BRYCE DOWNEY & LENKOV LLC

Indiana Workers' Compensation Newsletter

April 2014

Justin Nestor Published In March/April 2014 Building Indiana

Justin Nestor was published in the March/April 2014 edition of Building Indiana. Read the full article below.

Turning the Tables: Using an Employee's Own Actions as a Defense to Their Workers' Compensation Claim

Given the "no-fault" nature of workers' compensation, employers often face an uphill battle in defending employees' claims for accidental injuries allegedly sustained at work. With the abrogation of the "traditional" affirmative defenses, what options are left to defend these claims? Often, one only has to look at the employee's own actions to find a viable defense to their workers' compensation claim.

The basic principle underlying establishment of workers' compensation programs was that injured workers would receive benefits without

regard to fault, and employers in return would receive limited liability. Essentially, employees are entitled to benefits if the injury was caused by their employment, regardless of who caused the injury, and employers would be responsible for specific benefits in exchange for the elimination of lawsuits for negligence.

The key loss to employers with the enactment of "no-fault" workers' compensation systems was the loss of traditional negligence affirmative defenses like contributory negligence, comparative fault, and assumption of the risk.

Employers should look away from traditional methods of defending cases, i.e., the traditional negligence defenses, and look to investigating whether the injured employee's own actions can provide a viable defense to their workers' compensation claim. Two general categories of defenses based on an employee's own action which have evolved include an employee's personal risks unrelated to the employment and an employee's deviation from the course and scope of employment.

Personal Risks Unrelated to Employment

Some of the most difficult claims are those which the employee sustained injuries in the course of the employment (i.e., on the job and during working hours), but a question exists as to whether the accident and resulting injury arose out of the employment because the risk was purely personal to the employee or entirely unrelated to the work. The following are some examples of defense strategies available where an employee is injured by activities involving risk personal and unrelated to their employment.

A. Intoxication and Drug Use

In Indiana, a claimant's entitlement to workers' compensation benefits is barred if the injury or death was caused by the employee's intoxication or drug use. For an employee's intoxication to constitute a defense to their workers' compensation claim, there must be proof that the worker's intoxication was a substantial factor in causing the injury. Thus, while an employer raising the employee's intoxication as a defense has the burden of proving the intoxication was a substantial factor in bringing about the accident, death or injury, the employer is not required to prove the intoxication was the sole proximate cause of the accident. This defense will require scientific proof of intoxication and employers should also remember the burden of asserting this defense is on them.

B. Assaults and Fights Where Employee is the Aggressor

Generally, an injury to an employee as a result of an assault by a co-employee committed in the course of employment and arising out of some incident or condition of employment, is compensable as arising out of the employment.

On the other hand, an injury arising from an assault committed for purely personal reasons does not arise out of the employment and is not compensable. The fact that an assault was provoked by the injured employee (i.e., the aggressor) does not necessarily render the injury non-compensable although it may do so if the aggression amounts to willful misconduct. An investigation into the cause and circumstances of the assault is critical to determining whether the employee's injuries are compensable.

C. Acts for Purely Personal Benefit

Another area where an employee's own actions may bar their workers' compensation recovery is when they are performing acts purely for their own personal benefit. The key determination is whether the employee was injured by the nature of the work they are supposed to be performing or whether the injuries resulted from risks personal to the employee.

Generally, the rule for denying workers' compensation benefits for acts performed by employees solely for their own benefit does not apply to acts of personal convenience or comfort. Thus, acts that are reasonably necessary to the health and comfort of an employee while at work are incidental to the employment and are generally compensable. However, the activity must be reasonably foreseeable and incidental to the employment to entitle the employee to compensation.

Deviation from Employment

Another category of defenses which will preclude recovery is when the employee's actions deviate from the course and scope of their employment. But, when do an employee's own actions completely remove them from the course and scope of their employment?

A. Horseplay

Generally, injuries sustained by workers engaging in practical jokes or horseplay are not compensable under workers' compensation because the injuries do not arise out of the employment. Some states, like Indiana, have allowed employers to protect themselves from liability for certain hazards by adopting and publishing rules prohibiting such activities. *I.C. 22-3-2-8.*

B. Violation of Company Rules

Generally, violation of a safety rule or company policy may take the employee entirely out of the scope of their employment, and any resulting injury that occurs during the violation is not compensable. Likewise, an employee's violation of work safety rules will bar recovery where the violation constitutes willful misconduct. Of note, denying compensability for a violation of a safety rule is subject to proof of a causal relationship between the violation and injury.

Conclusion

The by-product of the "no-fault" nature of state workers' compensation systems makes it more difficult for employers to defend against claims where the employee's own actions should be taken into account in determining compensability. Generally, the defenses based on an employee's own actions will require proof of causation, i.e., that the conduct caused the claimed injury.

Employers should carefully review their existing employment and safety rules, and make sure that employees have actual knowledge of the rules. Further, a thorough investigation for all claims where the employee's own actions possibly caused or contributed to the accidental injuries should be immediately undertaken to determine whether a viable defense exists without reliance on traditional negligence defenses. Through the use of alternative defense theories and thorough investigation, employers and defense counsel can find ways to mitigate abrogation of the traditional common law defenses to defeat workers' compensation cases.

Recent Case Results

Indiana Workers' Compensation Case Results

- **Justin Nestor** secured a zero award on a case where the claimant sought in excess of $249,000.00 in medical, TTD and PPI/PTD benefits. Plaintiff alleged a work-related shoulder injury and stroke, both of which were fully disputed by the employer. Through the use of aggressive discovery and medical expert opinions, the Hearing Member's award denied Plaintiff's claim in its entirety. The case is currently on appeal to the Full Board.

- With the use of compelling surveillance, **Hannah Barnard** was able to negotiate a $37,000.00 settlement on a disputed PTD claim. The PTD exposure was in excess of $100,000.00, and there was no consideration for future medical, including pain medications and maintenance of Plaintiff's spinal cord stimulator which were projected to cost $500,000.00 over Plaintiff's lifetime, as part of the settlement.

- **Justin Nestor** settled a contested PTD claim for just over 10% of the original demand. Plaintiff claimed he was PTD and the original demand was $300,000.00. Through discovery and by pushing the case to mediation, the case eventually settled for $37,500.00.

- **Storrs Downey** and **Maital Savin** won an appeal of an Illinois Department of Employment Security (IDES) determination on behalf of their client. A former employee had filed a claim for unemployment benefits with the IDES, which was initially denied. The former employee appealed the decision denying benefits. At the appeal hearing, we presented evidence that showed that our client discharged the former employee for misconduct. Specifically, the evidence showed that the former employee violated the employer's rule requiring that he work his entire shift or get his supervisor's permission to leave early, and that such misconduct was willful and deliberate.

- **Storrs Downey** and **Jeffrey Kehl** obtained a favorable decision from the 7th Circuit affirming the summary judgment we obtained at the District Court level on an age and breach of contract action we have been defending for an employer.

  The United States Court of Appeals for the Seventh Circuit recently affirmed summary judgment in favor of one of our clients in a suit brought by a former vice president of the client claiming that he had been fired because of his age and in violation of an employment contract. Storrs Downey and Jeffrey Kehl successfully argued on appeal that his termination was not due to his age and that he did not have an employment contract.

Upcoming Seminars

- On **4/10/14,** Storrs Downey will moderate **"Non Workers' Compensation Issues That Every Workers' Compensation Practitioner Needs To Know"**

- On **6/3/14**, Rich Lenkov will speak at the 1st Annual Workers' Compensation Law & Practice seminar in Naperville. For more info and to register, Click Here

- On **8/20/14**, Rich Lenkov, Justin Nestor and Maital Savin will speak at the 69th Annual Workers' Compensation Educational Conference and 26th Annual Safety & Health

Conference in Orlando. For more info and to register, Click Here

- On **11/19/14**, Rich Lenkov & Jill Dulich, Senior Director of Marriott Claims Services, will present **"Top 10 Ways to Reduce Legal Expenses Now"** at the National Workers' Compensation & Disability Conference in Las Vegas. This seminar will give you real world, practical takeaways to mitigate your litigation expenses. Click Here for more info on the conference

FREE Webinars

Bryce Downey & Lenkov hosts monthly webinars on pressing issues and hot topics. Here is what some of our attendees say:

"Great webinar yesterday! Great case study examples and explanation of how they relate to our companies…"

"Thanks for making these so fun."

"…I actually just discussed your webinar in a meeting that our HR department had last week. We have several situations that your webinar really shined some light on so I wanted to also thank you for the opportunity to listen to the presentation. It was really helpful!"

Upcoming Webinars

- **4/24/14** – Rich Lenkov and Michael Milstein will present **"Permanent Partial Disability."** Click Here to register

- **5/7/14 –** Storrs Downey and Maital Savin will present **"Risky Business: Drugs, Sexual Orientation And Guns In The Illinois Workplace."** Click Here for more info and to register

- **5/20/14** – Rich Lenkov and Jeanmarie Calcagno will present **"Workers' Compensation Negotiation Strategies."** Click Here for more info and to register

If you would like a copy of any of our prior webinars, please email Jason Klika at jklika@bdlfirm.com. Recent webinars include:

- **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**
- **Employment Law Issues Every Workers' Compensation Professional Needs To Know**

Recent Seminars

- On **2/13/14,** Bryce Downey & Lenkov hosted the CLM Greater Chicago Chapter's educational & networking event, **"Top 10 Things You Need To Know About CMS."** The event was followed by a whiskey & food pairing

- On **2/12/14,** Justin Nestor presented **"Turning the Tables: Using an Employee's Actions as a Defense to Their Workers' Compensation Claim"** at the Beyond Safety 2014 Expo in Merrillville, IN

- On **12/4/13,** Rich Lenkov presented **"Workers' Compensation Update"** with Ed Hart at the Willis Insurance 2014 Forecast for the New Year

News from the Board

New Form Added to Portal

Notice: The Report Of Temporary Total Disability (TTD)/Temporary Partial Disability (TPD) Termination - SF 38911 form is now available via the Board's Forms Portal system. As usual, we will allow 90 days for the public to test the system and identify any issues prior to mandating adoption. Assuming no major issues are identified with this electronic replacement, we will cease processing of the paper-based form on Monday, June 2, 2014.

Victim's PPI Settlement Amount Not Recoverable via Restitution in Criminal Conviction of Assailant

In *Gonzalez v. State*, --- N.E.3d ---- (Ind. Ct. App. 2014), the Indiana Court of Appeals held that the $41,200.00 permanent partial impairment settlement paid to State correctional officer Rodney Gahl after he was beaten by an inmate could not be recovered via restitution by the State's workers' compensation TPA, JWF Specialty Company.

Citing to *Talas v. Correct Piping Co., Inc.*, 435 N.E.2d (Ind. 1982), the Court explained that, "[a] PPI payment is compensation for an injured employee's permanent loss of physical function(s) rather than for an inability to work. Gahl, himself, could not have sought restitution at the criminal proceeding for loss of physical function, as it does not encompass already-incurred lost wages or medical expense. Accordingly, JWF cannot recover the PPI payment via its status as a surrogate victim."

Inmate, Ruben Gonzalez, had been ordered to pay JWF more than $257,000.00 in restitution by the trial court for benefits paid to Gahl for medical bills, lost wages and a PPI settlement. The Court of Appeals remanded the matter to the trial court with the direction to reduce the restitution award by $41,200.00, the amount of the PPI settlement paid.

Practice Tip:

Although a rare situation, where the employer would be seeking recovery of its lien in the context of a criminal proceeding, it is possible to do so. However, any such recovery will not include payment of a PPI rating.

Denial of Benefits Reversed After Full Board Found Contrary to Parties' Stipulation

The Indiana Workers' Compensation Board's denial of an amended claim by Plaintiff's widow was reversed by the Court of Appeals when the Board's findings were contrary to an allowed stipulation of fact by the parties. In *Thompson v. York Chrysler*, 999 N.E.2d 446 (Ind. Ct. App. 2013), Sally Thompson filed an Application for Adjustment of Claim seeking benefits on behalf of her husband, Dennis, a service technician at a car dealership who died from unrelated causes, after making a claim for injuries sustained during an altercation with a coworker.

Although the facts indicated that Thompson's coworker approached him twice on August 2, 2007, the parties stipulated there was only one

altercation prior to Thompson seeking medical care for his alleged injuries. The Full Board determined that Thompson did not meet her burden to show that her husband's injuries arose in the course of his employment finding that, although "[t]he initial exchange between the parties occurred over parts and the evidence is equivocal on the relationship to employment. The later exchange clearly did not occur in the course of employment and stemmed from no duty owed the employer."

The Court of Appeals reversed and remanded noting that "the Board could not find there were two altercations because the parties stipulated there was only one." The Court further found that "[t]he Board's parsing of the altercation into the 'initial exchange' and the 'later exchange' was improper as a matter of law because the 'Board cannot permit a stipulation to stand and then find contrary to it.'"

***Practice Tip**:*

The parties must be careful as to the facts, issues or evidence that is being stipulated to as the Court of Appeals made it clear that the Board cannot make findings contrary to any such stipulations.

Indiana Adopts Medical Licensing Rules to Combat Pill Mills

Governor Mike Pence recently signed Senate Enrolled Act (SEA) 246 into law. The law was passed in response to a similar bill passed in Kentucky, which reportedly led to southern Indiana absorbing newly restricted pain clinics leaving Kentucky. Among other things, SEA 246 required the Medical Licensing Board (MLB) to adopt emergency and permanent rules providing protocol and standards for those who prescribe controlled substances.

The MLB adopted its Emergency Rule on October 24, 2013, with an effective date of December 15, 2013. The Rule applies only to physicians prescribing opioids to patients for chronic pain management under certain circumstances.

If a patient has been prescribed for a period longer than three consecutive months, either:

(1) more than sixty opioid-containing pills a month; or,
(2) a morphine equivalent dose of more than 15 milligrams per day, application of the Rule is required.

Section 3 of the Rule provides the following exceptions:

- Patients with a terminal condition
- Residents of a health facility licensed under IC 16-28.
- Patients enrolled in a hospice program
- Patients enrolled in an inpatient or outpatient palliative care program of a licensed hospital or hospice

However, the period of time a patient who was, but no longer is a health facility resident or patient as described in the above exceptions, shall be included in the three consecutive month calculation.

Under the Emergency Rule, physicians with patients to whom the Rule applies are required to:

- Perform an evaluation and risk stratification of the patient as outlined by the Rule.

- Discuss potential risks and benefits of opioid treatment as well as proper medication use.
- Inform patients about alternative forms of pain treatment.
- Run patient's names through the state's prescription monitoring program at least once per year.
- Conduct an initial and annual confirmatory drug monitoring test on the patient.
- Refrain from prescribing opioids to patients without periodic scheduled visits.

There are additional requirements on the physician if a patient's opioid dose reaches a morphine equivalent dose of more than 60 milligrams per day. A face-to-face review of the treatment plan and patient evaluation that includes consideration of a referral to a specialist must be scheduled and, if the physician elects to continue providing a dose of more than 60 mg. per day, he must develop a revised assessment plan which includes an assessment of increased risk for adverse outcomes, including death.

Although the Rule applies only to physicians, SEA 246 additionally requires similar licensing boards to adopt similar regulations. The law requires the MLB to adopt a permanent rule before November 1, 2014.

Court of Appeals' Refresher on PTD Burden of Proof

In *Keith v. Indiana Bell*, 93A02-1308-EX-758, 2014 WL 888982 (Ind. Ct. App. Mar. 6, 2014), the Indiana Court of Appeals addressed the claimant's PTD claim finding he had not met his burden of proof. The decision was not published, so it cannot be cited as precedent, but it does offer a good reminder of the burden shift and evidence the Board will look to in determining whether a claimant is PTD.

After suffering a compensable injury, Eric Keith required multiple back surgeries and was placed at MMI after receiving a permanent spinal cord stimulator. Keith disagreed with the MMI finding and was granted a Board IME that diagnosed him with chronic thoracic syndrome and chronic lumbar radicular syndrome. At the Board examiner's recommendation, Keith received additional care, was placed at MMI, and given a 30% whole person PPI rating which noted he was not capable of returning to medium or heavy work.

Keith next sought consultation from a vocational rehabilitation specialist who interviewed him and reviewed only the opinions of the doctor who issued his PPI rating. He then filed an Application for Adjustment of Claim seeking a PTD determination. Keith claimed that he had not sought employment because he could not work for more than 1-2 hours at a time and could not sit for longer than 45 minutes. Keith admitted that no doctor opined he could not work, that he had graduated high school, completed fifty-two hours of college credit, and held a certificate of completion from Ivy Tech in body and mechanical work. At the Single Hearing Member level, Keith was awarded a 30% whole person PPI and it was found that he had not met his burden of proving that he was PTD, which was affirmed by the Full Board.

Keith appealed arguing that the Board's determination was not supported by the evidence and that the Board should not have discounted the opinion of his vocational specialist. In affirming the Board's decision, the Court of Appeals found that Keith did not meet his burden of proof as his testimony regarding his education and the reports by his examining physicians did not support his claim that it would be futile to search for work in light of his condition. Unable to reweigh the evidence, the Court refused to give greater weight to the opinion of Plaintiff's vocational specialist and found that there was sufficient evidence to support the Board's conclusion.

Practice Tip:

The Indiana Supreme Court's decision in *Perez v. U.S. Steel Corp*, 428 N.E.2d 212 (Ind. 1981), is critical to remember when faced with a PTD claim. In that case, the Court held that it is the injured employee's burden to prove that he cannot carry on reasonable types of employment in order to establish a total disability. After the claimant has established the degree of physical impairment, coupled with other facts such as the claimant's capacity, education, training, or age, and has established that she has attempted unsuccessfully to find work or that it would be futile to search for work in light of the impairment and other characteristics, the burden of producing evidence that reasonable employment is regularly and continuously available then rests on the employer. *Walker v. State, Muscatatuck State Dev. Ctr., 694 N.E.2d 258 (Ind. 1998).* An employer and their carriers should thoroughly investigate the claimant's background and secure all available evidence before retaining a vocational expert to refute a PTD claim.

PPI and TTD are not Mutually Exclusive in PTD case

In *Moore v. Jerrell*, the claimant was an employee of a trucking company who sustained a burn injury to 51% of his body when his clothing caught fire. *Moore v. Jerrell,* 2014 WL 522740 (Ind.App. 2014). As a result, the claimant sustained amputations of one leg above the knee and the other below the knee, as well as loss of use of the left arm and several other deficits. The parties agreed that the claimant was permanently and totally disabled. The claimant's TTD rate was $166.75 a week and he was also receiving an extra $160.00 a week to compensate his mother for providing some of his home health care. The claimant reached MMI approximately eleven months after the date of injury, but required home health care for the remainder of his life. The employer continued TTD payments as a credit against any PTD/PPI award, until two main disputes arose at that time. First, whether the employer was entitled to a credit on PPI for the weekly payments made at the TTD rate retroactive to the date of injury or just to the date of MMI. Second, whether the employer could pay the PPI amount of $250,000.00 in weekly installments at the TTD rate or must pay at a rate to conclude the payments inside the 500 week limit.

At the Single Hearing Member level and then at the Full Board Hearing, found that the claimant was entitled to an award of $250,000.00 for PPI and that the award was to be paid over 500 weeks commencing from the date of injury. The

Board further found that the employer was entitled to a credit for payments made at the TTD rate after the date of MMI, but not before.

The Court of Appeals affirmed the findings of the Full Board, noting that the Board was within its discretion to order a PPI award on a 500 week basis. This was to avoid placing an undue burden on the claimant, in that payment of the PPI award at the TTD rate would have taken approximately twenty-eight years. The court also upheld the findings on TTD noting that nothing the Act prohibited the claimant from receiving both eleven months of TTD payments (up to the point of MMI), in addition to an award for PPI.

***Practice Tip*:**

This decision was not marked for publication and therefore cannot be cited as precedent. However, the decision indicates that the Board may limit PPI payments in the same manner as TTD/PTD payments so that the employee receives the full amount of the award within 500 weeks. Furthermore, employees may also recover a period of TTD in addition to a PPI award, even in situations where the PPI award far exceeds the amount the claimant would have otherwise been permitted to recover in PTD payments.

Consequences of Unauthorized Care

The case of *Harrold v. L&D Mailmasters* involved a claimant who sustained injuries to the back and hip while working on employer's conveyor belt line moving newspapers, 2014 WL 605478 (Ind.App 2014). The injury was accepted as compensable and TTD and medical benefits were paid. The claimant treated with the authorized treating physician, who recommended physical therapy and epidural steroid injections. The claimant later refused further treatment as he was afraid of the injections. Subsequently, the claimant went to her own unauthorized physician who also recommended physical therapy and injections. The claimant again refused injections, but did participate in physical therapy. Thereafter, the authorized physician placed employee at MMI.

An Application was filed with the Board and a Board IME was appointed. The Board IME physician also found employee to be at MMI, given the refusal of injections. Approximately, one year later the claimant then went to a second unauthorized physician, who agreed with the prior recommendations for injections.

The claimant then returned to the original authorized physician, for an unauthorized appointment, and informed him that the second unauthorized physician recommended surgery. However, there was no such recommendation. The original authorized treating physician performed a spinal fusion on the claimant, who then claimed the fusion surgery under the workers' compensation claim.

At hearing, the claimant argued that the employer should be responsible for the surgery because the injury was accepted as compensable and the original authorized physician performed the surgery. The Board, first by the Single Hearing Member and then Full Board Hearing, found that the claimant had reached MMI as of the Board IME and all treatment received after that point was unauthorized, and not compensable under worker's compensation.

On appeal the Court of Appeals upheld the findings of the Full Board, finding that the employer did not fail to offer adequate care and that the claimant failed to utilize all treatment offered by the employer. The claimant then sought treatment on her own affording no opportunity to the employer or to the Board to authorize said treatment. As such, the Court found that the surgery was not compensable under the Indiana Worker's Compensation Act.

***Practice Tip*:**

This decision was not marked for publication and therefore cannot be cited as precedent. However, the decision indicates that before unauthorized treatment is deemed compensable, the employee should first avail themselves to the treatment offered by the employer and/or Board IME, and then seek authorization from the employer and/or Board. If these steps are not taken, then employee is at risk for being liable for any unauthorized treatment obtained.

IME MMI Confusion May Soon Be Resolved by Board

It is not uncommon that a Board IME physician opines that a Plaintiff has reached maximum medical improvement, but nevertheless recommends further diagnostic testing, physical therapy, pain management, or other treatment. In those instances, it is common practice for defense practitioners to treat those decisions as an MMI release, or to seek clarification from the IME doctor.

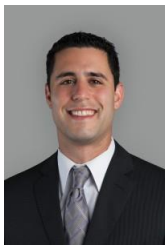
The Worker's Compensation Board is discussing this issue and whether it warrants formulating a single, coherent policy. It seems likely that the Worker's Compensation Board will find in all such situations in which the IME physician opines that a Plaintiff has reached MMI, but orders additional testing or treatment, that such MMI releases are illusory and Plaintiff has not yet reached MMI. Of course, if the physician indicates clearly that such care is palliative, or unrelated to the work injury, the report will function as an MMI determination.

Recent Awards & Accolades

The following attorneys were named 2014 Leading Lawyers:

Geoff Bryce
Storrs Downey
Terrence Kiwala
Rich Lenkov
Terrence Madden

This distinction has been earned by **fewer than 5% of all lawyers** licensed to practice law in Illinois.



Michael Milstein has been selected to the 2014 Illinois Rising Stars list. This is an exclusive list, recognizing no more than 2.5 percent of the lawyers in the state.

Rich Lenkov was invited to join the Workers' Compensation Defense Institute advisory board (WCDI). The WCDI is a group of top law firms that commit themselves to representing employers and carriers in the workers' compensation field. Members concentrate on delivering timely and effective claim resolution to ensure great service.

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

Bryce Downey & Lenkov: Growing!

We are pleased to announce the addition of Suzanne Kleinedler and Daniel Cooper to our Indiana team. Suzanne concentrates in Indiana workers' compensation and Daniel does both workers' compensation and casualty work. They are both located at our Crown Point office.

Giving Back

Team BDL - Ready to Hustle

On 3/28/14, Team BDL loaded up on carbs and talked strategy at the Paris Club Bistro and Bar. 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!

Team BDL Takes the Polar Plunge!

Lake Michigan may have been over 85% covered in ice but that didn't stop Team BDL

from taking a quick dip! On 3/2/14, 7 brave souls took the frigid Polar Plunge. Wearing polar bear hats and gripping their trusty plungers, the "Polar Plungers" (pun intended) braved wind chills of minus 12 and water a bone-chilling 32 degrees. The BDL Polar Plungers raised over $3,000 for Chicago Special Olympics and were even featured on GapersBlock.com. Be sure to follow us on Facebook to see more of Team BDL.

Did you know? Bryce Downey & Lenkov regularly issues several practice area newsletters. If you would like a copy of any of the below articles from other BDL newsletters, please email our Marketing Coordinator, Jason, at jklika@bdlfirm.com.

General Liability
- Illinois Court of Appeals Broadens Distraction Exception to Open and Obvious Doctrine
- Two Illinois Appellate Courts Reach Different Conclusions in Accumulation of Ice Cases

Labor & Employment Law
- US Supreme Court Defines "Supervisor" For The Purposes Of Employment Discrimination And Harassment Litigation
- Timing Of Terminating Injured Worker Important In Retaliatory Discharge Cases

Corporate & Construction
- Trade Secrets: If It's Not A "Trade Secret," How Do I Protect It?
- Federal, State And Local Incentives Available For Businesses

Contributors to the April 2014 Workers' Compensation Newsletter

Bryce Downey and Lenkov attorneys who contributed to this newsletter were Storrs Downey, Justin Nestor, Hannah Barnard, Suzanne Kleinedler and Daniel Cooper.

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
- 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:

- *Employment Landmines in Workers' Compensation*
- *Indiana: Using an Employee's Action as a Defense, Terminating TTD Benefit and Evaluation of PPI*
- *Indiana Workers' Compensation 101 and Indiana Workers' Compensation Forms*
- *Comprehensive Workers' Compensation Subrogation in Illinois and Indiana*
- *Overview of Illinois and Indiana Workers' Compensation Act and Practice*
- *Indiana Workers' Compensation Forms, PPI and Assorted Topics*
- *Turning the Tables: How to Use an Employees Own Actions as a Defense to Their Indiana Workers' Compensation Claim*
- *Curbing Litigation Expenses*
- *The Top Ten Employer Mistakes*
- *Expert Retention and Usage*
- *Possible Termination of Injured Worker: Employer's Rights and Obligations*

If you would like us to come in for a free seminar, please email Storrs Downey at sdowney@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 Indiana Workers' Compensation law, please contact Justin Nestor at (219) 488-2589; jnestor@bdlfirm.com, or Hannah Barnard at (219) 488-2591; hbarnard@bdlfirm.com, or any other member of our Workers' Compensation team.

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