



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter November 2017

Upcoming Webinar!

12/19/17

Ask Us ANYTHING

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THE TOP 5 LIST

Top 5 Questions You Should Ask Your Defense Counsel

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ How Did The Latest Event Affect The Case?

Anyone can report on how a site inspection, deposition, pretrial or other significant event went. However, your defense counsel owes you more than a simple report. Your counsel should also explain the impact of an event on the case and its budget.

2/ How Much Will This Cost?

Most attorneys will give you a budget at the start of the case. However, it will not help you a year later when you have to go to your boss and explain why your litigation costs exceed your reserves. Defense counsel must continuously keep you updated regarding how much you are spending and why.

3/ What Is Your Closure Plan Of Action?

Every step that you and defense counsel take in a case must be towards closure. The claim is not going to get cheaper as it continues. Your defense counsel has to be laser-focused on the goal of closing the case as quickly and as cheaply as possible.

4/ What Else Can We Be Doing To Close The Case?

Your counsel needs to think outside the box. You do not want worthless status updates telling you that nothing is going on with the case and it was simply continued. Your attorney needs to be filing motions to dismiss, obtaining trial dates and using tools like mediation and settlement days to close the case ASAP.

5/ What Are My Chances Of Success?

A lot of attorneys don't want to go out on a limb and tell a client how likely it is that a given plan of action will succeed. It is our job as defense counsel to take that stand. Do not accept wishy-washy opinions or ones that shift responsibility to you. You are paying your defense counsel to provide their expertise, so demand that they do so.



By: [Michael Milstein](#)

As expected, the Illinois legislature was unable to override Governor Rauner's vetoes of the two reforms to the Illinois Workers' Compensation Act. HB 2622, which created the independent insurance company to write workers' compensation coverage, received 65 votes, when 71 were needed. HB 2525, which provided more specific reforms to the Act, never received a vote to override the veto. As such, there will be no reforms in the foreseeable future.

However, issues surrounding workers' compensation will not disappear and we expect them to be a major issue in the upcoming gubernatorial election.



SOUND BITE: Illinois Opportunity Project Director of Communications [Kathleen Murphy](#) discusses the significance of the recent gubernatorial election in Virginia and what it means for Illinois and nationally.

Rich Lenkov: A Democrat won the Virginia governor's race recently. What does that mean for national politics? How does it affect us in Illinois?

Kathleen Murphy: It's an important test point for how people are feeling about Donald Trump's performance, how people are feeling about congressional Republicans. Their house went from a super majority, Republican, super majority into the minority. That was a big loss. Republicans nationally and in Illinois, have to be looking at stepping up their game. Congressional Republicans really need to get tax reform through, they really need to give people some kind of relief that they can feel.

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

Recent Topics:

- Sexual harassment
- Colin Kaepernick
- Gun Control Legislation
- Upcoming Supreme Court term
- Club Fed

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Sheriff David Clarke

[Jeffrey Cramer on Mueller indictments, Amanda Vinicky on Rauner's re-election campaign, Jesse Ruiz on running for IL attorney general](#)

[Colin Kaepernick, baseball injury liability, gun control legislation after Vegas](#)

[Upcoming Supreme Court term, OJ/Blago/Weiner's time @ Club Fed, Inside Out & much more](#)

[Blago, Right To Yelp law, hazing liability and the monkey selfie](#)

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[Constitutionality of hate speech, \\$417 baby powder verdict, legal issues surrounding the eclipse and more](#)

[Supreme Court panel, Cook County soda tax, Charlie Gard, Venus Williams, and more](#)

[Gloria Allred on Cosby mistrial, texting teen conviction, Johnny Depp, Rebel Wilson and more breaking legal news](#)

[Cosby breaking news, Illinois budget, Fox News lawsuit, the Duggars lawsuit and more in this week's Legal Face-Off](#)

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

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

Recalculating Route

By: [Michael Milstein](#)



It has become increasingly difficult to find a non-compensable accident involving a traveling employee. However, it is important to know that not all traveling employees' cases are compensable.

In *Outhouse v. Dugger Pool*, 17 I.W.C.C. 0403, Petitioner worked as a paint supervisor for a pool company. He departed from his final job to go back to the employer's office at 3:45 p.m., a trip that would usually take 30-45 minutes. Petitioner was involved in a car accident at 6:53 p.m. Petitioner's accident occurred before he arrived at the employer's office and while dropping off a personal water bill at the water company. The water company's office is located 2 minutes away from the employer's office. Petitioner could not explain his whereabouts from 3:45 until the accident, but he was "almost positive" he was at another job, though his time sheet showed the last job was at 3:45 p.m.

The arbitrator denied compensation despite Petitioner being a travelling employee. The arbitrator found that Petitioner's conduct was not reasonable or foreseeable to the employer. The arbitrator found that although going to pay his bill was a minor deviation, Petitioner's unknown whereabouts from 3:45 p.m. until 6:53 p.m. constituted a substantial deviation that was not reasonable or foreseeable. The Commission affirmed the arbitrator's denial of benefits.

Practice Tip:

Obtain an accident history, written statements and pay close attention to every detail. A case can be defeated by seemingly minor facts.

Preexisting Injuries Are Aggravating

By: [Jeanmarie Calcagno](#)



In *Schroeder v. IWCC*, 2017 Ill.App. 160192WC, Petitioner was employed as a truck driver in 2005 for 5 or 6 months, and returned in May, 2013. Petitioner's past medical history included back surgeries in 2009 and 2011, including an L4/5 fusion and discectomy. In early 2013, prior to her return to work, Petitioner treated for her back

and was recommended to undergo another surgery in March, 2013. In lieu of third surgery, Petitioner completed a truck driving refresher course, passed an Illinois Department of Transportation physical and returned to work on 5/30/13.

Petitioner was injured on 12/19/13 when she slipped and injured her back. Petitioner underwent a fusion. Petitioner's treating physician acknowledged that the x-rays taken prior to the accident versus those after the accident were not "terribly different." The treator testified that the fusion surgery he recommended was different than the fusion surgery he recommended prior to the accident due to a change Petitioner's symptoms.

Respondent's IME opined that the MRIs and x-rays taken after Petitioner's accident did not demonstrate any changes. The examiner also opined that Petitioner's neurological examination was normal and that the work restrictions were not the result of the accident.

The arbitrator found that Petitioner's accident was only a temporary aggravation of her pre-existing low back condition and that Petitioner failed to prove her condition was causally related to her accident. The Commission reversed the Arbitrator's decision and noted that Petitioner's condition deteriorated after the accident. The Circuit Court then reversed the Commission's decision and determined that the Commission erred in finding a causal connection between Petitioner's accident and her injuries. Petitioner then appealed to the Appellate Court.

The Appellate Court reinstated the Commission's decision and held that an accident need only be a cause of a condition of ill-being for a claimant to recover under the Act and a preexisting condition will not prevent recovery. Lastly, the Court noted that when an accident accelerates the need for surgery, a claimant may recover.

Practice Tip:

Although petitioners only have to prove that the accident is "a" cause of their condition of ill-being, careful investigation and precise trial preparation can defeat these cases. You should always obtain all records documenting Petitioners' pre and post-accident treatment and carefully detail all issues and records to be addressed by our independent medical examiners.

Firm News

Bryce Downey & Lenkov Names New Income Members

We are proud to announce [Michael Milstein](#) and [Kirsten Kaiser Kus](#) have been elected as Income Members.

Michael Milstein (Chicago) joined the firm in 2011 and handles workers' compensation. For the last four years, Michael was named a Rising Star by Super Lawyers and an Emerging Lawyer by Leading Lawyers. His clients include retailers, staffing agencies, trucking companies, manufacturers and insurance companies.

Kirsten Kaiser Kus (Schererville) joined the firm in 2014 and handles workers' compensation, general liability and criminal defense. This year, Kirsten was named a Rising Star by Super Lawyers. Her clients include construction-based companies, manufacturers, retailers, governmental agencies, casinos and insurance companies.

Both Michael and Kirsten embody firm culture and values with a client-focused approach and commitment to their communities. We are thrilled to welcome Michael and Kirsten as Income Members.



The Red Zone: Indiana Workers' Compensation Seminar

On 11/2/17, BDL hosted *The Red Zone: Indiana Workers' Compensation Seminar* at Lucas Oil Stadium in Indianapolis with co-sponsors [JPB](#), [CompAlliance](#), [Team Rehabilitation](#), [Litigation Solutions](#) and [Integrity](#).

Highlights included a case law update, panel discussion and Lucas Oil Stadium tour. Special thanks to our speakers:

- Justin Nestor, Bryce Downey & Lenkov
- Tricia Bellich, Bryce Downey & Lenkov
- Judi Cole, K2 Industrial Services
- G. Terrence Coriden, Coriden Coriden Andrews & Glover
- Kirsten Kaiser Kus, Bryce Downey & Lenkov
- James Yankosky, Tourkow Crell Rosenblatt & Johnston



BDL Sponsors 2017 Central Ohio RIMS Chapter Partner Day

On 11/9/17, [Chase Gruszka](#) and [Julia Alcaraz](#) attended the 3 day conference in Columbus, OH. The theme of the event was "Rolling Risk."

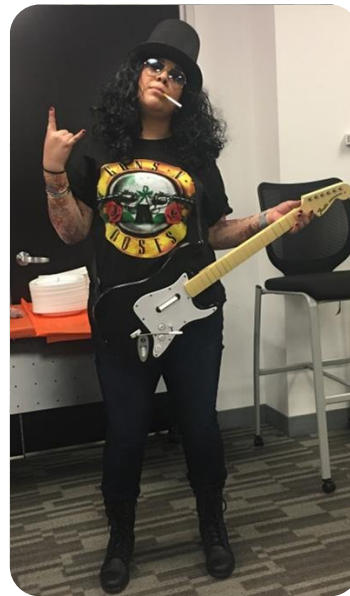


BDL Is Growing!



[Emily Gant](#) handles workers' compensation defense. Emily earned her Juris Doctorate from The University of Dayton School of Law where she served as a member of the board for the Student Bar Association, Phi Alpha Delta Law Society, and Intellectual Property Society. During her time in law school Emily gained valuable experience as a law clerk, with a special license to practice law, for the United States Attorney's Office for the Southern District of Ohio. In her free time, Emily enjoys rooting for Indiana Basketball. Go Hoosiers!

Halloween At BDL



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 11/14/17 webinar,
"Top Employer Mistakes In Indiana"

"Enjoyed the information provided and the format/breakdown"

"Broad range of topics"

"Very good and informative as always"

"I really like the specific examples given today"



Upcoming Webinar
12/19/17

Ask Us ANYTHING

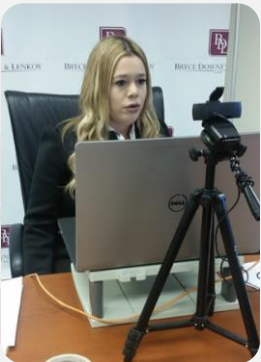
Rich Lenkov

Michael Milstein

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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](#).

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

Effective Dates	Maximum PPD	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
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	
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	

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

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.

Disclaimer:

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