



Workers' Compensation Newsletter September 2014

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The Top 5 List: Top Five Things Defense Counsel Tells You That You Should Question

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department



My May 2014 Top 5 list dealt with things that claimant's counsel tells you that you should question.

Here are the top 5 things you should question that your own defense counsel tells you:

1. "There Is Nothing Going On In This File"

This is an answer you should never accept. If your counsel is doing their job, they

should always be aggressively moving a case forward. Even if a claimant is still treating, your attorney should be proactively managing treatment to ensure that it is progressing as expected and moving the case to closure.

2. "Your Chances Of Success Are 50/50"

"Your chances of success are 50/50." You are paying your attorneys good money for their expertise. While it's impossible to give these percentages with exact certainty, a capable attorney should be able to give you a more accurate estimate than 50/50.

3. "Arbitrator ____ Is Assigned To This Case, Therefore It's A Winner/Loser"

It's very rare that the assignment of a particular arbitrator affects the case one way or the other. The days of arbitrators being very liberal or very conservative are over, which is a good thing. For the most part, all arbitrators decide cases on the merits, regardless of their background, perceived political affiliation or other factors.

4. "This Case Is Not Ready To Settle"

There is no such thing as a case that's not ready to settle. Any case can settle at any time with some motivation, ingenuity and thinking outside the box. There is no wrong time to settle a claim.

5. "This Is Illinois After All"

This is probably my least favorite thing to hear from any defense counsel. Illinois does

have a reputation as being one of the more difficult states for employers. That doesn't mean that you should throw up your hands and accept defeat. We successfully win cases every day in Illinois. You can too.

As always, this is not an exhaustive list and we would like your list. If you email them to me at rlenkov@bdlfirm.com, I will publish them in our October newsletter.

Bryce Downey & Lenkov at WCDI

On 8/20/14, Rich Lenkov, Justin Nestor and Maital Savin presented at the 69th Annual Workers' Compensation Educational Conference and 26th Annual Safety & Health Conference in Orlando. This was the first year that the multi-state conference included Illinois. As a leader in our field we were the only Illinois firm given the honor of speaking.



BDL also co-hosted a pool party and live band karaoke at the conference. Both events were great opportunities to network and collaborate with leading attorneys and workers' compensation professionals from across the nation.

CLM Networking BBQ



On 8/14/14, CLM Greater Chicago Chapter hosted a networking BBQ. Attendees mingled while enjoying tender brisket and spun the sponsor wheel to win prizes. One lucky winner took home a Hawks sweater! We would like to thank our sponsors for making this event possible.



Upcoming Seminars

- On 9/15/14, Edward Jordan will present **“Closing Difficult / Complex Cases”** in Naperville, IL
- On 10/1/14, the Foodservice Industry Risk Management Association (FIRMA) will hold a conference in Fullerton, CA. For more info and to register, [Click Here](#)
- On 10/17/14, Bryce Downey & Lenkov will present at a multi-state breakout session regarding effective workers' compensation claims handling in Dallas, TX. For more info and to register, [Click Here](#)
- On 10/24/14, Rich Lenkov, Robert Baer and Grant Dixon will present **“Point/Counterpoint: Key Workers' Compensation Issues from the Perspective of an Employee Attorney and an Employer Attorney”** at the CLM 2014 Workers' Compensation Conference in Costa Mesa, CA. For more info and to register, [Click Here](#)
- On 11/13/14, the CLM greater Chicago chapter will be hosting an educational and networking event. Stay tuned for more details
- 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. For more info and to register, [Click Here](#)



NOVEMBER 19 - 21, 2014
MANDALAY BAY | LAS VEGAS

For 22 years, the National Workers' Compensation and Disability Conference® (NWDC) has provided the best workers' compensation and disability management training available — attracting thousands of industry professionals each year.

Top 10 Ways To Reduce Your Legal Expenses NOW

Join Marriott Claims Services Senior Director **Jill Dulich** and Bryce Downey & Lenkov Partner **Rich Lenkov** at the 23rd Annual National Workers' Compensation and Disability Conference & Expo as they teach you how to reduce—and in many cases—eliminate legal expenses.

- Force vendors to stick to a budget
- Analyze legal bills
- Recognize appropriate trial strategies
- Cut through legal jargon

And many more practical tips!



FREE Webinars

Bryce Downey & Lenkov hosts monthly webinars on pressing issues and hot topics.

Here is what past attendees have had to say:

"A useful look at the types of work comp back claim exposures and review of available defenses."

- 8/25/14

"It was very informative and I like how you have doctors discuss the topics and provide actual case studies."

- 8/25/14

"Everything about the presentation was well thought out and presented very well."

- 8/25/14

"Interesting topic as I handle a lot of back injuries."

- 8/25/14

"I liked the case law examples to back up the medical that was covered. Giving the real life claim examples help make training 'stick.'"

- 8/25/14

On 9/30/14, Rich Lenkov and Jessica Rimkus will present an informative webinar regarding recent case law. [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 Pain Claims: A Medical & Legal Perspective
- Defending Back Pain Claims: A Medical & Legal Perspective

Credit Where Credit is Due

By: [Jorge Roveló](#)



The recent case of *Swetland v. Illinois State of/Pinckneyville Corrections Center*, 22 ILWCLB 96 (IL. W.C. Comm. 2014), clarifies that credit for a previous settlement or award will only apply if a later claim results in a greater level of permanency.

Several years before the instant case, Petitioner injured his left knee and settled his claim for 25% loss of use of his left leg. Several years later, Petitioner injured his left knee while working as a correctional officer. At trial, Petitioner testified that he experiences difficulty climbing stairs and playing with his children, that his left knee pops and swells and that he takes over-the-counter medication daily. The arbitrator awarded 5% loss of use of the left leg. However, because of Petitioner's previous settlement of 25% of the left leg, the arbitrator credited that prior settlement against this award and awarded no permanency.

On review, the Commission ruled that the arbitrator erroneously applied the credit from the previous settlement to void the new award. The Commission highlighted that following the arbitrator's reasoning would result in the "patently absurd" determination that the Petitioner's permanency of his leg is less now than it was after the earlier accident. Therefore, the Commission ruled that credit is only properly applied where the present permanency is greater than the permanency at the time the earlier settlement or award was entered. In this case, the Commission modified the decision and awarded Petitioner 30% loss of use of the left leg, against which the previous 25% award was

credited, which resulted in a total award of 5% loss of use of the left leg.

Practice Tip:

Credit for a previous settlement or award will only be applied if a subsequent claim results in a greater level of permanency. As the Commission did in the *Swetland* case, this creates the potential for permanency to be determined not just based on the current level of disability but also based on consideration of the net effect of any applicable awards or settlements to be credited.

Please contact us with any questions you may have regarding credit issues.

Rolling Into Employment

By: [Rick Warner](#)



In *Bacheldor v. Walmart*, 22 ILWCLB 88 (IL. W.C. Comm. 2014), Petitioner was attempting to sit on a rolling chair, rolling on a smooth floor, with no mats or carpeting. The chair rolled away from her causing her to fall. The Commission held that the injuries “arose out of and in the course of her employment.”

The arbitrator cited *Poole v. Cook County Medical Examiner*. In *Poole*, the petitioner fell when his chair rolled away from him when he reached for a file. There, the Commission found that “wheeled, swiveling office chairs are less stable than most chairs and that one who sits at work in such a chair on a linoleum surface is exposed to risks greater than that to which a member of the public is exposed.”

Practice Tip:

Employers should ensure that mats are placed below all rolling chairs when possible to avoid claims such as these. Additionally, each incident should be carefully investigated, no matter how seemingly routine or unlikely.

Please contact us with any questions you may have regarding instituting preventative safety measures and investigating claims.

Giving Back

Race Judicata 2014



Each year, Bryce Downey & Lenkov proudly sponsors Chicago Volunteer Legal Services' (CVLS) Race Judicata 5K Race. In addition to our sponsorship, this year, Bryce Downey & Lenkov will be sponsoring the wine tent. Team BDL is 45 strong this year and will be joined by our friends at Chicago Legal Prep, Chicago's first and only legal-themed charter high school, and NIU college of Law.

Check out our 2014 Team BDL shirts:



Meet the Team

Rick Warner



I grew up in Aurora, Illinois, and have lived most of my life in the Chicagoland area. I've played the violin since I was two years-old.

I attended Marmion Military Academy, an all-male college preparatory high school. I then attended Illinois State University in Normal, Illinois, where I played violin in the orchestra and was in a rock and roll band. After college, I graduated from John Marshall Law School.



Playing guitar at a bar on St. Patrick's day

While in law school, I clerked at a large Chicago-based defense firm. Since passing the bar exam, I've practiced in the areas of workers' compensation, insurance, medical malpractice, entertainment, construction, real estate, employment and municipal

liability law. I have been a litigator with Bryce Downey & Lenkov for over two years, concentrating on workers' compensation and general litigation/insurance defense.

A little over 1 ½ years ago, my wife and I got married in Key West, Florida. We currently live in Naperville with our two dogs, Lucy and Betty, and are expecting our first child in November. I like to spend my free time riding my motorcycle, playing golf, practicing guitar and violin, traveling, reading and spending time with family and friends.



My wife and I riding up California State Route 1 near Santa Barbara

Meet Our Clients



Jeff Strege,
Senior Director of Risk
Management,
CEC Entertainment

1. What are your responsibilities?

As Senior Director of Risk Management, I am responsible for the company's safety, security, insurance and claims programs.

2. Where are you originally from and where are you currently based?

I am originally from Minneapolis, Minnesota. My family moved to the Houston area the summer before I started high school. I adjusted workers' compensation, general liability, and auto claims in Houston, Texas for about eight years before transitioning into corporate claims and risk management with SYSCO Corporation in 1993. I am currently based at CEC's Support Center in Irving, Texas.

3. What is the biggest challenge facing your workers' compensation program?

We have a very solid workers' compensation program at CEC. We operate in almost all 50 states, so keeping abreast of changing statutory and case law in each jurisdiction can sometimes be challenging. I'm thankful that we have excellent defense attorneys in each venue to assist us in this endeavor.

4. What is your biggest pet peeve about Illinois workers' compensation?

My biggest pet peeve about Illinois workers' compensation is the volatility and expense of litigation in Illinois, especially when we are forced through litigation to offer a settlement above the awarded PD rate to claimants who have successfully returned to work for CEC.

5. What do you do for fun when you're away from work?

I am married with two children. Our oldest will be a freshman at Concordia University Texas this Fall, and our youngest son is a junior in high school. I enjoy supporting my kids in their activities. My wife and I love to two-step to Texas country music, travel and dine out. I'm also dabbling with a blog with tremendous interest but still finding my way at kellertxdad.com.



ILLINOIS RATES AT A GLANCE

EFFECTIVE DATES	MAXIMUM TTD	MINIMUM PTD and DEATH	STATE AVERAGE WEEKLY WAGE
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 1/14/14	1331.20	499.20	998.40
1/15/14 to 7/14/14	1336.91	501.34	1002.68
7/15/14 to 1/14/15	1341.07	502.90	1005.80

EFFECTIVE DATES	MAXIMUM PPD
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	721.66
7/1/14 to 6/30/15	Will be posted 1/15

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.
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 7/15/13-1/14/14	220.00	*	253.00	286.00	319.00	330.00
TTD & PPD 1/15/14-7/14/14	220.00	*	253.00	286.00	319.00	330.00
TTD & PPD 7/15/14-1/14/15	220.00	*	253.00	286.00	319.00	330.00

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

Advertising Material. The attorneys at Bryce Downey & Lenkov constantly strive to keep you updated regarding the latest developments in Illinois and Indiana workers' compensation law. If you would like more information on any of the topics discussed above, or have any questions regarding these issues or any aspect of Illinois and Indiana Workers' Compensation Law, please contact Rich Lenkov at 312-327-0032 or rlenkov@bdfirm.com

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



BRYCE DOWNEY & LENKOV
LLC

Advertising Material

* Past performance is not a guarantee or indicator of future results.

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.

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 2014 by Bryce Downey & Lenkov LLC, all rights reserved. Reproduction in any other publication or quotation is forbidden without express written permission of copyright owner. The content of this newsletter has been prepared by Bryce Downey & Lenkov LLC (the Firm) for informational purposes and does not constitute legal advice. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. You should not act upon this information without seeking advice from a lawyer licensed in your own state or country.

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