

# CELEBRATING 20 YEARS

## Workers' Compensation Newsletter

August 2021

### Border War: Key Differences Between Illinois & Indiana Medical Care

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 income member [Kirsten Kaiser Kus](#) address **medical care**.

#### ILLINOIS



1. Conventional wisdom is that employers can't control medical care in Illinois: don't believe it

2. You can aggressively use tools like Utilization Review for treatment and prescriptions. In Illinois, Utilization Review is "super evidence." The Act states that your

denial creates a presumption that the prospective treatment is not needed

3. Petitioner chooses their treating physician, however, they can't doctor shop. If Petitioner sees more than 2 doctors, and there was no referral, object and deny treatment and bills
4. It is Petitioner's burden to prove that the bills are reasonable and necessary, and in fact related to your claim. Don't assume that all bills meet that criteria
5. Be aggressive with medical bills – adjust all bills under the Illinois Fee Schedule and realize that providers, especially on denied claims, will take a discount off the balance(s) due. Negotiate and never pay full amounts
6. Having complete records is crucial for obtaining an IME. Utilize a medical canvas to identify all past and current providers, and issue subpoenas as soon as possible
7. IME reports are key to refuting disputed issues like causation, treatment, TTD and MMI. Pick IME doctors that are credible, bipartisan and spend the great majority of their time treating rather than litigating

#### INDIANA



1. Unlike in Illinois, employers have a statutory right to direct medical care in Indiana

2. If a claim is denied, the employee can direct their own care and the burden of proof is on the employee to prove that the care was necessary and related to a work injury

3. If a claim is accepted, employers choose the treating physician; however, they cannot doctor shop. Sending an employee to multiple physicians in the same specialty will diminish credibility with the Board
4. If there is a dispute regarding the value of medical care that has been deemed related to a work injury, the burden is on the medical provider to file an Provider Fee Application with the Board and prove the reasonable value of the care provided
5. An employer is not required to pay medical bills on a denied claim unless the Board rules that the claim should have been accepted and the medical care received was related to the work accident
6. In some circumstances, an employee is entitled to an IME opinion by a physician appointed by the Board. In all circumstances, an employer is entitled to a second opinion with a physician of its own choosing, although it is not considered a true IME
7. In most scenarios, the Board will defer to the opinion of a Board-appointed IME physician when there is a dispute regarding medical

# Illinois Legislative Update

By [Michael Milstein](#)

Income Member



While there are no significant updates regarding legislation, Gov. Pritzker recently announced 3 new arbitrator appointments to the IWCC:

**Roma Dalala** — former Wiedner & McAuliffe partner, representing respondents.

**Antara Nath Rivera** — former Chief of General Prosecutions of the Enforcement Unit for the Illinois Department of Financial and Professional Regulation and Illinois Department of Insurance Workers' Compensation Fraud Unit investigator.

**Ana Vazquez** — former Assistant Attorney General in the Workers' Compensation Bureau within the Illinois Attorney General's Office.

*All pending confirmation by the Illinois Senate.*

## Commission Affirms Denial of Psych Claim

By [Jeanmarie Calcagno](#)

Income Member



Arbitrator Cellini denied an insurance agent's psychological claim because she failed to prove her accident arose out of and in the course of her employment. In *Cherry Bell v. Automotive Club of Southern CA*, 21 IWCC 0059; 2021 Ill. Wrk. Comp. LEXIS 79 (2021), Petitioner was an insurance agent who sold auto and home insurance policies.

Petitioner testified that she experienced a hostile work environment, alleging emotional trauma from interactions with her underwriter, supervisor and customers. Some of these allegations included her underwriter retaliating against her by modifying policies that may have adversely affected customers' premiums—and ultimately her own income—as well as her supervisor taking away her internet leads. Petitioner's supervisor and underwriter denied all allegations. Petitioner initially denied any personal issues that affected her emotional state, but admitted on cross-examination to:

1. malfunctioning gas, plumbing, electricity and air issues in her home, which caused her to live with a friend;

2. a \$23,000 payment made to an incompetent contractor for work in her home;
3. headaches she claimed were from carbon monoxide poisoning, but later admitted could have been stress-induced;
4. insomnia, irritability and a fear that people were trying to hurt her.

Arbitrator Cellini applied an analysis under *Chicago Board of Education v. Workers' Compensation Comm'n.*, 169 Ill. App. 3d 459 (1988), citing that:

1. Petitioner's testimony that she suffered harassment, bullying, insufficient job training or a stressful condition greater than her co-workers was not supported by the evidence. Petitioner was not subjected to more than day-to-day emotional strain and tension that all employees face. Also, Petitioner's perception of the work stress was not reasonable.
2. Petitioner's testimony was not only uncorroborated, but several emails contradicted her testimony and indicated that she was a bully who made threatening and antagonistic statements. The emails "evidence(d) what appears to be a clear pattern of attitude and defiance about versions of things that conflicted with her own."
3. Despite Petitioner's allegation that her work environment was the only contributing factor in her psychological injury, Petitioner had a separate civil lawsuit pending, and at least some of her treatment records demonstrated that Petitioner's home issues played a significant factor in her mental health. He concluded that the employment conditions, when compared to non-employment conditions, were not the major cause of her mental disorder.

### Practice Tip:

A strong investigation is critical to successfully defending psychological cases. Always perform a social media check, subpoena all medical care providers and retain all electronic communications.

## Firm News

### Bryce Downey & Lenkov Turns 20!

This year, we celebrate our firm's 20<sup>th</sup> anniversary!

A lot has changed from our humble beginnings to the firm we are today, but our values & culture are the same. We remain committed to community, inclusiveness & the footprint we leave behind.

Thank you for your confidence in our firm. We hope to continue another 20 years of exceptional service & proven results.



### Kirsten Kaiser Kus Named CLM Outside Counsel Professional of the Year

Income member [Kirsten Kaiser Kus](#) is the winner of Claims and Litigation Management Alliance's (CLM) Outside Defense Counsel of the Year award. Winners were announced on 8/12/21 during CLM's [Annual Conference](#) in Atlanta.

Kirsten was recognized for her talent, commitment to CLM, leadership in the claims and litigation management industry and significant contributions to the success of clients and the firm.



### BDL Sponsors Charity Tournament

Bryce Downey & Lenkov proudly sponsored the Annual St. Louis Claim Managers' Council Golf Tournament benefiting Operation Food Search (OFS) and Kids' Chance of Missouri on 8/5/21.

OFS is a hunger relief organization that provides free food, nutrition education and innovative programs that increases access to healthy and affordable food. Kids' Chance of Missouri provides post-high school scholarships to children of Missouri workers killed or seriously injured on the job.

[Learn more about Operation Food Search.](#)  
[Learn more about Kids' Chance of Missouri.](#)



### Rich Lenkov on Cuomo

Capital member [Rich Lenkov](#) joined WGN Radio's John Williams Show on 8/3/21 and WMBD's The Craig Collins Show on 8/4/21 to discuss NY Gov. Andrew Cuomo's sexual harassment scandal.





## Storrs Downey & Jessica Jackler Co-Author Refresher on Conducting Workplace Investigations



Capital member [Storrs Downey](#) and associate [Jessica Jackler](#) recently co-authored an article for *CLM Magazine* titled, "Back To Basics In The Workplace," a refresher for employers on conducting workplace

investigations during the important era of #MeToo, civil rights movements and a global pandemic.

Storrs and Jessica highlight the importance of workplace investigations, proactive policies and procedures, confidentiality, witness interviews and provide post-investigation protocols.

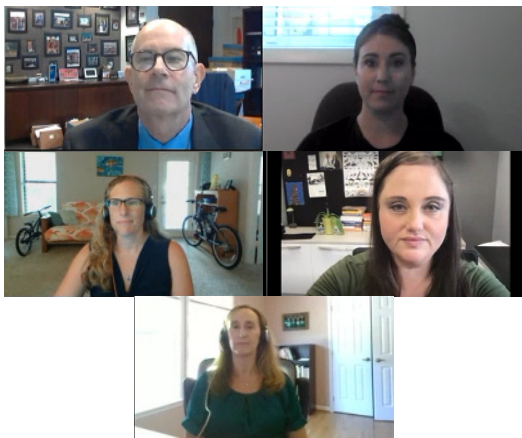
[Read "Back To Basics In The Workplace."](#)

## Responding to Internal Employee Complaints: Conducting Workplace Investigations Webinar

Landmark Pest Management's Rebecca Fyffe and Hartford Steam Boiler's Lenore Chouinard and Stephanie Hewardine joined capital member [Storrs Downey](#) and associate [Jessica Jackler](#) as they addressed internal workplace investigations.

Topics included proactive policies, knowing when & who should conduct an investigation, confidentiality, remedial measures and more.

[View the recording.](#)



## Storrs Downey Joins Legal Face-Off

Capital member [Storrs Downey](#) discusses Naomi Osaka, mental health conditions in the workplace and more employment news on Legal Face-Off with Rich Lenkov & Christina Martini.

[Watch the interview.](#)



## Chambers USA Recognizes Margery Newman

We are pleased to announce that income member [Margery Newman](#) has been recognized by *Chambers USA* 2021 as a leading lawyer.

Margery was selected as a leading construction attorney for her work in construction litigation, contract negotiation, mechanics lien claims and MBE/WBE/DBE certification.

*Chambers USA* ranks leading lawyers and law firms based on market analysis, industry feedback and client interviews. Their research assesses industry expertise and understanding, technical legal ability, client service, diligence and innovation.



# BDL Webinars

Join us in October for a breakdown of Illinois and Indiana upper extremity repetitive trauma claims. Please submit your most pressing questions to [mkt@bdlfirm.com](mailto:mkt@bdlfirm.com).

## Investigating IL & IN Repetitive Trauma Claims w/Dr. Phillips & Dr. Yahuaca

10/14/21

Rich Lenkov, Kirsten Kaiser Kus, Dr. Craig Phillips & Dr. B. Israel Yahuaca



**REGISTER NOW!**

## Upcoming Events

- **9/10/21-9/11/21** - Jeanne Hoffmann and Brian Rosenblatt will be mentors for several entertainment panel sessions at the 13<sup>th</sup> Annual LAUNCH Music Conference & Festival. For more information and to register, [click here](#).

View more information about our **Workers' Compensation practice**.

Our other practices 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](#)

Watch our latest webinar:

## **Illinois Workers' Compensation: Beyond COVID-19 w/IWCC Chairman Michael Brennan**



# 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.



**"It's also an issue in New York, but in New York it's called Molineux witnesses. There were Molineux or "me too" witnesses admitted on the Harvey Weinstein criminal case...He was sentenced to 20 years after he was convicted based on my client's testimony... Mr. Weinstein, who is appealing from that conviction will also make arguments about the "me too" witnesses there. Likewise, my guess is that Weinstein's attorneys will also make the argument that "me too" witness testimony should not be admitted here in California. It's a current and important issue."**

**- Gloria Allred on "bad act" witnesses' future in litigation**  
Civil Rights Lawyer, Author

[Listen to the latest episode here](#)

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

## Recent Topics

- Capitol riot
- Bill Cosby release
- Britney Spears conservatorship
- Derek Chauvin verdict
- Cuomo harassment allegations

## Recent Guests

- Harry Litman
- Gloria Allred
- Alan Dershowitz
- IL Rep. Kam Buckner
- Elie Honig
- Jill Wine-Banks

[Allred on Cosby, Cokley on Britney Spears conservatorship, Montoya and Silva on Surfside, Wermiel and Huq on SCOTUS, and much more](#)

[Hovenkamp on NCAA ruling, Tarpey on ACA ruling, Watkins on client 'QAnon Shaman,' and much more](#)

[Illinois Representative Buckner on NIL Legislation, Lenkner on Alexa Class Action and Downey on the Latest Employment News, and much more](#)

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



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**.