

BELOW THE RED LINE

HEYL...
ROYSTER

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

A Newsletter for Employers and Claims Professionals

November 2019

A WORD FROM THE PRACTICE CHAIR

I am writing this note to you all on the eve of the holiday season and what I call the great weight gain. Between Thanksgiving, Christmas, and New Year's, my extensive Italian family will not let me go home without being well fed and provided with several pieces of Tupperware full of leftovers. Honestly, I would not have it any other way, but there is always a price to pay in January. I do hope the beginning of this holiday season finds you well and ready to be with family, friends, and loved ones. I wish you safe travels, great company, wonderful food, and some rest and relaxation. First things first, make sure you enjoy your Thanksgiving. It is a perfect time of year to reflect on those many blessings we all have and hold dear.

In the interest of giving thanks, on behalf of the Workers' Compensation Practice Group here at Heyl Royster, I wanted to thank you for allowing us to be part of your Team. It means a great deal to us that you entrust us with the responsibility to defend your claims and clients. We do not take this responsibility lightly and always seek to prove ourselves the best choice you have made by selecting us to be part of your defense team. So, thank you on behalf of a grateful team!

In this issue, my partner Brad Antonacci discusses the *Iannoni* case as it relates to circumstances where you do not have to pay a full PPD award via a lump sum check. After an Arbitrator issues an award following an arbitration hearing, the respondent is only required to pay those PPD benefits which have accrued. Or, simply stated, the number of weeks

of PPD following the point of maximum medical improvement. You will owe that amount in a lump sum check. If there happens to be a balance after, then the employer will have the choice to pay it weekly or in a lump sum. Again, that is a strategic decision you get to make which, and we suggest you discuss with us in advance so proper planning (and mathematical calculations) can be made. This is something to keep in mind with your file handling post-arbitration. Please feel free to discuss with me those strategies as they come up so that you are optimizing the handling of your claims.



Toney J. Tomaso
Workers' Compensation Practice Chair
ttomaso@heyloyroyster.com



HEYL ROYSTER WORKERS' COMPENSATION UPDATE

November 2019

Editor, Lynsey Welch

IS THE RESPONDENT REQUIRED TO PAY PPD AWARDS IN A LUMP SUM?

By: Brad Antonacci, Chicago Office

When an Arbitrator or the Commission issues an award for PPD, the gut reaction is to pay the PPD award in a lump sum. However, according to the recent case of *Iannoni v. City of Chicago*, 2019 IL App (1st) 182526, respondent does not necessarily need to pay the award in a lump sum, but rather can pay any non-accrued benefits on a weekly basis.

In *Iannoni*, petitioner suffered an injury in the course of his employment with respondent, the City of Chicago. He filed a Workers' Compensation claim and respondent began paying Workers' Compensation benefits as the parties proceeded to arbitration. Following arbitration, the Arbitrator entered a final decision awarding petitioner both temporary total disability benefits and permanent partial disability benefits. The TTD benefits awarded totaled \$134,884.68, and respondent had already paid \$128,694.95, leaving a balance of \$6,189.73 for TTD. The Arbitrator further awarded petitioner permanent partial disability benefits to the extent of 35% loss of use of person-as-a-whole under Section 8(d)(2) of the Act, equaling 175 weeks of benefits. The PPD benefits were awarded at the rate of \$721.66 per week. Neither party challenged the award.

Following the award, respondent sent a check to petitioner for \$62,890.49. The check covered the balance of the temporary total disability benefits due and more than 70 weeks of permanent partial disability benefits that had accrued. Respondent then sent petitioner a second check for \$3,135.78, covering a little more than four weeks of PPD benefits. They did not pay the entire PPD award in a lump sum.

Petitioner then filed a complaint against respondent in circuit court, seeking immediate payment of the remainder of the PPD award, plus interest and attorney's fees. Respondent argued that it chose to pay petitioner monthly amounts to match the mandatory rate of \$721.66 per week until it paid the entire PPD amount the Arbitrator awarded. Respondent argued that, since petitioner was being paid PPD for the entire upcoming month, even though those weekly benefits had not yet accrued as of the date they were issued, petitioner was actually receiving the weekly PPD benefits early.

The circuit court held that petitioner was entitled to a lump sum PPD payment in exchange for the loss of the complete use of his person. The circuit court entered a judgment in favor of petitioner for the amount of the unpaid PPD benefits plus attorney's fees in the amount of \$34,247.50. In a supplemental order, the circuit court additionally awarded petitioner \$3,429.77 in interest. Respondent appealed.

On appeal, the appellate court reversed the circuit court's order requiring immediate payment of the PPD amount that had not accrued as of the date of the order. Also, because respondent had made timely payments of all amounts due, the appellate court reversed the award of interest and attorney's fees as well.

According to the appellate court, the underlying purpose of the Workers' Compensation Act is to provide financial protection in various forms, including the restoration of lost wages for workers whose earning power is interrupted or terminated as a consequence of injuries arising out of and in the course of employment. The purpose of Workers' Compensation is to provide injured workers with periodic payments, which are a substitute for regular wages, and therefore the ordinary payment of compensation is in installment payments. Because the legislature intended Workers' Compensation

HEYL ROYSTER WORKERS' COMPENSATION UPDATE

November 2019

Editor, Lynsey Welch

payments to substitute for the injured employee's wages, lump sum awards are the exception and not the rule.

The appellate court also cited to Section 9 of the Act and noted that if an employee or employer desires to have compensation paid in a lump sum, they may petition the Commission, asking that such compensation be so paid.

Petitioner did not petition the Commission to award a lump sum. He filed no petition under Section 9. The appellate court found that the respondent paid petitioner the TTD benefits that had accrued as well as the PPD benefits that had accrued. If petitioner was seeking to receive the remaining payments in a lump sum, he needed to file a petition under Section 9 of the Act and would need to present evidence showing that a lump sum payment would serve the best interests of the parties.

While the appellate court noted lump sum awards are the exception and not the rule, in practice, PPD awards are almost always paid in a lump sum once a Commission award becomes final. Frankly, we would expect that most if not all respondents would prefer to pay the award in a lump sum in order to close the file sooner rather than later. However, it is not necessary to pay the non-accrued benefits in a lump sum. It may be difficult to find reasons why respondent would not want to pay a PPD award in a lump sum. But for some, there may be financial incentive to pay the award weekly. According to *Iannoni*, the respondent can do just that.

If you have any questions about payment of awards, feel free to reach out to us.



Brad Antonacci
Chicago Office
bantonacci@heyloyster.com

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.

Contact Attorney:

Brad A. Antonacci
bantonacci@heyloyster.com
Kevin J. Luther
kluther@heyloyster.com
312.971.9807

Chicago Zone

Dockets Covered:

Elgin • Geneva • Wheaton

Contact Attorney:

Kevin J. Luther
kluther@heyloyster.com
815.963.4454

Zone 6

Dockets Covered:

Rockford • Waukegan • Woodstock

Contact Attorneys:

Kevin J. Luther
kluther@heyloyster.com
Lynsey A. Welch
lwelch@heyloyster.com
815.963.4454

Zone 5

Dockets Covered:

Kankakee • New Lenox • Ottawa

Contact Attorney:

Kevin J. Luther
kluther@heyloyster.com
815.963.4454

Zone 4

Dockets Covered:

Bloomington • Rock Island • Peoria

Contact Attorney:

Dana J. Hughes
dhughes@heyloyster.com
309.676.0400

Zone 3

Dockets Covered:

Quincy • Springfield • Urbana

Contact Attorney:

Bruce L. Bonds
bbonds@heyloyster.com
217.344.0060

Zone 2

Dockets Covered:

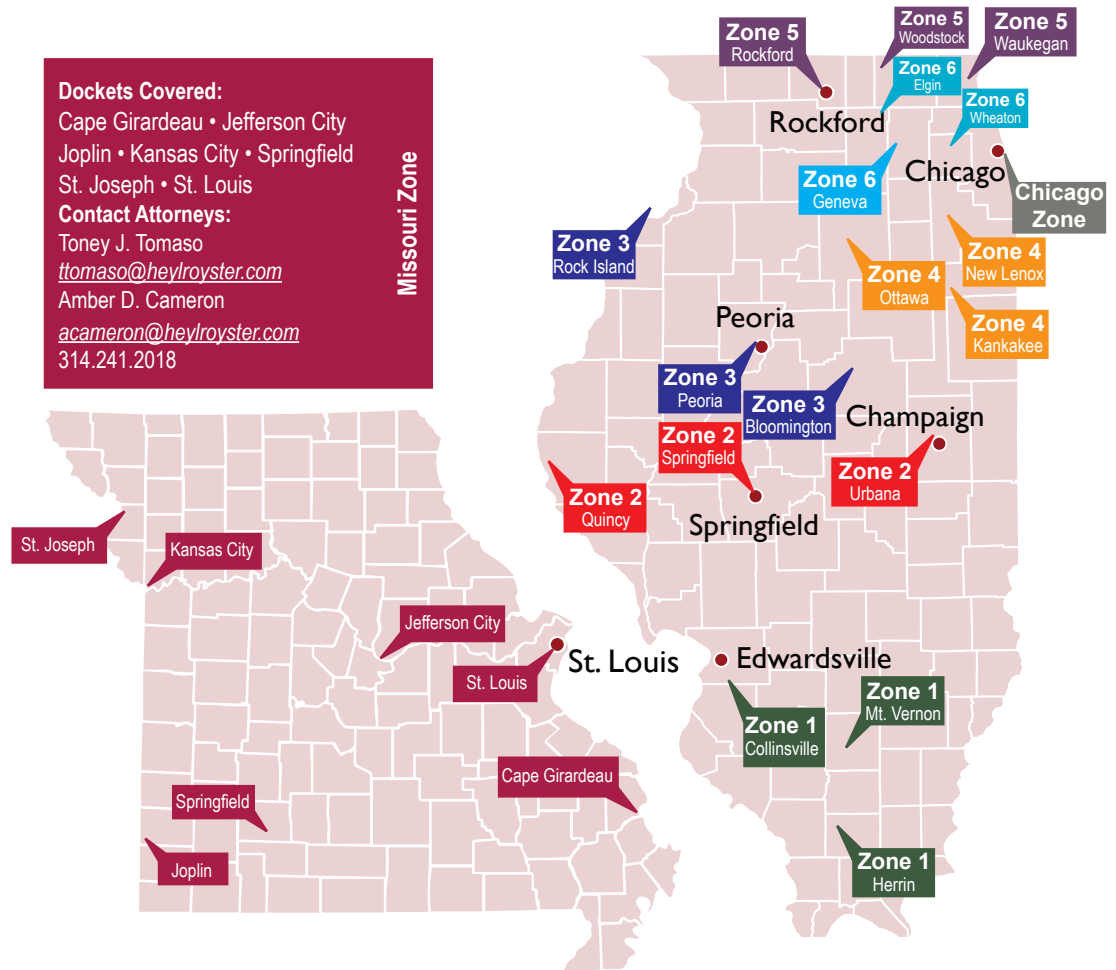
Collinsville • Herrin • Mt. Vernon

Contact Attorneys:

Toney J. Tomaso
ttomaso@heyloyster.com
618.656.4646

Zone 1

REGIONAL ZONE MAPS



Workers' Compensation Practice Chair

Contact Attorney:

Toney Tomaso - ttomaso@heyloyster.com
217-344-0060

Workers' Compensation Appellate

Toney Tomaso - ttomaso@heyloyster.com
Dana J. Hughes - dhughes@heyloyster.com
217-344-0060

State of Wisconsin

Contact Attorney:

Kevin J. Luther - kluther@heyloyster.com
815-963-4454

Jones Act Claims

Contact Attorney:

Ann Barron - abarron@heyloyster.com
618-656-4646

WORKERS' COMPENSATION OFFICE LOCATIONS

Champaign

301 N. Neil St.
Suite 505
Champaign, IL
61820
217.344.0060

Chicago

33 N. Dearborn St.
Seventh Floor
Chicago, IL
60602
312.853.8700

Edwardsville

105 W. Vandalia St.
Mark Twain Plaza III
Suite 100
PO Box 467
Edwardsville, IL
62025
618.656.4646

Peoria

300 Hamilton Blvd.
PO Box 6199
Peoria, IL
61601
309.676.0400

Rockford

120 W. State St.
Second Floor
PO Box 1288
Rockford, IL
61105
815.963.4454

Springfield

3731 Wabash Ave.
PO Box 9678
Springfield, IL
62791
217.522.8822

St. Louis

701 Market St.
Peabody Plaza
Suite 1505
St. Louis, MO
63101
314.241.2018

WORKERS' COMPENSATION PRACTICE GROUP



Practice Group Chair

Toney Tomaso

ttomaso@heyloyster.com

Champaign Office



Contact Attorney:

Bruce Bonds

bbonds@heyloyster.com



John Flodstrom

jflodstrom@heyloyster.com



Joseph Guyette

jguyette@heyloyster.com



Bradford Peterson

bpeterson@heyloyster.com



Toney Tomaso

ttomaso@heyloyster.com



Joshua Lawson

jlawson@heyloyster.com

Chicago Office



Contact Attorney:

Brad Antonacci

bantonacci@heyloyster.com



Kevin Luther

kluther@heyloyster.com



Lynsey Welch

lwelch@heyloyster.com



Reginald Lys

rlys@heyloyster.com



Joseph Rust

jrust@heyloyster.com



Jacque Donahue

jdonahue@heyloyster.com

Edwardsville Office



Contact Attorney:

Toney Tomaso

ttomaso@heyloyster.com



John Flodstrom

jflodstrom@heyloyster.com



Amber Cameron

acameron@heyloyster.com

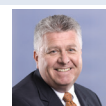
Springfield Office



Contact Attorney:

Dan Simmons

dsimmons@heyloyster.com



John Langfelder

jiangfelder@heyloyster.com



Jessica Bell

jbelle@heyloyster.com

Peoria Office



Contact Attorney:

Dana Hughes

dhughes@heyloyster.com



Bradford Ingram

bingram@heyloyster.com



James Manning

jmanning@heyloyster.com



Jessica Bell

jbelle@heyloyster.com



Devin Taseff

dtaseff@heyloyster.com

Rockford Office



Contact Attorney:

Kevin Luther

kluther@heyloyster.com



Lynsey Welch

lwelch@heyloyster.com



Jordan Emmert

jemmert@heyloyster.com



Scott Hall

shall@heyloyster.com



Wendi Werren

wwerren@heyloyster.com



Adam Rosner

arosner@heyloyster.com

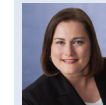
St. Louis Office



Contact Attorneys:

Toney Tomaso

ttomaso@heyloyster.com



Amber Cameron

acameron@heyloyster.com

Appellate



Contact Attorney:

Toney Tomaso

ttomaso@heyloyster.com



Dana Hughes

dhughes@heyloyster.com

Below is a sampling of our practice groups highlighting a partner who practices in that area – For more information, please visit our website
www.heyloyster.com



Appellate Advocacy

Craig Unrath
cunrath@heyloyster.com



Business and Commercial Litigation

John Heil
jheil@heyloyster.com



Business Organizations & Transactions

Ken Davies
kdavies@heyloyster.com



Casualty/Tort Litigation

Nick Bertschy
nbertschy@heyloyster.com



Civil Rights Litigation/Section 1983

Keith Fruehling
kfruehling@heyloyster.com



Construction

Mark McClenathan
mmcclenathan@heyloyster.com



Employment & Labor

Brad Ingram
bingram@heyloyster.com



Governmental

Andy Keyt
akeyt@heyloyster.com



Healthcare

Roger Clayton
rclayton@heyloyster.com



Insurance Services

Patrick Cloud
pcloud@heyloyster.com



Long Term Care/Nursing Homes

Tyler Robinson
trobinson@heyloyster.com



Product Liability

Rex Linder
rlinder@heyloyster.com



Professional Liability

Renee Monfort
rmonfort@heyloyster.com



Toxic Torts & Asbestos

Kent Plotner
kplotner@heyloyster.com



Trucking/Motor Carrier Litigation

Matt Hefflefinger
mhefflefinger@heyloyster.com



Workers' Compensation

Toney Tomaso
ttomaso@heyloyster.com



Scan this QR Code
for more information about
our practice groups and attorneys

Peoria	Champaign	Chicago	Edwardsville	Rockford	Springfield	St. Louis	Jackson
300 Hamilton Blvd. PO Box 6199 Peoria, IL 61601 309.676.0400	301 N. Neil St. Suite 505 Champaign, IL 61820 217.344.0060	33 N. Dearborn St. Seventh Floor Chicago, IL 60602 312.853.8700	105 W. Vandalia St. Mark Twain Plaza III Suite 100 PO Box 467 Edwardsville, IL 62025 618.656.4646	120 W. State St. Second Floor Rockford, IL 61105 815.963.4454	3731 Wabash Ave. PO Box 9678 Springfield, IL 62791 217.522.8822	701 Market St. Peabody Plaza Suite 1505 St. Louis, MO 63101 314.241.2018	1000 Highland Colony Pkwy. Suite 5203 Ridgeland, MS 39157 800.642.7471