my support team that puts a smile on my face every day.

My wife would call this burying the lead in her work jargon ... But, I am happy to report the Heyl Royster 34th Annual Claims Handling Seminar is set, and we are ready to see our friends in person once again. Yes. That's right, IN PERSON. It will not be a hybrid seminar. There is no option to watch virtually via an online platform for any of these three events. Please mark it on your calendar. You will see our save-the-date card and invitation information going out soon online. Please RSVP, as we look forward to seeing you and talking about all

things workers' compensation. The schedule includes June 8 in Lombard (IL), followed by June 15 in Bloomington (IL), and then we wrap up on June 22 in St. Louis (MO). The programs will be the same for the most part, so pick the one that best suits your schedule and travel needs. We will see you in June! I cannot explain how excited we are to be back in action for the annual event that took a bit of a necessary hiatus due to COVID. Also, when you formally RSVP, you will have the chance to identify any questions or topics you want us to touch on during our presentations. This seminar is for you, so please, tell us what you are thinking about and what you need!

This month's newsletter article is written by Of Counsel attorney, Meg Bentley. Meg joined Heyl Royster in 2022 with a wealth of experience in workers' compensation defense over the past twenty years. She has been a welcomed addition to our Chicago office and doing a great job of mentoring our younger and less experienced workers' compensation attorneys. She is well respected at the Commission, and we hope you get to work with her and meet her in the near future. Meg's topic this month is the recent decision of the City of Joliet and the employer's ability to assert a Section 8(j) credit. This credit allows an employer, or the employer's workers' compensation insurance carrier, the ability to assert a credit against benefits paid on the injured employee's behalf by a group health and any disability policies, but only under certain circumstances. Meg outlines how this case helps us understand Section 8(j) and those circumstances when we, on behalf of the employer, get to claim such credits.

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[Toney Tomaso](#)

FEATURE ARTICLE

CASE REVIEW: CITY OF JOLIET V. ILLINOIS WORKERS' COMP. COMM'N, ET AL., 2023 IL APP. (3D) 220175WC

By [Meg Bentley](#)

Recently, in *City of Joliet v. Illinois Workers' Compensation Comm'n*, 2023 IL App (3d) 220175WC, the Illinois Appellate Court again considered respondent's entitlement to a credit for sums paid to claimant under Section 8(j) of the Illinois Workers' Compensation Act (Act). That section provides, in relevant part:

1. In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act. In such event, the period of time for giving notice of accidental injury or filing application for adjustment of claim does not commence to run until the termination of such payments. This paragraph does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act. Any employer receiving such credit shall keep such employee safe and harmless from any and all claims or liabilities that may be made against him by reason of having received such payments only to the extent of such credit.

2. Nothing contained in this Act shall be construed to give the employer or the insurance carrier the right to credit for any benefits or payments received by the employee other than compensation payments provided by this Act, and where the employee receives payments other than compensation payments, whether as full or partial salary, group insurance benefits, bonuses, annuities or any other payments, the employer or insurance carrier shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment. 820 ILCS 305/8(j) (West 2014).

In *City of Joliet*, Kimberly Smyth filed two workers' compensation claims as a result of two work-related injuries she sustained while employed by respondent.



On September 29, 2014, claimant was involved in a motor vehicle accident. She continued to work until January 28, 2015, when she was taken off work by her treating doctor. At that time, respondent started payment of temporary total disability (TTD) benefits. Claimant also received “make-whole” payments pursuant to the collective-bargaining agreement under which the parties operated.

On January 31, 2017, claimant sustained a second work-related injury when she slipped on uneven ground and felt a “crack and pop” in her neck. On February 17, 2017, claimant was taken off work by her treating doctors. Since respondent initially

denied this claim, claimant did not receive any TTD benefits during this period. However, claimant was paid pursuant to the expenditure of her sick, vacation, and compensatory leave with her employer. She also applied for benefits under the Illinois Municipal Retirement Fund (IMRF).

The arbitrator found that during this period running from February 17, 2017, to December 7, 2017, respondent paid \$54,403.28 pursuant to claimant's expenditure of her accrued sick leave, vacation, and compensatory time. Since these payments could be made to the claimant irrespective of a work injury, the arbitrator concluded that respondent was not entitled to a credit under Section 8(j) of the Act. With respect to this issue, the Commission affirmed the arbitrator's decision and the circuit court confirmed the Commission's decision.



Upon review, the Illinois Appellate Court affirmed the Commission's finding that respondent's payments for the period running from February 17, 2017, to December 7, 2017, were made pursuant to claimant's expenditure of her accrued sick leave, vacation, and compensatory time. It noted that such leave may be used irrespective of the occurrence of a work-related injury and respondent did not dispute this conclusion. Instead, respondent argued that this limitation did not apply to this case, relying on *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 954 (2011), where the employer was allowed a credit for payment of wages in lieu of TTD benefits.

In *Elgin Board of Education School District U-46*, the Illinois Appellate Court found that the first clause


of Section 8(j)(2) states that an employer is entitled to a credit only for compensation payments made pursuant to the Act. *Id.* However, the second clause states that when an employer pays money other than compensation payments, the employer "shall receive credit for each such payment," thereby appearing to qualify the broad language in the first clause of Section 8(j)(2) [emphasis added]. *Id.* However, this interpretation was seemingly rejected by the Appellate Court in *Tee-Pak, Inc. v. Industrial Comm'n.*, 141 Ill. App. 3d 520 (1986).

Respondent agreed that in *Tee-Pak, Inc.*, the Appellate Court held that under Section 8(j) of the Act, "the employer receives no credit for benefits which would have been paid irrespective of the occurrence of a workers' compensation accident." *Id.* at 529. However, unlike *Tee-Pak, Inc.*, in this case, there was no evidence that the employer intended that its employees collect wages and TTD benefits at the same time. Like *Elgin Board of Education School District U-46*, respondent asserted that this case was similarly distinguishable from *Tee-Pak, Inc.*

In reaching its decision in *City of Joliet*, the Appellate Court, noted that the limitation referenced in *Tee-Pak, Inc.* appears in the plain language of Section 8(j)(1) itself: "This paragraph does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act." 820 ILCS 305/8(j)(1) (West 2014). The Appellate Court concluded that this language is controlling here, regardless of whether *Tee-Pak, Inc.* was distinguishable.

Based upon the Appellate Court's recent decision in *City of Joliet*, it would appear that the courts will now look solely to the plain language of the Act when determining whether an employer is entitled to a Section 8(j) credit. Therefore, the employer might no longer be allowed a credit for compensation made to its employees even when there is no indication or evidence that its employees could not have used their accrued leave time or receive collective bargaining compensation absent an occupational injury.

However, the Appellate Court's findings would likely

be different if the claimant had used short-term disability leave benefits or other employer sponsored benefits applicable only in the case of illness or injury and not accruable by an employee through work hours for the employer. Further, if the employer had provided sufficient evidence at trial that the moneys provided were in lieu of compensation that would have been payable during that same period under the Act, that would have likely changed the outcome too; but here, the employer did not meet its burden of proof. 

ABOUT THE AUTHOR



[Meg Bentley](#)

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With more than 18 years of experience, Meg is a successful litigator seasoned in both state and federal courts.

With more than 18 years of experience handling insurance defense cases involving large multi-party actions with multi-million-dollar exposure, Meg concentrates her practice in the areas of workers' compensation and civil litigation. She has represented clients in a wide range of cases, including workers' compensation, transportation/trucking negligence, premises liability, automobile negligence, wrongful death, construction negligence, insurance coverage, subrogation, and commercial litigation.

Meg has successfully litigated and tried numerous workers' compensation cases on a multitude of issues throughout Illinois. She has also handled cases in both state and federal courts. Prior to joining Heyl Royster, Meg was a Partner at a prominent Chicago firm with 200+ attorneys and 12 offices throughout the United States.

Meg received her Bachelor of Arts degree from Miami University (Ohio) in 1999 and then earned her Juris Doctor degree from DePaul University College of Law in 2003.

WE'RE PUTTING THE BAND BACK TOGETHER

LIVE

34TH ANNUAL CLAIMS SEMINAR TOUR

PRESENTED BY:

HEYL...
ROYSTER

**SAVE
THE
DATE**



DATE LOCATION

**06.08 LOMBARD, IL
EMBASSY SUITES LOMBARD OAK BROOK**

TRACKS

**WORKERS'
COMPENSATION**

**06.15 BLOOMINGTON, IL
MARRIOTT HOTEL & CONFERENCE CENTER**


**WORKERS'
COMPENSATION** 
CASUALTY

**06.22 ST. LOUIS, MO
EMBASSY SUITES DOWNTOWN**


**WORKERS'
COMPENSATION**

**REGISTRATION
COMING SOON**

Seminar • Social
1:00 p.m. • 4:30 p.m.

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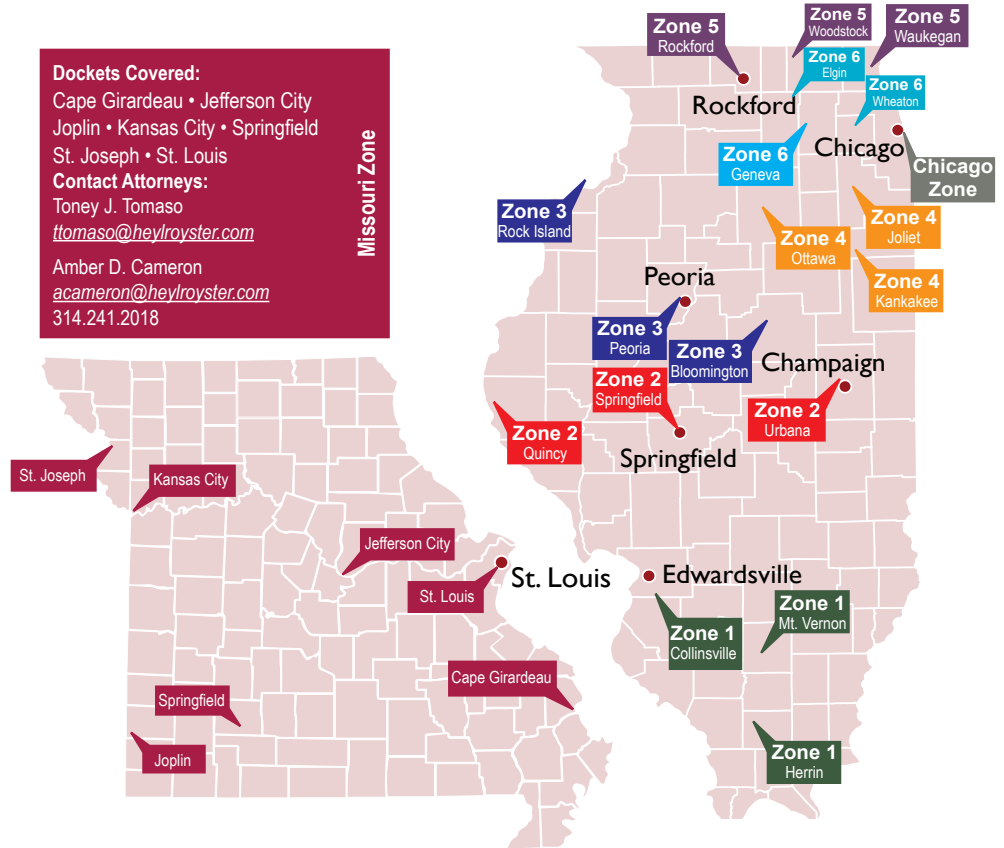
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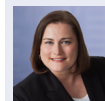
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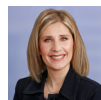
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