

BELOW THE RED LINE

HEYL ROYSTER

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

A Newsletter for Employers and Claims Professionals

May 2018

A WORD FROM THE PRACTICE CHAIR

At our May seminars we took the opportunity to introduce you to Heyl Royster's new office in St. Louis, Missouri. Conveniently located in the heart of downtown St. Louis at 701 Market Street in Peabody Plaza, the firm's latest office offers a number of opportunities for our clients, as the firm can now handle client needs across the entire state of Missouri.

Robert "Bob" Bassett, an experienced litigator who focuses on the defense of trucking and other transportation-related claims, products liability, premises liability, and workers' compensation claims throughout Missouri and Illinois, is spearheading the firm's workers' compensation practice in Missouri. Bob started his legal practice in what was Heyl Royster's Urbana office and later moved to our Edwardsville office. He has served as Associate General Counsel for Anheuser-Busch and most recently, was a partner at a St. Louis-based civil defense firm. While at Anheuser-Busch Companies, he managed the company's product liability litigation in state and federal courts across the nation.

In this month's issue, Bob spends a few paragraphs talking about his past work and the general nature of workers' compensation practice in Missouri. We are very pleased that Bob was able to "come home" to Heyl Royster. He is a perfect fit. His focus on details and constant communication with clients are essential parts of what makes Heyl Royster such a go-to firm. Bob is carrying on in this rich tradition. Bob has always proven himself to be a team player who will do what is necessary to meet and exceed the client's needs. The "team-first" concept is one that Bob adheres to and which

has allowed our practices to merge so seamlessly over the past few months. I am confident that any needs you might have in Missouri from a workers' compensation perspective will be met and your expectations surpassed.

Brad Antonacci of our Chicago office also examines a new appellate court decision, *Medicos Pain and Surgical Specialists, S.C. v. Travelers Indemnity Co. of America*, which addressed whether medical providers can file a separate cause of action to seek interest for the late payment of medical bills. There is currently a House Bill in play that seems to be getting some traction based upon the efforts of the Illinois Medical Society seeking to statutorily overturn the recent *Medicos Pain and Surgical Specialists* decision so that the medical providers have a vehicle by which to pursue their bills and interest from same. Heyl Royster will keep you posted on this and other legislative matters as we learn more.

As a final note, we again thank all of you who attended our recent May seminars in Itasca and Bloomington. Please note that the written materials from this year's seminars will soon be available to request on our website.



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Editors, Brad Elward and Lynsey Welch

A WORD FROM OUR ST. LOUIS OFFICE

By: Bob Bassett, rbassett@heyloyroyster.com

I have been fortunate to represent employers in workers' compensation cases for over 30 years, in both Illinois and Missouri. I have tried many cases and handled appeals to both the Illinois and Missouri appellate courts on more than ten occasions. I have represented employers in the healthcare, construction and transportation fields, among others. I currently represent employers in each of those industries, primarily in Missouri, from St. Louis, west to Kansas City, north to Hannibal, and south west to Joplin.

In a previous position as in-house counsel with Anheuser Busch, I was a member of a company-wide task force charged with addressing escalating workers' compensation costs. The program we developed ultimately achieved savings of 68 percent over the first two years of implementation. I was then selected for the Board of Directors of a captive insurance company established to help distributors drive down costs for their workers' compensation cases. I hope to bring similar cost-saving strategies to all of the firm's clients, whether in Illinois or Missouri.

Our St Louis office is ideally located to serve our clients at the busiest Missouri dockets, including St. Louis, St. Charles, Kansas City, Jefferson City, Cape Girardeau, Hannibal, and others. We represent Hannibal Regional Hospital on all of their workers' compensation claims, through Cottingham, as well as ABC Supply.

As we discussed at our May seminars, there are three primary differences between Illinois and Missouri workers' compensation laws. First, Missouri requires that the employee prove that his or her "at work" incident was the "prevailing factor" in causing the injury or illness. Second, the employer is able to direct medical care. Third, permanent partial disability (PPD) benefits are capped at rates significantly lower than those in Illinois.

Please let us know if there are matters where we can assist you in Missouri. We intend to continue to offer our clients the level of professionalism in claims handling that you have been accustomed to from Heyl Royster in our representation throughout Illinois.



Bob Bassett - St. Louis

Bob is an experienced litigator who focuses on the defense of trucking and other transportation-related claims, product liability, premises liability, and workers' compensation claims throughout Missouri and Illinois. Bob has presented lectures relating to general civil litigation and worker's compensation for the Nation Business Institute, the Product Liability Advisory Council and numerous private groups. He serves on the Board of Directors of the St. Clair County Bar Foundation.



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RECENT CASE OF INTEREST:

Medicos Pain and Surgical Specialists, S.C. v. Travelers Indem. Co. of America, 2018 IL App (1st) 162591

By: Brad Antonacci, antonacci@heyloyster.com

A recent appellate court decision decided the issue of whether medical providers can file a separate cause of action to seek interest for the late payment of medical bills, and more generally, whether medical providers in a workers' compensation claim are members of the class for whose benefit the Workers' Compensation Act was enacted. According to the Appellate Court, First District, medical providers are *not* protected members under the Act.

Section 820 ILCS 305/8.2(d) of the Workers' Compensation Act provides that late payments to a medical service provider shall incur interest at a rate of one percent per month payable to the provider. Medicos Pain and Surgical Specialists, SC (Medicos) and Ambulatory Surgical Care Facility, LLC (Ambulatory) provided surgical care to a machine operator who was injured at work. They had to wait several years for payment from the petitioner's employer. The arbitrator in the underlying workers' compensation claim awarded Medicos \$29,708 and Ambulatory \$38,554 for the payment of outstanding medical bills, years after the bills were incurred. When the petitioner received the awarded payment from the insurance carrier, petitioner remitted payment to Medicos and Ambulatory. The petitioner in the underlying workers compensation claim never sought enforcement of the interest provisions of Section 8.2(d) of the Act and the providers never received any interest payment for the delay in payment of their bills.

Medicos and Ambulatory then filed a lawsuit against the insurance carrier and the respondent in circuit court, seeking interest accrued due to the delay in payment of their medical bills. The circuit court case proceeded to a bench trial solely

on the issue of whether Medicos and Ambulatory were entitled to interest for the delay in payment. The circuit court awarded interest for the delay in payment. The employer and its insurer sought appeal.

According to the appellate court, a party may assert a right to be compensated for the violation of a statute only if a private right of action was authorized by the legislature. There is no language in the Act expressly authorizing a private right of action for medical providers to collect interest for late payment, according to the appellate court. The court noted that "the interest payment mandated by Section 8.2(d)(3) of the Act is but one of the many provisions in the Act designed to encourage the 'prompt' payment of compensation. While providers *might* receive some benefit from the specific interest provision contained in section 8.2(d)(3) of the Act, that benefit is *at most* incidental and was provided solely in an effort to serve the legislature's primary goal of compensating employees completely and promptly." Citing to *Marque Medicos Fullerton, LLC v. Zürich American Insurance Co.*, 2017 IL App (1st) 160756.

The court held that the plaintiff medical service providers failed to state a claim upon which relief could be granted. The Act, the court found, was not enacted for the benefit of medical providers. As noted above, it is well-established that the fundamental purpose of the Act is to protect employees by providing them with prompt and fair compensation for work-related injuries, regardless of fault. Medical providers cannot file suit to collect interest on late payment of medical bills even though the payment obligations of Section 8.2(d) were to be made to medical service providers and no one else. The appellate court held that the trial court erred in awarding the statutory interest and vacated the trial court's judgment.

Although some medical providers are becoming aggressive in pursuing payment of their bills and seeking interest for late payment, the Appellate Court, First District, has now made it clear that

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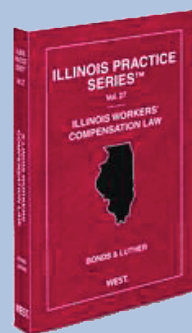
they are not a protected class under the Workers' Compensation Act and medical providers cannot file separate suit for interest for late payment. While this decision does not mean that medical providers are not entitled to interest for late payment, it is clear that they are not able to file suit to collect that interest. The interest must be awarded in the underlying workers' compensation claim and the petitioner must seek the interest. Based on this decision, we can expect that more petitioner's attorneys will seek interest for late payment of medical bills during workers' compensation trials and we expect medical providers to be urging the petitioner's bar to do so.



Brad Antonacci - Chicago

Brad concentrates in the areas of workers' compensation and civil litigation. With extensive experience defending hundreds of employers before the Illinois Workers'

Compensation Commission, Brad has arbitrated many workers' compensation claims as well as argued numerous reviews before the Workers' Compensation Commission during his career. He has also argued appeals of Workers' Compensation Commission decisions before the circuit court. Brad has spoken on and authored articles regarding employment layoffs and temporary total disability benefits. Brad has also spoken on updates to Workers' Compensation case law.



Current Edition Available

Bruce Bonds and **Kevin Luther** co-authored the recently released "Illinois Workers' Compensation Law, 2017 Edition," Volume 27 of the Illinois Practice Series published by Thomson Reuters. This publication provides an up-to-date assessment of Illinois workers' compensation

law in a practical format that is useful to practitioners, adjusters, arbitrators, commissioners, judges, lawmakers, students, and the general public. It also contains a summary of historical developments of the Illinois Workers' Compensation Act. Mr. Bonds concentrates his practice in the areas of workers' compensation, third-party defense of employers, and employment law. He is a member of the Illinois Workers' Compensation Commission's Rules Review and Revisions Committee and an adjunct professor of law at the University of Illinois College of Law, where he has taught workers' compensation law to upper-level students since 1998. Mr. Luther supervises the employment law, employer liability, and Workers' Compensation practices in the firm's Rockford and Chicago offices. He has represented numerous employers before the Illinois Human Rights Commission, arbitrated hundreds of workers' compensation claims, and tried numerous liability cases to jury verdict.

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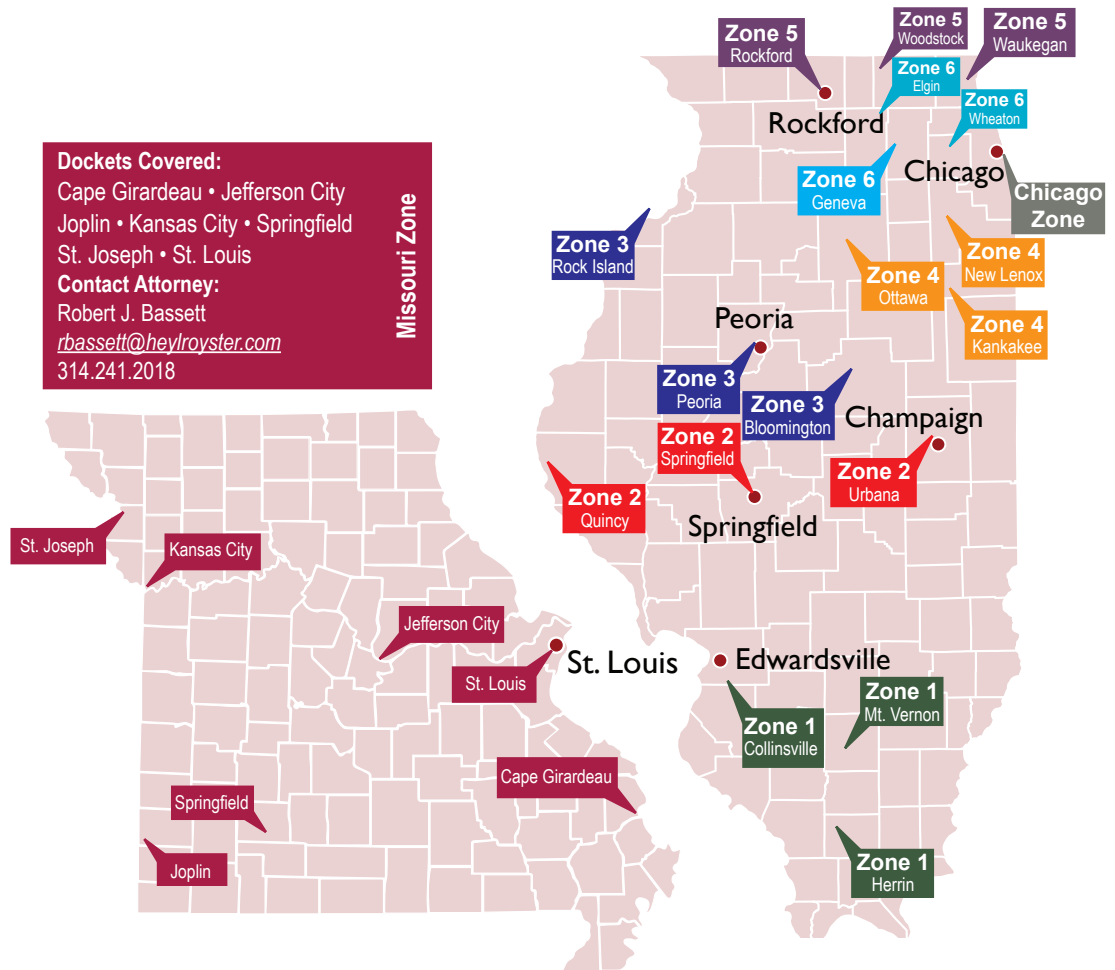
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