

# BELOW THE RED LINE

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ROYSTER

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

*A Newsletter for Employers and Claims Professionals*

*February 2018*

### A WORD FROM THE PRACTICE CHAIR

As the month of February wraps up, our minds turn towards warmer thoughts of springtime. I know from growing up in the Chicagoland area that sometimes that is fool's gold. I remember some pretty tough wintery weather in March. But, as they say, "hope springs eternal."

I am hoping that groundhog from Pennsylvania was flat-out wrong. I hope this winter has not been too tough on you, and that you are thinking about some Spring break plans that get you to warmer environs.

Right now Bruce Bonds and Kevin Luther are hard at work updating their Illinois workers' compensation treatise. The next version will provide timely updates to the case law interpreting sections of the Illinois Workers' Compensation Act per the latest court rulings. I don't go anywhere without my Illinois Practice Series on Illinois Workers' Compensation Law. I will let you know when the next edition is available.

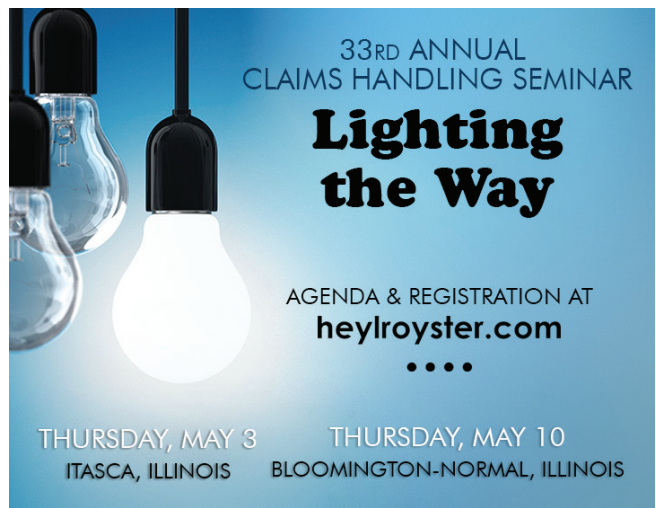
And this outstanding resource dovetails nicely into our next topic: The Heyl Royster Spring Seminar. Each year Bruce and Kevin give away one of their books at the seminar. If you want a chance at a free book (valued at \$255) then please plan on attending the seminar in May. We are, once again, offering sessions in Itasca (May 3) and Normal (May 10). Please feel free to contact me if you are interested, or see the agenda and register at [www.heyloyroyster.com](http://www.heyloyroyster.com).

I want to both thank and congratulate my partner, Brad Elward, on a job well done on the recent decision he received from the Illinois Appellate Court, Workers' Compensation Commission Division. It has been a long and difficult road, but the Heyl Team, led by Brad, prevailed in the case of *Dobbs Tire & Auto*,

where the issue, which has far-reaching monetary implications, really helps each and every one of our clients. The key issue is what percentage interest rate to use during workers' compensation appeals. The implication is one where thousands of dollars are at issue, and which has an impact on whether you choose to move forward with an appeal or not. In this month's newsletter, we get an inside look into this case, courtesy of Brad Elward, explaining how the court came to a conclusion that benefits all employers. This was a big win for the good guys, and it is that much sweeter because I am able to share that it is based upon the considerable efforts and talent of my partner Brad Elward.



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33RD ANNUAL  
CLAIMS HANDLING SEMINAR

## Lighting the Way

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THURSDAY, MAY 3 ITASCA, ILLINOIS	THURSDAY, MAY 10 BLOOMINGTON-NORMAL, ILLINOIS
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Editors, Brad Elward and Lynsey Welch

### APPELLATE COURT HOLDS THAT SECTION 19(N) INTEREST APPLIES UNTIL COMMISSION DECISION IS REDUCED TO A JUDGMENT THROUGH A SECTION 19(G) PROCEEDING

By: Brad Elward, Peoria Office

Our April 2016 issue of *Below the Red Line* reported on a trend gaining momentum in Illinois where petitioner's attorneys were demanding, and sometimes obtaining, nine percent judgment interest on Commission awards that were appealed by employers to a reviewing court on judicial review and confirmed. According to these attorneys, the nine percent judgment interest commenced once the circuit court entered its order confirming the Commission's decision and applied until payment. These attorneys reasoned that the circuit court's order was in essence a judgment and that as a result, section 2-1303 of the Code of Civil Procedure, which applies nine percent interest rates to a judgment, applied.

Section 19(n) of the Illinois Workers' Compensation Act sets the interest rate applicable to arbitration decisions until paid. Section 19(n) ties interest to the yield on indebtedness issued by the United States Government with a 26-week maturity on the auction date prior to the date on which the decision is filed. Thus, if an arbitration decision is rendered on January 8, 2018, the applicable rate would be 1.57 percent. To illustrate the significance of this issue, applying that rate to a \$100,000 award yields a yearly interest obligation of \$1,570. At nine percent, the annual interest is \$9,000. Interest applies to the entirety of the unpaid award, including medical bills paid.

On February 16, 2018, the Illinois Appellate Court, Workers' Compensation Commission Division, handed down its much-awaited decision in

*Dobbs Tire & Auto v. Illinois Workers' Compensation Comm'n*, 2018 IL App (5th) 160297WC (consolidated with *Stolte v. Illinois Workers' Compensation Comm'n*). In each case, the employer pursued an appeal from the Commission through the appellate court and, upon issuance of an adverse appellate court decision affirming the Commission award, promptly paid the award due plus full interest under section 19(n) of the Act. Despite prompt payment of the award in both cases, the petitioner demanded payment of nine percent judgment interest commencing with the circuit court's order confirming the Commission's decision. In *Dobbs Tire*, this additional interest amount to roughly \$72,000, while in *Stolte*, it totaled approximately \$1,200. When the employers refused to pay the higher interest, the petitioners filed a section 19(g) proceeding, seeking to reduce the Commission's decision to judgment and further to obtain the higher nine percent interest rate. In *Dobbs Tire*, the circuit court granted the section 19(g) petition and entered the award for higher interest; in *Stolte*, the circuit court granted the employer's motion to dismiss the section 19(g) petition and denied the petitioner's request. Both cases ended up on appeal before the appellate court and were consolidated. Ironically, both cases involve the same counsel for both sides.

The appellate court, in a unanimous published decision authored by Justice Moore, found that section 2-1303's nine percent interest rate does not apply unless and until a Commission's decision, which is not a judgment, is reduced to a judgment under section 19(g) in a separate circuit court proceeding. Thus, the nine percent interest would not apply to a scenario where an employer promptly pays the award due plus applicable section 19(n) interest. The appellate court observed that where an employer pays the underlying award and pays section 19(n) interest, there are no grounds for

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entry of a section 19(g) judgment, and thus, section 2-1303 has nothing to which to attach.

*Dobbs Tire* is a significant victory for employers and one that clarifies the law concerning when section 19(n) interest ends and section 2-1303 interest begins. This decision means that employers who pay the awards when due and owing, and tender the appropriate interest under section 19(n), have no fear of being held liable for the higher nine percent judgment interest. Given the discrepancy between the current rates available under section 19(n) and nine percent interest, these amounts can be significant.

Both cases will likely see the filing of a petition for rehearing and request for certification to the Illinois Supreme Court. We will keep you updated.

Please keep *Dobbs Tire* in mind when you receive a demand from petitioner's counsel asking for interest at the higher nine percent rate. Moreover, when an award becomes due, pay them promptly and tender the full amount of interest due on the award. Make sure, too, to pay enough additional interest to cover the time it takes for the check to travel from your office to opposing counsel. In most cases, with section 19(n) rates running as low as 0.15

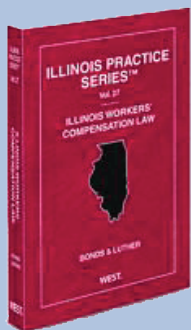
percent (\$150 per year on each \$100,000 or \$0.41 per day), tendering an addition \$5.00 on an interest check so there are no questions of full tender may prove the best return on investment you can make.

Please feel free to call us with any questions you may have on calculating interest on an award or with issues you may be having resolving payment of your case.



**Brad Elward - Peoria**

Brad concentrates in appellate practice and has a significant sub-concentration in workers' compensation appeals. He has authored more than 300 briefs and argued more than 225 appellate court cases, resulting in more than 100 published decisions. Brad is Past President of the Appellate Lawyers' Association. He has taught courses on workers' compensation law for Illinois Central College as part of its paralegal program and has lectured on appellate practice before the Illinois State Bar Association, Peoria County Bar, Illinois Institute for Continuing Legal Education, and the Southern Illinois University School of Law. Brad is the Co-Editor-In-Chief of the IICLE volume on *Illinois Civil Appeals: State and Federal*, and authored the chapter on Workers' Compensation appeals.



### 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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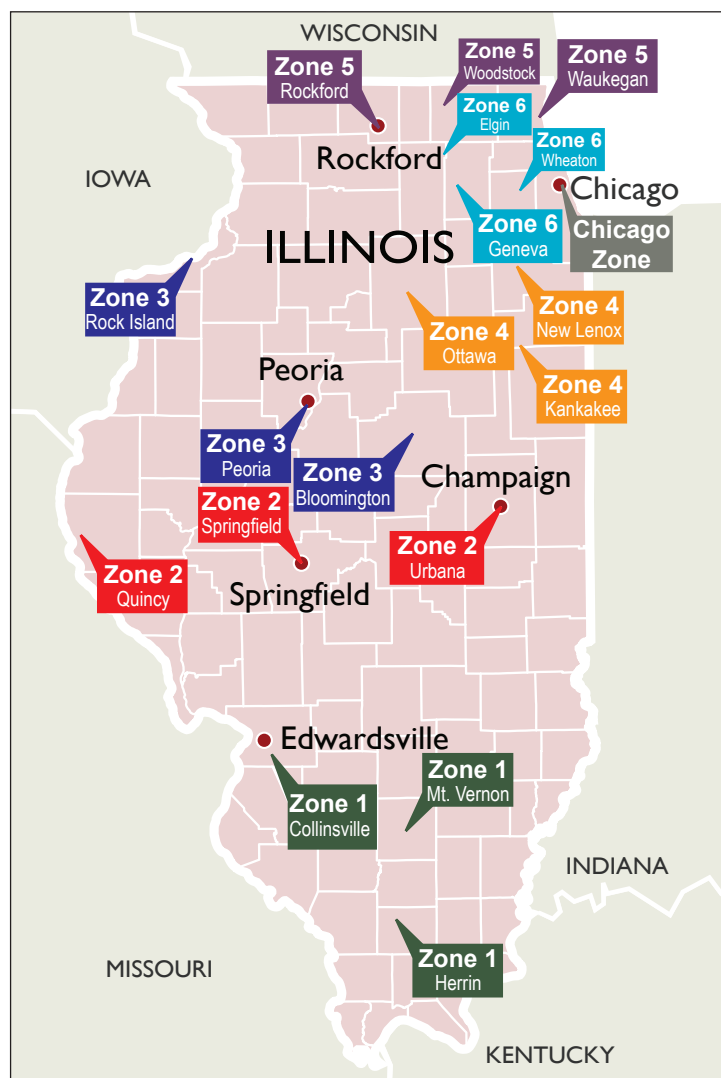
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