HEYL ROYSTER

BELOW THE RED LINE

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

May 2024

A WORD FROM THE PRACTICE CHAIR

I hope everyone had a long and restful Memorial Day weekend, otherwise known as the unofficial kick-off to summer. Prom season is over, graduations are underway, kids are coming home from college, and plans are being made. I am sure you, like me, are looking forward to your summertime activities, especially getting outside to soak up all the fun and sun.

I am thrilled to report that our Summer Associate program at Heyl Royster is in full swing. This program, which introduces law students to the practical side of the law, is a testament to our commitment to nurturing the next generation of legal professionals. We very much enjoy having these new faces around our offices each summer, as they bring fresh perspectives and energy. One concept that has always stuck with me over the years is that law school teaches you how to think like an attorney. But, in order to be taught the practice of law, you need a good attorney to guide you. The wonderful part of this process is that we have many excellent attorneys here at Heyl Royster to teach the next generation of law students what it means to be a great attorney. The best part of being a great mentor, is that as much as you might be teaching the law students, they can also teach you something. All you have to do is listen. I have found that really great mentoring relationships are a two-way street. And it is always our hope that if there is a good fit after this summer associate program, these are the Heyl Royster attorneys of tomorrow.

One point I want to make sure is abundantly clear for all of our clients: when your Heyl Royster attorneys are arbitrating a case (whether a full trial on all issues or an emergency petition for benefits) or participating in oral arguments before the Commission, those events are taking place in an open, public forum. We extend a warm invitation to you to watch these proceedings as a spectator. If you are unfamiliar with the process and want to see it happen firsthand, please know you are always invited. I realize not all of you are next door or within driving distance, but if you are and don't mind the drive, we are happy to host you and save you a "front row" seat to the trial or appeal.

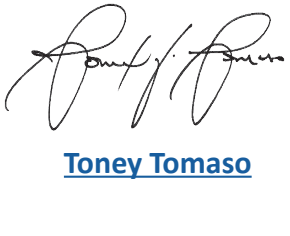
This month's article is written by Sara Trevino, an associate from our Chicago office who joined Heyl Royster in 2023. Sara tackled this month's article assignment with her zeal and intellect. The topic deals with how, procedurally, an appeal works at every level of a workers' compensation claim here in Illinois and the standards and burdens to be met by the parties along the always hazardous path of an appeal. I want to emphasize that if you have an appeal, even if it is not a case Heyl Royster handled from the start, we are one of the few firms in Illinois that has a dedicated appellate guru by the name of Christopher Drinkwine. Christopher's expertise and experience can help you navigate the appellate hazards and ensure that your client's case is heard and all viable arguments made. In my experience, there are many pitfalls to perfecting an appeal, and having an experienced expert is always a good idea. Christopher's role in our firm is crucial, and his dedication to our clients' cases is unparalleled. In addition, getting to know Chris Drinkwine is a bonus you will not regret. Our workers' compensation appellate practice has an outstanding reputation at the Commission level and before the appellate court, and I can tell you that means a great deal in these lengthy and complicated battles. If you need our help with an appeal, please don't hesitate to contact me or Chris Drinkwine directly.

WORKERS' COMPENSATION PUBLICATION TEAM

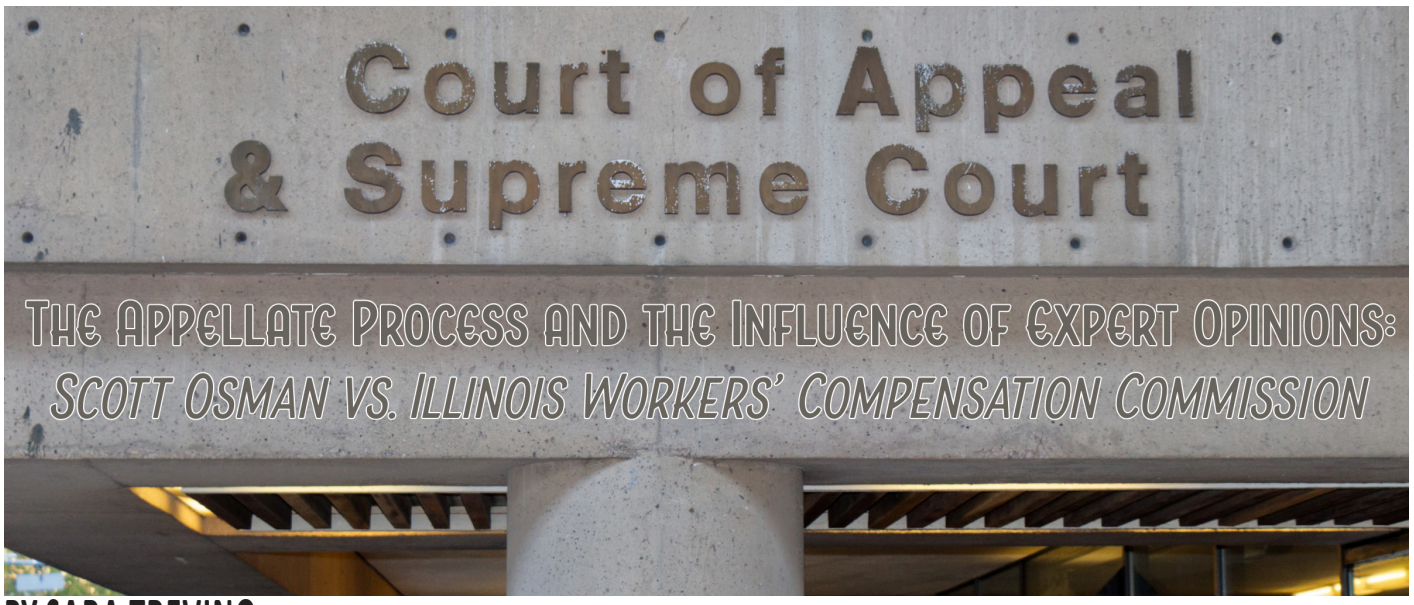
Practice Chair
Toney Tomaso

Editor
Amber Cameron

Featured Author
Sara Trevino



Toney Tomaso



The Appellate Process and the Influence of Expert Opinions: *Scott Osman vs. Illinois Workers' Compensation Commission*

BY SARA TREVINO

To appeal or not to appeal? Before recommending an appeal of a court's decision, there are several procedural and substantive processes employers and insurers should consider. In this article we discuss the procedural, legal, and factual considerations of an appeal. We examined a decision by the Second District Appellate Court on the often disputed "causation" requirement. The decision provides insight on the interplay between the Commission's findings, expert opinions, and deference thereof on appeal.

Below is an overview of the appeals process.

a. Appealing the Arbitrator's Decision to the Illinois Workers' Compensation Commission

The party seeking an appeal ("movant") must submit two copies of a petition for review and a written explanation of the basis of the appeal to the Illinois Workers' Compensation Commission ("IWCC") within 30 days of receipt of the arbitrator's decision. Also, within 35 days, the movant must either file a statement discussing the agreed-upon facts presented at the arbitration hearing or a transcript of the hearing. After the procedural requirements, the parties adhere to the deadlines set forth in the briefing schedule set by the Commission.

A successful appeal will result in original jurisdiction vesting in the IWCC for all issues of law and fact, which means that the IWCC is not bound by any of the arbitrator's findings. This is referred to as a *de novo* review. Meaning it is the Commission who assesses credibility of witnesses, resolves conflicts in evidence, assigns weight to be accorded to evidence, and draws reasonable inferences from the evidence. Thus, the Commission is empowered to evaluate credibility and to reweigh the evidence as it sees fit, based on the transcript of arbitration. A panel consisting of three commissioners will review all evidence that was used in the arbitration hearing, the arbitrator's decision, and both parties' written briefs and oral arguments. The commissioners are to render their decision within 60 days.

b. Appealing the Commission's Decision to the Circuit Court and the Illinois Appellate Court

Both parties have the opportunity to appeal to the Commission's decision to higher courts. This appeal process is complex. First, the movant must determine whether the IWCC decision is final and appealable or interlocutory. If it is the latter, it is a nonfinal decision and not immediately appealable. If the decision is appealable, the movant must conform with all procedural requirements set forth in §19(f) of the Illinois Workers' Compensation Act, 820 ILCS 305/19(f), and Illinois Workers' Compensation Commission Rule 9060.10. This process includes filing the appropriate petitions, posting a bond, and identifying an appropriate surety. Following the

procedural requirements, the parties will prepare written arguments in accordance with the court's briefing schedule. The movant will file for appeal of the Commission's decision in the Illinois circuit court in the count where the injury took place first. If a party is not satisfied with the decision of the circuit court, they can then appeal to the Illinois Workers' Compensation Division of the Illinois Appellate Court.

c. Appealing to the Illinois Supreme Court

The Illinois Supreme Court will only review a case if a petition for leave to appeal is granted. It is extremely rare for a workers' compensation claim to be certified for appeal to the Illinois Supreme Court. To obtain leave of the court, a movant must obtain a statement from two or more judges of the panel that the case in question involves a substantial question which warrants consideration by the Supreme Court. Ill. Sup. Ct. R. 315. The specific procedural requirements are set forth in Illinois Supreme Court Rule 315(b)–(d). In sum, whether a petition will be granted is a matter judicial discretion.

To recover, a claimant bears the burden of proving that his or her condition of ill-being is causally related to their employment. *Anderson Clayton Foods v. Industrial Comm'n,* 171 Ill. App. 3d 457, 459 (1988). If a claimant fails to meet this burden or would like to appeal the

Commission's decision and award, they may file an appeal. When facts are in dispute or when conflicting inferences may be drawn from the facts, the reviewing court will not disturb the Commission's finding unless "it is against the manifest weight of the evidence." *Durand v. Industrial Comm'n,* 224 Ill. 2d 53, 64 (2006). The appropriate test for determining whether the Commission's finding is against the manifest weight of the evidence is whether there is sufficient evidence in the record to support the Commission's determination. *Tower Automotive v. Illinois Workers' Comp. Comm'n,* 407 Ill. App. 3d 427, 434-435 (1st Dist. 2011). Thus, a reviewing court will only find that a factual finding is against the manifest weight of the evidence if it is clearly apparent, from the record, that the finding is false or without any evidentiary foundation. *Anderson Clayton,* 171 Ill. App. at 450.

In *Scott Osman v. Illinois Workers' Comp. Comm'n,* the claimant was employed by the East Aurora School District 131 as a shipping and receiving clerk. 2024 IL App (2d) 230180WC ¶ 3. On December 11, 2012, the claimant fell from a ladder, caught his foot in between a wall and two pallets, and injured his right ankle. *Id.* The claimant received medical treatment including a right ankle ligament reconstruction, post operative physical therapy, and a custom orthotic. *Id.* ¶¶ 5-6. Dr. Lee, claimant's treating physician, released claimant to return to work full duty and found he reached maximum medical improvement ("MMI") on May 21, 2014. *Id.* ¶¶ 5, 22. On January 1, 2015, seven months after reaching MMI, the claimant was examined by Dr. Brian Burgess. *Id.* ¶¶ 10-12. Dr. Burgess opined that the condition of his right ankle was causally related to his December 2012 work accident. *Id.* ¶ 10. The claimant returned to Dr. Burgess in May 2015 complaining of knee and hip pain which Dr. Burgess also opined were causally related to his work accident of December 2012. *Id.*

The arbitrator found the claimant's right ankle condition was causally related to the work accident. *Id.* ¶¶ 21-26. However, he found the hip and knee complaints were not causally related to the work accident. *Id.* The arbitrator concluded that the claimant had not met his burden of proof as to the knee and hip injuries. *Id.* ¶ 24. Specifically, the arbitrator noted there were inconsistencies in the claimant's medical history, gaps in medical treatment, pre-existing degenerative conditions, and further found that the respondent's experts' opinions (finding the knee and hip pain were not causally related to the work accident) were persuasive. The Commission affirmed and adopted the arbitration decision. *Id.* ¶ 27. The Circuit Court, Kane County, confirmed the Commission's decision. Claimant appealed.

In his appeal to the appellate court, he raised several issues including: (1) claiming the arbitrator's order was invalid based on claimant's contention that the arbitrator did not have a valid appointment; (2) arguing the manifest-weight standard of review was being misapplied; and (3) claiming the Commission's decision that he failed to provide a causal connection between his knee and hip pain was erroneous

and contrary to the manifest weight of the evidence. *Id.* As to the first issue, the appellate court determined the arbitrator's appointment complied with current law. *Id.* ¶¶ 37-39. To the second issue, the appellate court rejected the claimant's argument and reiterated that the manifest weight of the evidence standard of review is appropriate and requires showing that an opposite conclusion is clearly apparent. *Id.* ¶ 47. See also *City of Springfield v. Illinois Workers' Comp. Comm'n,* 388 Ill. App. 3d 297, 312-13 (4th Dist. 2009).

As to the issue of causation, the appellate court held the claimant had failed to meet his burden of proof by failing to provide evidence that there was a connection between his ankle injury and his subsequent knee and hip problems. *Id.* ¶ 19. The court rejected claimant's argument that the timeline of medical treatment supported a finding of causation. *Id.* ¶ 57. It found that the gap in treatment, medical records, and MMI finding provided support for the Commission's decision. It also noted that Dr. Lee and the respondent's expert opinions were consistent. *Id.* ¶ 52. The appellate court held there was sufficient evidence in

the record to credit the respondent's expert opinions. *Id.* ¶ 61. It further reasoned that the Commission's expertise with medical matters entitled it to great deference. *Long v. Industrial Comm'n,* 76 Ill. 2d 561, 566 (1979). Although the court recognized that a period of good health followed by an accident and then a decline in health constitutes circumstantial evidence to support an inference that the accident caused the subsequent decline, it was not absolute. *Id.* ¶ 56. It stated, "We are unaware of any case that states that such a chain of events requires the trier of fact to draw such an inference [finding of causal connection]." *Id.* Therefore the court's decision reaffirms that a chain of events alone is insufficient to establish causal connection. The court concluded the claimant failed to provide evidence that the Commission's decision to accept respondent's expert opinions was clear error. *Id.* ¶ 55.

There are several key takeaways regarding the appeals process in reviewing *Osman*. First, an appeal is an inherently lengthy process with specific procedural and substantive requirements. For example, in *Osman* the claimant's injury occurred in December 2012, he reached MMI in May 2014, and the arbitrator's decision was issued on April 9, 2020. It took nearly 12 years from the date of injury to obtain a decision of the appellate court. Nonetheless, this should not discourage employers or insurers from considering an appeal in the right circumstances.

Second, an appeal by a claimant is not always "bad" or cause for concern. As shown in *Osman*, continued appeal can result in an affirmance of the Commission's decision. *Osman* is at surface a win because it reaffirmed the employer's position that simply because a claimant's health declines in a chain of sequential events after a work injury, it does not automatically mean those subsequent injuries are causally connected to the work injury.

Lastly, it sheds light on the common courtroom "battle of the experts." It reminds employers and insurers to seek retention of credentialed medical experts in an area of medicine *central* to the injury. In *Osman*, the appellate court noted that the claimant's expert (who opined that claimant's hip and knee injury were causally related to the December 2012 work accident) was a board-certified foot surgeon whereas respondents' experts were both board-certified orthopedic surgeons. To emphasize the importance of retaining experts with the appropriate medical expertise it noted "more importantly, there were reasons the Commission could reasonably reject his opinion. Dr. Burgess is board certified in foot surgery. He treats neither knees nor hips." *Osman* at ¶ 61. Thus, a careful assessment of an expert's area of medical specialization and curriculum vitae in relation to the issues in dispute is paramount.

The Heyl Royster attorneys in the workers' compensation practice group and appellate group have extensive experience defending workers' compensation claims through all levels of appeal in Illinois. We are happy to provide assistance or advice relating to any aspect of a workers' compensation claim.

ABOUT THE AUTHOR

Sara Trevino

Associate in Chicago, IL

- Casualty & Tort
- Construction
- Medical Malpractice
- Toxic Torts & Asbestos
- Workers' Compensation

A meticulous and caring litigator, Sara is a straight shooter.

An associate attorney in the firm's Chicago office, Sara Trevino is passionate about litigation. Confident in her ability to zealously advocate for her clients inside and outside the courtroom, she focuses her practice in medical malpractice, toxic torts, premise liability, casualty/tort litigation, construction, and workers' compensation.

In law school, Sara had the opportunity to represent clients at the county and federal levels, as well as auditioning for and participating in two legal clinics. As a Federal Civil Rights Clinic member, Sara was provisionally admitted to the U.S. District Court for the Central District of Illinois. She was sworn in at the U.S. Federal Courthouse in Urbana by the Honorable Eric I. Long, United States Magistrate Judge for the Central District of Illinois, where she and her co-counsel prepared vigorously to represent their previously pro se litigant in a federal civil rights trial. Further, Sara deposed a key hostile witness, vigorously argued *motions in limine*, and successfully argued against the Defendant's Motion for Summary Judgment.

As a Family Advocacy Clinic student, Sara had the opportunity to represent children involved in the juvenile abuse and neglect system in Champaign County, where she fervently advocated for her client's health, safety, and well-being. She gained invaluable litigation and trial skills through her clinical experiences while engaging in case negotiation, research, drafting and motion practice, oral advocacy, and trial work.

Hailing from the great state of Texas, Sara loves running, working out, and spending time outdoors enjoying her two dogs, Ace and Teddy. She enjoys training for half marathons - her favorite course has been the Nashville St. Jude Rock and Roll Half Marathon. Sara has set a goal to run as many half-marathons in as many states as possible.

HEYL ROYSTER

Contact Attorney:
Brad A. Antonacci
bantonacci@heylroyster.com
Kevin J. Luther
kluther@heylroyster.com
312.971.9807
Chicago Zone

Dockets Covered:
Elgin • Geneva • Wheaton
Contact Attorney:
Kevin J. Luther
kluther@heylroyster.com
815.963.4454
Zone 6

Dockets Covered:
Rockford • Waukegan • Woodstock
Contact Attorneys:
Kevin J. Luther
kluther@heylroyster.com
815.963.4454
Zone 5

Dockets Covered:
Kankakee • Joliet • Ottawa
Contact Attorney:
Kevin J. Luther
kluther@heylroyster.com
815.963.4454
Zone 4

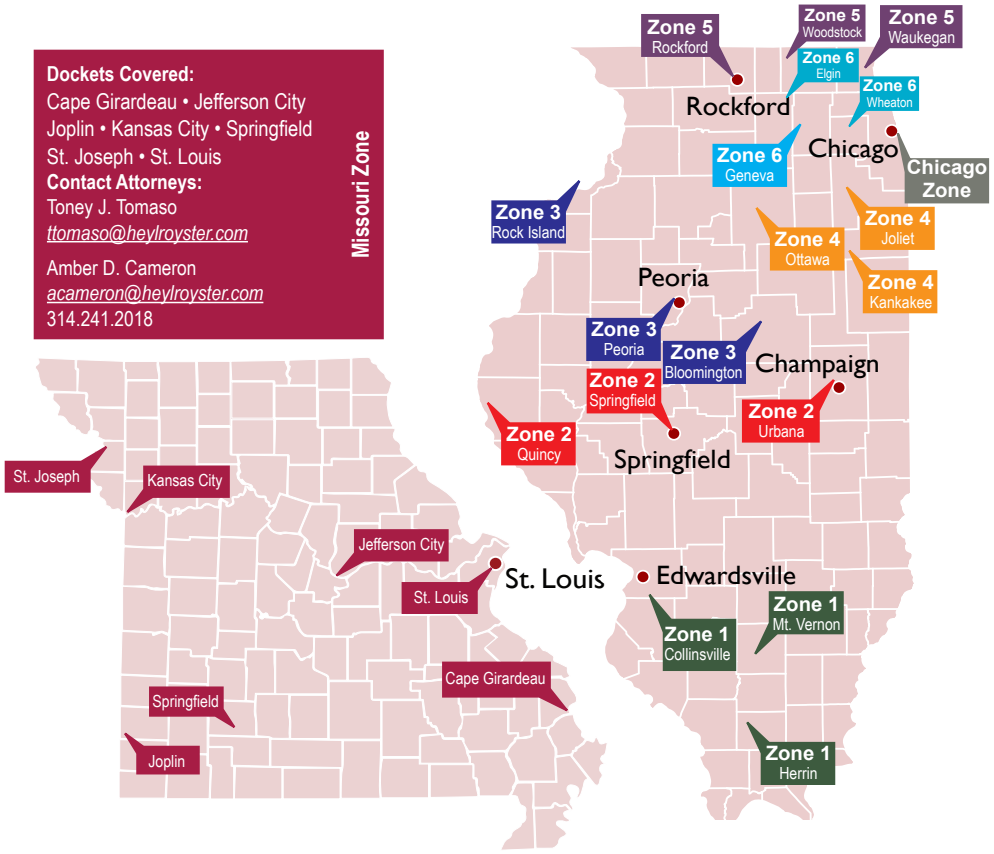
Dockets Covered:
Bloomington • Rock Island • Peoria
Contact Attorney:
Jessica M. Bell
jbell@heylroyster.com
309.676.0400
Zone 3

Dockets Covered:
Quincy • Springfield • Urbana
Contact Attorney:
Bruce L. Bonds
bbonds@heylroyster.com
217.344.0060
Zone 2

Dockets Covered:
Collinsville • Herrin • Mt. Vernon
Contact Attorneys:
Toney J. Tomaso
ttomaso@heylroyster.com
618.656.4646
Zone 1

REGIONAL ZONE MAPS

Dockets Covered:
Cape Girardeau • Jefferson City
Joplin • Kansas City • Springfield
St. Joseph • St. Louis
Contact Attorneys:
Toney J. Tomaso
ttomaso@heylroyster.com
Amber D. Cameron
acameron@heylroyster.com
314.241.2018
Missouri Zone



Workers' Compensation Practice Chair

Contact Attorney:
Toney Tomaso - ttomaso@heylroyster.com
217-344-0060

Workers' Compensation Appellate

Contact Attorneys:
Toney Tomaso - ttomaso@heylroyster.com
217-344-0060
Christopher Drinkwine - cdrinkwine@heylroyster.com
815-963-4454

State of Wisconsin

Contact Attorney:
Kevin Luther - kluther@heylroyster.com
815-963-4454

Jones Act Claims

Contact Attorney:
Ann Barron - abarron@heylroyster.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
Edwardsville, IL
62025
618.656.4646

Peoria
300 Hamilton Blvd.
Second Floor
Peoria, IL
61602
309.676.0400

Rockford
120 W. State St.
Second Floor
Rockford, IL
61101
815.963.4454

Springfield
4205 Wabash Ave.
Springfield, IL
62711
217.522.8822

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

WWW.HEYLROYSTER.COM

WORKERS' COMPENSATION PRACTICE GROUP

PRACTICE GROUP CHAIR
Toney Tomaso
ttomaso@heylroyster.com

Champaign Office

CONTACT ATTORNEY:
Bruce Bonds
bbonds@heylroyster.com

Joseph Guyette
jguyette@heylroyster.com

Toney Tomaso
ttomaso@heylroyster.com

Samuel Brolley
sbrolley@heylroyster.com

Jacob Welch
jwelch@heylroyster.com

Peoria Office

CONTACT ATTORNEY:
Jessica Bell
jbell@heylroyster.com

Bruce Bonds
bbonds@heylroyster.com

Ashley Broadstone
abroadstone@heylroyster.com

Aimée Dluski
adluski@heylroyster.com

Chicago Office

CONTACT ATTORNEY:
Brad Antonacci
bantonacci@heylroyster.com

Kevin Luther
kluther@heylroyster.com

Meg Bentley
mbentley@heylroyster.com

Joseph Rust
jrust@heylroyster.com

Leah Nolan
lnolan@heylroyster.com

Yu Ma
yma@heylroyster.com

Sara Trevino
strevino@heylroyster.com

Rockford Office

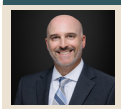
CONTACT ATTORNEY:
Kevin Luther
kluther@heylroyster.com

Steve Getty
sgetty@heylroyster.com

Jackie Pulak
jpulak@heylroyster.com

Michael Verbic
mverbic@heylroyster.com

Edwardsville Office



CONTACT ATTORNEY:
Toney Tomaso
ttomaso@heylroyster.com

Amber Cameron
acameron@heylroyster.com

Springfield Office

CONTACT ATTORNEY:
Dan Simmons
dsimmons@heylroyster.com

John Langfelder
jlangfelder@heylroyster.com

Jessica Bell
jbell@heylroyster.com

St. Louis Office

CONTACT ATTORNEYS:
Toney Tomaso
ttomaso@heylroyster.com

Amber Cameron
acameron@heylroyster.com

Jenna Kobernus
jkobernus@heylroyster.com

Appellate

CONTACT ATTORNEY:
Toney Tomaso
ttomaso@heylroyster.com

Christopher Drinkwine
cdrinkwine@heylroyster.com

HEYL ROYSTER

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

Appellate Advocacy
Ann Barron
abarron@heylroyster.com

Business and Commercial Litigation
John Heil
jheil@heylroyster.com

Business Organizations & Transactions
Ken Davies
kdavies@heylroyster.com

Casualty/Tort Litigation
Nick Bertschy
nbertschy@heylroyster.com

Civil Rights/Section 1983 & Correctional Healthcare
Keith Fruehling
kfruehling@heylroyster.com

Construction
Mark McClenathan
mmcclenathan@heylroyster.com

Employment & Labor
Brian Smith
bsmith@heylroyster.com

Governmental
Andy Keyt
akeyt@heylroyster.com

Healthcare
Katie H. Anderson
kanderson@heylroyster.com

Insurance Services
Patrick Cloud
pcloud@heylroyster.com

Long Term Care/Nursing Homes
Tyler Robinson
trobinson@heylroyster.com

Professional Liability
Renee Monfort
rmonfort@heylroyster.com

Toxic Torts & Asbestos
Jennifer Johnson
jbjohnson@heylroyster.com

Trucking/Motor Carrier Litigation
Mark McClenathan
mmcclenathan@heylroyster.com

Workers' Compensation
Toney Tomaso
ttomaso@heylroyster.com

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

---

Peoria
300 Hamilton Blvd.
Second Floor
Peoria, IL
61602
309.676.0400

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
Edwardsville, IL
62025
618.656.4646

Rockford
120 W. State St.
Second Floor
Rockford, IL
61101
815.963.4454

Springfield
4205 Wabash Ave.
Springfield, IL 62711
217.522.8822

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