



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter December 2014



### THE TOP 5 LIST

## Top 5 Qualities To Look For In A Defense Firm

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation  
Department

This month, we have a special top 5 list. **Jim Troester**, J.D., Claims & Litigation Manager at Frankenmuth Insurance Company, recently shared with us the top 5 qualities he looks for in a defense firm. Here is his list with our commentary:

### 1/Integrity

Reputation matters. As with any other representative of your business, your selection of counsel is a reflection of your business. Retaining lawyers with honest reputations will go a long way, not just in terms of your overall reputation, but particularly with judges, arbitrators and mediators.

### 2/Knowledge

It seems obvious, but it's important that you retain counsel with the right knowledge and experience to obtain excellent results in your case. Ideally, you should retain an attorney who specializes in the relevant area of law.

### 3/Preparedness

Being smart is not enough. Counsel must be prepared to obtain excellent results for you. Hire counsel that is prepared, whether it's for a conference call, settlement negotiations or trial.

### 4/Likeability

Let's face it, dealing with unwanted litigation only takes you away from your real work. Working with likeable defense counsel can help make the process a little bit more tolerable and perhaps even a little fun.

### 5/Passionate Enthusiasm

Look for counsel that will advocate aggressively on your behalf. Counsel that understands that your file is not just another case, but has a real impact on your business, is more likely to achieve extraordinary results for you.

As always, we would like to hear your thoughts. What qualities do you look for when retaining counsel? Email me at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com) and we'll publish your comments in our next newsletter.

[Page 2](#)

Legal Faceoff – WGN PLUS

[Page 3](#)

Commission News

[Page 4](#)

Giving Back

[Page 6](#)

Meet Our Clients

23<sup>rd</sup> Annual National Workers'  
Compensation Disability Conference  
& Expo

Upcoming Seminars

Intoxication Defense Up In Smoke

"Raining" In Liability For Slip And  
Fall Injuries

Bryce Downey & Lenkov is Growing

[Page 5](#)  
Meet the Team

Free Webinars

## Legal Faceoff – WGN PLUS



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

Our most recent episode was released on 12/8 and you can listen to it here: <http://wgnplus.com/category/legal-face-off/>

Please like us on [Facebook](#) and follow us on [Twitter](#). Email [legalfaceoff@gmail.com](mailto:legalfaceoff@gmail.com) to interact with the show. Send us your questions and we will answer them on air—nothing is off limits.



## 23rd Annual National Workers' Compensation Disability Conference & Expo

On 11/19/14, Rich Lenkov and Jill Dulich presented "Top 10 Ways to Reduce Legal Expenses NOW" at the 23rd Annual National Workers' Compensation and Disability Conference & Expo in Las Vegas. If you would a copy of the PowerPoint, email Rich at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com).



## Upcoming Seminars



- On **1/19/15**, **Rich Lenkov** will present "Trial Preparations" in Danville, IL for [CEU Institute](#)
- On **1/22/15**, the CLM Greater Chicago Chapter hosts "What Are They Thinking: Secrets Revealed From Risk Professionals." For more information, [Click Here](#)
- On **2/5/15**, **Rich Lenkov**, **Sherri Johnson** (Senior Director of Corporate Claims, Interstate Hotels & Resorts) and **Cameron Shirley** (Director of Global Claims and Litigation Management at Starwood Hotels & Resorts) will present "General Liability and Workers' Compensation Issues Unique to the Hotel Industry" at the CLM 2015 Retail, Restaurant & Hospitality Committee Conference in Orlando, FL. For more info, [Click Here](#)
- On **3/25/15**, **Rich Lenkov** will present "Negotiation Skills That Every Workers' Compensation Professional Needs To Know" at The CLM 2015 Annual Conference in Palm Desert. For more information, [Click Here](#)
- On **6/9/15**, **Rich Lenkov** will present "Workers' Compensation Fraud: What You Can Do About It" at the SEAK 35th Annual National Workers' Compensation and Occupational Medicine Conference in Chicago. For more information, [Click Here](#)

# Commission News

## Arbitration Territory Changes

Zone 4 now consists of New Lenox, Ottawa and Kankakee, a new site. Zone 6 now consists of Geneva, Wheaton and Elgin, another new hearing site.

All Chicago cases that were assigned to Zone 6 arbitrators will be reassigned to new Arbitrators Bocanegra and Fruth. To fill out the new arbitrators' caseloads, other Chicago cases will be reassigned as well.

Currently, all Collinsville/Belleville cases are set in Collinsville.

## Acting Chairman Appointed

On 11/30/14, Michael Latz, Chairman of the Illinois Workers' Compensation Commission, resigned his position. To fill the vacancy, Governor Quinn appointed Ronald A. Rascia as Acting Chairman, effective on 12/1/14. Chairman Rascia first joined the Commission in 2011 as General Counsel, and later also took on the duties of the Secretary of the Commission.

It is unclear whether Governor-Elect Rauner will keep Chairman Rascia in this position or will try to re-shape the Commission with new appointments once he is sworn in in January. We will keep you posted.

# Intoxication Defense Up In Smoke

By: [Jorge Rovelo](#)



In *Wolfson v. Solar Wind USA LLC*, 12 IL. W.C. 16856 (Ill.Indus.Com'n June 6, 2014), the Commission affirmed the arbitrator's decision that Petitioner's injuries were compensable despite a positive drug test.

Pursuant to the 2011 amendments to the Act, compensation is not due if there is any evidence of "impairment" due to the unlawful or unauthorized use of an intoxicating substance, including cannabis. The Act provides that an employee's refusal to submit to a drug test creates a presumption that the employee was intoxicated at the time of the accident and that the intoxication was the proximate cause of his or her injuries. However, an employee is able to overcome the presumption if he or she can show that the intoxication was not the proximate cause of the accident.

Despite of the Act's intoxication defense, the Commission affirmed the arbitrator's decision that Petitioner's injuries were compensable. As Petitioner was carrying a solar panel from a building to a client's car, Petitioner stepped off a curb and fell, injuring both knees and elbows.

The following day, Petitioner tested positive for marijuana. However, Petitioner testified that he did not ingest marijuana prior to his fall. Instead, Petitioner testified that following the accident, he went home and was examined by a friend, who is an internist. Instead of taking medication prescribed by his friend, Petitioner testified that he chose marijuana to alleviate his pain.

The arbitrator determined that the evidence indicated that Petitioner fell due to his view being blocked by the solar panel that he was carrying, not because he was impaired. The arbitrator relied on Petitioner's testimony that he was not under the influence at the time of the accident, that witnesses stated that Petitioner did not appear to be under the influence, and that Petitioner fell in such a manner as so to protect the solar panel he was carrying. The arbitrator found that the evidence was sufficient to overcome the presumption that Petitioner was under the influence at the time of the accident.

## Practice Tip:

Even when armed with a positive drug test, this case demonstrates that it is still possible for a claimant's injuries to be found compensable. To reduce this risk, it is imperative that employers administer drug tests immediately following workplace accidents, issue detailed and complete accident reports and document thorough accounts of all witnesses.

# "Raining" In Liability For Slip And Fall Injuries

By: [Edward Jordan](#)



In *Sykes v. Illinois State Police*, 12 IL. W.C. 12420 (Ill.Indus.Com'n June 5, 2014), the Commission denied Petitioner benefits for injuries sustained during a slip and fall on a wet, sloped sidewalk while Petitioner was carrying a backpack filled with work items.

Petitioner, a special agent for the Illinois State Police, was walking to her work vehicle in a parking lot designated for employees. Petitioner testified that she was wearing a 10 pound fanny pack containing her loaded weapon, extra bullets, handcuffs, her badge and paperwork. She was also wearing a 5 to 10 pound backpack. While walking to her vehicle, she slipped and fell and twisted her ankle. Post-accident photographs showed the sidewalk was sloped, uneven and had a gap between the sidewalks. It was also raining at the time of Petitioner's accident. The arbitrator found that Petitioner sustained a compensable accident and awarded benefits.



However, the Commission reversed and found in favor of Respondent. The Commission noted that the sidewalk was sloped, but otherwise had no actual defect in the area of Petitioner's fall. In addition, the Commission stated that neither the rain nor the wet sidewalk created an increased risk. Finally, the Commission found that Petitioner wearing a fanny pack and backpack filled with work items did not increase her risk of falling.

#### Practice Tip:

It's refreshing to see the Commission issue a favorable decision involving a slip and fall injury. This is a good reminder to be aggressive in handling your cases - the Commission might just agree with you.

## Giving Back

### It's Time For Team BDL To Hustle!



It's time for Team BDL to Hustle! On **2/22/14**, we will join more than 4,000 people climbing to the top of John Hancock Center to raise funds for lung disease research, advocacy and education. Last year we had a team of 25 climbers and raised \$6,000! For more info about this event or to donate, [Click Here](#).

## Suits for Success



On 11/22/14, **Maital Savin** volunteered for "Suits for Success," a program through the Chicago Bar Association seeking to prepare high school students for their first job interviews. The program provides students with resume review, mock interviews and a gently used suit. In preparation for the event, Maital reviewed the students' resumes and solicited suit donations. Maital also conducted mock interviews to help prepare students for the real thing.

## Bryce Downey & Lenkov is Growing

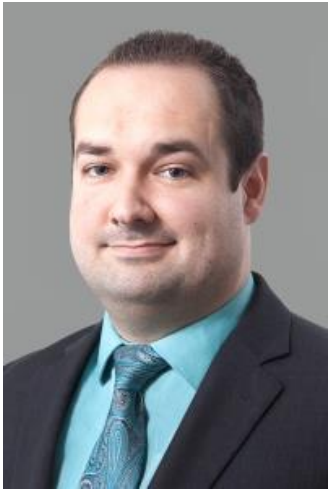


We are pleased to announce the addition of **Tim Alberts** to our workers' compensation team.

He graduated with honors and earned his JD from John Marshall Law School. Prior to joining Bryce Downey & Lenkov, Tim gained significant experience in workers' compensation defense with another well-respected Chicago firm, where he handled cases at

all stages of litigation. In his free time, Tim enjoys cheering on his beloved Chicago sports teams as well as spending time with friends and family.

## Meet the Team



### Daniel Cooper

Associate,  
Bryce Downey & Lenkov

I am a transplant to the Chicago area, originally from Louisiana. I work out of BDL's Indiana office in Crown Point, just over the border from Illinois.

I earned a Bachelor of Arts, with a double major in Political Science and History, from Louisiana Tech University. After undergrad, I attended law school at Louisiana State University, where I received Bachelor of Civil and Juris Doctor degrees. I am admitted to practice in Louisiana and Indiana. My practice primarily focuses on workers' compensation, but I also have, trial and appellate experience in civil, bankruptcy and criminal law cases. Prior to joining the BDL Team, I worked as in-house counsel for a Fortune 100 company.



Outside of work, I enjoy playing golf and following my Louisiana sports teams (Saints, LSU & LA Tech). My wife, Aimee, and I enjoy hanging out with friends and family, spending our summers on the lake and traveling whenever we can both find the time.

## Other Newsletters

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 Klika at [jklika@bdlfirm.com](mailto: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

- Medical Marijuana Update: Eye On The Pot
- Game Changing News: NLRB Rules Northwestern Football Players Are Employees

### Corporate & Construction

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



## Meet Our Clients



### Becky Walraven

Workers' Compensation Supervisor,  
Frankenmuth Insurance

**What are your responsibilities?** I supervise a staff of eight workers' compensation adjusters. I supervise Illinois, Michigan, Wisconsin and Indiana. I also manage Medical Bill Review and Managed Care.

**Where are you originally from and where are you currently based?** I am originally from Bay City, Michigan. I currently work in Frankenmuth, Michigan.

**What is the biggest challenge facing your workers' compensation program?** The biggest challenge we are facing is the ability to manage care from a treatment and cost perspective.

**What is your biggest pet peeve about Illinois workers' compensation?** The laws of the state continue to be very pro-claimant, making it hard to dispute that a condition is not work-related and win.

**What do you do for fun when you're away from work?** I spend as much time with my family as possible. I enjoy golfing and traveling to Northern Michigan.



## Free Webinars

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

### Here is what attendees had to say about our November webinar

"The survey questions brought about some good education/thought provoking."

"It was a great presentation with a lot of excellent pointers on surveillance."

"Insightful. Did not know that you do not have to disclose surveillance."

"Practical information that I can use to sell the management folks."

### Upcoming

**12/9/14** – [Click Here to Register](#)

#### The Other Side: Perspectives On Various Workers' Compensation Issues From A Petitioner's Attorney

Rich Lenkov and Dave Menchetti, Cullen, Jaskins,  
Nicholson & Menchetti, P.C.

### Recent

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

**Using Surveillance In Your**

**Workers' Compensation Claim**

Exploiting The Internet In Your Pre-Suit Investigation

**Spills, Thrills & Bills: The True Story Behind Illinois & Indiana**

**Premises Liability Law**

If you would like a copy of any of our prior webinars, please email Marketing Coordinator Jason Klika at [jklika@bdlfirm.com](mailto:jklika@bdlfirm.com).

## Illinois Rates At A Glance

EFFECTIVE DATES	MAXIMUM TTD	MINIMUM PTD & DEATH	STATE AVERAGE WEEKLY WAGE
7/15/04 to 1/14/05	1,034.56	387.96	775.92
1/15/05 to 7/14/05	1,051.99	394.50	788.99
7/15/05 to 1/14/06	1,078.31	404.37	808.73
1/15/06 to 7/14/06	1,096.27	411.10	822.20
7/15/06 to 1/14/07	1,120.87	420.33	840.65
1/15/07 to 7/14/07	1,148.51	430.69	861.38
7/15/07 to 1/14/08	1,164.37	436.64	873.28
1/15/08 to 7/14/08	1,178.48	441.93	883.86
7/15/08 to 1/14/09	1,216.75	456.28	912.56
1/15/09 to 7/14/09	1,231.41	461.78	923.56
7/15/09 to 7/14/10	1,243.00	466.13	932.25
1/15/10 to 7/14/10	1,243.00	466.13	922.45
7/15/10 to 1/14/11	1,243.00	466.13	925.08
1/15/11 to 7/14/11	1,243.00	466.13	930.39
7/15/11 to 1/14/12	1,261.41	473.03	946.06
1/15/12 to 7/14/12	1,288.96	483.36	966.72
7/15/12 to 1/14/13	1,295.47	485.80	971.60
1/15/13 to 7/14/13	1,320.03	495.01	990.02
7/15/13 to 1/14/14	1,331.20	499.20	998.40
1/15/14 to 7/14/14	1,336.91	501.34	1,002.68
7/15/14 to 1/14/15	1,341.07	502.90	1,005.80

EFFECTIVE DATES	MAXIMUM PPD	
7/1/04 to 6/30/05	567.87	<b>Minimum Rate Death &amp; Total Permanent Disability:</b>
7/1/05 to 6/30/06	591.77	50% of the Statewide Average Weekly Wage
7/1/06 to 6/30/07	619.97	<b>Maximum Rate Death Benefit:</b>
7/1/07 to 6/30/08	636.15	The greater of \$250,000 or 20 years
7/1/09 to 6/30/10	664.72	Effective 2/1/06 – the greater of \$500,000 or 25 years
7/1/10 to 6/30/11	669.64	<b>Temporary Total Disability (TTD) Rate:</b>
7/1/11 to 6/30/12	695.78	66-2/3% (.667) x AWW
7/1/12 to 6/30/13	712.55	<b>Permanent Partial Disability (PPD) Rate:</b>
7/1/13 to 6/30/14	721.66	60% (.6) x AWW
7/1/14 to 6/30/15	Will be posted 1/15	

MINIMUM	SINGLE	MARRIED	1 DEP.	2 DEP.	3 DEP.	4+ DEP.	
TTD & PPD 7/15/08-7/14/09	206.67	*	237.67	268.67	299.67	310	*number if children and/or spouse = number of dependents
TTD & PPD 7/15/09-7/14/10	213.33	*	245.33	277.33	319	330	
TTD & PPD 7/15/10-7/14/13	220	*	253	286	319	330	
TTD & PPD 7/15/13-1/14/14	220	*	253	286	319	330	
TTD & PPD 1/15/14-7/14/14	220	*	253	286	319	330	
TTD & PPD 7/15/14-1/14/15	220	*	253	286	319	330	

## PERMANENT PARTIAL DISABILITY BENEFITS SCHEDULE OF BODY PARTS

For injuries occurring	Before 7/20/2005	7/20/2005 - 11/15/2005	11/16/2005 - 1/31/2006	2/1/2006 - 6/27/2011	On or after 6/28/2011
<b>Disfigurement</b>	150	162	150	162	162
<b>Thumb</b>	70	76	70	76	76
<b>First (index) finger</b>	40	43	40	43	43
<b>Second (middle) finger</b>	35	38	35	38	38
<b>Third (ring) finger</b>	25	27	25	27	27
<b>Fourth (little) finger</b>	20	22	20	22	22
<b>Great toe</b>	35	38	35	38	38
<b>Each other toe</b>	12	13	12	13	13
<b>Hand</b>	190	205	190	205	205
Carpal tunnel due to repetitive trauma					28.5 - 57
<b>Arm</b>	235	253	235	253	253
Amputation above elbow	250	270	250	270	270
Amputation at shoulder joint	300	323	300	323	323
<b>Foot</b>	155	167	155	167	167
<b>Leg</b>	200	215	200	215	215
Amputation above knee	225	242	225	242	242
Amputation at hip joint	275	296	275	296	296
<b>Eye</b>	150	162	150	162	162
Enucleation of eye	160	173	160	173	173
<b>Hearing loss of one ear (under WC Act)</b>	50	54	50	54	54
<b>Hearing loss of both ears (under WC Act)</b>	200	215	200	215	215
<b>Testicle--1</b>	50	54	50	54	54
<b>Testicle--2</b>	150	162	150	162	162
The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.					



## 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**
- **Top 10 Ways To Reduce Legal Expenses NOW**
- **The Mediation Process**
- **Balancing Aggressive Pursuit Of Lien Recovery With Associated Litigation Expenses**
- **Dealing With Difficult Claimants**
- **Health-Related Leave: Workers' Compensation, ADA and FMLA**
- **Illinois State Overview**
- **Traveling Employees In Illinois Workers' Compensation**

**If you would like us to come in for a free seminar, [Click Here Now](#) or 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

## Disclaimer:

The content of this newsletter has been prepared by Bryce Downey & Lenkov LLC for informational purposes. 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. In considering prior results, please be aware that: (1) each matter is unique and (2) you should not rely on prior results to predict success or results in future matters, which will differ from other cases on the facts and in some cases on the law. Please do not send or disclose to our firm confidential information or sensitive materials without our consent.