



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter May 2016



### THE TOP 5 LIST

#### **Top 5 Questionable Diagnoses**

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

##### **1/CRPS (complex regional pain syndrome), formerly known as reflex sympathetic dystrophy**

This is a fast-growing and questionable diagnosis. Even if a claimant legitimately has this condition, there is very little medical data supporting causation to work.

##### **2/Post-Traumatic Stress Disorder (PTSD)**

Like many alleged mental trauma diagnoses, this is very difficult to prove. Petitioner must prove that it is work-related. Very frequently, claimants diagnosed with PTSD or other psychiatric claims have a long history of other conditions that are the more likely cause of their current state.

##### **3/Repetitive Trauma**

Repetitive trauma claims are very difficult for a claimant to prove. The most prominent one is carpal tunnel syndrome. In order to prevail, the claimant has to provide evidence from a specialist confirming that the work involved a very definite set of repetitive and forceful hand movements. This is an extremely difficult burden of proof, as there is very little evidence that work causes these conditions.

##### **4/Concussions/Closed Head Injuries**

While these can be serious, they are also ripe with malingering and exaggerated claims. There are objective tests to quantify these conditions, but claimants can manipulate them with subjective complaints.

##### **5/Any Condition Involving Opioids**

OxyContin is the most prescribed drug in workers' compensation. Opioids carry a host of problems, including long term addiction. Use drug UR, peer review and drug testing to avoid abuse of opioids and other pain medications.

Upcoming Webinar!

5/26/16

10 Common Causation  
Scenarios And How to  
Defend Them

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By: [Michael Milstein](#)



Over the past month, there has been little news to suggest that a resolution to the budget impasse is on the horizon. Illinois legislators have been

told that they will not be paid until a budget is passed. Illinois has nearly \$8 billion in backlogged bills and could total \$10 billion by the end of June. Though each side has not shown any willingness to move from their respective corner, public anger continues to grow and will hopefully foster an agreement.

We will continue to keep you posted on the budget impasse and workers' compensation reform.



**SOUND BITE: ACLU attorney Dror Ladin discusses CIA torture and the state secrets privilege.**

**Rich Lenkov:** Dror, thanks for joining us on Legal Face-Off. Tell us about the lawsuit brought on behalf of 3 individuals over their alleged torture endured in a secret CIA prison.

**Attorney Dror Ladin:** So these are 3 men who are named in the Senate Intelligence Committee's report on CIA torture as victims of the CIA's torture program. They're suing the two psychologists, James Mitchell and Bruce Jessen, who are, as independent contractors, responsible for designing and implementing the torture program for the CIA.

**Jason Whiteside:** What's also in the news about this is there's been a shift with the Obama administration. Previously, they shut down any type of these lawsuits that would sue directly for this torture, but now, the government is not putting up that barrier.

**Attorney Dror Ladin:** Yes, it's totally unprecedented. In every previous torture lawsuit, the government immediately intervened and asserted something called the 'state secrets privilege' and said the whole issue of torture was "too secret for courts to deal with" and fought dismissal of every lawsuit. In this case, the government filed a statement of interest on April 8<sup>th</sup>, in which it said it was considering special procedures which would allow the lawsuit to go forward. And in fact, we just had a hearing on April 20th and the government appeared in court and did not seek to shut the lawsuit down. The government was just there to talk about how they would enable discovery to take place and under what circumstances and what procedures.

**Rich Lenkov:** Why is there a shift on behalf of the justice department to not invoke the state's privilege?

**Attorney Dror Ladin:** The biggest reason for it is probably the release of the senate CIA report on torture. In order to get the executive summary, which is about 500 pages, publically released they got a lot of information about the CIA's torture program declassified. So there's no real argument that it's a state secret anymore. So whatever the justice department said in the past about the secrecy of the programs can't tentatively be said at this stage.

[Click Here To Listen To The Full Episode:  
http://wgnplus.com/category/legal-face-off/](http://wgnplus.com/category/legal-face-off/)

**Recent Topics:**

- Dennis Hastert
- Tom Brady's suspension reinstated
- ACLU's lawsuit against CIA
- Texas circumventing Obama immigration policy
- Corruption in Illinois
- Merrick Garland

**Recent Guests:**

- Alan Dershowitz, Professor Of Law, Emeritus, Harvard Law School
- Criminal defense attorney Joe Cataldo
- Alan Amron, Post-It Notes inventor
- Attorney Dror Ladin, ACLU National Security Project
- Professor Robert Bruno, University Of Illinois, School of Labor & Employment Relations
- Gloria Allred

[ACLU's lawsuit alleging CIA's use of torture, Tom Brady's suspension, "Bystander Effect" in relation to Marques Gaines' death, Uber settlement, Dennis Hastert sentencing](#)

[Texting/Suicide Case, Texas circumventing Obama's immigration policy, Female-only Uber competitor, Will Smith murder, Charlie Sheen and a Dora The Explorer lawsuit](#)

[Gloria Allred discusses OJ & Cosby, CTU vs CPS, Blagojevich, Drew Peterson, Elton John and more](#)

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

## Upcoming Seminars

- On 6/1/16, **Jeanmarie Calcagno** will be presenting to Midwest Orthopedics. Stay tuned for more details
- On 6/7/16, **C. Matt Alva** will present "Fundamentals Of Workers' Compensation" for SES. [Click Here](#) for more info and to register
- On 6/16/16, **Tina Paries** will present "Drafting and Negotiating Construction Contracts" for NBI. [Click Here](#) for more info and to register
- On 8/21-8/24/16, **Rich Lenkov, Justin Nestor** and **Maital Savin** will present at the 71st Annual Workers' Compensation Educational Conference & 28th Annual Safety & Health Conference. [Click Here](#) for more info and to register

## PPD Award Plummet After Credit For Same Body Part

By: [Tim Alberts](#)



In *Dorsey v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 143044WC, the Appellate Court considered the issue of applying a credit in shoulder/arm cases. Petitioner, an electrician, sustained an injury to his left biceps tendon. He had a prior workers' compensation settlement for 30% loss of the use of a left arm.

At trial, Petitioner argued that his injury should be assessed as a shoulder, warranting a MAW award. Credit for prior settlements is not applied in MAW cases.

The arbitrator awarded 17% MAW. Respondent appealed, arguing that a 30% credit should be applied and that the award should be classified as a percentage loss of the left arm. The Commission agreed, modifying the award to 37.5% loss of the left arm and assessed a credit for the prior settlement. The Appellate Court affirmed, citing *Will County Forest Preserve District* and Section 8(e)(17).

### Practice Tip:

Always check the IWCC website for prior settlements. Aggressively claim a credit when there was a previous settlement for the same body part.

Many Petitioners' attorneys will try to circumvent the credit by alleging a job loss or MAW injury.

## Employer In Hot Water Over Spilled Tea

By: [C. Matt Alva](#)



In *Schipper v. Illinois, State of/Dixon Correctional Center*, 24 ILWCLB 13 (2015), Petitioner spilled hot tea and burned her leg and foot while working at her desk. The parties disputed whether this accident arose out of Petitioner's work. The arbitrator held and the Commission affirmed that the accident arose out of and in the course of her employment.

Petitioner placed a cup of hot tea on her desk while working in a secure control room. During a work-related phone call, the phone cord hit the cup of tea, which spilled and burned Petitioner.

The arbitrator determined that, based on the personal comfort doctrine, Petitioner's accident was in the course of her employment. With regards to the arising out of issue, the arbitrator characterized the risk as neutral and indicated that Petitioner needed to show that she was exposed to a greater risk than the general public. Petitioner presented evidence that she was at a greater risk due to the busy and repetitious nature of her work activities. Accordingly, the arbitrator found that Petitioner's accident arose out of her employment.

Respondent's attorneys argued that Petitioner's use of a hot pot to make the tea violated work rules and took her injury outside the scope of her employment. The arbitrator rejected this argument, as it was the tea and not the hot pot, that caused the injury. Further, Petitioner was allowed to have tea at her desk.

### Practice Tip:

Neutral risk cases are very fact-specific and require detailed accounting of Petitioner's work duties and the activities at the time of an accident. It is important to develop a thorough record through employment records and witness statements. Employers should also implement specific work rules relative to potentially dangerous products like hot tea and coffee, such as requiring lids.

## Giving Back

### Geoff Bryce Skates To Raise Funds For Cancer

On 4/23/16, **Geoff Bryce** and the Windy City Skaters skated in the American Cancer Society Walk & Roll. This fundraiser focuses on honoring cancer survivors, increasing awareness and raising funds for the American Cancer Society.



### Rich Lenkov Receives Northern Illinois University's 2016 Outstanding College Alumni Award

Rich Lenkov was honored with the 2016 College Of Law Outstanding Alumni Award from the NIU Alumni Association. [Click Here](#) to read more.



## Did You Know?

In addition to workers' compensation, we also handle:

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



## Free Monthly Webinars

What you said about our 4/28/16 webinar,  
"Defending Pain Claims"

*"Dr. Hong's descriptions and explanations of various things were incredibly helpful. Some of that information is lost when trying to interpret reports sometimes. I appreciated his time today."*

*"I liked the information provided by Dr. Hong, specifically the different tests and for what pain complaints they are used."*

*"As always, very informative & can definitely be used when speaking with adjusters."*

*"I think Dr. Hong's perspective was very helpful and informative."*



[Kevin Borozan](#) focuses on general liability and workers' compensation. Kevin clerked for a year and a half at a plaintiff's law firm in Chicago, gaining experience in all stages of litigation.

If you would like a copy of any of our other prior webinars, please email our Marketing Coordinator Jason Klika at [jklika@bdlfirm.com](mailto:jklika@bdlfirm.com).

Upcoming Webinar

5/26/16

### 10 Common Causation Scenarios And How to Defend Them

Rich Lenkov

Kevin Borozan

[Click Here to Register](#)

#### Recent Webinars

- Reduce Your Legal Expenses NOW!
- WC Horror Stories
- More Top 5 Lists
- WC Issues Raised By Millennials
- What The Movies Can Teach You About Handling WC Claims
- Compensable Or Not? 10 Common Accident Scenarios And How To Defend Them

## Cutting Edge Legal Education

If you would like us to come to you for a free seminar,

[Click here now](#) or email Rich Lenkov at

[rlenkov@bdlfirm.com](mailto:rlenkov@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



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Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
7/15/10 - 1/14/11	\$1,243.00	\$466.13	\$925.08
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

Effective Dates	Maximum PPD	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
7/1/04 - 6/30/05	\$567.87	<b>Maximum Rate Death Benefit:</b> The greater of \$250,000 or 20 years Effective 2/1/06 – the greater of \$500,000 or 25 years
7/1/05 - 6/30/06	591.77	
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	<b>Temporary Total Disability (TTD) Rate:</b> 66-2/3% (.667) x AWW
7/1/11 - 6/30/12	695.78	
7/1/12 - 6/30/13	712.55	<b>Permanent Partial Disability (PPD) Rate:</b> 60% (.6) x AWW
7/1/13 - 6/30/14	721.66	
7/1/14 - 6/30/15	735.37	
7/1/15 - 6/30/16	755.22	

\*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 - 7/14/16	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

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## PPD Benefits Schedule Of Body Parts

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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