

BELOW THE RED LINE

HEYL ROYSTER

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

A Newsletter for Employers and Claims Professionals

April 2021

A WORD FROM THE PRACTICE CHAIR

Welcome to April 2021 and a much needed Spring season. I hope you are venturing outdoors and enjoying the scents and scenes as Mother Nature provides a beautiful show of renewal and growth. Speaking of growth I would be remiss if I did not note for our friends that we have a great new addition to our Workers' Compensation Team in Rockford. Mr. [Joe Pishghadamian](#) has joined Heyl Royster and will be working in the Northern Illinois / Chicago portion of the State. We are excited to have Joe on board and ready to jump in to take care of your workers' compensation needs.

The updates at the Commission include a new policy and procedure the Arbitrators have been asked to follow. We will be working off of a new procedural protocol for trials. They will still require the mandatory pre-trial hearing prior to obtaining a trial date. What will be different now is that the pre-trial will take place one month, and the trial date will be set the following month (so the parties have enough time to get their ducks in a row). This change came about because there were instances where the pre-trial took place one day, and the case was set for trial just a day or two later. This did not afford the parties enough time to schedule the appearance of witnesses. The new procedure will accommodate schedules and be more user friendly. We are still only conducting trials in person at three locations in the state - Chicago, Springfield, and Collinsville. That should be changing soon as vaccines are rolling out and positivity rates continue to drop. This will allow the Chairman to work with other locations around the State and open up more venues for in person activities.

Our author this month is my partner [Joe Guyette](#) from Heyl Royster's Champaign office. I am confident many of you already know and rely upon Joe for both his workers' compensation abilities and his bank of Medicare knowledge. Joe has taken over this very important aspect of our workers' compensation practice group, previously handled by Brad Peterson, who retired at the end of 2020. Joe Guyette is a Certified Medicare Secondary Payer

Professional, having completed the 36 hour course and passed the certification examination in 2019. He is also a member of the National Medicare Secondary Payer Network, and attends their educational conference yearly. Joe is a frequent presenter on the intersection of Workers' Compensation and Medicare, and regularly counsels clients on the efficient resolution of cases involving Medicare issues. Recently, Joe presented on the topic of Medicare and Workers' Compensation for the Illinois State Bar Association. His article below will always fall under the category of timely and useful. I recommend you read it and print out the [linked](#) materials to use as a desk reference tool when wrestling with Medicare complications in your files. Don't hesitate to contact Joe when you need him to help you with your Medicare questions.

Finally, we wanted to share a much deserved victory at the Appellate Court by the good guys. [Here](#) is a link to the case of *Emily Purcell v. The Illinois Workers' Compensation Commission*. The employee made the decision to take a short-cut of sorts when walking to drop off her time card. Instead of using a sidewalk she decided to cut a corner and jump over a chain barrier/fence, in doing so caught her foot on the chain falling and injuring herself. This is a published opinion and the Appellate Court affirmed the Decision of the Circuit Court and Commission, which found against the injured worker and awarded no benefits. This decision goes through the *McAllister* analysis and the *Traveling Employee* analysis in reaching its ultimate conclusion in favor of the employer here. A job well done on behalf of this client by my partner Joe Guyette.



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HEYL ROYSTER WORKERS' COMPENSATION UPDATE

April 2021

IDENTIFYING AND RESOLVING MEDICARE ISSUES IN WORKERS' COMPENSATION SETTLEMENTS

Medicare issues tend to complicate and delay the resolution of a Worker's Compensation case. It can be difficult to balance the need to settle a claim for a reasonable sum with the need to limit or eliminate Medicare liability, but this is possible with good planning. Whether you are tackling conditional payments, the funding of future medical benefits or post-settlement issues, there are strategies that can be used to keep a case on track.

Conditional Payments

- An arbitration hearing can be used to limit liability for conditional payments. If an arbitrator decides that certain medical treatment is not related to an accident, those bills will not be included in Medicare's conditional payment demand.
- Even after Medicare's conditional payment demand is finalized, there is an appeal process that can be used to reduce liability. Some of the deadlines for this process are very tight, and it is important to gather necessary information as soon as possible.
- Medicare will not seek to recover any additional payments for a very small settlement, totaling \$750 or less. This strategy can be used to resolve a "nuisance value" claim without having to worry about Medicare issues.

Future Medical Benefits

- A trial can also be used to limit liability for future medical benefits. If the arbitrator decides that certain future medical treatment is not necessary or is unrelated to an accident, that treatment will not need to be included in a Medicare set-aside.

- There are different types of Medicare set-asides (evidence-based, legal zero, medical zero) that can be used to help balance Medicare liability with the cost effective resolution of a claim. It is important to select the right type of MSA for your case.
- A Rated Age report can help reduce the amount of a Medicare set-aside to a significant degree; even a couple of years of reduced life expectancy can eliminate tens of thousands of dollars of future medical benefits from a Medicare set-aside.

Post-Settlement

- If a Medicare set-aside is submitted to CMS for review, and the set-aside is significantly increased, consider a re-review or amended review. This is an appeals process to determine the proper amount of a Medicare set-aside.
- Particularly with regard to an amended review, the savings available can be drastic.

[Click here](#) to view the full printable desk reference outline.



Joe Guyette
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Joe concentrates his practice in the areas of workers' compensation defense, professional liability and employment matters. Joe has taken several bench and jury trials to verdict, and has drafted and argued numerous dispositive motions. Joe has handled workers' compensation arbitration hearings at venues throughout the state, and has argued multiple cases before the Workers' Compensation Commission.

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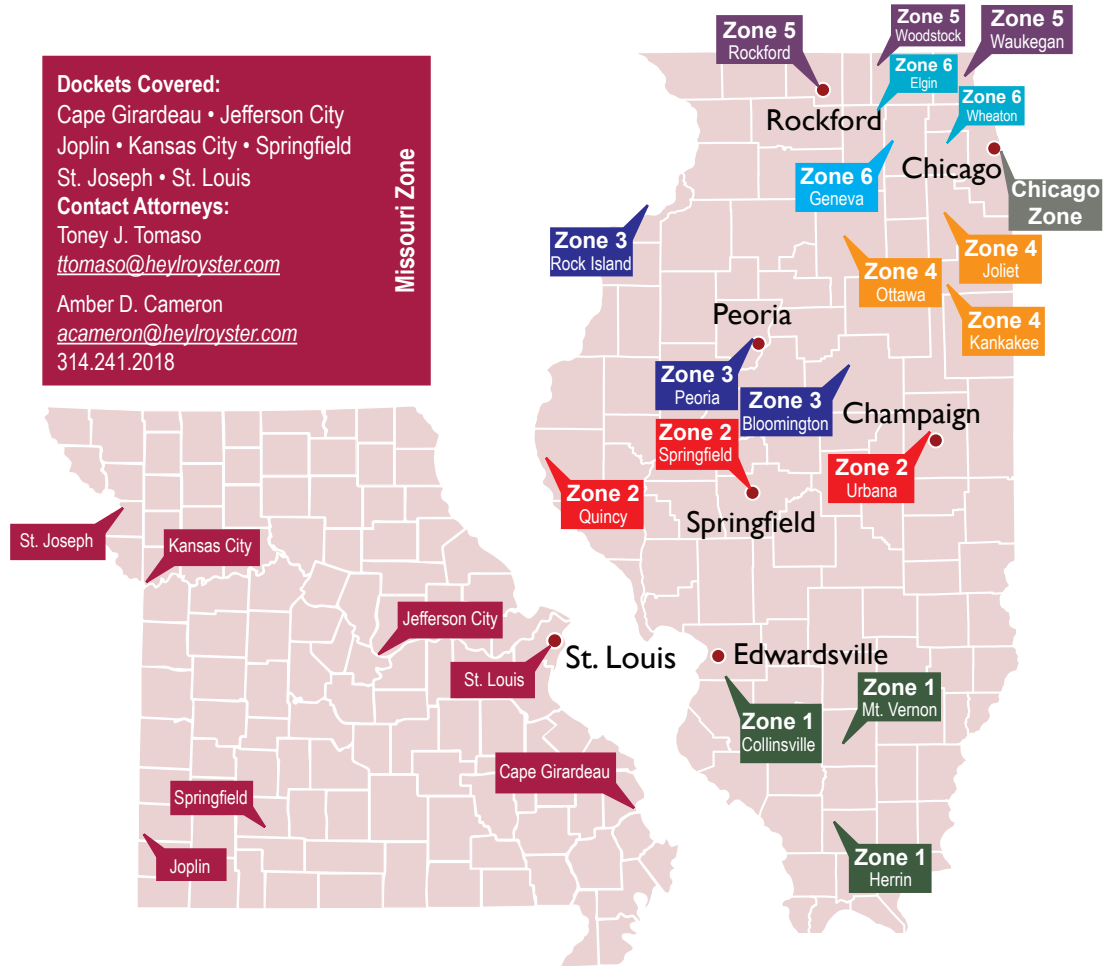
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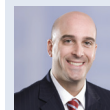
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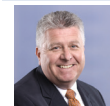
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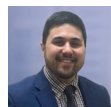
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Workers' Compensation

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