

Workers' Compensation Newsletter October 2018

Upcoming Webinar!

10/30/18

WC Horror Stories



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THE TOP 5 LIST

Top 5 Questions To Ask Potential Defense Counsel

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ What Are Your Average Legal Expenses?

Too often, clients are fixated on hourly rates. That doesn't tell the whole story. The more crucial question is what the firm averages in litigation expenses per case. Any firm can wow you with a low rate, but overall cost is a better indicator of whether the firm is a true business partner.

2/ How Long Do Your Cases Stay Open?

Your defense counsel should always be focused on closing cases quickly and as cheaply as possible. You should not only ask how long the case will stay open, but what tools they use to move the cases along quickly.

3/ Who Will Staff My Case?

No one likes the bait and switch, where the experienced attorney convinces you to hire them and is never seen again. Clients hire individuals, not firms. Be sure your defense counsel knows that you want your hand-selected team representing you.

4/ How Many Trials/Appeals/Depositions Have You Personally Handled?

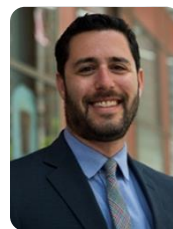
Don't just inquire as to the years in practice from your potential defense counsel. Someone who has been in practice for 20 years but hasn't really taken a lead role in the trenches may not suit your needs. Ask specifically about how much actual workers' compensation handling experience your potential counsel has had.

5/ What Do You Know About My Company?

You should hire counsel that views their role as your business partner first and your lawyer second. It is important for your defense counsel to know what you do, what your company does, what its goals are, its history, etc. You obviously don't want a defense counsel who simply sees you as just another corporation paying its bills.



By: [Michael Milstein](#)



With the gubernatorial election a few weeks away, there has been no movement in Springfield on any front. However, a major difference between this and the prior election is that workers' compensation reform is not only an issue at the governor level, but has also trickled down ticket and can be heard in many stump speeches throughout the state.

With this newfound attention on workers' compensation, we expect reform legislation to be put forward once the election is over, as newly elected officials look to make good on campaign promises.

Pritzker: "There's no doubt we've got to address the workman's comp issue. The problem is that what the Republicans really want to do is lower costs. They don't really think about workplace safety when they think about how do we reform the system. But you've got to balance these things and lower costs at the same time."

Rauner: The governor said he would like to establish "a procedure through the Illinois Workers' Compensation Commission which would result in more timely determinations of interest payments for all concerned."

We will keep you posted on developments following the election.



Legal Face-Off is a fast paced legal podcast. Rich Lenkov and Christina Martini of McDermott Will & Emery discuss the hottest legal issues and feature guests from a variety of backgrounds.

SOUND BITE: Former Cook County State's Attorney Anita Alvarez discusses the Jason Van Dyke verdict.

Rich Lenkov: Anita, you actually charged Jason Van Dyke with first degree murder. He was convicted of second degree murder, as well 16 counts of aggravated battery with a firearm. What are your thoughts on that verdict?

Anita Alvarez: I believe it's a just verdict. I believe it's the right one. I believe that based on everything we saw when we were doing this investigation on this case, the evidence that we had, his role as an officer. In Illinois, in order to be found guilty of second degree murder, you have to charge first. Now that may sound a little off to a lay person, but the law is very specific.

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



Recent Topics:

- Supreme Court decisions post-Kavanaugh
- Van Dyke trial
- "Time's Up"/Me Too movement
- Chicago mayoral candidates

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Directors Julie Cohen and Betsy West of [RBG](#)

[The Supreme Court post-Kavanaugh, Anita Alvarez on Van Dyke, Canadian pot, Nic Cage movies & more](#)

[Runge live report from the Van Dyke trial, the other side of the MeToo movement, Inside Out and much more](#)

[Manafort, Vegas shooting lawsuit, Inside Out Columnists, The Prisoner Rights Project](#)

[Alan Dershowitz on impeaching Trump, a new Chicago law school, the president of the Federal Bar Association and a new legal app](#)

[LFO's SCOTUS panel, ACLU's David Cole, Mailee Smith, Shannon Shepherd, Jordan Goodman](#)

Please like us on [Facebook](#), [Twitter](#) and [subscribe on iTunes](#). Send us your questions and we will answer them on air—nothing is off limits.

Commission Reverses Benefits Award in Absence of Work-Related Cause

By: [Jeanmarie Calcagno](#)



In *Davis v. State of Illinois Vienna Correctional Center*, the Commission reversed the arbitrator's benefits award on the basis that the accident did not arise out of Petitioner's employment. Davis, a correctional officer, sustained left ankle injuries when she fell on a curb while walking through an area that was not open to the general public.

As basis for the reversal, the Commission cited that there was no evidence of Petitioner hurrying, carrying anything and/or of any defective conditions that caused the accident. In fact, the Petitioner completed an accident report in which she acknowledged that the accident was not caused by any unsafe act or condition in the area.

The Commission's decision is very significant given that Petitioner was working at the time of the accident and claimed that it may have been caused by the lighting in the area and/or a noise she heard. In addition, Petitioner testified that she walked through the area where she fell 6-8 times per day while working.

Practice Tip:

It is very effective at trial to produce evidence of Petitioner's own words as to how the accident occurred coupled with photos and/or video surveillance of the accident site.

Excessive Typing Doesn't Cause Carpal Tunnel Syndrome

By: [Emily Schlecte](#)



In *Alderman v. The State of IL Environmental Protection Agency*, 26 ILWCLB 102 (Ill. W.C. Comm. 2018), the Commission held that Petitioner failed to prove that her left hand carpal tunnel syndrome (CTS) arose out of and in the course of her employment as an office worker.

Petitioner testified she worked for Respondent for 19 years and that her work duties consisted of typing permits on a typewriter, pulling staples, writing, and putting permits in envelopes. In 2013, Petitioner was required to work overtime on Saturdays to clear out a back log of permits, and testified that 70% of her shift was dedicated to typing.

Petitioner treated in 2014 after she noticed numbness and tingling in her left arm and was diagnosed with CTS.

Respondent's Section 12 examiner opined that Petitioner's CTS was unrelated to her job duties and instead due to her underlying medical condition and risk factors. These risk factors included insulin-dependent diabetes, hyperlipidemia, obesity, hand arthritis and being female. He further opined that there were no studies or objective evidence to implicate typing as a cause of CTS. Moreover, the doctor noted that although Petitioner complained of numbness and tingling while typing, she also complained of the same symptoms while driving.

The Commission was persuaded by Respondent's IME and held that Petitioner's typing activities merely aggravated her symptoms, but did not aggravate her underlying condition. Therefore, Petitioner was not entitled to benefits.

Practice Tip:

The mere fact that a petitioner is at work and engaged in a job-related activity when carpal tunnel symptoms occur is not sufficient to prove compensability. Evaluate whether the work activity aggravated underlying symptoms versus the underlying condition.

For more information on our Workers' Compensation practice, please [click here](#).

Our other practice areas include:

- Appellate Law
- Business Law
- Condominium Law
- Construction Law
- Entertainment Law
- General Liability
- Healthcare Law
- Insurance Law
- Intellectual Property
- Labor & Employment
- Products Liability
- Professional Liability
- Real Estate
- Transportation Law

Firm News

ALA 2018 Midwest Architecture Conference

On 10/2/18, [Geoff Bryce](#) and [Werner Sabo](#) presented “Practice Pointers for Illinois Architects” at the Association of Licensed Architects 2018 Midwest Architecture Conference. The conference is the leading source for architects and building professionals to obtain the latest business and technical education information. To learn more about ALA, visit: <https://www.alatoday.org/>



Brian Rosenblatt Co-hosted Launch Party for Slang Music Vault

On 10/10/18, [Brian Rosenblatt](#) co-hosted “Music To Build The World” with Slang Music Group and its founder, legendary producer and composer Vince Lawrence. The event celebrated the launch of Slang Music Group’s Slang Music Vault, which provides a collection of customized songs that users are able to license and download, opening a wide market for advertisers, film and commercial clients. To learn more about Slang Music Vault, visit: www.slangmusicvault.com



Oz Park Baseball Association

Bryce Downey & Lenkov is proud to sponsor Oz Park Baseball Association (OPBA). OPBA is a non-profit that provides baseball coaching and competition for over 1,200 boys and girls, ages 4-14. [Rich Lenkov](#) is currently coaching the Cool Hatz youth team in the playoffs. Sponsorships assist with participant costs, scholarships for underprivileged children, coach training and community events. Learn more about OPBA, visit: <https://leagues.bluesombrero.com/Default.aspx?tabid=865055>.



12th Annual Agassiz Walk-a-Thon

On 10/12/18, Bryce Downey & Lenkov was proud to sponsor Agassiz Elementary’s 12th Annual Walk-a-Thon. The Walk-a-Thon rallies the students and the community at the start of the year, while emphasizing healthy habits like exercising and walking. 44th Ward Alderman Tom Tunney also stopped by to show his support to the Lakeview community.



BDL is Growing!



Bryce Downey & Lenkov is proud to welcome [Howard Turner](#) as of counsel in our Construction practice. Howard brings decades of experience in mechanics lien and construction law. He has authored many articles on mechanics liens and is the author of *Turner on Illinois Mechanics Liens*. The highly acclaimed book is published by the Illinois State Bar Association and sponsored by the Society of Illinois Construction Attorneys, of which Howard is also a member.



We also welcome [Jonathan Zarate](#), who joins our Workers' Compensation group as an associate. He represents employers and insurance carries before the Illinois Workers' Compensation Commission and appellate courts. Prior to joining Bryce Downey & Lenkov, Jonathan defended clients in professional negligence, automobile, and workers' compensation. In his free time, Jonathan enjoys traveling and playing sports.

Upcoming Events

- **11/8/18** – Bryce Downey & Lenkov is a proud sponsor of the Respiratory Health Association's 12th Annual Chill event. Proceeds from the Chill event help support Fight Asthma Now© and Asthma Management, teaching children and their caregivers skills to manage their asthma; local lung health research projects; and Respiratory Health Association's COPD initiative, which offers resources and programs for people living with COPD and their caregivers. For more information or to purchase tickets, please [click here](#).
- **12/12/18** – [Geoff Bryce](#) and [Samuel Levine](#) will present at the Illinois Institute for Continuing Legal Education's "Construction Litigation Dispute Resolution" conference. Geoff will present "Insurance: Coverage for Construction Defects and Who Wants to be an Additional Insured?" Sam will discuss "Construction Defects Litigation" with co-presenter Justin Weisberg of Schuyler, Roche & Crisham. For more information or to register, please [click here](#).

Baskets For Breast Cancer

Bryce Downey & Lenkov is proud to participate in USLI's 4th Annual Baskets for Breast Cancer auction from 10/17/18-10/24/18.

The online silent auction features over 70 baskets including an array of items generously donated from companies. This year, Bryce Downey & Lenkov donated "My Kind of Town – Chicago's Arts & Entertainment." Bidders are able to enjoy everything Chicago has to offer with this one-of-a-kind package. [Click here](#) to review and bid on our basket.

100% of sales benefit breastcancer.org.

My Kind of Town
CHICAGO
Chicago's Arts and Entertainment

\$250 Southwest Airlines Gift Card
Book your flight with Southwest Airlines and save big with the world's largest low-cost carrier.

\$100 Morton's Gift Card
Experience exceptional service and fine dining at the original Morton's Steakhouse on State Street.

\$50 House of Blues Gift Card
Enjoy reheating drinks and live, live Blues music at Chicago's premier live entertainment venue.

\$150 Go Chicago "Explorer Passes"
Choose any three attractions from 28 options including the Architecture Center & Skydeck (2 passes).

Plan your next trip to the Windy City with this one-of-a-kind package!

BDL Bryce Downey & Lenkov

Bryce Downey & Lenkov was founded as a full-service firm in 2001. With over a century of combined trial experience, our attorneys efficiently and professionally manage and present cases for mediation to juries, judges, and mediation/arbitration panels.

Exceptional Service. Proven Results.

www.bdlfirm.com

Free Monthly Webinars

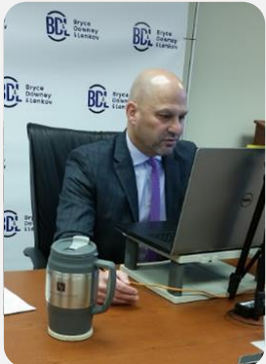
feedback from our 9/18/18 webinar,

Defending Shoulder and Knee Injuries, Feat. Chicago Bulls & White Sox Team Doctor Brian Cole:

"I loved the specific examples /scenarios. I learned so much about physiology today. Fat can date an atrophied meniscus? Wow."

"It was very beneficial. Lots of great info and topic."

"Good to know there is a credible Dr that does IMEs and understands medical causation."



Next Upcoming Webinar
10/30/18

WC Horror Stories



[Rich Lenkov](#)
[Chase Gruszka](#)

[Register Here](#)

Recent Webinars

- Key Differences in IL & IN Workers' Compensation
- Injuries Away From Work
- Settlement Strategies
- When Is An Employee Not An "Employee"?
- Ask Us ANYTHING
- Top 10 Differences Between IL WC & GL Claims
- The Ups & Downs Of Upper & Lower Extremity Claims
- What's This Claim Worth?
- New OSHA Regulations
- Top Employer Mistakes In Indiana



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).

Our attorneys provide free seminars on a wide range of workers' compensation topics regularly. We speak to individuals and companies of all sizes. Some of the national conferences that we've presented at are:

- Workers' Compensation Educational Conference
- 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
- Chicagoland Safety, Health and Environmental Conference

Some of our previous seminars include:

- When Safety Goes Awry... Send Lawyers, Guns and Money
- 5 Questionable Claims & How To Defend Them
- 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



**Bryce
Downey
& Lenkov LLC**

PPD Benefits Schedule Of Body Parts

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
7/17/17 - 1/14/18	1,440.60	540.23	1,080.45

Effective Dates	Maximum PPD
7/1/06 - 6/30/07	619.97
7/1/07 - 6/30/08	636.15
7/1/09 - 6/30/10	664.72
7/1/10 - 6/30/11	669.64
7/1/11 - 6/30/12	695.78
7/1/12 - 6/30/13	712.55
7/1/13 - 6/30/14	721.66
7/1/14 - 6/30/15	735.37
7/1/15 - 6/30/16	755.22
7/1/16 - 6/30/17	775.18
7/1/17-6/30/18	790.64

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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833 West Lincoln Highway
Suite 210
Schererville, IN 46375
Tel: 219.488.2590
Fax: 219.213.2259

For Injuries Occurring	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
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.					

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