

## Workers' Compensation Newsletter May 2018

Upcoming Webinar!  
5/24/18  
Settlement  
Strategies  
[Register Here](#)



### THE TOP 5 LIST

## Top 5 Questionable Diagnoses

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

### 1/ Complex Regional Pain Syndrome (CRPS)

This is a fast-growing but 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. 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/ 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.



By: [Chase Gruszka](#)



On 4/26/18, the Illinois House voted 62-43 in favor of a plan that would set up a state-monitored insurance company with the stated goal of driving down workers' compensation insurance costs (HB 4595).

Under the proposed legislation, the Illinois Workers' Compensation Commission Operations Fund would loan \$10 million to create an independent underwriter, which would then act as an insurance company in the open market to compete with the over 300 insurers' already providing coverage in the State. The bill's critics point out that the state's track record with finances makes it difficult to believe the \$10 million loan would be paid back in a timely fashion.

Although another source of competition in the market may ultimately drive down costs, removing resources from the IWCC risks jeopardizing the entire WC adjudication process for employers and employees alike.

HB 4595 is nearly identical to HB 2622, which Governor Rauner vetoed last year.



**SOUND BITE:** Chicago Principals & Administrators Association President **Troy LaRaviere** discusses his bid to unseat Rahm Emanuel as Chicago mayor.

**Rich Lenkov:** Tell us why you are running for mayor of Chicago.

**Troy LaRaviere:** I am running for mayor of Chicago because Chicago does not have a mayor. The bankers have a mayor, investor class has a mayor, real estate developers have a mayor but everyday people, working people – they do not have a mayor, they do not have a champion, they don't have an advocate and I want to make sure they have one in city hall. People like Henry Finberg, he has a mayor. This is the venture capitalist who was caught in an email exchange with Rahm Emmanuel trying to get him to push for, to get rid of workers' pensions and Rahm responds by bragging about that he's the only mayor in the country that eliminated a benefit, got rid of their healthcare all together.



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

## Recent Topics:

- Mueller Investigation
- James Comey's book
- "Time's Up"/Me Too movement
- Supreme Court decisions
- DCFS Transparency

## Past Guests:

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

[IL Attorney General candidates Erika Harold & Kwame Raoul, former National Census Bureau Director Kenneth Prewitt on the Trump census, LawyerSmack and more](#)

[IL Attorney General candidates Pat Quinn & Sharon Fairley, Gloria Allred on Netflix documentary, sanctuary state lawsuit & more](#)

[Gun control laws in the wake of Parkland, Michigan State University president resignation, non-disclosure agreements & more](#)

[Gubernatorial candidate Daniel Biss, can the 25th Amendment bump Trump?, "Fire & Fury", "Time's Up" and more](#)

[Cook County Board candidates Lowry & Degnen, a former football pro turned barrister, the Newtown legacy & more in the last LFO of 2017!](#)

[Can Trump obstruct justice?, Bob Fioretti on his run for Cook County Board President, Blago](#)

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

# Wage Differential? Not So Fast...

By: [Jesse Lanshe](#)



In *Sysco Food Service of Chicago v. IWCC*, 2017 IL App (1st) 170435WC, the Appellate Court reversed the Circuit Court's ruling that the Commission must award Petitioner wage differential benefits.

Petitioner, who had a pre-existing, unrelated degenerative knee condition, sustained a torn meniscus after falling out the back of his delivery truck. After meniscal repair surgery, Petitioner was released to full-duty work without restrictions. Petitioner testified that he was willing and able to work as a truck driver and that he was authorized work without restrictions. However, because Petitioner's pre-existing knee condition affected his ability to drive a truck safely, the employer offered Petitioner work as a security guard instead.

The Commission awarded Petitioner 30% loss of use of a leg, but denied benefits for the unrelated pre-existing knee condition. On appeal, the Circuit Court reversed the Commission's finding that the pre-existing knee condition was not work related and remanded with instructions to calculate a wage differential. The Commission calculated a wage differential and, after a second appeal, the Appellate Court reversed the wage differential award.

Petitioner testified that the employer had refused to offer him his pre-injury job, not that he was incapacitated from pursuing such a job generally.

Interpreting the language of Section 8(d)(1), the Appellate Court reasoned that an injured employee is entitled to a wage differential benefits if "as a result" of a work related "accidental injury[,] he becomes partially incapacitated from pursuing his usual and customary line of employment. The Appellate Court noted that the Circuit Court erred by equating the employer's decision to not extend Petitioner's pre-employment job with Petitioner being incapacitated from pursuing such work generally.

In order to qualify for wage differential benefits, an employee must be incapacitated "as a result" of an injury, not based on the reasons articulated by an employer for not offering a pre-accident position.

## Practice Tip:

If you offer a claimant a job that is different from their pre-accident job, investigate whether a basis for your decision exists that is not related to the work injury.

# Coming Off The Bench; The 5 Factors Are But Your Starting Lineup

By: [Timothy Furman](#)



In *Slotkin v. International Profit Association*, 26 ILWCLB 20 (Ill. W.C. Comm. 2017), the Commission increased the permanency award for a surgically repaired rotator cuff from 20% man as a whole to 27.5%.

Petitioner, a senior business analyst salesman, tore his rotator cuff after slipping on ice at a customer's location and eventually underwent two surgeries. The arbitrator used the 5-factor analysis referenced in Section 8.1b of the Act in awarding 20% man as a whole.

The arbitrator and Commission agreed that none of Petitioner's limitations stemming from his surgeries prevented him from continuing his business endeavors. Similarly, Petitioner continued to work in a similar line of work.

Nonetheless, the Commission increased the award to 27.5% man as a whole, noting that Petitioner faces additional inconveniences and difficulties in his travel and personal activities. The Commission seems to apply a Section 8(d)2 permanency analysis rather than a pure 5 factor analysis.

## Practice Tip:

We must examine everything when arguing the 5 factors; we cannot simply examine the effects on Petitioner's work life.

## Firm News

### Record-smashing settlement day

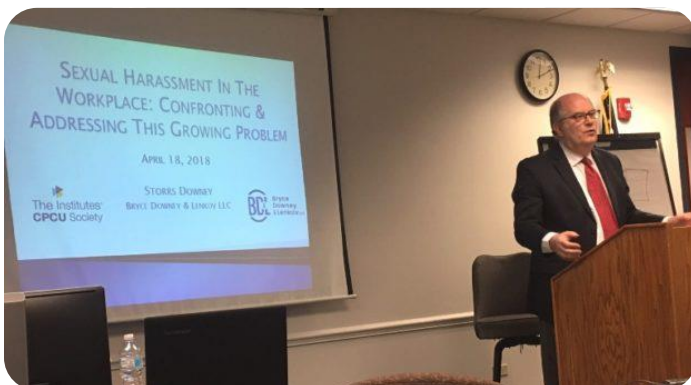
On 4/26/18, [Rich Lenkov](#) and [Emily Schlecte](#) led a Settlement Day at the Workers' Compensation Commission for one of the world's largest retailers. We usually settle 70% of cases at our Settlement Days. For this one, we smashed all prior records with an 81% success rate, settling 13 out of 16 cases. We reduced a huge amount of our client's reserves and settled a significant number of old cases in this process.

We are the most aggressive firm in Illinois and Indiana with regards to settlement days and other alternative means of case resolution. **We can achieve the same result for your company.** For more information on Settlement Days, [click here](#). We do not have to have cases assigned to us to help organize and manage your Settlement Day.

To schedule a Settlement Day, or for more information, contact Rich Lenkov at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com)

### Storrs Downey Presents to The Institutes CPCU Society

On 4/18/18, [Storrs Downey](#) presented "Sexual Harassment in The Workplace: Confronting & Addressing This Growing Problem" at the Institutes CPCU Society monthly member meeting. The presentation covered: identifying sexual harassment, investigating sexual harassment and workforce training on company policy.



## Upcoming Seminars



- On 5/22/18, after CLM, Bryce Downey & Lenkov is co-sponsoring a happy hour with:
  - Speed, Seta, Martin, Trivett & Stubley, LLC
  - Engles, Ketcham, Olson & Keith, P.C.
  - Brant Hickey & Associates
  - Stockwell, Harris, Woolverton, & Helphrey
  - DigiStream Investigationsduring the 2018 CLM & Business Insurance Workers' Compensation Conference. [Click here for the invitation.](#)
- On 5/23/18, [Rich Lenkov](#) will participate in "Navigating Mild Traumatic Brain Injury Cases In The Workers' Compensation Environment" at the 2018 CLM & Business Insurance Workers' Compensation Conference. For more information or to register, [click here](#).
- On 5/23/18, [Tricia Bellich](#) will participate in "Premium--It's Not Just About Price!" at the 2018 CLM & Business Insurance Workers' Compensation Conference. For more information or to register, [click here](#).

## Did You Know?

In addition to workers' compensation, we also handle:

- [Business Litigation](#)
- [Construction](#)
- [Employment & Labor](#)
- [Entertainment Law](#)
- [Insurance Coverage & Litigation](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)



## Free Monthly Webinars

What you said about our 4/19/18 webinar,  
Ask Us ANYTHING Part II

*"Open forum w/ real-time Q&A."*

*"All the topics covered were incredibly interesting"*

*"Learning about cases and dispelling misconceptions people may have about the law."*

*"I learned a few tips on how to handle IL claims more effectively"*



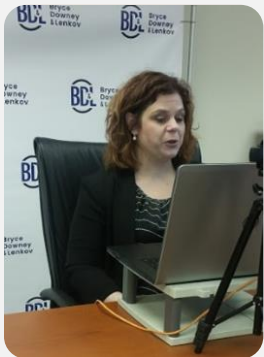
### Upcoming Webinar 5/24/18 Settlement Strategies

[Rich Lenkov](#)  
[Emily Schlecte](#)

[Register Here](#)

### Recent Webinars

- The Ups & Downs Of Upper & Lower Extremity Claims
- Illinois Workers' Compensation Reform
- New OSHA Regulations
- 1<sup>st</sup> 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](mailto: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 provide free seminars on a wide range of workers' compensation topics regularly. We speak to a few people or dozens, to companies of all sizes and large national organizations. The national conferences that we've presented at are:

- 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



**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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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.					

### Disclaimer:

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