

BELOW THE RED LINE

HEYL...
ROYSTER

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

A Newsletter for Employers and Claims Professionals

February 2020

A WORD FROM THE PRACTICE CHAIR

As I am writing this note to you I am (once again!) watching the snow come down in Illinois. It seems this Winter Season does not want to let go just yet. I hope you are making plans to go on a nice spring break (even if it is just in your head) to get a mental health break from this weather. Now, if you are one of those hearty souls which really enjoys and appreciates this cold, gray environment, then more power to you. I am thinking about wearing shorts and having the sun on my face. So, here's to a warmer March and an early Spring! In April we expect the Illinois Workers' Compensation Commission to roll out the first step in electronic filing. The system is called CompFile. They are training both attorneys and staff right now for registration purposes, and we will report to you how this comes along. We are optimistic that the transition will be smooth. We will be seeing injured workers and their attorneys filing their claims (Applications for Adjustment of Claim) electronically; pro se settlement contracts will be filed this way as well. And eventually, when we arbitrate a case before an Arbitrator, our trial exhibits will be uploaded to the system (and not turned over in hard copy for to the Arbitrator as we do now). It is an exciting time as we jump into the 21st century, much like the civil system has done. We will get there, I am sure, and experience some bumps along the way, but the Commission is under solid leadership, and I do believe the Chairman will get this right and make things easier and better for all of us.

My partner Lynsey Welch is this month's contributing author. She is giving us a good outline of a recent appellate court decision regarding the imposition of penalties and attorney fees per sections 19(k), (l), and 16a when the sole issue in dispute is medical benefits. It is always a good idea to brush up on the rules surrounding these sections and how we can defend against veiled threats for penalties and fees by opposing counsel. We all realize the cost involved in disputing medical benefits and with this price tag in mind it is important to get your money's worth at the end of the day. You can go to trial and dispute the treatment. Or, if the medical treatment is something the injured worker does not really want to do, it can force him back to the settlement table where he may be more reasonable, and then the process has been worth it. If you are unsure what to do in a Penalty situation please contact me or any of the Heyl Royster Team members so we can talk through your situation and help you make the best decision moving forward.



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HEYL ROYSTER WORKERS' COMPENSATION UPDATE

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Editor, Lynsey Welch

"I'M FILING FOR PENALTIES AND FEES, AND THE ARBITRATOR ISN'T GOING TO BE HAPPY WITH YOU!"

By: Lynsey Welch, Rockford Office

Who hasn't been threatened with penalties and fees in a strong arm attempt to get medical treatment authorized? Okay. It's a rhetorical question. The moment medical treatment is terminated, not authorized, or denied, the threat of an impending pleading being filed requesting penalties and attorney fees awarded against the employer most certainly follows suit. Petitioner's counsel will notice the matter for hearing before the arbitrator by filing a Notice of Motion and Request for Hearing under sections 19(b)/8(a), as well as a Petition for Penalties and Fees under sections 19(k), (l), and 16a of the Act.

Relevant language from each of these sections impacting potential exposure for penalties and fees awarded at trial are as follows:

Under section 19(k), "...the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k).

Under section 19(l), "...the Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed \$10,000." 820 ILCS 305/19(l).

Under section 16a, "...no claim of any attorney for services rendered in connection with the securing of compensation...shall exceed 20% of the amount of compensation recovered and paid..." 820 ILCS 305/16a(B).

The good news is that the Illinois Appellate Court recently discussed the implication of specific statutory language of both sections 19(k) and 19(l) penalties in instances where the only benefit in dispute at trial is medical benefits. The decision in *O'Neil v. Illinois Workers' Compensation Comm'n*, 2020 IL App (2d) 190427WC, was recently filed by the Appellate Court, Workers' Compensation Commission Division, in early February 2020.

In *O'Neil*, the petitioner was a marine technician that performed mechanical work and general boat maintenance. While installing a platform on the back of a boat, the petitioner lowered his right knee onto a concrete floor and felt a pop and a sharp pain. The petitioner participated in a course of conservative treatment and was able to keep working light duty, but the petitioner's orthopedic surgeon recommended a right knee arthroscopy and open removal of the prepatellar bursa. The respondent initially authorized the surgery; however, the petitioner delayed the surgery to take place during the winter when his work was off-season and slower. During this delay, respondent discovered medical records referencing a prior procedure to the petitioner's right knee. The surgical authorization was revoked, and the matter proceeded to trial pursuant to section 19(b) of the Act. At trial Petitioner denied undergoing any procedure to his right knee. He did indicate that at a different time he had benign fatty tumors removed from his right shin several inches below his knee.

The respondent did not offer any medical opinions to dispute causal connection. The arbitrator in his opinion criticized the respondent's revocation of surgical authorization stating respondent, "relied on speculation and ambiguity and did so in an unreasonable and vexatious manner." *O'Neill*, 2020 IL App (2d) 190427WC, ¶ 13. The arbitrator awarded penalties pursuant to section 19(l) of the Act and attorney fees pursuant to section 16a of the Act. 820 ILCS 305/16a. The arbitrator did not

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impose any penalties pursuant to section 19(k) of the Act, based on *Hollywood Casino-Aurora, Inc. v. Workers' Compensation Comm'n*, 2012 IL App (2d) 110426WC. In that case, the appellate court found that there was no statutory authority to award penalties pursuant to section 19(k) of the Act for the failure to authorize medical treatment.

On review, the Workers' Compensation Commission modified the decision of the arbitrator as it pertained to the award of penalties. The Commission based their decision on the prior case of *Hollywood Casino*, where the court found they did not have statutory authority to assess penalties for an employer's delay in authorizing medical treatment. The crux of the issue was whether or not the statutory construction of Sections 19(k) and 19(l) would allow for penalties for a delay in authorizing medical treatment. The court found that the plain language of section 19(l) says nothing about any award of additional compensation (penalties) for an employer's delay in authorizing medical treatment. The text of section 19(k) addresses "delay in payment" and "underpayment" of compensation. The text of section 19(l) addresses "fail, neglect, refuse, or unreasonably delay the payment" of benefits. 19(l) also lacks any reference to an employer's failure, neglect, refusal, or unreasonable delay in authorizing medical treatment. Specifically, the appellate court discussed their lack of authority to read into any statute any exceptions, limitations, or conditions that the legislature did not intend.

In these instances, section 16a attorney fees are predicated on an award pursuant to section 19(k) or 19(l). Based on the court's holdings in both *Hollywood Casino* and *O'Neil*, the threat of penalties and fees has lost all steam when the only issue in dispute is medical benefits. So keep these cases in your back pocket when you are threatened with penalties and attorney fees for failing to authorize medical benefits.



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Lynsey dedicates a significant portion of her practice to the defense of employers in workers' compensation cases. She has successfully arbitrated several complex claims. She has also effectively argued numerous claims before the Illinois Workers' Compensation Commission. She has served as a guest speaker to local high school students on topics such as career mentoring and the practice of law. Lynsey serves as an arbitrator for the Seventeenth Judicial Circuit's Court-Annexed Arbitration System. She is also an active member in the Winnebago County Bar Association, currently on its Board of Directors. Lynsey has experience speaking to clients, claims representatives, employers, and attorneys on issues regarding the Illinois Workers' Compensation Act. Additionally, she has authored a variety of articles on Workers' Compensation and Workers' Compensation Appeals, including such topics as Personal Comfort Doctrine and defending a claim for a voluntary recreational activity.

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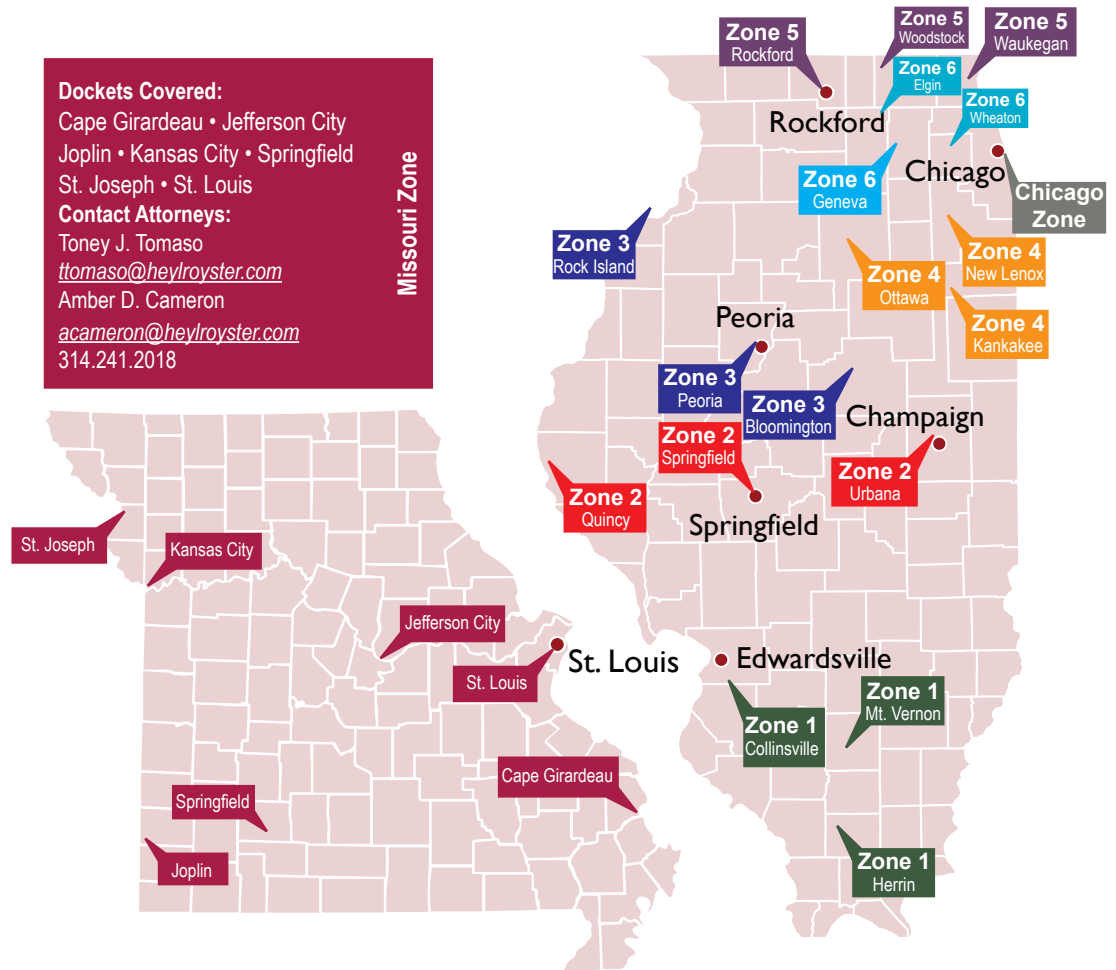
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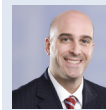
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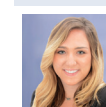
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