

# WCLA NEWS



## FROM THE PRESIDENT'S DESK

Dear WCLA Members,

It is hard to believe that June is nearly over, especially after the never-ending winter we experienced with all of the cold and rainy weather. Despite the dreary weather, things at WCLA have been amazing.

Perhaps the most exciting change for members is the implementation of the ability to stream the continuing legal education seminars from the WCLA website. These are available for the entire month following the seminar. Not only do you have access to the information, but you can also still receive credit if you view it within the 30 day period online. We are confident that this program will increase our collar County and downstate membership and, as a result, increase our voice in Springfield.

I am very pleased to announce that the WCLA Board has voted to continue our charitable partnership with the Ronald McDonald House through 2019. This is an amazing organization to provide support to families whose children are undergoing medical treatment at Lurie's Children's Hospital. Through the charitable contributions of our WCLA members, we were able to provide support, housing, and meals to over 600 families over the past five years.

On June 20, 2018, we hosted the members of the Workers' Compensation Division of the Illinois Appellate Court at the University Club. This was a great opportunity to not only listen to what the justices have to say about practicing in front of them but also to ask them questions. I found this event to be one of the most outstanding WCLA events as it provides a rare opportunity for feedback and guidance on our practice in front of the Appellate Court.

We will continue to have our monthly continuing legal education seminars, all of which are listed on the WCLA website. We are also planning our second medical seminar of the year to take place in September.

Of course, we are about more than teaching, as we all know! The YLS hosted a bourbon and cigar tasting event on June 7, 2018, which was open to all members and a lot of fun. Additional YLS happy hours will be scheduled throughout the rest of the year.

Also, by now, you should have received your invitation to the annual golf outing, perhaps our most popular event. We look forward to a great day of sunshine, camaraderie, raffle prizes and some golf!

We are delighted to have you as a member. Membership in the WCLA not only benefits you as an individual, but the entire practice. I encourage you to refer your friends and colleagues to our great organization. As we all know, there is strength in numbers.

Sincerely,

**Peter J. Stavropoulos**

**2018 President of the WCLA**

## Summer 2018

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John Castaneda at [jcastaneda.cac@gmail.com](mailto:jcastaneda.cac@gmail.com)*

## SECTION 8.2(D)(3) OF THE ACT

### Are medical service providers able to bring a private right of action for interest under section 8.2(d)(3) of the Act?

On April 26, 2018, the First District Appellate Court filed the decision of: *Medicos Pain & Surgical Specialists, S.C., and Ambulatory Surgical Care Facility v. Travelers Indemnity Co. of America and Blackhawk Steel Corp.*, 2018 IL App (1st) 162591. In its decision the court affirmed that medical service providers do not have a private right of action to interest on medical bills under section 8.2(d)(3) of the Act. *Id.* at ¶ 16. In *Medicos*, the Appellate Court vacated the Circuit Court's judgment order. The only issue on appeal was whether medical service providers were entitled to interest under section 8.2(d)(3) of the Act. Section 8.2(d)(3) states that payments to a medical service provider "shall incur interest at a rate of 1% per month payable to the provider." 820 ILCS 305/8.2(d)(3) (West 2018).

### **Facts**

In 2010, Javier Mendoza was injured in an accident arising out of, and, in the course of employment, when he fell off a truck from approximately four feet high and landed on his left side. *Medicos*, 2018 IL App (1st) 162591 at ¶2. Mendoza injured both of his shoulders and as a result, Mendoza underwent a left rotator cuff surgery in late 2010, and a right rotator cuff surgery in

early 2011. *Id.* Before each surgery, Medicos faxed a one-page surgery approval request form to Travelers and received a faxed response prior to the repair surgeries. *Id.* The forms identified the procedures to be performed and provided a line for checking "Approved" or "Denied;" Travelers ticked the approval line. *Id.*

Two years later Medicos and Ambulatory filed a complaint attaching the approval faxes and other exhibits alleging \$166,944.00 in bills were issued to Travelers and Blackhawk, and they only received \$1,714.00. *Id.* at ¶3. Medicos and Ambulatory alleged that Travelers and Blackhawk were liable for the remaining balance under the theory of promissory estoppel, in addition to statutory interest under section 8.2(d)(3) of the Act. 820 ILCS 305/8.2(d)(3) (West 2018). Travelers and Blackhawk argued that the approval faxes amounted to an unambiguous promise for surgical bills. *Medicos*, 2018 IL App (1st) 162591 at ¶3. Medicos and Ambulatory noted that the lawsuit was intended to collect statutory interest, not unpaid bills. *Id.*

### **Illinois Workers Compensation Decision**

In February 2013, the Arbitrator determined that the remaining charges were "reasonable and necessary." *Id.* at ¶6. The Arbitrator awarded \$29,708 to Medicos and an additional \$38,554 to Ambulatory. *Id.* The Arbitrator rejected Mendoza's argument that the surgeries were preauthorized, and therefore,

all surgeries should have been paid. *Id.* The Arbitrator concluded that Mendoza was not entitled to penalties under sections 19(k) and 19(l) of the Act or attorney fees under section 16 of the Act. 820 ILCS 305/16, 19(k), and 19(l) (West 2018). The Arbitrator held "that although the need for surgery was not in dispute, there was clearly a disagreement as to whether all the charges stemming from those surgeries were reasonable and whether the outstanding fee schedule charges were accurately calculated [or had been double billed in error]. *Medicos*, 2018 IL App (1st) 162591 at ¶ 6.

### **Circuit Court Decision**

The parties appeared at the circuit court for a bench trial on the issue of interest on March 11, 2016. *Id.* at ¶7. Medicos and Ambulatory sought interest under 8.2(d)(3) of the Act totaling \$17,927.00 for the first surgery, and \$19,303.00 for the second surgery, as well as \$2,208.00 in 5% prejudgment interest. *Id.*; 820 ILCS 305/8.2(d) (West 2018). During the trial, Medicos and Ambulatory only argued a statutory claim regarding payment of interest on late paid medical bills. *Medicos*, 2018 IL App (1st) 162591 at ¶6. Travelers and Blackhawk tendered the ruling of Circuit Court Judge Rita Novak in *Marque Medicos Fullerton, LLC v. Zurich American Insurance Co.*, 2017 IL App (1st) 160756. *Id.* at ¶9. In *Marque Medicos*, a group of medical service providers sued a group of workers'

compensation insurers alleging they violated section 8.2(d)(3) of the Act. *Id.* Judge Novak ruled that medical service providers, such as Medicos and Ambulatory, “could not pursue their statutory interest claims under three theories: (1) an implied-in-fact contract; (2) an implied private right of action under the Act; or (3) as third-party beneficiaries of various workers’ compensation insurance policies.” *Id.* While the trial judge acknowledged Judge Novak’s ruling, Medicos and Ambulatory were awarded the full amount of interest. *Id.* at ¶10.

### ***Appellate Court Decision***

Travelers and Blackhawk appealed to the Appellate Court requesting reconsideration for two reasons. First, Medicos and Ambulatory failed to prove promissory estoppel as alleged in their complaint. *Id.* at ¶12. Then, in *Marque Medicos*, Judge Novak held that medical service providers’ statutory interest claims were rejected and dismissed with prejudice. *Id.* Therefore, Medicos and Ambulatory’s statutory interest claims should be rejected and dismissed. See *id.*

Medicos and Ambulatory argued that promissory estoppel was irrelevant once the Commission upheld the Arbitrator’s award for medical service fees. The parties returned to the circuit court to address the issue of interest. *Id.* at ¶13. Moreover, they relied on the late payments made as evidence to conclude that under the Act, Medicos and Ambulatory were entitled to section 8.2(d)

(3) interest. *Id.* Medicos and Ambulatory mentioned *Marque Medicos* to support their argument that the trial court and not the Commission has subject-matter jurisdiction over common-law claims regarding section 8.2(d)(3) interest. *Id.*

The Appellate court rejected Medicos and Ambulatory’s argument that promissory estoppel became irrelevant after the Commission awarded Mendoza compensation under the Act. *Id.* at ¶14. The Court noted that Medicos and Ambulatory failed to prove the common-law theory of promissory estoppel. *Id.* Moreover, the Commission’s decision did not affect the common-law claim. The Court confirmed that *Marque Medicos* was controlling on this issue. *Id.*

In *Marque Medicos*, the court held that the “plaintiff, [the] medical service providers, had no private right of action to be compensated for the purported failure of the defendant, [the] workers’ compensation insurer and employer, to comply with the interest provision of section 8.2(d)(3) of the Act.” *Id.* at ¶16 citing *Marque Medicos*, 2017 IL App (1st) 160756 at ¶38. The court in *Marque Medicos* noted that if a private right of action was authorized by the legislature, then a party may assert a right to be compensated for violation of a statute. *Id.* at ¶16; *Marque Medicos*, 2017 IL App (1st) 160756 at ¶57. The court found that 8.2(d)(3) of the Act does not expressly authorize a private right of action. To establish a private right of action all

## **2018 EVENTS**

### **ANNUAL GOLF OUTING**

August 10 - Pheasant Run Resort  
[Click here for more information and to register.](#)

### **3-HOUR MED SEMINAR**

Fall 2018 - Coinciding with IWCC  
Judicial training Details TBA

### **NOMINATIONS MEETING**

November 6 - Petterinos, Chicago

### **HOLIDAY PARTY**

December 7 - W Hotel City Ctr, Chgo

### **ELECTION MEETING**

December 10 - Petterinos, Chicago

### **BROWN BAG LUNCHES PROGRAMS**

Held in the JRTC Assembly Hall which is the auditorium on the Concourse (basement) level of the James R. Thompson Center (State of Illinois Building) at 100 W. Randolph in Chicago. All programs begin at 12:00 noon and end at 1:00 pm.

*Upcoming dates are as follows:*

Tuesday, July 10  
Wednesday, August 8  
Thursday, September 13  
Tuesday, October 9  
Wednesday, November 7  
Thursday, December 13

Visit our website for up-to-date event information and membership renewal.  
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*Continued, page Page4*

four factors must be met: “(1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff’s injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute.” *Id.* This Court rejected the argument that because section 8.2(d) of the Act required payments to be made to medical service providers only, these providers should be considered members of the class benefited by the Act, thus satisfying the first factor. *Medicos*, 2018 IL App (1st) 162591 at ¶16; *Marque Medicos*, 2017 IL App (1st) 160756 at ¶58. The court explained that fundamentally the Act protects employees by providing them prompt and fair compensation for work-related injuries, regardless of fault. *Medicos*, 2018 IL App (1st) 162591 at ¶16; *Marque Medicos*, 2017 IL App (1st) 160756 at ¶58. Further, the legislature’s primary goal in establishing the Act was to compensate employees completely and promptly, and any benefit to the medical service provider is at most incidental. *Marque Medicos*, 2017 IL App (1st) 160756 at ¶60. Therefore, this Court concluded that *Medicos* and *Ambulatory* only asserted a claim for interest under section 8.2(d)(3) of the Act and that claim fails because medical service providers are not a protected member of the class for whose benefit the Act was enacted. *Medicos*, 2018 IL App (1st) 162591 at ¶17. This Court held that the medical service providers failed to state a claim upon which relief could be granted and the trial court erred in awarding statutory interest. *Id.* at ¶19. In the concurring opinion of the First District Appellate Court, Judge Gordon explained that the legislature vested exclusive original jurisdiction in the Workers’ Compensation Commission regarding all matters involving injured workers, including benefits and employer defenses under the Act. *Id.* at ¶22; 820 ILCS 305/1 (West 2018). Here, the injured worker did not request enforcement of 8.2(d) of the Act before the Workers’ Compensation Commission, and *Medicos* and *Ambulatory* were not parties in that proceeding. *Medicos*, 2018 IL App (1st) 162591 at ¶22. Therefore, the Circuit Court of Cook County lacked jurisdiction to decide the issue of

interest or “any of the issues advanced by Plaintiff.” *Id.*

### CONCLUSION

This Court has clarified that medical service providers are not the class of persons who the legislature intended the Act to protect. Rather, medical service providers are incidental beneficiaries of the injured employee. It is well established that fundamentally the Act compensates employees injured on the job promptly, fairly, and completely. The First District Appellate Court interpreted the Act to prohibit medical service providers from bringing a private action against an employer or insurer under the interest provision of the Act. 820 ILCS 305/8.2(d)(3) (West 2018). The Illinois Supreme Court has denied a petition to leave for appeal. Other panels within the First District Appellate Court have affirmed *Marques Medicos*. As of 2017, medical service providers will not be able to bring a private right of action for interest under section 8.2(d)(3) of the Act.

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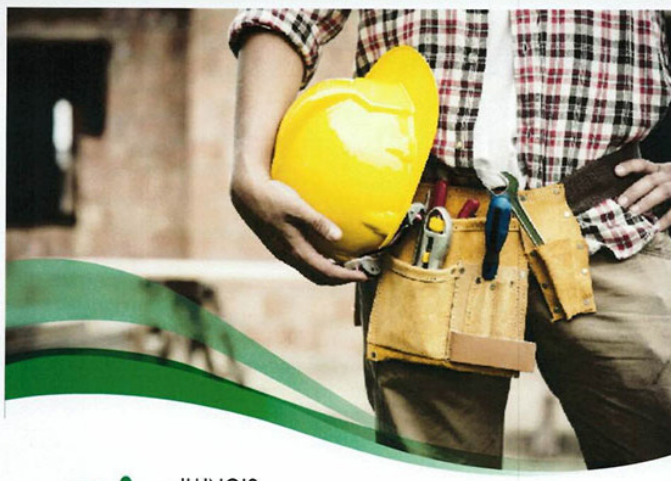
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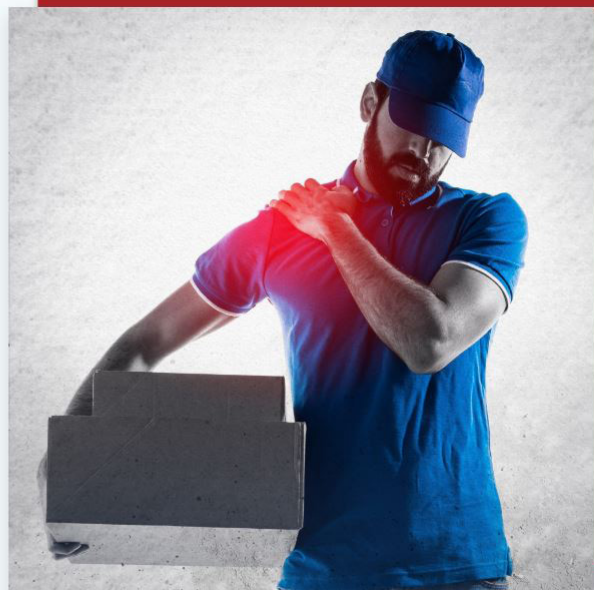
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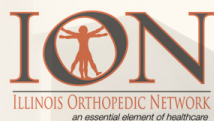
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