



Border War: Key Differences Between Illinois & Indiana IMEs

In a new column, two members of our Workers' Compensation team compare how Illinois & Indiana handle major workers' compensation issues. This month, capital member [Rich Lenkov](#) and associate [Dan Korban](#) address **IMEs**.



ILLINOIS

1. You can get multiple IMEs, but anything beyond one looks like doctor shopping
2. You have an absolute right to an IME per Section 12
3. If Petitioner doesn't attend the IME, cut benefits and charge them the no-show fee
4. Always hire a board-certified physician
5. Always hire a doctor that is qualified to provide AMA ratings, which is one of five factors the Commission uses to determine permanency
6. Always hire a credible doctor, "hired guns" are not credible



INDIANA

1. There is only one true IME: a Board IME. You can get a second opinion, but it does not carry as much weight
2. There are statutory triggering events where Plaintiff is entitled to an IME; short of this, either party can request a Board IME, but the Board has discretion whether to grant one
3. If Plaintiff doesn't attend IME, provide notice of intent to cut benefits and charge them no-show fee
4. Once a Board IME is granted, the WCB will allow the parties to agree on an IME physician. If they cannot agree, the WCB will select a physician
5. The Board IME physician's sole purpose is to determine if the injured worker is at MMI. The physician may also make an opinion on physical restrictions
6. Employers direct medical treatment, so the WCB does not consider an employer-secured second opinion as truly "independent." Likewise, an injured worker's second opinion does not carry as much weight as a Board IME opinion

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Illinois Legislative Update

By [Michael Milstein](#)

Income Member



On 4/21/21, the Illinois House of Representatives unanimously passed [HB3662](#). HB3662 provides a rebuttable presumption of compensability for firefighters, emergency medical technicians and paramedics who contract contagious staph infections, including Methicillin-Resistant Staphylococcus Aureus (MRSA). Workers must be employed

in their role for five years for the presumption to apply. The bill was sent to the Senate for consideration.

While this seems like a minor amendment to the Act, it comes on the heels of the COVID-19 presumption and other measures across the country which have relaxed the compensability standards of infectious diseases.

Don't forget that a rebuttable presumption can be overcome and the burden then shifts back to Petitioner to prove that their case is compensable.

Indiana Legislative Update

By [Kirsten Kaiser Kus](#)

Income Member



The Indiana Worker's Compensation Board's accident tracking system, CAUSE, will be inoperable beginning at noon on 4/29/21 for one week. The WCB's new electronic file management system is scheduled to launch on 5/5/21.

Current data will be frozen and transferred to the new system, however certain forms will not go out during this time. Employers are asked to continue filing all EDI transactions as required. Once the new system is up and running, all previously suspended forms will be sent out. Some of the forms, including the Notice of Denial of Benefits (53914) and Report of Temporary Total Disability/Temporary Partial Disability termination (38911) will change format with the new system.

If you have any questions, please [contact us](#).

Breaking Up Fight Not Compensable

By [Emily Schlecte](#)

Associate



In *Higueros v. La Villa Banquets* (20 IWCC 0769), Petitioner worked as a busboy and server. His job duties included cleaning and serving during events and resetting tables and the stage for next day's events. Petitioner intervened in a parking lot altercation while walking with co-workers. He testified that he knew the police had been called and told the attacker to get

off of the property. Petitioner proceeded to talk the man down and testified that he felt the need to intervene because he believed the man would have killed the woman. The man ultimately attacked Petitioner's face with a sharp object.

Respondent's witness testified that there were no formal policies regarding disputes on the premises. However, Respondent did not condone getting involved in disputes and believed the police should handle any issues. The witness also testified that this was the first altercation on its property and that employees were told to speak to a manager if there were any problems during training.

The arbitrator found for Respondent on all issues; Petitioner appealed. The Commission found that **Petitioner successfully proved he was "in the course of" his employment** with Respondent. The Commission found that Petitioner's injury occurred immediately after the end of his shift and was instigated by an assault on Respondent's premises. The Commission also determined that rendering aid "is natural and expected" and does not remove Petitioner from the course of his employment. *Metropolitan Water Reclamation District v. Industrial Commission*, 650 N.E. 2d 671 (1995), citing *Puttkammer v. Industrial Commission*, 371 Ill. 497, 503.

However, the Commission found that **Petitioner did not prove that his injuries arose "out of" his employment** with Respondent. The Commission considered the three categories of risk: employment risks, personal risks and neutral risks. Petitioner argued that he worked late at night and was exposed to a greater risk of altercations involving intoxicated patrons. The Commission held that the mere risk of working late in a bar was insufficient to prove an increased risk of employment. They noted that Petitioner did not present evidence of increased crime in the surrounding area, and found it was significant that there had never been an incident like this on Respondent's premises. The Commission further reasoned that there was no evidence to establish that Petitioner's actions to assist the woman were necessitated by the conditions of his employment.

The Commission held that Petitioner failed to prove that he sustained an accidental injury arising out of his employment and affirmed the arbitrator's decision.

Practice Tip:

When altercations arise on workplace premises, employers should question whether Petitioner's involvement arose out of their employment and whether their action was necessitated.

Injury While Hopping Fence Did Not Arise Out Of Employment

By [Brian Rosenblatt](#)

Income Member



In *Purcell v. IWCC*, 2021 IL App (4th) 200359WC, the appellate court affirmed the arbitrator, Commission and circuit court's denial of benefits.

Petitioner, an administrative assistant at University of Illinois, was denied benefits after she attempted to hop a chain-link fence. Petitioner's job required her to

leave her dedicated office to perform various duties around campus. Early one morning, before starting work, Petitioner hopped over a fence while en-route to dropping off her time card. She tripped and fell, dislocating her elbow.

The arbitrator found that Petitioner was not a traveling employee and that the injury did not arise out of her employment. Even if Petitioner was a traveling employee, pursuant to *Dodson v. Industrial Commission*, 308 Ill. App. 3rd 572 (5th D. 1999), Petitioner exposed herself to an unnecessary danger/persona risk by hopping over a fence when there was a clear path just 15 ft away.

The Commission disagreed with the arbitrator's finding that Petitioner was not acting in the course of her employment, but affirmed and agreed that the accident did not arise out of her employment. The Commission found that Petitioner failed to establish a causal nexus between the risk of injury and her employment.

The appellate court affirmed stating, "[t]he claimant voluntarily hopped over the chain fence when the heel of her shoe got caught and she was injured. This decision exposed her to an unnecessary danger entirely separate from her employment responsibilities. Therefore, we find that the claimant's injury did not arise out of her employment as a non-traveling employee."

The appellate court also dismissed Petitioner's assertions that she was a traveling employee, finding that her act of traveling to other campus buildings was not an essential element of her employment.

Practice Tip:

"An injury does not arise out of employment where an employee voluntarily exposes herself to an unnecessary personal danger solely for her own convenience." A thorough investigation will help guide a decision to accept or deny claims.

Firm News

Kirsten Kaiser Kus Named a CLM Professionals of the Year Finalist



We are proud to announce that [Kirsten Kaiser Kus](#) is a finalist for Claims and Litigation Management Alliance's Professionals of the Year Awards. Kirsten was nominated in the Outside Defense Counsel category on her commitment and leadership within the industry, as well as contributions to the success of the firm and her clients.

Winners will be announced at the CLM Annual Conference on 8/12/21. Please join us in congratulating Kirsten on her nomination!

Jeanne Hoffmann Presents Women in Law Firm Leadership for Managing Partner Forum

Managing capital member [Jeanne Hoffmann](#) presented at Managing Partner Forum's virtual conference series: "Women in Law Firm Leadership: Shattering the Glass Ceiling" on 6/17/21.

Jeanne's panel, "Building a Culture that Empowers Women in Leadership," examined ways to build and maintain a firm culture in which women lawyers thrive. They also discussed empowerment, sponsorship and flexible working arrangements that advance promotions and retention.

[View the recording.](#)



Rich Lenkov Authors *Business Insurance* Article



Capital member [Rich Lenkov](#)'s *Business Insurance* article addresses COVID-19 presumptions and the future of other infectious diseases in workers' compensation. Rich examines strategies employers can use to overcome the presumption the infection arose out of and in the course of the employee's employment.

He also discusses permanency, legislation surrounding other severe infectious diseases and workers' compensation benefits for seasonal illnesses.

[Read "Tips for Rebutting COVID-19 Presumptions."](#)

Rich Lenkov & Kirsten Kaiser Kus Deep Dive on COVID-19 Claims with WCDI



Capital member [Rich Lenkov](#) and income member [Kirsten Kaiser Kus](#) presented at Workers' Compensation Defense Institute's webinar, "Deep Dive State Exploration of Top Tips for Defending COVID-19 Claims" on 6/11/21.

The multi-state webinar provided a more detailed state-by-state discussion on investigating & defending COVID-19 claims, WFH injuries and moving claims forward in today's remote world.

View the recordings:

[Part I](#) ft. FL, GA, IL, NY, NC, SC, TN

[Part II](#) ft. AL, CA, IN, KY, LA, MS, OK, TX

BDL Presents at NBI's Workers' Compensation Fundamentals Webinar

Several members of our workers' compensation team presented at National Business Institute's 6/10/21 webinar. The seminar provided essential workers' compensation procedures and strategies to avoid preventable mistakes during the claims process.

Our attorneys addressed the latest case law and legislative updates, how to comply with and prepare Medicare set-aside arrangements, settlement methods and mediation practices, appeal procedures and judicial proceedings, toxic tort, third-party injuries, subrogation and more.



Kirsten Kaiser Kus Presents at CLM WCRRH Conference

Income member [Kirsten Kaiser Kus](#) presented "Recovered Worker Results in Empathy ROI" at the CLM Workers Compensation and Retail, Restaurant & Hospitality Conference on 5/13/21. Kirsten joined Sedgwick's Beth Burry-Jackson, Cottingham & Butler's Katie Hensley, Willis Towers Watson's Thomas Ryan and Fidelity National Financial's Kimberly Simmons to discuss key advancements impacting injury and recovery, medical literacy and proven tactics throughout the claims process for successful results.

Virtual Workers Compensation and
Retail, Restaurant & Hospitality Conference
May 13 | 11:00 am - Noon | #CLMWCRRH



Recovered Worker Results in Empathy ROI



Kirsten Kaiser Kus Presents at WCDI Webinar



Income member [Kirsten Kaiser Kus](#) presented at Workers' Compensation Defense Institute's webinar, "Tips from the Trenches," on 4/30/21. The multi-state webinar covered how to properly investigate and defend COVID-19 claims, remote/WFH injuries and moving claims forward in today's remote world.

[View the recording.](#)

RIMS Live



Income member [Michael Milstein](#) and Stanley Steemer's Risk Management Director Eric Spalsbury presented "From Struggle to Success: 2020 Lessons and 2021 Solutions" at RIMS

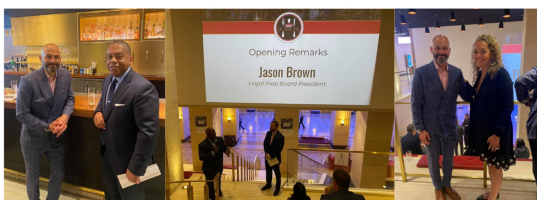
Live 2021 on 4/19/21. Their presentation covered COVID-19 rebuttable presumptions, employer-mandated vaccines, modified duty & TTD payment during the pandemic, work from home injuries, the impact of increased crime on workers' compensation & employment and more.

BDL Supports Legal Prep Charter Academy's Eat. Drink. Give. Gala

Capital member [Rich Lenkov](#) and income member [Juan Anderson](#) enjoyed tastings from Chicago's top chefs in support of Legal Prep Charter Academy's Annual Eat. Drink. Give. Gala on 6/10/21. Rich's Legal Face-Off podcast host, Tina Martini of McDermott Will & Emery also attended.

The annual gala benefited Chicago's first and only legal-themed high school. Legal Prep prepares Chicago's West Side youth for college and inspires students to give back to their community. Rich serves on the Advisory Board.

[Learn more about Legal Prep Charter Academy.](#)



BDL Sponsors NIU Law's 16th Annual Golf Outing

Bryce Downey & Lenkov proudly sponsored Northern Illinois University College of Law's 16th Annual Law Golf Outing at River Heights Golf Course on 6/11/21. Proceeds from the event went towards the NIU Law Council's Student Scholarship Fund and other related alumni programs.

The NIU Alumni Council is comprised of alumni interested in networking and maintaining a strong connection with the school.

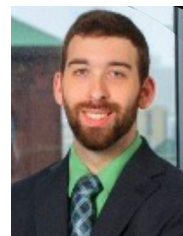
Capital member [Rich Lenkov](#) is on NIU College of Law's Board of Visitors.

[Learn more about NIU Alumni Council.](#)



BDL Is Growing!

Please join us in welcoming Andrew Carroll, [Daniel Flores](#), Robert Kroeger and Joseph La Rocco to the firm. Andrew, Daniel, Robert and Joseph join us as workers' compensation and general liability associates.



Andrew brings a fresh perspective to his cases, previously serving as a loss mitigation specialist for a large financial institution. He is also experienced with personal injury, insurance subrogation and premises liability claims.



Daniel is experienced in handling all aspects of litigation including occupational and drug-related cases. He previously handled personal injury and civil procedures at another prominent Chicago law firm.



Robert has represented clients in a wide range of complex litigation matters, working with clients to minimize cost and achieve favorable outcomes.



Joseph is an experienced attorney, representing insurance companies and employers in all aspects of workers' compensation and associated civil litigation matters. He also handles subrogation and other third-party cases.

View more information about our **[Workers' Compensation practice.](#)**

Our other practices Include:

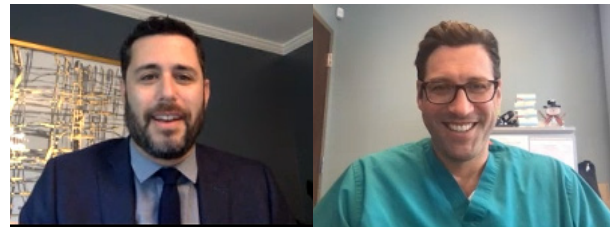
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BDL Webinars

Join us in August for a breakdown of Illinois and Indiana upper extremity repetitive trauma claims. Please submit your most pressing questions to mkt@bdlfirm.com.

Watch our latest webinar:

[Defending Shoulder & Knee Injury Claims: A Medical & Legal Perspective w/Dr. Domb](#)



Upcoming Events

- **6/30/21** - Storrs Downey and Jessica Jackler will present "Responding to Internal Employee Complaints: Conducting Workplace Investigations." For more information and to register, [click here](#).

Legal Face-Off

Legal Face-Off is a fast paced, high energy legal podcast dealing with the hottest issues of the day. Rich Lenkov and Christina Martini provide a point/counterpoint perspective on a variety of breaking legal news topics.



“The right time to do this was years ago. However, now we’re up against a deadline because the state of California was

intrepid and bold. They passed legislation a year and a half ago that would make this legal in California starting July 1. What happened after that, was many states began to play catch up...competition is at the heart of this. We know that states around the country are scrambling to get this done before July 1st because they’re going to lose out when recruits see that Alabama, Florida or California allow this but places like Indiana, Ohio or Michigan don’t.”

**– Kam Buckner on proposed NIL legislation for student athletes
IL Representative & Former Illini
Defensive End**

[Listen to the full episode here](#)

Want to be a guest on a future episode? [Contact us.](#)

Recent Topics

- Texas abortion law
- Bill & Melinda Gates divorce
- Derek Chauvin verdict
- Cuomo harassment allegations
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Recent Guests

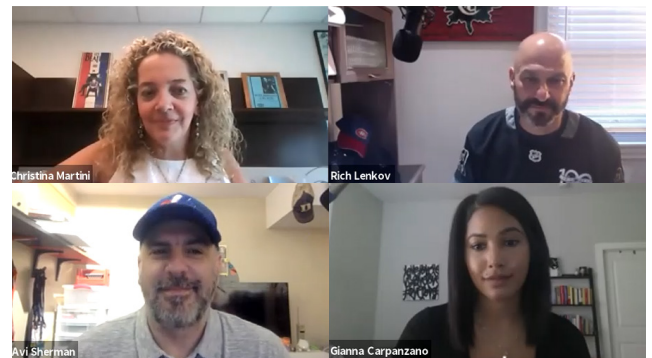
- Harry Litman
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[Sepper on Texas abortion law, Greenfield on the Supreme Court conservative majority, Fox on Shell climate ruling, Honig on new book, and much more](#)

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Legal Face-Off's Legal Grab Bag

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Please Like Us on **Facebook**, **Twitter** and **Subscribe on Apple Podcasts**. Send us your questions and we will answer them on air — **nothing is off-limits**.