

BELOW THE RED LINE

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

A Newsletter for Employers and Claims Professionals

January 2018


A WORD FROM THE PRACTICE CHAIR

We are wrapping up January and looking forward to February. I hope the beginning of 2018 has treated you well. There is much to look forward to this year, starting with our announcement that Heyl Royster will be opening a new office in St. Louis, Missouri. We are expanding our influence outside the state of Illinois, and based upon our clients' requests, we are moving into Missouri! If you believe Heyl Royster can help you in Missouri, please contact me.

Also coming in 2018 is our Spring Claims Handling Seminars, which are set for May 2018. We will once again have sites located in Itasca (suburban Chicago area) and Bloomington-Normal (Central Illinois area). These seminars are designed with you in mind and are based upon the issues you face (and share with us every day), and the defense strategies we are using in the trenches to defend your workers' compensation claims. We hope to enlighten and entertain. More details to follow.

My partner Brad Elward, our appellate guru, has penned the latest edition of our newsletter wherein he has analyzed the recent *Perez* case and the findings made by the Appellate Court as to how to properly interpret Section 8(a) medical benefits when it comes time to pay medical bills. This case needs to be kept in mind during claims handling as you consider payment of medical bills (and what discounts you can expect) during negotiations

and after any award is made in the future. If you would care to discuss this case, or any other issue you are currently dealing with, then please contact me. Please remember, we are happy to make "house-calls" and visit you and your Team.



Toney J. Tomaso
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33RD ANNUAL
CLAIMS HANDLING SEMINAR
Save the Date

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AGENDA & REGISTRATION
COMING SOON!

THURSDAY, MAY 3 THURSDAY, MAY 10
ITASCA, ILLINOIS BLOOMINGTON-NORMAL, ILLINOIS

PLEASE NOTE:

The Professional Liability session will only be in Itasca.

The Governmental session will only be
in Bloomington-Normal.

Both locations will have Workers' Compensation and
Casualty & Property sessions.

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Editors, Brad Elward and Lynsey Welch

APPELLATE COURT CLARIFIES EMPLOYER'S OBLIGATION UNDER SECTION 8(A) WHERE MEDICAL EXPENSES ARE PAID AT A NEGOTIATED RATE

By: Brad Elward, Peoria Office

Under section 8(a) of the Illinois Workers' Compensation Act, the employer is permitted to pay medical expenses at a lower amount negotiated and paid by a third-party insurance carrier, rather than the stipulated fee schedule amounts. According to Section 8(a):

The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury.

820 ILCS 305/8(a).

In *Perez v. Illinois Workers' Compensation Comm'n*, 2018 IL App (2d) 170086WC, the Commission awarded the claimant total temporary disability (TTD) benefits and medical expenses in accordance with sections 8(a) and 8.2(e) without the Commission having specified the amount of the medical expenses. At arbitration the claimant testified that her medical expenses were either paid by Cigna, her then husband's medical insurance carrier, or paid out-of-pocket. The employer submitted an exhibit listing medical payments made by Cigna, showing payments of \$17,597.96

and copayments of \$260. The parties entered into a stipulation reflecting the fee schedule amounts for the medical services in question, which totaled \$37,767.32, but with a caveat stating "[the employer] disputes the fee schedule is the appropriate basis for calculating [the] amount of medical, if compensable." *Perez*, 2018 IL App (2d) 170086WC, ¶ 8.

On review, the circuit court remanded the matter back to the Commission to determine the amount owed for medical expenses. On remand, the Commission issued a new decision, ordering the employer to pay \$17,857.96, which was the negotiated amount of medical expenses, and represented the amounts paid by Cigna and the claimant. In its ruling, the Commission, relying on *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427 (1st Dist. 2011), found that section 8(a) "does not require the employer to be a party to the rate agreement in order to receive the benefit of the agreement." *Perez*, 2018 IL App (2d) 170086WC, ¶ 12.

On appeal, the claimant argued that under section 8(a), the employer pays the negotiated rate only when the rate is negotiated *by the employer* or *its own* insurance carrier. The claimant argued that the negotiated rate in this case was accepted by the third-party carrier, Cigna, which was the then husband's health insurer, not the workers' compensation insurer.

The Appellate Court, Workers' Compensation Commission Division, disagreed with the claimant and affirmed the Commission, finding that section 8(a) contained no language that required the employer to pay the negotiated rate only when it is negotiated by the employer or its own insurance carrier. According to the court, the statute is clear that the only concern is the negotiated rate, not who does the negotiating. The court said, "[h]ad the legislature intended to limit negotiated rates and agreements to those between the employer or

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the employer's own insurance carrier, it could have included this restriction; however, the legislature declined to do so." *Id.* ¶ 19. The court further rejected any suggestion that the Commission guidelines on fee schedules limited the negotiations to those done by the employer or its carrier, stating that the guidelines "merely clarify that the fee schedule does not preclude a negotiated rate or agreement." The court said the guidelines are "silent on the issue of who may actually pay or benefit from the negotiated rate." *Id.* ¶ 20. In the end, the court noted, "[t]o award claimant any amount for medical expenses beyond the amount actually paid to the medical service providers would result in a windfall to claimant." *Id.* ¶ 22.

The result of *Perez* is that employers can take advantage of any negotiated medical amounts, whether secured through the actions of the claimant, the group carrier, or the employer and its insurance carrier. We all need to keep this new decision and its interpretation of section 8(a) in mind as we value our cases.



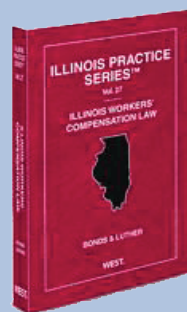
Brad Elward - Peoria

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.

WORKERS' COMPENSATION PANEL ASSIGNED NEW JUSTICE

Effective January 8, 2018, the Honorable **John B. Barberis** was assigned to the Illinois Appellate Court, Workers' Compensation Commission Division, as the principle member for the Fifth District, to the position formerly held by Justice James R. Moore. Justice Barberis was elected to the Appellate Court in 2016 and was a trial judge in Madison County.

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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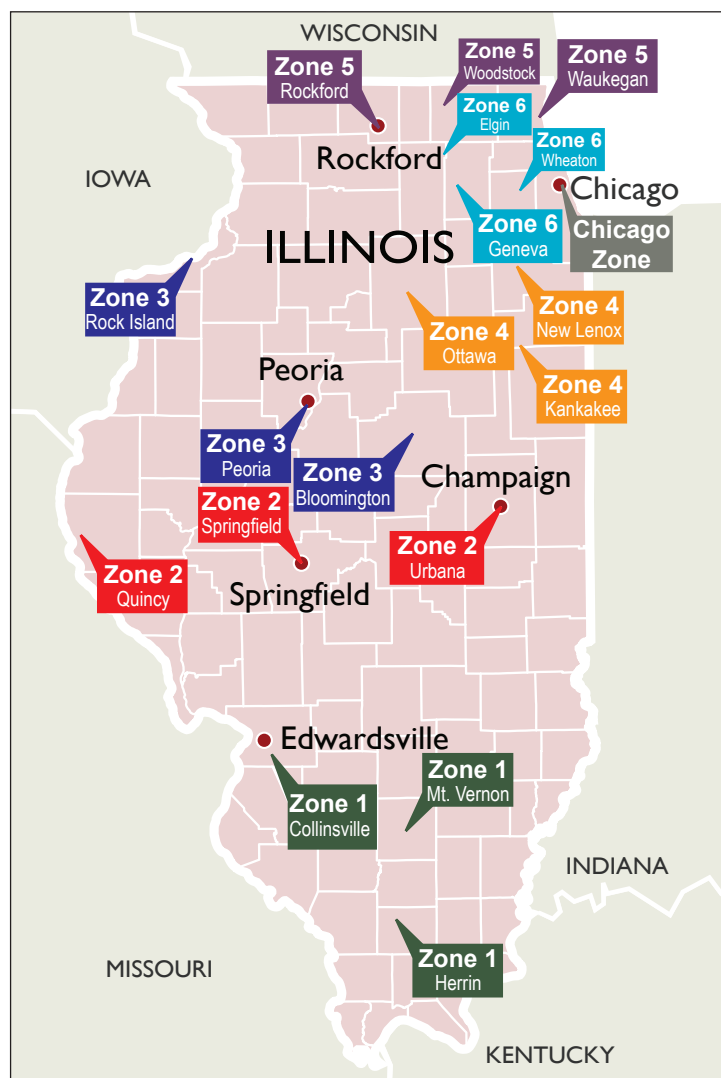
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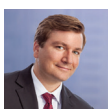
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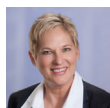
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