

## Workers' Compensation Newsletter September 2018

**Upcoming Webinar!**

10/30/18

WC Horror Stories



[Register Here](#)



### THE TOP 5 LIST

## Top 5 Pieces Of Evidence You Should Always Give Your Defense Attorney

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

### 1/ Accident Reports

A completed, signed and dated Form 45 (the Illinois Workers' Compensation Commission official notice form) is critical. I also want to see any internal reports generated by my clients. It's important that all documents, especially accident reports, are signed and dated.

### 2/ Photos & Films

Obviously, any film or photos depicting the accident are crucial. Not only is it important for your defense counsel to see, it's also important to preserve that evidence to avoid a spoliation of evidence claim.

### 3/ Personnel Files

Some clients are reluctant to disclose Petitioner's personnel file. However, it is an invaluable piece of evidence that can turn an entire case. For example, disciplinary actions that occur shortly before an alleged accident are often red flags. Also, information about prior medical history contained in the personnel file can provide a valuable defense when causation is disputed.

### 4/ Claims Notes

An adjuster's claim notes provide a crucial road map of what has transpired before the file hits my desk. They are important in allowing me to quickly get up to speed.

### 5/ Cover Letter/Email

It is always very helpful and appreciated when a client takes the time to quickly summarize the case and lay out their impressions. As stated above, claim notes are helpful in this regard, but they don't tell the entire story. A concise cover letter is a great way for me to start a case.



By: [Michael Milstein](#)



On 8/26/18, Gov. Rauner performed an amendatory veto of both SB 1737 and SB 904. In the amendatory veto, the governor provided amendments to the legislation that requires passage of both legislatures to become final.

Regarding SB 1737 (dealing with insurance rates) the governor didn't propose anything specific, but noted that the "poorly conceived government-driven rate controls" should be removed because of its fundamental "misunderstanding of the true cost drivers in our system" and its regulatory increase "to the detriment of Illinois businesses and individuals."

For SB 904 (penalties for late medical payments), Gov. Rauner simply noted that the proposed bill did not reform WC in a way that brings about the right type of change. He stated that it diminishes an employer's ability to determine causation and whether an injury is work-related and dramatically tips the balance in favor of medical providers.

These amendatory vetoes will likely be the end of any such legislation until after the election.

In addition, Gov. Rauner recently reappointed the following arbitrators: Maria Bocanegra, Paul Cellini, Stephen Friedman, Jessica Hegarty, Gerald Granada, Jeffrey Huebsch, Nancy Lindsay, Christine Marie Ori, Maureen Pulia, Melinda Rowe-Sullivan and Douglas Stephenson. George Andros is officially retired.



**Legal Face-Off** is a fast paced one-hour legal podcast. Rich Lenkov and Christina Martini of McDermott Will & Emery discuss the hottest issues in sports, Hollywood, politics and current events with contrasting legal perspectives.

**SOUND BITE:** Director [Kelly Richmond Pope](#) discusses her award-winning documentary, [All The Queen's Horses](#), a look at the largest case of municipal fraud in American history.

**Rich Lenkov:** Your film, which I recently watched and immensely enjoyed, tells the story of Rita Crundwell, the perpetrator of the largest case of municipal fraud in American history. Crundwell stole \$53 million dollars from the small town of Dixon, IL. The question that kept bugging me as I was watching your film was, how the hell did she get away with this for 22 years?

**Kelly Richmond Pope:** Well when you trust someone, especially a person that tends the money, when you really think you have found a really good person, you tend to just leave them alone and I think that's what we see here in Dixon. They trusted Rita and she was good at her job, so they just left her alone; didn't ask important questions.



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



## Recent Topics:

- SCOTUS decisions
- Manafort trial
- 3D guns controversy
- "Time's Up"/Me Too movement
- Chicago mayoral candidates
- Judge Kavanaugh's senate hearings

## Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Directors Julie Cohen and Betsy West of [RBG](#)

[Manafort, Vegas shooting lawsuit, Inside Out Columnists, The Prisoner Rights Project](#)

[Manafort trial, 3D guns lawsuit, CPS Inspector General & much more](#)

[Alan Dershowitz on impeaching Trump, a new Chicago law school, the president of the Federal Bar Association and a new legal app](#)

[Chicago mayoral candidate Garry McCarthy, former Supreme Court clerks Scodro & Keller on Kavanaugh, Anurima Bhargava on new Trump affirmative action policies](#)

[LFO's SCOTUS panel, ACLU's David Cole, Mailee Smith, Shannon Shepherd, Jordan Goodman](#)

[Robert Blagojevich on a commutation for his brother, Chicago mayoral candidates Paul Vallas & Lori Lightfoot, Karla Altmayer on new DOJ asylum regulations](#)

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# Claim Taken from Right Under Petitioner's Nose

By: [Diandra Abate](#)



In *Aleman v. Nation Pizza & Foods*, 26 ILWCLB 105 (Ill. W.C. Comm. 2018), the Illinois Workers' Compensation Commission (IWCC) found that Petitioner failed to prove his shoulder injury was the result of a workplace risk, and was instead the result of his voluntary cocaine use.

Petitioner, a mechanic, sustained severe finger injuries after trying to get a conveyor belt to work. Petitioner attempted to fix the belt's gears with his hands, but failed to turn the machine off first and neglected to use the tool employees were to utilize for these situations. Petitioner took an alcohol and drug test the day of the accident and tested positive for cocaine.

Respondent's doctor, a toxicologist, explained that cocaine is a stimulant, and even though the user may appear to be functioning normal, the drug impairs the user's judgment. Respondent's doctor opined that Petitioner was intoxicated at the time of the accident and that the cocaine present in his system was the cause of injury.

In denying benefits, the arbitrator held that Respondent provided evidence that established Petitioner was intoxicated at the time of his accident, creating a rebuttable presumption that the arbitrator further held that Petitioner failed to provide sufficient evidence that would overcome this presumption.

IWCC affirmed the Arbitration Decision because:

1. IWCC noted the symptoms of cocaine intoxication include alertness, elevated blood pressure, tachycardia and impaired judgment. They held that Petitioner exhibited these symptoms, mentioning his elevated blood pressure and pulse upon arrival to the emergency room.
2. IWCC found Petitioner to lack credibility. Petitioner told emergency room doctors he did not use illegal drugs, however he argued before the IWCC that he only used drugs when the effects would not affect his ability to work. He further asserted he used very little cocaine and it was three days prior to his accident, contradicting the toxicology reports that revealed Petitioner had either used large amounts of cocaine just days before the accident or he had used a smaller amount of cocaine closer in time to the accident.

Additionally, Petitioner provided inconsistent testimony that workers would use their hands to move the chain in the conveyor belt. Respondent's witness, a maintenance mechanic, testified a tool was used by Respondent's mechanics to physically move the chain.

3. Petitioner failed to provide expert testimony to contradict Respondent's toxicologist. The only evidence Petitioner presented was at the time of the accident—he did not have slurred speech and did not appear intoxicated or sluggish—all factors the IWCC found to be related to alcohol intoxication, and irrelevant to cocaine intoxication.
4. IWCC held that, regardless of the rebuttal presumption that was established pursuant to Section 11, there is established case law that holds that an employee's voluntary intoxication is a defense to a claim under the Act. Petitioner's actions and medical tests were clear evidence of chemical intoxication, which defeats the claim regardless of Section 11's provisions.

## Practice Tip:

Always assure a drug test is administered after an accident to establish all possible defenses.

# Employer Doesn't Have to Foot Whole Bill

By: [Jesse Lanshe](#)



In *McDonald v. Zurich North America*, 26 ILWCLB 107 (Ill. W.C. Comm. 2018), the Illinois Workers' Compensation Commission (IWCC) reduced a Petitioner's PPD award after finding that the arbitrator improperly assigned "no weight" to an executive's future earning capacity.

Petitioner injured his foot while traveling for business. In reviewing 5 Section 8.1(b) PPD factors, arbitrator gave "little weight" to Petitioner's ability to work in his current position. The arbitrator also gave "no weight" to the injury's effect on Petitioner's future earning capacity, as no evidence of earning capacity was submitted.

Petitioner returned to his pre-injury, non-physical executive job without difficulty. IWCC found that this fact constituted "competent evidence that the injury did not diminish his future earning capacity" and "giving no weight to that factor was erroneous." IWCC reduced PPD award from 25% loss of a foot to 20%.

## Practice Tip:

A petitioner's post-injury ability to work impacts future earning potential, even when there is no direct evidence available.

For more information on our Workers' Compensation practice, please [click here](#).

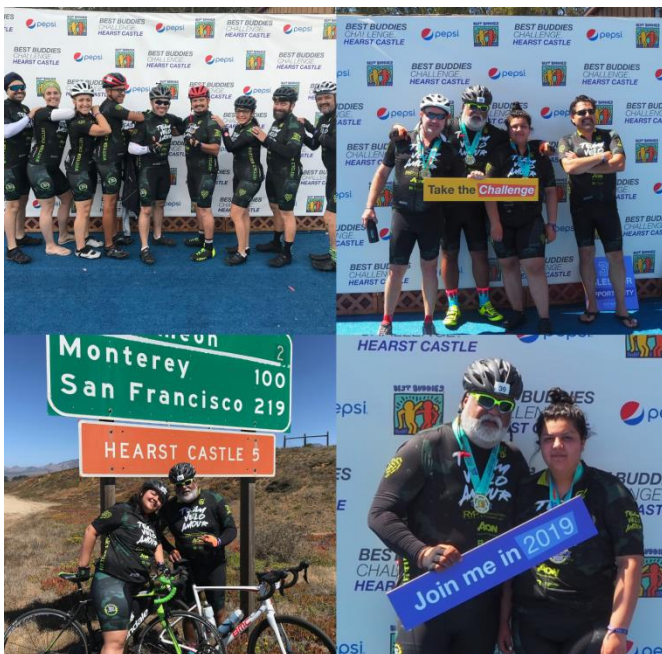
Our other practice areas include:

- 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

## Firm News

### Best Buddies Challenge

On 9/9/18, Bryce Downey & Lenkov sponsored the Best Buddies Challenge, a biking, running and walking event supporting programs for people with intellectual and developmental disabilities. Best Buddies International is dedicated to providing opportunities for one-to-one friendships, integrated employment and leadership development for people with intellectual and developmental disabilities. For more information on Best Buddies, visit: [www.bestbuddies.org](http://www.bestbuddies.org)



### Race Judicata 5k

On 9/13/18, Bryce Downey & Lenkov sponsored Chicago Volunteer Legal Services Race Judicata® 2018. Chicago Volunteer Legal Services is the first and pre-eminent pro bono civil legal aid provider in Chicago, serving the city's poor and working poor. To learn more about CVLS, visit: <https://www.cvl.org/about>.



### Chicagoland Safety Health Environmental Conference

On 9/17/18, [Rich Lenkov](#) and [Brian Rosenblatt](#) presented "When Safety Goes Awry . . . Send Lawyers, Guns and Money" at the 2018 Chicagoland Safety Health Environmental Conference.



## BDL Participates In Baskets For Breast Cancer

Bryce Downey & Lenkov is proud to participate in USLI's 4<sup>th</sup> Annual Baskets for Breast Cancer auction from 10/17/18-10/24/18.

The online silent auction features over 70 baskets including an array of items generously donated from companies. This year, Bryce Downey & Lenkov donated "My Kind of Town – Chicago's Arts & Entertainment." Bidders are able to enjoy everything Chicago has to offer with this one-of-a-kind package. The basket includes:

- \$250 Southwest Gift Card
- \$100 Morton's Steak House Gift Card
- \$50 House of Blues Gift Card
- \$150 – Two Go Chicago "Chicago Explorer Pass"

**100% of sales benefit [breastcancer.org](http://breastcancer.org).**

## BDL is Growing!



We are proud to welcome Aaron Medley as an associate in our Indiana office. Aaron joins our Workers' Compensation practice. He advocates for employers and insurance carriers in related litigation. Aaron conducts depositions and extensive pre-discovery fact investigation and document review of complex insurance defense and personal injury cases.

Prior to joining Bryce Downey & Lenkov, Aaron handled personal injury at a prominent Indiana law firm. Aaron was previously in the U.S. Navy Reserve for eight years.



We also welcome Julius Shapiro as of counsel in our Chicago office. Julius joins our Construction practice, and has extensive experience in construction and mechanics lien law. He has had an active role in proposing new laws and changing existing mechanics lien law and the Illinois Construction Bond Act. Julius has also litigated actions in national and local real estate law.

Prior to joining the firm, he served as co-chairman and president of another Chicago law firm. Julius is a member of the Society of Illinois Construction Attorneys, and co-chairman of the Chicago Bar Association's Continuing Legal Education.

## Upcoming Events

- **9/26/18** – Brian Rosenblatt and the ABA Forum on the Entertainment & Sports Industries will host a "Meet the Leadership" event. Brian is editor of the forum's quarterly journal, *Entertainment & Sports Lawyer*. To register, please [click here](#).
- **10/2/18** – [Geoff Bryce](#) and [Werner Sabo](#) will present "Practice Pointers for Illinois Architects" at the Association of Licensed Architects 2018 Midwest Architecture Conference. The conference delivers key informational seminars for architects and building professionals. For more information or to register, please [click here](#).
- **10/4/18** – [Geoff Bryce](#) will present "The Standard of Care for Design Professionals, and Architect Claim Reduction Strategies from Contract Negotiation to Contract Administration" at the Professional Liability Defense Federation 9<sup>th</sup> Annual Meeting and CLE/CEU Presentation in New Orleans. Geoff and the rest of his co-panelists will look in depth at the standard of care to be met by design professionals. For more information or to register, please [click here](#).
- **11/8/18** – Bryce Downey & Lenkov is a proud sponsor of the Respiratory Health Association's 12<sup>th</sup> Annual Chill event. Proceeds from the Chill event help support Fight Asthma Now® and Asthma Management, teaching children and their caregivers skills to manage their asthma; local lung health research projects; and Respiratory Health Association's COPD initiative, which offers resources and programs for people living with COPD and their caregivers. For more information or to purchase tickets, please [click here](#).
- **12/12/18** – [Geoff Bryce](#) and [Samuel Levine](#) will present at the Illinois Institute for Continuing Legal Education's "Construction Litigation Dispute Resolution" conference. Geoff will present "Insurance: Coverage for Construction Defects and Who Wants to be an Additional Insured?" Sam will discuss "Construction Defects Litigation" with co-presenter Justin Weisberg of Schuyler, Roche & Crisham. For more information or to register, please [click here](#).

## Free Monthly Webinars

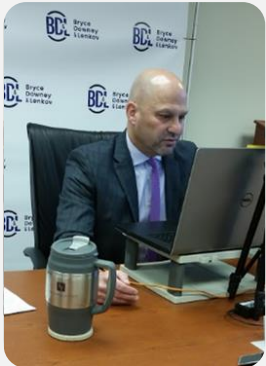
feedback from our 9/18/18 webinar,

### Defending Shoulder and Knee Injuries, Feat. Chicago Bulls & White Sox Doctor:

*"I loved the specific examples /scenarios. I learned so much about physiology today.  
Fat can date an atrophied meniscus? Wow."*

*"It was very beneficial. Lots of great info and topic."*

*"Good to know there is a credible Dr that does IMEs and understands medical causation."*



#### Next Upcoming Webinar 10/30/18 WC Horror Stories



[Rich Lenkov](#)  
[Chase Gruszka](#)

[Register Here](#)

#### Recent Webinars

- Key Differences in IL & IN Workers' Compensation
- Injuries Away From Work
- Settlement Strategies
- When Is An Employee Not An "Employee"?
- Ask Us ANYTHING
- Top 10 Differences Between IL WC & GL Claims
- The Ups & Downs Of Upper & Lower Extremity Claims
- What's This Claim Worth?
- New OSHA Regulations
- Top Employer Mistakes In Indiana

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 individuals and companies of all sizes. Some of the national conferences that we've presented at are:

- Workers' Compensation Educational Conference
- 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
- Chicagoland Safety, Health and Environmental Conference

Some of our previous seminars include:

- When Safety Goes Awry... Send Lawyers, Guns and Money
- 5 Questionable Claims & How To Defend Them
- 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

**CHICAGO, IL:**  
200 North LaSalle Street  
Suite 2700  
Chicago, IL 60601  
Tel: 312.377.1501  
Fax: 312.377.1502

**SCHERERVILLE, IN:**  
833 West Lincoln Highway  
Suite 210  
Schererville, IN 46375  
Tel: 219.488.2590  
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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