



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter June 2017

Upcoming Webinar!
7/20/17
**Top 10 Differences
Between IL General
Liability & Workers'
Compensation Claims**
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THE TOP 5 LIST

LEGISLATIVE UPDATE



Top 5 Tips For Defending Psychiatric Claims

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Routine Stress is NOT Compensable

A claimant alleging mental disability due to stressful working conditions must prove exposure to emotional strain and tension greater than that which all employees experience. Specifically, the conditions producing the mental disability must be extraordinary and must objectively exist. Garden variety stress is common to everyone's job and is not compensable.

2/ Question Permanency

Even for legitimate psychiatric claims, it is very rare to have lasting, permanent impairment. Generally, the stress subsides fairly quickly, and most credible psychiatrists will not find ongoing permanency.

3/ Research

Conduct a background check. Check social media. Obtain all of the claimant's prior medical records. I'll bet you that someone claiming work caused his or her mental stress also has a history of prior issues, most of which are more likely causes of his or her present condition than work.

4/ Know When To Hire An Expert

Retaining a credible, qualified psychiatrist is often a sound strategy. Doing so is very expensive and can cost \$5,000 to \$10,000. Before you spend that money, make sure that you actually need to. Frequently, the claim is not supported by a causation opinion from a board-certified psychiatrist. If the claimant simply provides an opinion from a physical treater or therapist, you likely don't need to go through the time and expense of hiring your own psychiatrist. Remember, it is always the claimant's burden to prove causation.

5/ Closely Monitor Treatment & Narcotics

More than ever, claimants alleging work-related mental stress are taking serious opiates. These narcotics are very addictive. It is imperative to fully manage these expensive drugs through utilization review, experts, nurse case management and the fee schedule.

By: [Michael Milstein](#)



On 5/26/17, the Illinois Senate passed two bills, HB2525 and HB2622, that "reform" workers' compensation.

HB2525 requires state Insurance Department-approved rates based on market need. The legislation provides that insurance premiums shall not be "excessive" and allows the Department to adjust premiums on insurers. It codifies "in the course of," "arising out of" and travelling employees. It allows for an apportionment of fault for repetitive injuries between employers and includes a credit for person-as-a-whole injuries. Lastly, it creates a Workers' Compensation Premium Rates Task Force.

HB2622 established the Illinois Employers Mutual Insurance Company, a not-for-profit company. It will receive a \$10 million loan from the state for its initial capitalization, which will be repaid in 5 years. The company will not be considered a state agency and will not receive state benefits, other than the initial loan.

This type of not-for-profit insurance company is currently active in many other states and has typically grown to be the largest insurer for workers' compensation.

These bills were sponsored by Democrats, including one who is running for governor. They represent an attempt by the Democrats, who control both legislative houses in Illinois, to take the lead on workers' compensation reform away from Republican Governor Bruce Rauner, who has made sweeping changes to the workers' compensation system a key to his administration. I do not think that Governor Rauner will sign either bill, given that they do not deal with some of the most important reforms needed to reduce Illinois workers' compensation costs.

We will keep you posted on any news.



SOUND BITE: Wigdor LLP partner Jeanne M. Christensen discusses her racial & sexual discrimination lawsuits against Fox News.

Rich Lenkov: Detail for us what you are alleging against individuals at Fox News and the corporation.

Jeanne Christensen: Our primary case in the Bronx County is a case that is filed against Fox the corporate entity and Fox News Network. It also names individually Dianne Brandi, who is the longtime general counsel at Fox, and a woman named Judith Slater who was the former comptroller of Fox. That case is based on pervasive racial discrimination at the corporate offices.

Rich Lenkov: One of the allegations specifically against Judith Slater is by a client of yours who worked for her and claims that she refused to make your client a permanent employee with benefits. Yet, Slater hired white people to do the same job with benefits and Fox fired your client after she gave birth to her child.

Jeanne Christensen: Right, that case is one of the singular cases that we filed in federal court for procedural reasons, but that is exactly what we alleged in that case. There are similar allegations in the larger Bronx County case for some of those individuals as well. We allege that Slater repeatedly kept persons of color on as temporary employees, but when it came time to actually make somebody a permanent employee she selected white employees.

[Click Here To Listen To The Full Episode:](#)

Recent Topics:

- Bill Cosby trial
- The Duggars lawsuit
- Jury duty scofflaws
- Trump FBI probe
- Fighting opioid dependency

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- Sheriff David Clark

[Alan Dershowitz on Trump/Comey, feds investigate Fox News, Fyre Festival, Penn State hazing liability and much more](#)

[Illinois gubernatorial candidate on abortion funding, minimum wage increase, new book explores injustice and more.](#)

[Legalizing marijuana, Eli Manning sued, law school trends, Bennifer, Blago & Aaron Hernandez in this week's Legal Face-Off](#)

[Trump U settlement, Gorsuch hearings, Rahm email scandal, Facebook live assault & more.](#)

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Firefighter Claims

By: [Krista Sifuentes](#)



In *Johnston v. (East Dundee Fire Protection District, Appellee)*, IWCC, 25 ILWCLB 63 (Ill. App. Ct. 2nd 2017), the Second District Appellate Court held that the defendant successfully rebutted the Section 6(f) firefighter presumption. Petitioner was a firefighter for 22 years. He smoked up to 1 ½ packs of cigarettes per day. On 2/5/14, he arrived at the fire station

and the next thing he knew, he woke up in the hospital. 4 coworkers found him lying in the snow in the parking lot after a sudden cardiac arrest.

Section 6(f) requires the employer to offer some evidence sufficient to support a finding that something other than Petitioner's occupation caused his condition.

Although the arbitrator found that the Section 6(f) statutory presumption set forth applied in that the cardiac event arose out of and in the course of Petitioner's employment, and a causal relationship existed between the condition and the hazards of the employment, he denied benefits.

On appeal, the Second District affirmed the denial. The court reasoned that the legislature intended an ordinary rebuttable presumption to apply. In applying the presumption, the court found it irrelevant whether Petitioner was performing a work function at the time of his heart attack. The court reasoned that based on Respondent's expert, who opined that Petitioner's history of smoking, family history of heart disease, possible diabetes and obesity were all risk factors for developing coronary artery disease, the presumption was rebutted.

Practice Tip:

Always look into a Petitioner's past medical history. Medical canvases are a great way to obtain information on prior illnesses, injuries and treatment.

Lack Of Specific Injury Dooms Claim

By: [Michael Milstein](#)



How much detail must be included in an accident history for it to be found compensable? In *Anguiano v. Klein Tools, Inc.* (25 ILWCLB 39), the IWCC tackled that issue. Petitioner worked for a company that manufactured metal parts and alleged that he began experiencing back pain in May, 2011. Petitioner did not provide a specific mechanism

of injury, only noting that he injured his back while working on a machine. In July, 2011 treated and underwent therapy. His treatment records also did not contain any detail regarding the onset of his symptoms. Petitioner told his doctor that he performed repetitive tasks at work, but did not state what those tasks were or what he was doing when the injury occurred. He eventually had surgery which alleviated some pain. The arbitrator awarded benefits.

On appeal, the IWCC reversed reasoning that Petitioner never mentioned a specific mechanism of injury at trial and the medical records also did not provide any details. The Commission reasoned that these histories were too vague of a description for a compensable claim. As there was no specific mechanism of injury, Petitioner was unable to prove accident.

Practice Tip:

Deny the claim if Petitioner fails to specify what happened when he is injured. Simply alleging that you are hurt while working, without any detail, is not sufficient to prove a compensable claim.

Firm News

FIRMA Chicago Risk Management Conference

On 6/7/17, [Rich Lenkov](#) presented at the FoodService Industry Risk Management Association (FIRMA) Chicago Conference.

Rich provided important legal updates regarding why, when and how businesses should use video surveillance in litigation.



2017 CLM & Business Insurance Workers' Compensation Conference

On 5/25/17, [Rich Lenkov](#) moderated a panel on “3 Common Ethical Dilemmas From 3 Different Perspectives” with Eric Spalsbury, Director of Risk Management for Stanley Steemer International and Arbitrator Maria Bocanegra of the Illinois Workers' Compensation Commission at the 2017 CLM & Business Insurance Workers' Compensation Conference in Chicago, Illinois.



Additionally, [Kirsten Kaiser Kus](#) presented on “Top Employer Mistakes in the Claims Process” with Melissa Donovan, Superintendent AIC, AIM for Cincinnati Insurance, Judi Cole, Corporate Claims Manager for K2 Industrial and Stephanie Wood, Claims Manager for The Wendy's Company.



Legal Prep Charter Academy Barristers' Ball

On 5/25/17, [Rich Lenkov](#) attended [Legal Prep Charter Academy's 6th Annual Barristers' Ball](#). Rich is proud to serve on the advisory board of LPCA, Chicago's only legal themed charter high school.



Did You Know?

In addition to workers' compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization & Governance](#)
- [Construction](#)
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- [Intellectual Property](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)

NRA Show 2017 & Sweets & Snacks Expo

On 5/22/17, [Rich Lenkov](#), [Michael Milstein](#), [Juan Anderson](#) and [Tim Alberts](#) attended the [National Restaurant Association Show](#) and the [Sweets & Snacks Expo](#) at McCormick Place in Chicago.

They learned about major innovations in the food industry which will serve us well, given that we represent dozens of retailers and restaurants.



Free Monthly Webinars

What you said about our 5/23/17 webinar,

"What's This Claim Worth?"

"It was very informative."

"I always appreciate the examples from real-life case law."

"I liked the information about AMA membership and certification, IME, Arbitration and Commission awards."

"A good review of the current values being given to cases in Illinois."



Upcoming Webinar
7/20/17

Top 10 Differences Between IL
General Liability & Workers' Compensation

Claims

Rich Lenkov
Michael Milstein

Register



Recent Webinars

- The Ups & Downs Of Upper & Lower Extremity Claims
- Illinois Workers' Compensation Reform
- New OSHA Regulations
- 1st Annual Great American BDL WC Quiz
- Common Workers' Compensation Issues Defined
- Indiana Forms: Taking A Claim From Start To Finish

If you would like a copy of any of our other prior webinars, please email us at mkt@bdlfirm.com

Cutting Edge Legal Education

If you would like us to come to you for a free seminar, [Click here](#) or email [Rich Lenkov](mailto:Rich.Lenkov@bdlfirm.com).

Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to a few people or dozens, to companies of all sizes and large national organizations. Among the national conferences at which we've presented:

- Claims and Litigation Management Alliance Annual Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- National Workers' Compensation & Disability Conference
- RIMS Annual Conference

Some of our previous seminars include:

- Turning The Tables: Using An Employee's Own Actions As A Defense To Their Workers' Compensation Claim
- Closing The Nightmare Case
- Workers' Compensation 101
- Mandatory CMS Reporting Requirements: What You Need To Know
- Managing & Closing WC Claims In A Cost-Effective Manner
- Top 10 Ways To Reduce Legal Expenses NOW
- The Mediation Process
- Balancing Aggressive Pursuit Of Lien Recovery With Associated Litigation Expenses
- Dealing With Difficult Claimants
- Health-Related Leave: Workers' Compensation, ADA and FMLA

Illinois Rates At A Glance

Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
1/15/11 - 7/14/11	1,243.00	466.13	930.39
7/15/11 - 1/14/12	1,261.41	473.03	946.06
1/15/12 - 7/14/12	1,288.96	483.36	966.72
7/15/12 - 1/14/13	1,295.47	485.80	971.60
1/15/13 - 7/14/13	1,320.03	495.01	990.02
7/15/13 - 1/14/14	1,331.20	499.20	998.40
1/15/14 - 7/14/14	1,336.91	501.34	1,002.68
7/15/14 - 1/14/15	1,341.07	502.90	1,005.80
1/15/15 - 7/14/15	1,361.79	510.67	1,021.34
7/15/15 - 1/14/16	1,379.73	517.40	1,034.80
1/15/16 - 7/14/16	1,398.23	524.34	1,048.67
7/15/16 - 1/14/17	1,428.74	535.79	1,071.58
1/15/17 - 7/14/17	1,435.17	538.19	1,076.38

Minimum Rate Death & Total Permanent Disability:

50% of the Statewide Average Weekly Wage

Maximum Rate Death Benefit:

The greater of \$250,000 or 20 years Effective 2/1/06 - the greater of \$500,000 or 25 years

Temporary Total Disability (TTD) Rate:

66-2/3% (.667) x AWW

Permanent Partial Disability (PPD) Rate:

60% (.6) x AWW

*Number if children and/or spouse = number of dependents.

Minimum TTD & PPD	Single	Married	1 DEP.	2 Dep.	3 Dep.	4+ Dep.
TTD & PPD 7/15/10 - 7/14/17	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

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PPD Benefits Schedule Of Body Parts

	Before 7/20/05	7/20/05 - 11/15/05	11/16/05 - 1/31/06	2/1/06 - 6/27/11	On or after 6/28/11
For Injuries Occurring					
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (Index) Finger	40	43	40	43	43
Second (Middle) Finger	35	38	35	38	38
Third (Ring) Finger	25	27	25	27	27
Fourth (Little) Finger	20	22	20	22	22
Great Toe	35	38	35	38	38
Each Other Toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal Tunnel Due To Repetitive Trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation Above Elbow	250	270	250	270	270
Amputation At Shoulder Joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation Above Knee	225	242	225	242	242
Amputation At Hip Joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation Of Eye	160	173	160	173	173
Hearing Loss Of One Ear (Under WC Act)	50	54	50	54	54
Hearing Loss Of Both Ears (Under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162

The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.

Disclaimer:

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