



# Causation In Illinois Workers' Compensation Claims

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3/24/15





# Speakers



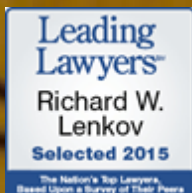
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- Strategies and Tactics for Defending Indiana WC Claims
- Defending Pain Claims:  
A Medical & Legal Perspective
- Subrogation Basics For Workers' Compensation Professionals
- Workers' Compensation Negotiation Strategies
- Employment Law Issues Every Workers' Compensation Professional Needs To Know About
- 10 Illinois Workers' Compensation Cases You Need To Know
- Ask an Attorney Anything: Your Most Pressing Workers' Compensation Questions ANSWERED
- Defending Workers' Compensation Psychiatric Claims
- Turning The Tables: Using an Employee's Own Actions As a Defense to Their Workers' Compensation Claim
- Defending Repetitive Trauma Claims In Illinois Workers' Compensation
- Traveling Employees In Illinois Workers' Compensation
- Illinois vs Indiana: 5 Key Issues & How Each State Deals With Them
- AMA Guidelines: A Legal and Medical Perspective
- Preferred Provider Programs







# March Workers' Compensation Newsletter



BRYCE DOWNEY & LENKOV  
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## Workers' Compensation Newsletter March 2015



### THE TOP 5 LIST

#### Top 5 Defense Tools You Shouldn't Overlook

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov  
Workers' Compensation Department

We all use IMEs and utilization review. However, there are other equally important, but lesser-known, tools that you should use to defend a claim. Here are a few:

#### 1/ Medical Provider Canvas

It is imperative to know as much about a claimant's prior medical history as possible. If you are limiting your search to only those providers that the claimant has identified, you are only accomplishing half of your goal. A medical provider canvas is a very effective and inexpensive way to gather this information.

#### 2/ ISO Report

Again, information is power. Knowing your claimant's claim history is imperative to your defense. Believe it or not, claimants are not always forthcoming about their prior history!

#### 3/ Personnel File

There is frequently invaluable information in a claimant's personnel file. For example, disciplinary action close to an alleged accident date raises significant red flags that can help you dispute a questionable claim.

#### 4/ Records Review

Have you ever read an IME report hoping that it would give you what you wanted, only to be burned? An effective way to avoid that is to get a preview of the opinion through a records review. If the doctor ends up giving you an unfavorable opinion, you do not need to disclose it.

#### 5/ Motion To Dismiss

While the Illinois Workers' Compensation Act does not explicitly allow for motions to dismiss, they are a key tool that we use to move cases forward. When a claimant is not compliant with medical treatment, misses IMEs or skips out of vocational rehabilitation appointments, file a motion to dismiss, asserting that Petitioner is not fulfilling his or her duties in moving the case forward.

As always, we would like to hear your thoughts. Email me at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com) and we'll publish your comments in our next newsletter.

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# Survey & Giveaway

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1. What did you like about today's webinar?

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3. What topics would you like to learn more about in future webinars?

4. Additional suggestions:

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# Upcoming News & Seminars



Legal Faceoff is a fast paced, high energy legal podcast airing every other Friday on WGN PLUS. Each week, **Jason Whiteside** (an exceptional Chicago plaintiff's attorney) and **Rich Lenkov** provide a legal point/counterpoint perspective on the hottest issues in sports, Hollywood, politics and current events. Of course, with a couple of jabs here and there.

[Our most recent episode was released on 3/23 and you can listen to it at http://wgnplus.com/category/legal-face-off/](http://wgnplus.com/category/legal-face-off/)

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# Causal Connection



*Vogel v. Industrial Comm'n.*, 354 Ill. App. 3d 780, 786, 290 Ill. Dec. 495, 821 N.E. 2d 807 (2005)



A claimant need only prove that some act or phase of his or her employment was a causative factor in his or her ensuing injury



Winnable in Illinois







# Causation $\neq$ Accident



WC Act is not intended to insure employees against all injuries  
Employee must be at risk greater than that to which general public is exposed



No medical opinion needed to support finding of causal connection



Respondents need expert opinion to defeat treater's causal connection opinion





# Causation $\neq$ Accident



Accident must “arise out of” and “in the course of” employment



“Arise out of” refers to risk connected to employment



"In the course of" refers to time, place and accident



Presence at work not enough







# Quiz #1



Down by 2 points with 2.7 seconds left, J.J. Huntman Jr. makes a 3 point shot giving the Black Cats the win in the 1<sup>st</sup> round of the NCBDL tournament



J.J.'s father and coach, J.J. Huntman Sr., has pre-existing Achilles tendonitis from playing forward in college



Coach Huntman falls off his chair with excitement and tears his Achilles tendon



Is J.J. Huntman Sr.'s injury compensable?

- A. Yes
- B. No
- C. No, because he was sitting in a chair
- D. It depends if he fell before the buzzer
- E. Not if it was his One Shining Moment





# Quiz #1



Yes







# Aggravation Of Pre-existing Condition



Employer takes employee as it finds him



Pre-existing conditions do not always bar benefits



Claimant with aggravation of pre-existing condition may obtain benefits if employment was causative factor of injury



If pre-existing condition is aggravated, exacerbated, or accelerated by injury, employee may be entitled to benefits




Accident need not be sole cause of disability




Employee must only prove accident was a causative factor

Compensation may be denied if condition deteriorated to point that any normal daily activity would be overexertion







# Aggravation Of Pre-existing Condition




Pre-existing conditions will not prevent recovery under WC Act if condition was aggravated or accelerated by claimant's employment.




*Caterpillar Tractor Company v., Industrial Comm'n.*, 92 Ill. 2d 30, 440 N.E. 2d 861 (1982)




Claimant had preexisting non-work related rheumatoid arthritis, and injured his back while moving a casting



Court determined that the work-related low back pain was a contributing factor to his subsequent disability




Compensation was awarded



Claimant's injury need not be sole factor that aggravates a preexisting condition, so long as it is a factor that contributes to the disability



*Johns-Mansville Products Corp. v. Industrial Comm'n.*, 78 Ill. 2d 171, 177, 399 N.E. 2d 606 (1979)



Denies recovery where the employee's health has so deteriorated that any normal daily activity is an overexertion or where the activity engages in presented risks no greater than those to which the general public is exposed







# Effect Of Prior Accidents

Prior accidents and injuries can have significant impact on new injury claims

Use your investigative tools

Obtain ISO Claim Search Summary

Subpoena prior carriers

Subpoena group insurance records

Subpoena medical records and diagnostic films

Use IWCC electronic records

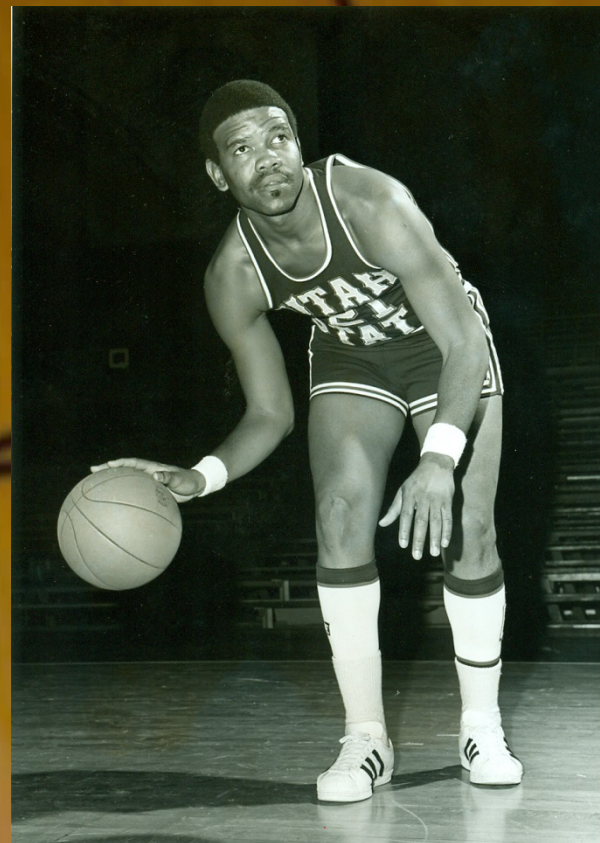
Use Circuit Court electronic records

Analyze prior medical findings

Determine whether finding is result of new accident or product of prior accident

Obtain expert physician's opinion on causal connection

Provide your expert with all medical records and films





# Effect Of Subsequent Accidents

- ✎ Causal connection can be severed
- ✎ To be relieved of liability, intervening cause must break causal connection
- ✎ If subsequent accident does not result in new findings or aggravation, causal connection is unaffected
- ✎ If new medical finding, seek expert opinion on causal connection
- ✎ Use investigative tools to determine new medical findings







# Case Law



In cases involving multiple workplace accidents and, therefore, multiple potential causes for a claimant's ill-being, courts have made clear that (e)very natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable...absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and ensuing disability of injury. *National Freight v. Illinois Workers' Compensation Comm'n.*, 993 N.E. 2d 473, 373 Ill. Dec. 167 (5th District 2013) (citing *Vogel v. Industrial Common.*, 354 Ill. App. 3d 780, 786, 290 Ill. Dec. 495, 821 N.E. 807 (205).





# Case Law

*National Freight v. Illinois Workers' Compensation Comm'n.*,  
993 N.E. 2d 473, 373 Ill. Dec. 167 (5th District 2013)

Petitioner injured his back on 11/6/06 while pulling boxes off of a truck while in employ of Fischer Lumber.

Back surgery was scheduled for 12/5/08

Petitioner injured on 12/4/08 in motor vehicle accident while in employ of National Freight

Second accident resulted in new & more extensive injuries than those of 11/6/06 accident

Court held that second accident broke causal connection between claimant's condition of ill-being & initial accident

Court cited to changes in symptoms, pathology, type of surgery required, and ability to work

Petitioner would be entitled to seek permanency award from first employer once he reached MMI







# Effect Of Subsequent Accidents



What if Petitioner's actions preclude his recovery?  
WC Act provides tool to reduce or suspend benefits



Section 19(d) of the WC Act states:




(d) If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical, surgical, or hospital treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee. However, when an employer and employee so agree in writing, the foregoing provision shall not be construed to authorize the reduction of suspension of compensation of an employee who is relying in good faith, in treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, to buy a duly accredited practitioner thereof





# Effect Of Subsequent Accidents

 Injurious practice cases typically arise with smokers, weight-related issues, etc.



Typical scenario: Petitioner has been advised to quit smoking by physician, but refuses to quit. Recovery is adversely affected leading to need for additional treatment and increased indemnity benefits



Carefully review medical records



Use your investigative tools



Obtain medical expert opinion



With favorable opinion, file Section 19(d) motion







# Intoxication



Section 11 states in part,



" No compensation shall be payable if (i) the employee's intoxication is the proximate cause of the employee's accidental injury or (ii) at the time the employee incurred the accidental injury, the employee was so intoxicated that the intoxication constituted a departure from the employment"





# How Do We Prove Intoxication?

“Admissible evidence of concentration:

Alcohol,

Cannabis as defined in the Cannabis Control Act,

Controlled substance listed in the Illinois Controlled Substances Act, or an intoxicating compound listed in the Use of Intoxicating Compounds Act in the employee's blood, breath, or urine at the time the employee incurred the accidental injury shall be considered in any hearing under this Act to determine whether the employee was intoxicated at the time the employee incurred the accidental injuries

If at the time of the accidental injuries, there was a 0.08% or more by weight of alcohol in the employee's blood, breath, or urine or if there is any evidence of impairment due to the unlawful or unauthorized use of:

Cannabis,

A controlled substance listed in the Illinois Controlled Substances Act,

An intoxicating compound listed in the Use of Intoxicating Compounds Act”







## Quiz #2



Which of the following is the least likely cause of CTS:

- A. Obesity
- B. Gender
- C. Work
- D. Diabetes
- E. Genetics





## Quiz #2

### C. Work













# Repetitive Trauma

- Compensability of work-related trauma does not require Petitioner to prove injury occurred as one specific incident traceable to definite time, place and cause
- Manifestation date determines date of accident
  - Date when injury and causal relationship become apparent to reasonable person
- Review details of Petitioner's prior and present medical history
- Consider other factors that could lead to diagnosis





# Conclusion

-  Fully investigate causal connection
-  Exercise Section 12 IME rights
-  Exercise rights to of all medical records and films
-  Use qualified medical experts
-  Provide your expert with all medical evidence
-  Investigation must be ongoing throughout claim life







# Q&A



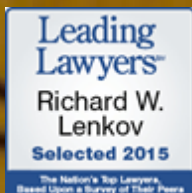
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# Giveaway



Type your answer into the question box



The first person to answer correctly wins:







# Giveaway



Who is the only player to go to 4 straight Final Fours (and remarkably is not in the College Basketball Hall of Fame)?





# Giveaway



Christian Laettner







# Bonus Giveaway!



Type your answer into the question box



The first person to answer correctly wins:





# Bonus Giveaway!



What team won the first NCAA tournament?







# BDL Ballers – Chicago Legal Prep





# Bonus Giveaway!



University Of Oregon, 3/27/39



Victory over Ohio State







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