



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter November 2013

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### **FIGHT!**

**By: Rich Lenkov**



There have been some recent developments in Illinois Workers' Compensation Law that have been discouraging to the defense side. The Commission seems to be largely ignoring AMA Ratings as a factor when determining permanent partial disability. Additionally, some recent decisions, including those regarding traveling employees, seem to indicate a desire to further expand the rights of injured employees in Illinois, already among the most expensive states in the country for workers' compensation claims.

While there have been some obstacles, we all have to remember that it's our responsibility to continue to be aggressive and fight where appropriate. Our client's employees are generally the lifeblood of their business, and taking care of legitimately injured workers is very important. However, many of the workers' compensation claims, especially the ones that we see, are less than legitimate. On those kinds of claims, it is very important to continue to be aggressive and fight. The workers' compensation climate in Illinois will only change by continuing to stay aggressive and effectuate many of the changes from the 2011 reforms, which were enacted in order to create a more level playing field in our state.

As a firm we have tried and true tactics that allow our clients to strongly control their workers' compensation cases in Illinois. Please contact me at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com)

for more details on some of these strategies.

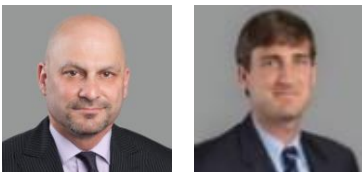
## Rich Lenkov and Richard Warner Obtain Favorable Cook County Jury Verdict



On 9/25/13, **Rich Lenkov** and **Rick Warner** successfully defended Stanley Steemer International, Inc. in a trip and fall case. The trial lasted three days.

Plaintiff alleged that Stanley Steemer negligently caused its vacuum hose to lie across Plaintiff's concrete patio, causing him to trip and injure his shoulder. Rich and Rick successfully argued that Plaintiff was contributorily negligent. Plaintiff asked the jury for \$5,691.63 in medical bills, \$14,308.37 for future surgery and \$40,000.00 in pain and suffering, totaling \$60,000.00. Prior to trial, opposing counsel had initially demanded \$75,000.00. The jury awarded Plaintiff \$0.00 for loss of a normal life, \$0.00 in pain and suffering, and \$5,691.63 in bills. The jury then reduced Plaintiff's award by 50% due to his contributory negligence and awarded damages of only \$2,845.82.

## Motion for Summary Judgment Granted



Rich Lenkov and Brian Hindman won a Motion for Summary Judgment on behalf of



The Jump Up, Inc., a children's inflatable play facility. Plaintiff, a mother, sued Defendant for injuries she sustained while exiting an inflatable structure after assisting a child. Plaintiff alleged that the structure "collapsed" beneath her, causing her to fall forward on her hands and knees.

Plaintiff had initial complaints of right knee pain, left hip pain and eventually underwent a right shoulder arthroscopy for impingement syndrome. Plaintiff claimed \$22,159.07 in medical specials and made a settlement demand of \$350,000.00.

Defendant argued that Plaintiff waived her right to sue by signing a permanent waiver. The waiver stated in part:

"The risk of serious injury from participating in The Jump Up, Inc.'s activities, although minimal, does exist and includes the potential for permanent physical injury..." and

"I, for myself, my child(ren) and on behalf of my heirs, assigns, personal representatives and next of kin, **hereby waive, release, and hold harmless...** with respect to any and all claims for personal injury, disability, death, or loss or damage to person or property..."

Plaintiff claimed that the waiver was unenforceable based on four arguments:

1. there was a genuine issue of material fact as to the circumstances in which the Plaintiff signed the waiver,
2. it was ambiguous and did not contain clear, explicit and unequivocal language regarding the types of

activities and possible injuries it covered,

3. Plaintiff's fall was not foreseeable within the scope of the waiver, and
4. it violated public policy because of the disparity in bargaining power between Plaintiff and Defendant.

At hearing, the court rejected arguments 1, 2 and 4 and allowed the parties to conduct additional discovery with regard to whether or not Plaintiff's fall was foreseeable.

The parties deposed a total of 6 witnesses including Plaintiff, three witnesses to the accident, the owner of the facility and the Illinois inspector who licensed the facility. Although she claimed that the inflatable structure "collapsed" beneath her, Plaintiff also admitted that she was 5'7" and weighed 320 pounds on the date of the incident. Further, she admitted that she did not see the posted warning signs regarding weight limit (maximum of 120 lbs. per person) and did not see any holes or defects in the inflatable structure.

The court agreed with Defendant's argument that the waiver was enforceable and that Plaintiff's fall was exactly the type of fall that was contemplated by the waiver's clear language. Since Plaintiff produced no evidence otherwise, the court considered the injury to be foreseeable. Therefore, the waiver was enforceable.

#### ***Practice Tip:***

When considering the enforceability of a waiver, the foreseeability of the injury is very important. If the injury occurred in a way that could be perceived as outside of the scope of the terms of the waiver, the waiver may not be enforceable. When drafting a waiver, be as specific as possible

when listing the types of injuries meant to be covered. Additionally, always build your case with a Motion for Summary Judgment in mind.

### **Bryce Downey & Lenkov Case Results**



**Storrs Downey** obtained a favorable summary judgment ruling in a federal court case before the Northern District of Illinois on an alleged age discrimination and breach of contract case brought by a terminated, former executive of our client employer. Less than 90 days into a Cook County filed transgender discrimination claim, we were able to successfully get the case dismissed without having to engage in any written discovery.



**Cary Schwimmer** obtained dismissal of two union unfair labor practice charges before the NLRB. Cary also obtained a dismissal of two Arkansas EEOC race discrimination charges.



**Rick Warner** was recently published in Jury Verdict Reporter. Rick won summary judgment on behalf of a national pizza chain in a suit resulting from a delivery driver opening his car door into the path of a bicyclist causing injury to the cyclist. The court found that the driver was not the agent of the pizza chain at the time of the collision.



**Michael Milstein** recently appeared before an arbitrator at the Illinois Workers' Compensation Commission to address whether a petitioner is

entitled to TTD when on FMLA. Petitioner was injured and later released to full duty work. Petitioner then took 8 weeks of leave under FMLA to attend to his daughter's medical condition. While he was on FMLA leave, he presented to the doctor in a follow-up for his own workers' compensation injury and was released to light duty restrictions.

The issue was whether TTD would be owed if no light duty job was available. Michael argued that by applying for FMLA, Petitioner had effectively taken himself out of the workforce for that period of time and therefore, TTD was not owed. However, Petitioner's counsel argued that based on *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, Petitioner was not yet at MMI and therefore, should be entitled to TTD benefits.

The Arbitrator found that no TTD benefits were owed while Petitioner was on FMLA.

## Upcoming Seminars

- On 11/14/13 Rich Lenkov and Kunal Ganti will host a FREE Webinar **"Defending Wage Differentials and Permanent Total Disability Awards."** [Click Here](#) for more information and to register for this webinar
- On 12/4/13 Rich Lenkov will present **"Workers' Compensation Update"** with Ed Hart at the Willis Insurance 2014 Forecast for the New Year seminar
- On 4/9/14 – 4/11/14, Rich Lenkov will chair a roundtable session at the Claims Litigation Management Conference entitled **"Restaurant Liability: from A-Z"** in Boca Raton, Florida



## Recent Seminars

- On 10/17/13, Rich Lenkov led an all-star panel of claims professionals for CLM **"Claims & Litigation Nightmares"**. The program was held at Illinois' #1 Rated haunted house, Asylum eXperiment



- On 10/15/13, Rich Lenkov and Maital Savin hosted a FREE WEBINAR **"Turning the Tables: Using and Employee's Own Actions As a Defense to their Workers' Compensation Claim."**

Prior webinars have been on hot topics such as:

- Preferred Provider Programs
- Illinois vs. Indiana: 5 Key Issues & How Each State Deals with Them
- AMA Guidelines: A Legal and Medical Perspective
- Traveling Employees in Illinois Workers' Compensation
- Defending Repetitive Trauma Claims in Illinois Workers' Compensation Claims

If you would like a recording of this or prior presentations, please email Jason Klika at [jklika@bdlfirm.com](mailto:jklika@bdlfirm.com)

- On 10/10/13, Mital Savin presented **"The IME Process from the Defense Attorney's Perspective"** at a workers' compensation educational dinner program
- On 10/8/13 Rich Lenkov recorded a video presentation **"Illinois Workers' Compensation Update: Medical Marijuana"** for the Illinois Manufacturers' Association. [Click here](#) to view the video
- On 10/1/13 Michael Milstein presented **"Uncharted Waters: Legal Considerations for a Telework Program"** at the Telework Summit 2013 in New York, NY
- On 9/19/13, Rich Lenkov and Brian Hindman hosted a webinar: **"Defending Repetitive Trauma Claims in Illinois Workers' Compensation Claims"**
- On 9/18/13, Jeanmarie Calcagno and Kunal Ganti presented **"Workers' Compensation Updates & Hot Topics"** to the Illinois Manufacturers' Association. They led an informative discussion on workers' compensation reform, traveling employees, the Illinois concealed-carry law and medical marijuana
- On 8/27/13, Rich Lenkov and Edward Jordan hosted a FREE Webinar **"Traveling Employees in Illinois Workers' Compensation"**

If you would like a copy of any of these presentations, please email Jason Klika at [jklika@bdlfirm.com](mailto:jklika@bdlfirm.com).

## Commission News

By: Michel C. Milstein



- The IWCC recently announced the 2014 Arbitrator assignments. We generally welcome these assignment changes in the downstate calls as it allows for fresh eyes to review the cases.

Additionally, it prevents the local attorneys from becoming too familiar with the arbitrators (which had been a problem in the past). The assignments are as follows:

**Zone 1** (Collinsville, Herin and Mt. Vernon): Arbitrators Lee, Lindsay and Zanotti;

**Zone 2** (Springfield, Quincy and Urbana): Arbitrators Dearing, Gallagher and Pulia;

**Zone 3** (Bloomington, Peoria and Rock Island): Arbitrators Erbacci, Holland\* and McCarthy;

**Zone 4** (Geneva, New Lenox and Ottawa): Arbitrators Granada, Mathis and O'Malley

**Zone 5** (Rockford, Waukegan and Woodstock): Arbitrators Andros, Falcioni and Fratianni

**Zone 6** (Chicago and Wheaton): Arbitrators Cronin, Doherty and Lusin

**Zone 7** (Chicago): Arbitrators Black, Carlson, Dollison, Flores, Huebsch, Kane, Kelmanson, Mason, Simpson, Steffen, Thompson-Smith and Williams

- The IWCC recently announced the 2014 fee schedule rates. Although there was an increase of 1.52% from last year, the rate is still 7% below the 2006 rates. The IWCC noted that if the fee schedule had tracked medical inflation, rates would be 30% higher than in 2006. We will continue to update you with any developments at the IWCC. Please let us



know if there is a specific subject you would like more information on

\*Sadly, Arbitrator Holland passed away on 10/16/13. We will update you if a new arbitrator is appointed

## **Guns At Work: What Employers Need to Know**

**By: Maital Savin**



*\*The complete version of this article was originally published in the Women's Bar Association of Illinois' Fall 2013 Newsletter. Visit [www.wbaillinois.org](http://www.wbaillinois.org) for more info.*

On July 9, 2013, Illinois passed the Firearm Concealed Carry Act (FCCA), allowing individuals to carry concealed firearms. This article provides a step-by-step guide to applying the new legislation to your workplace.

### **1. Is your workspace a “prohibited area”?**

Prohibited areas include hospitals, schools, colleges, government buildings, parks, public transportation, gaming facilities and most bars and many restaurants, as well as other specified types of facilities.

If your workspace is considered a “prohibited area”, you do not need to do anything, as firearms are barred from prohibited areas.

If your workspace is not a prohibited area, consider whether you want to prohibit firearms from your workplace. Although it will be several months before the first concealed-carry license is issued, in a number of counties, prosecutors have announced that they will not prosecute individuals for concealed-carry if they have valid state firearm owner's cards. Thus, you

should consider whether you want to ban guns from your workplace *immediately*.

Some important considerations include employee safety, liability for injuries or crimes, changes to insurance coverage and the difficulty of enforcing a prohibition on concealed-carry. Given the increased liability that stems from allowing firearms in the workplace, many employers will decide to prohibit concealed-carry. On the other hand, consider your client base – will taking an anti-gun stance cause you to lose clients?

### **2. Do you own or lease your workspace?**

If you own your workspace, you may prohibit firearms by conspicuously posting official signs at the entrances to your buildings, premises or properties. Signs must indicate that firearms are prohibited on the property. Signs must be of a uniform design as established by the Police Department and must be four inches by six inches in size. The Police Department has not yet published regulations interpreting the new law, nor has the official sign banning concealed-carry on private property been made publicly available.

The FCCA is not clear about the rights of employers that lease their workspace to prohibit firearms. This uncertainty will likely be resolved once the Police Department issues the regulations interpreting the new law. Until then, you should review your lease agreement and discuss your policy regarding firearms with the property owner to ensure that your policy is consistent with the property owner's policy.

Note, you may not ban firearms from private vehicles brought into employer parking lots, provided the firearms are secured in a locked vehicle or a locked compartment within the vehicle. A firearm may also be carried near a vehicle for the

purpose of storing or retrieving the firearm from the vehicle's trunk.

**3. Review and update your employment handbook to ensure that it clearly prohibits employees and any guests from bringing firearms into the workplace.**

Some important considerations:

- a. Ensure that your policy does not conflict with the FCAA;
- b. Address whether you will prohibit employees from keeping firearms in company vehicles;
- c. Your policy should clearly state what type of workplace searches employees can expect and under what circumstances;
- d. Your policy should address how you will deal with threats of workplace violence;
- e. Your policy should clearly state the consequences for bringing a gun into the workplace. Consider whether termination will be a consequence. The FCAA is silent on whether it creates a private right of action, but an employee may have a cause of action for wrongful termination if terminated for concealed-carry, although this is not clear.

**4. Distribute your updated policy regarding handguns and have each employee sign a form acknowledging receipt.**

Please contact us with any questions you may have regarding implementing the new gun legislation in your workplace.

## **Injuries Resulting From Ordinary Activity**

**By: Maital Savin**

What happens when an employee is injured while engaged in ordinary activity at work, such as sitting or walking? In a recent Illinois Appellate Court decision, the Court denied benefits to a petitioner who was injured when he fell off a bench at work. In another recent case, the Commission denied benefits to a petitioner who alleged that she was injured when stepping out of a vehicle at work.

In *Mann v. Stratas Foods*, IWCC, 21 ILWCLB 103 (Ill. App. Ct., 4th 2013), Petitioner was injured during his coffee break when he fell off a bench in the company lunchroom. Falls that occur while an employee is engaged in ordinary activity are considered to result from neutral risks. Neutral risks are only compensable if an employee is exposed to the risk to a greater extent than the general public due to his or her employment. The Court found that Petitioner did not show that his risk of falling off the bench was greater than that of the general public due to his employment and therefore, his injury did not arise out of his employment. The Court affirmed the Circuit Court's decision, denying benefits to Petitioner.

Similarly in *Harmon v. Kilian Corp.*, 21 ILWCLB 124 (Ill. W.C. Comm. 2013), Petitioner alleged that she was injured when she stepped out of a truck at work. The Commission held that the simple act of stepping out of a standard truck at work carries the same risk of injury as stepping out of a standard truck at home.

### ***Practice Tip:***

Just because an injury occurs at work, does not necessarily mean that the injury is

compensable. When an injury results from an ordinary activity, such as sitting or walking, one must carefully consider whether Petitioner was exposed to a greater risk than the general public due to his or her employment. If not, there may be grounds for denying benefits.

Please contact us if you have any questions regarding injuries resulting from ordinary activity.

## **Another Employee Successfully Proves Repetitive Trauma Claim at Menard Correctional Center**

**By: Edward A. Jordan**



In the recent case of *Phoenix v. State of Illinois/Menard Correctional Center* (Ill. W.C. 2013), the Illinois Workers' Compensation Commission awarded benefits, finding Petitioner successfully proved

he sustained repetitive trauma injuries to his right and left wrists and elbows.

The commissioners reversed the arbitrator's decision in favor of Respondent. Petitioner alleged he developed bilateral carpal tunnel and cubital tunnel syndrome as a result of work activities as a correctional maintenance craftsman. He claimed his symptoms had existed for two years, but he didn't know his injuries were work related until he was informed by his doctor. The IWCC found that Petitioner provided credible evidence that his job included the use of forceful gripping of hand tools and the use of vibratory equipment, which caused numbness and tingling in his arms, elbows and hands.

In initially denying benefits, the arbitrator found that Petitioner's medical records contained multiple inconsistencies and

Petitioner's alleged repetitive work activities were performed years prior to the alleged manifestation date. Additionally, the arbitrator noted that Petitioner underwent two electrical diagnostic studies, which were negative for carpal tunnel or cubital tunnel syndrome.

The IWCC reversed and awarded TTD, medical expenses and PPD benefits for 15% loss of use of both hands and arms under Section 8(e). The Commission relied on Petitioner's work activities which involved forceful gripping and the use of vibratory tools including air hammers and air drills.

Petitioner's employer, Menard Correctional Center, has been the subject of many prior claims of alleged repetitive trauma filed by prison guards claiming injuries resulting from locking and unlocking cell doors. Those claims became a catalyst for some of the 2011 amendments to the Illinois Workers' Compensation Act.

### ***Practice Tip:***

The use of vibratory tools and repeated forceful grasping are the only two documented causes of carpal tunnel and cubital tunnel syndrome. In cases where such an activity is involved, the employee may be able to prove a compensable repetitive trauma injury. That is not to say these claims should not be aggressively defended, however. All cases involving repetitive trauma, including those involving vibratory tools, should be investigated and defended with the use of job analysis, detailed job descriptions, job videos and independent medical examinations.

Please contact us with any questions regarding defending repetitive trauma claims.



## When "Reaching" Is Work-Related --- And How Simple Non-Events Turn Into Arbitration Awards

By: John P. O'Grady



In the recent decision of *Autumn Accolade v. IWCC* (Ill. App. 2013), the Illinois Appellate Court found that the act of reaching could be considered as "arising out of" employment, even when the petitioner is not carrying anything.

Petitioner was a caregiver for Respondent and reported that "something popped in [her] shoulder" while helping a patient take a shower. A supervisor's report likewise stated "she just turned her head and something popped." Notably, the patient whom Petitioner was helping was very mobile, and no lifting was necessary to help the patient. Petitioner was also noted to have a "long history of back and neck pain." However, Petitioner later changed her story; instead, she alleged that she was holding the patient down with one hand while turning her body and bending forward to use the other hand to awkwardly reach for a soap dish in a slippery shower.

Petitioner eventually required a cervical-spine fusion, which the arbitrator awarded, along with 33 weeks of TTD and 30% impairment of MAW.

This case is a typical example of a petitioner's testimony at arbitration going far beyond what was documented in the initial accident reports. The Appellate Court conceded that there were inconsistent accident histories, and also that Petitioner's testimony was more detailed than what she said in the written documents. However, the Court held that it could not second-guess the fact-finding and credibility findings

made by the IWCC. The Court found that Petitioner was exposed to a risk to a greater degree than the general public when she reached for the soap dish, based on the accident details which were not included in the initial accident reports.

### **Practice Tip:**

IWCC findings of fact and credibility cannot be easily overturned by the reviewing courts. Thus, it is important that employers challenge any part of an employee's testimony that can be disproved by other reports or records.

Please contact us with any question you may have regarding testimony that may conflict with the records or reports.

## Mediation: Benefits and Strategies

By: Maital Savin



On 9/20/13, Judge A. Ward (Ret.) of ADR Systems and the attorneys of Bryce Downey & Lenkov met to discuss the benefits of and strategies for mediation, particularly in general liability cases involving workers' compensation liens. This article highlights some important points discussed that may be helpful to your practice.

### **Helpful tips for lienholders to keep in mind before and during mediation:**

1. Flexibility is the key to successfully mediating a case. Approach the mediation with "targets," rather than hard line numbers

2. As a lienholder, it is important to advise the Plaintiff's attorney of your lien amount as it may affect settlement negotiations
3. Provide information regarding your lien to the mediator
4. Ensure that you have up to date lien figures and breakdowns (medical, TTD, etc.) available at the mediation
5. Ensure that the attorney representing the lien holder and the adjuster have a direct line of communication during the mediation. This includes after hours contact information as it is not unusual for mediations to last through the late hours of the night.

## Waiver

As a lien holder, you never want to waive your lien. But what do you do if the mediator asks you to waive your lien to facilitate settlement? Judge Ward suggested that a party need not give up its lien, but can still use language indicating that its position is flexible in order to facilitate settlement. For example, responding to the mediator with language such as "I don't think there is anything to worry about" allows you to indicate to the mediator that you have some flexibility without waiving the lien entirely. Should waiver be something you wish to consider, remember you need to receive something in exchange for waiver.

## Mediation of Cases Strictly Involving Workers' Compensation Claims

There is no rule barring parties from using mediation as a tool to resolve IL workers' compensation cases. Although mediation is not often used in cases strictly involving workers' compensation claims, mediation can be a powerful tool to facilitate resolution in certain worker's compensation

cases by saving the time and expense of protracted litigation.

### *Practice tip:*

Mediation has been a helpful tool in various areas of litigation and should also be considered in workers' compensation cases involving high-exposure claims.

Please contact us regarding any questions you may have regarding whether mediation may be appropriate to assist with resolution of your case.

## **Food Fight: Restaurant's Employee's Conduct Prevents Employer's Aggressor Defense**

By: Kunal Ganti



In *Evans v. Bartlett Management Peoria d/b/a KFC/Taco Bell* (Ill. W.C. 2013), the Commission addressed the applicability of the aggressor defense. The aggressor defense states that the "aggressor" in a workplace fight is not due compensation for injuries resulting from the fight. The courts will consider the totality of the circumstances rather than just who made the first contact in determining whether a party was the aggressor.

Petitioner alleged that a co-worker sprayed her with water from a hose and later, picked up Petitioner and tried to shove her into the sink. Petitioner testified that during the struggle, she accidentally kicked the co-worker. The co-worker then forcefully pulled Petitioner's arm. However, a witness stated that Petitioner intentionally kicked the co-worker.

Respondent tried to deny benefits under the aggressor defense. The Commission

found that either version of the fight would not trigger the aggressor defense. The Commission stated that Petitioner's response to the behavior of the co-worker was due to the fact that the co-worker provoked Petitioner. When Petitioner responded to the co-worker's aggressive actions, and then hit the co-worker, the co-worker's response in pulling Petitioner's arm did not trigger the aggressor defense. Petitioner's actions remained in the course of and arising out of her employment.

### ***Practice Tip:***

As this case shows, the Commission will take all versions of an accident into account when deciding the issue of compensability. Therefore, it is important that employers carefully document the history of accidents and interview possible witnesses.

Please contact us if you have a question regarding documenting your file in preparation for litigation.

## **Settlement Days**

By: Rich Lenkov



Bryce Downey & Lenkov is the most aggressive firm when it comes to resolving cases in general and specifically through settlement days. For the 12 month period ending in March 2013 we settled 99 cases through settlement days, which generally last no more than a few hours. For more information on this valuable case resolution tool, please see page 16.

If you would like to schedule a settlement day, please contact Rich Lenkov at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com).

## **Bryce Downey & Lenkov is (Still) Growing!**



In our August newsletter we were pleased to announce the addition of two new associates, Mital Savin and Kunal Ganti. Bryce Downey & Lenkov is pleased to announce the addition of Daniel Zlatic. Daniel focuses his practice on the defense of insurers and their insureds in workers' compensation and personal injury matters. Mr. Zlatic has successfully completed in excess of twenty first-chair jury trials. He joins our rapidly expanding Indiana team.

## **Recent Awards & Accolades**



**Mital Savin** has been appointed as a legislative liaison to the Chicago Labor & Employment section of the CBA Young Lawyers.

## **Giving Back**

### **A Very BDL Halloween...**



How often do you get to sit down with Gene Simmons, Lady Gaga, Freddy Krueger, Poison Ivy and Khalessi, Mother of Dragons?



Only at the Bryce Downey & Lenkov Halloween party! The annual firm costume contest saw everything from zombies to the guy from the Geico Money Man. This year's winners were Lady Gaga and Poison Ivy. [Click here to view more photos on our Facebook page.](#)

Happy Halloween from Bryce Downey & Lenkov!

**Rich Lenkov & Rick Warner**  
**Scare for Charity**



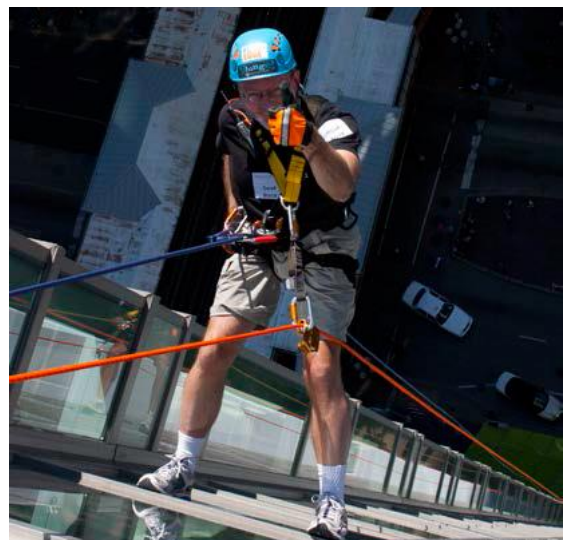
For the second year in a row, BDL attorneys Rich and Rick recently helped scare people at Fear City Haunted House. Fear City, one of the largest haunted houses in the Midwest, donates a portion of its proceeds to the National Multiple Sclerosis Society.

**Race Judicata 2013 5k!**



Every year, Bryce Downey & Lenkov employees participate in Race Judicata in support of Chicago Volunteer Legal Services Foundation. CVLS is the first and pre-eminent pro bono civil legal aid provider in Chicago. On 9/12/13, 33 runners from Bryce Downey & Lenkov participated in the race. Brian Hindman came in first for Team BDL with the fantastic time of 24:30!

**Geoff Bryce – Skyline Plunge**



Every year the Respiratory Health Association of Metropolitan Chicago offers the "Skyline Plunge" to those who are daring (or crazy) enough to rappel down a 27 story building. On 9/8/13, Geoff rappelled 27

stories to help raise awareness and funds for lung disease research, education and advocacy.

### **Team BDL - Ready to Hustle**



On 4/13/14, Team BDL will climb 94 floors to help raise awareness and funds for lung disease research, education and advocacy. Last year 19 members of our team participated in the Respiratory Health Association's Hustle up the Hancock. This year Team BDL is 24 strong!



## ILLINOIS RATES AT A GLANCE

EFFECTIVE DATES	MAXIMUM TTD	MINIMUM PTD and DEATH	STATE AVERAGE WEEKLY WAGE
7/15/03 to 1/14/04	1012.01	379.51	759.01
1/15/04 to 7/14/04	1019.73	382.40	764.80
7/15/04 to 1/14/05	1034.56	387.96	775.92
1/15/05 to 7/14/05	1051.99	394.50	788.99
7/15/05 to 1/14/06	1078.31	404.37	808.73
1/15/06 to 7/14/06	1096.27	411.10	822.20
7/15/06 to 1/14/07	1120.87	420.33	840.65
1/15/07 to 7/14/07	1148.51	430.69	861.38
7/15/07 to 1/14/08	1164.37	436.64	873.28
1/15/08 to 7/14/08	1178.48	441.93	883.86
7/15/08 to 1/14/09	1216.75	456.28	912.56
1/15/09 to 7/14/09	1231.41	461.78	923.56
7/15/09 to 7/14/10	1243.00	466.13	932.25
1/15/10 to 7/14/10	1243.00	466.13	922.45
7/15/10 to 1/14/11	1243.00	466.13	925.08
1/15/11 to 7/14/11	1243.00	466.13	930.39
7/15/11 to 1/14/12	1261.41	473.03	946.06
1/15/12 to 7/14/12	1288.96	483.36	966.72
7/15/12 to 1/14/13	1295.47	485.80	971.60
1/15/13 to 7/14/13	1320.03	495.01	990.02
7/15/13 to 1/15/14	TBA	TBA	TBA

EFFECTIVE DATES	MAXIMUM PPD
7/1/03 to 6/30/04	550.47
7/1/04 to 6/30/05	567.87
7/1/05 to 6/30/06	591.77
7/1/06 to 6/30/07	619.97
7/1/07 to 6/30/08	636.15
7/1/09 to 6/30/10	664.72
7/1/10 to 6/30/11	669.64
7/1/11 to 6/30/12	695.78
7/1/12 to 6/30/13	712.55
7/1/13 to 6/30/14	Posted in Jan. 2014

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

MINIMUM	SINGLE	MARRIED	1 DEP.	2 DEP.	3 DEP.	4+ DEP.
PPD before 2/1/06	80.90	83.20	86.10	88.90	91.80	96.90
TTD & PPD 1/15/08-7/14/08	200.00	*	230.00	260.00	290.00	300.00
TTD & PPD 7/15/08-7/14/09	206.67	*	237.67	268.67	299.67	310.00
TTD & PPD 7/15/09-7/14/10	213.33	*	245.33	277.33	319.00	330.00
TTD & PPD 7/15/10-7/14/13	220.00	*	253.00	286.00	319.00	330.00
TTD & PPD 7/15/10-1/14/12	220.00	*	253.00	286.00	319.00	330.00
TTD & PPD 7/15/13 to 1/15/14	TBA	TBA	TBA	TBA	TBA	TBA

\*number if children and/or spouse = number of dependents

## SCHEDULE OF INJURIES FOR DISABILITY IMPAIRMENT

**NOTE: New 2005 rates:**

◀ column indicates the rates for incidents that occurred **before July 19, 2005, and for incidents that occurred from November 16, 2005, through January 31, 2006.**

▶ column indicates the new rates for incidents that occur **on or after February 1, 2006, and for incidents that occurred from July 20, 2005, through November 15, 2005.**

BODY PART	WEEKS		BODY PART	WEEKS	
	◀	▶		◀	▶
Man as a Whole*	500	500	8c Disfigurements – Max	150	162
Eye	150	162	Thumb	70	76
Leg	200	215	Index Finger	40	43
Foot	155	167	Middle Finger	35	38
Arm	235	253	Ring Finger	25	27
Hand	190	205	Little Finger	20	22
Great Toe	35	38	Other Toes	12	13
Loss One Testicle	50	54			
Loss Both Testicles	150	162			
Hearing Loss One Ear Accident	50	54	Hearing Loss One Ear Occupational Disease	100	100
Hearing Loss Two Ears Accident	200	215	Hearing Loss Two Ears Occupational Disease	200	200

BODY PART	ADD # WEEKS	
	◀	▶
Leg Amputation – above the knee	25	27
Leg Amputation – at the hip	75	81
Arm Amputation – above the elbow	15	17
Arm Amputation – at the shoulder	65	70
Eye Enucleation	10	11

STATUTORY FRACTURES	MINIMUM AWARD
Vertebra	6
Facial Bone	2
Transverse Process	3
Skull	6
Nasal Bone	2

# SETTLEMENT DAY

## Close Dozens of Files NOW!

### WHAT?

We invite opposing attorneys and their clients for claims that have languished to meet and discuss settlement

### WHERE?

At the Illinois Workers' Compensation Commission in Chicago (*and by conference call if they are not local*)

### WHO?

Decision-makers from the insured and/or TPA arrive with settlement authority. Bryce Downey & Lenkov attorneys consult together with them to present our best offers

### WHEN?

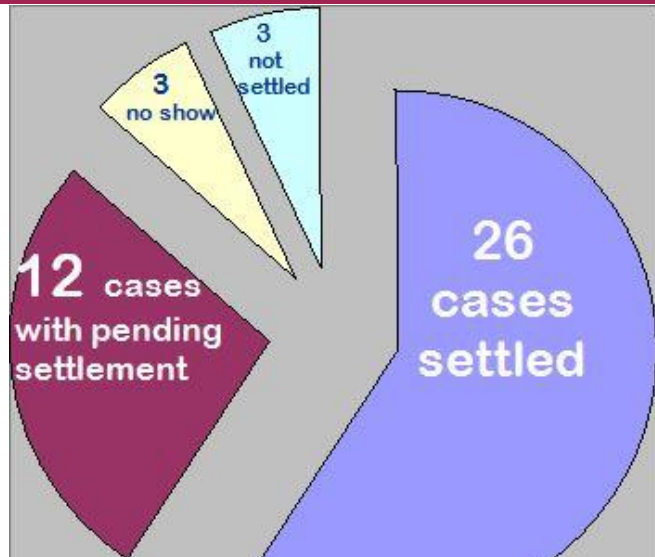
Two or three cases scheduled for each 30-minutes block between 9 am and 5 pm, over one or two days

### WHY?

From 3/1/12 – 3/1/13, we closed **99** cases through settlement days.

### RECENT SETTLEMENT DAY RESULTS

- We invited 90 attorneys to attend an insurance company's Settlement Day
- 44 cases were scheduled for discussion:
  - 26 settled within 30 days – 22 of those on that day
  - 12 pending settlement (some awaiting the end of treatment or MSA, etc.)
  - 3 did not settle
  - 3 did not show up



If you would like our assistance in closing your claims during settlement days

or through other innovative strategies, please contact

Rich Lenkov at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com)



**BRYCE DOWNEY & LENKOV**  
LLC

## Free Seminars!

*Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to a few people or dozens, to companies of all sizes and large national organizations. Among the national conferences at which we've presented:*

- Claims and Litigation Management Alliance Annual Conference
- Illinois Work Comp Forum
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- REBEX
- RIMS Annual Conference

### *Some of the topics we presented are:*

- *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*
- *Obtaining A Winning Medical Opinion*
- *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*

*If you would like us to come in for a free seminar, please email Rich Lenkov at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com). We can teach you a lot in as little as 60 minutes.*

Bryce Downey & Lenkov is a firm of experienced business counselors and accomplished trial lawyers who deliver service, success and satisfaction. We exceed clients' expectations while providing the highest caliber of service in a wide range of practice areas. With offices in Chicago, Crown Point, IN, Memphis and Atlanta and attorneys licensed in multiple states, Bryce Downey & Lenkov is able to serve its clients' needs with a regional concentration while maintaining a national practice. Our practice areas include:

Business Litigation  
Business Transactions & Counseling  
Corporate/LLC/Partnership  
Organization and Governance  
Construction

Employment and Labor Counseling & Litigation  
Entertainment Law  
Insurance Coverage  
Insurance Litigation  
Intellectual Property

Medical Malpractice  
Professional Liability  
Real Estate  
Transportation  
Workers'  
Compensation

*The attorneys at Bryce Downey & Lenkov are committed to keeping you updated regarding the latest developments in workers' compensation law in Illinois and Indiana. If you would like more information on any of the topics discussed above, or have any questions regarding these issues, please contact Rich Lenkov at 312.327.0032, Storrs Downey at 312.327.0007, or any member of the Workers' Compensation team. © Copyright 2013 by Bryce Downey & Lenkov LLC, all rights reserved. Reproduction in any other publication or quotation is forbidden without express written permission of copyright owner.*

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