

# BELOW THE RED LINE

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

November 2022

## A WORD FROM THE PRACTICE CHAIR

I hope you had your fill of food, family, and friends at your chosen Thanksgiving table last week. One of the traditions in my home is going around the table and talking about what we are thankful for. Counting one's blessings while surrounded by family is always good for the soul. And, I must report I do not mind the food offerings at that table either. Whether I had more than my fair share of food, I will not disclose, as it might incriminate me. So, we now find ourselves getting ready for the rest of the holiday season. The Christmas countdown is on at my house, and that puts a big smile on my face. I hope you enjoy the holidays and all they represent, and please know the Workers' Compensation Team here at Heyl Royster is thankful for you and the trust you put in us to help you achieve great results in your claims and with your business.

I can report to you the Heyl Royster Team is in the planning stages of our Annual Claims Handling Seminar, which we moved from the Fall of 2022 to the Spring of 2023. We are securing our venues and dates. As soon as we are done with that part of the process, I will be sure to spread the word to you, our clients, as to the particulars so you can mark this premier in-person event on your calendar. Please email me any particular topic you believe is vital to the seminar. I would be happy to hear from you and get your input. Thank you in advance.

This month's article is written by one of our associates, [Sam Brolley](#), who works in our Champaign office. Sam has been working with me and Bruce Bonds as far as his workers' compensation training is concerned. I hope, in the not-too-distant future, you have a chance to work with and get to know Sam, as he has a bright road ahead of him. The *Montgomery* case is the article's focus and touches on the subject of Life Care Plans. These plans are becoming more in vogue and something we will need to deal with in the future. Sam discusses how to combat these plans and what aspects of the Illinois Workers' Compensation Act are at the employer's disposal to dispute the reasonableness of such a plan.



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## FEATURE ARTICLE

### **LIFE CARE PLANS: LIMITS ON THE COMMISSION'S AUTHORITY**

**By Sam Brolley**

A claim that involves lifelong future medical care can be expensive and complicated. In some cases, a Life Care Plan (LCP) may be warranted to help the parties determine the need for and cost associated with future medical care that may arise from a work accident. An LCP can include such pertinent details as the life expectancy of the patient, the long-term care the patient may require, and possible medical complications that may arise. Future cost areas can range from physician visits, home modifications, orthotics and prosthetics, dietary assessment, and transportation needs, just to name a few. As a tool for calculating damages, an LCP can be pivotal in settlement negotiations or at trial.

A decision from the Third District Appellate Court released earlier this month refocused and narrowed the Commission's role in deciding issues related to a life care plan.

#### ***Montgomery v. Illinois Workers' Comp. Comm'n, 2022 IL App (3d) 210604WC***

In 1994 petitioner Kurt Montgomery was injured in a compensable workplace accident involving a forklift and suffered injuries to his neck, shoulder, and arms. *Montgomery v. Illinois Workers' Comp. Comm'n*, 2022 IL App (3d) 210604WC, ¶ 5. The parties later entered into a lump sum settlement agreement approved by the Commission in which the petitioner waived all rights under the Act except his right to future medical treatment pursuant to Section 8(a). 820 ILCS 305/8(a). In 2011 the petitioner filed a Section 8(a) petition seeking medical treatment that was denied by Respondent as reasonable and related to the work injury. *Montgomery*, ¶ 8. At a 2017 hearing on the 8(a) petition, the petitioner made a claim for over \$50,000 in incurred medical expenses and requested that the Commission award all future medical care (as to both modalities

and frequency) listed in an LCP prepared by an expert with both a nursing degree and PhD. *Id.* ¶ 9. The expert determined that for this 49-year-old petitioner with complex regional pain syndrome ("CRPS"), the total cost for medical treatment and pharmaceuticals over the remaining 32 years of the petitioner's expected lifetime would be over \$15 million without acupuncture and over \$17 million with acupuncture. *Id.* ¶ 11. Respondent disputed the reasonableness and necessity of the medical and incidental expenses listed in the LCP.



Oral arguments were made before the Commission and the Commission decision included four main determinations regarding the LCP. First, the Commission ordered the petitioner's CRPS be managed by one central treating physician who would oversee the care plan and manage all modalities of treatment and medications. *Id.* ¶ 14. The Commission relied on a medical expert who criticized the discontinuous treatment that resulted with the use of multiple treatment facilities. Second, the central treating physician could not be the petitioner's current primary care physician; mostly because this primary care physician had failed to taper the amount of opioids prescribed to the petitioner. *Id.* ¶ 15. Third, the central treating physician had to practice out of a major medical institution or a university-based center. *Id.* ¶ 16. Fourth, the Commission determined the proposed LCP was premature and should not be considered until a medical care plan administered by a central treating physician meeting the criteria described above was implemented. *Id.* ¶ 17.

The circuit court confirmed the Commission's

decision, finding it was not against the manifest weight of the evidence. *Id.* ¶ 22. On appeal to the Third District, however, the appellate court found the Commission merely recited the respondent's Section 8(a) duty to pay reasonable and necessary medical and incidental expenses without detailing which of those expenses respondent was obligated to pay. *Id.* ¶ 23. On remand, the Commission stated the parties had reached a settlement agreement for the petitioner to be paid \$44,000 for the full extent of unpaid bills and expenses. *Id.* ¶ 24. In addition, the respondent was to pay the Medicare or Medicaid lien if asserted. *Id.* The circuit court confirmed this final Commission decision. *Id.* ¶ 25.

On appeal, the petitioner argued that by rejecting the life care plan without support from utilization review, the Commission violated Section 8.7 of the Act, but the Third District agreed with the respondent that under Section 8.7, utilization review is not binding on the Commission. Instead, the court quoted Section 8.7(i), which states "[a]n admissible utilization review shall be considered by the Commission, along with all other evidence and in the same manner as all other evidence, and must be addressed along with all other evidence in the determination of the reasonableness and necessity of the medical bills or treatment." *Id.* ¶ 30.

Respondent also argued that associated with the Commission's authority under Section 8(a) to determine the reasonableness and necessity of future medical treatment was the authority to enact conditions that the future medical treatment be managed by a central treating physician with certain characteristics, but the Third District rejected this argument. The Court conducted *de novo* review of the Act and found no provision empowering the Commission "to attach conditions to its finding of whether future medical care is necessary and reasonable." *Id.* ¶ 32. Section 8(a) could not be reasonably interpreted as giving the Commission the powers to order the designation of a central treating physician practicing out of a certain clinic or a university-based medical center, nor could it give the Commission the power to disqualify the petitioner's

primary care physician from the role. The court was unwilling to bestow upon the Commission "the powers to choose among physicians and to regulate the manner in which medical treatment [was] carried out." *Id.* The Third District reversed the Commission's decision ordering a central treating physician from a major medical institution and excluding the petitioner's primary care physician from that role. *Id.* ¶ 33. On remand, the Commission was instructed to perform its proper role of determining whether the future medical services and pharmaceuticals in the LCP were proven to be necessary and whether the expected cost of each necessary item was proven to be reasonable. *Id.* ¶ 34.



When life care plans are part of the determination of future medical benefits, it is important to remember that the Commission's authority is limited by Section 8(a): to determine whether the future medical treatment requested is reasonable, necessary, and related to the accident. As evidenced by the outcome in *Montgomery*, the Courts are reluctant to expand the authority of the Commission to select medical providers or put limitations or qualifiers on treatment requested. It is also worth remembering that utilization review is only one piece of evidence of many the Commission takes into consideration in determining the reasonableness and necessity of future medical bills or treatment.

Please feel free to contact any of our workers' compensation attorneys should you have any questions on this topic or any other workers' compensation issues.



## ABOUT THE AUTHOR



**Sam Brolley**

Sam joined Heyl Royster's Champaign office in 2021 as an Associate Attorney. He works in civil litigation, focusing on workers' compensation, casualty/tort litigation, employment, civil rights, and trucking. Sam believes in preparing diligently, getting to know the needs and motivations of his clients, and paying attention to local rules. He brings effort, enthusiasm, and energy to every case and client interaction.

Sam received his J.D. from Notre Dame College of Law in 2021. While at Notre Dame, Sam served two years as an editor for the Journal on Emerging Technologies. He spent his law school summers with the Cook County Public Defender in Chicago and at Heyl Royster, respectively. During his final year, he externed for the City of South Bend's legal department and had the pleasure of serving the men of Knott Hall as an assistant rector.

Outside of work, Sam mentors through the Big Brothers Big Sisters of Central Illinois program and is a fan of the Fighting Illini and Fighting Irish sports teams. He enjoys weightlifting, kayaking, and ultimate frisbee. Ask Sam about his favorite band (hint: it's Pearl Jam).

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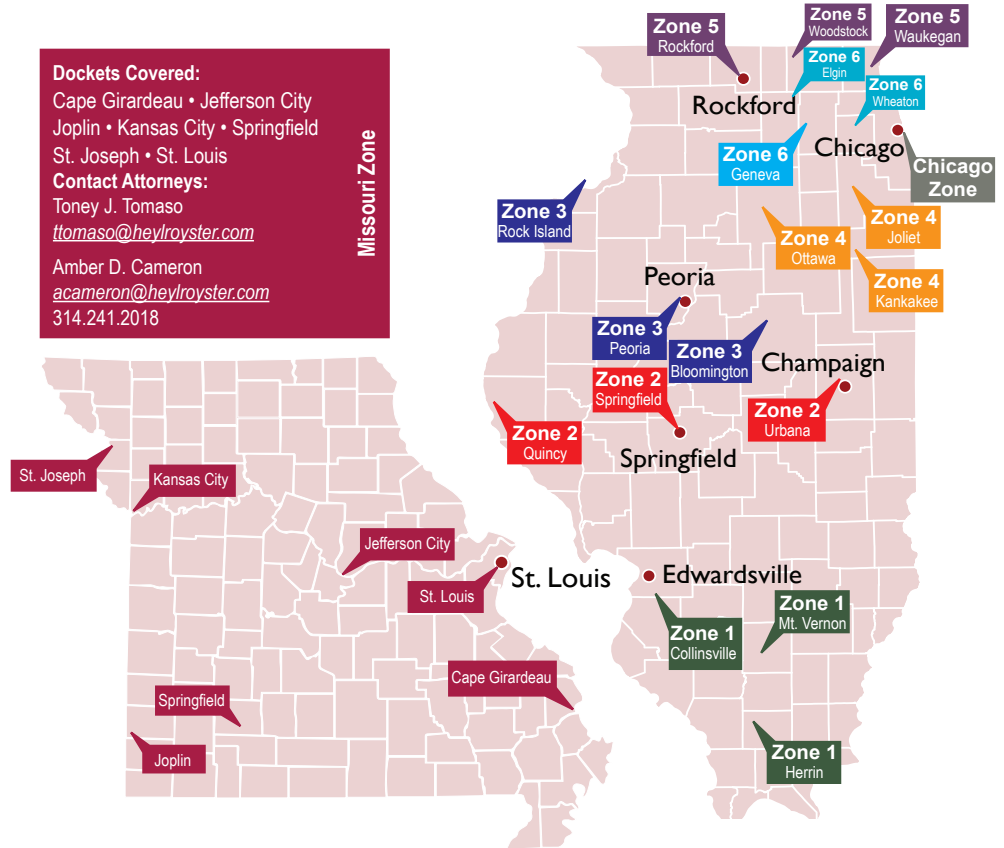
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