



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter March 2015



### THE TOP 5 LIST

## Top 5 Defense Tools You Shouldn't Overlook

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov  
Workers' Compensation Department

We all use IMEs and utilization review. However, there are other equally important, but lesser-known, tools that you should use to defend a claim. Here are a few:

### 1/ Medical Provider Canvas

It is imperative to know as much about a claimant's prior medical history as possible. If you are limiting your search to only those providers that the claimant has identified, you are only accomplishing half of your goal. A medical provider canvas is a very effective and inexpensive way to gather this information.

### 2/ ISO Report

Again, information is power. Knowing your claimant's claim history is imperative to your defense. Believe it or not, claimants are not always forthcoming about their prior history!

### 3/ Personnel File

There is frequently invaluable information in a claimant's personnel file. For example, disciplinary action close to an alleged accident date raises significant red flags that can help you dispute a questionable claim.

### 4/ Records Review

Have you ever read an IME report hoping that it would give you what you wanted, only to be burned? An effective way to avoid that is to get a preview of the opinion through a records review. If the doctor ends up giving you an unfavorable opinion, you do not need to disclose it.

### 5/ Motion To Dismiss

While the Illinois Workers' Compensation Act does not explicitly allow for motions to dismiss, they are a key tool that we use to move cases forward. When a claimant is not compliant with medical treatment, misses IMEs or skips out of vocational rehabilitation appointments, file a motion to dismiss, asserting that Petitioner is not fulfilling his or her duties in moving the case forward.

As always, we would like to hear your thoughts. Email me at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com) and we'll publish your comments in our next newsletter.

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## Legal Face-Off On WGN



Legal Face-Off is a fast paced, high energy legal podcast airing every other Friday on WGN PLUS. Each week, **Jason Whiteside** (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.

[Legal Face Off: Grab Bag \(American Sniper Trial, Boston Marathon Bomber, Left Shark Litigation, & Taylor Swift\)](#)

[Legal Face Off: Chicago's Legal Prep Charter Academy](#)

[Legal Face-Off: Why is it important to have a credible Expert Witness? Steve Babitsky has all the answers!](#)

Our most recent episode was released on 2/26 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.



## Upcoming Seminars

- 3/25/15, "What the Movies Can Teach You About Defending Workers' Compensation Claims," The CLM 2015 Annual Conference in Palm Desert, CA. For more info, [Click Here](#). Presented by:

  - Rich Lenkov**, Capital Member, Bryce Downey & Lenkov LLC
  - Sean Downing**, Director of Litigation, CVS Caremark
  - Natalie Troilo**, Claims Manager, Dick's Sporting Goods
- 5/8/15, "Negotiation Skills That Every Workers' Compensation Professional Needs To Know," CLM 2015 Insurance Fraud & Workers' Compensation Conference in Boston, MA. For more info, [Click Here](#). Presented by:

  - Rich Lenkov**, Capital Member, Bryce Downey & Lenkov LLC
  - Michael Kelley**, Senior Vice President, Director of Claim Operations, HUB International New England
  - Eric Spalsbury**, Director, Risk Management, Stanley Steemer International, Inc.
- On 5/13/15, **Rich Lenkov** will present "Ethical Claims Negotiations" in Rogers, AR for [CEU Institute](#)
- On 5/27/15, **Daniel Cooper** will present "Attorney Induced Disability Syndrome" webinar for [CEU Institute](#)
- On 6/2/15, **Rich Lenkov** will present "Trial & Appellate Procedures" at the Advanced Workers' Compensation conference in Naperville. Stay tuned for more details
- 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 info, [Click Here](#)
- On 6/10/15, **Tim Alberts** will present "Effective Statements" in Des Moines, IA for [CEU Institute](#)



## Commission News

Governor Rauner selected Joann Fratianni-Atsaves as Chairwoman of the Illinois Workers' Compensation Commission. She has 34 years of experience in workers' compensation law and is currently an arbitrator on the IWCC.

Additionally, Governor Rauner appointed Joshua Luskin as Commissioner and reappointed David Gore and Kevin Lamborn as Commissioner.

The Commission has yet to announce who will fill former Arbitrator Fratianni-Atsaves and Arbitrator Luskin's positions. We will keep you posted.

## Mental Injury Award Without Any Physical Injury

By: [Edward Jordan](#)



In *Cosek v. Medspeed & Clearpoint*, 10 IL.W.C 20439 (Ill.Indus.Comm'n 2014), the Illinois Workers' Compensation Commission awarded benefits to Petitioner after he hit and killed a pedestrian with his car while performing his work duties.

Petitioner did not suffer any physical injuries in the car accident. Petitioner testified that shortly after the accident, he experienced nightmares and insomnia and sought medical attention. He also claimed that he developed severe anxiety when he returned to work.

The Commission analyzed the case under *Pathfinder v. IWCC*, which held that a petitioner who suffers a mental injury without physical trauma, must prove a sudden, severe emotional shock traceable to a definite time, place and cause. The Commission held that the act of striking and killing a pedestrian constituted a sudden and severe emotional shock under *Pathfinder*. The Commission found that there was a causal connection between the accident and Petitioner's psychological injuries.

However, it was not all bad for Respondent. The Commission limited Petitioner's benefits because it found that Petitioner's psychological injuries did not support a post-traumatic stress disorder and his work related condition resolved six months after the accident. The Commission noted that Petitioner engaged in recreational driving, had never been restricted from driving and was not authorized off of work until three years after the accident.

### Practice Tip:

This case is a good time to remind you of some effective ways to defend psychiatric claims:

1. Look closely at Petitioner's medical history, by obtaining all prior medical records and conducting an ISO search. Usually someone who is claiming a work-related psychiatric claim has a prior history.
2. As this case shows, most legitimate psychiatric claims resolve fairly quickly and have little permanent impairment.
3. Psychiatric IMEs are an effective way to fight claims on causation and permanency. However, these experts are very expensive, so use them judiciously. If you need a recommendation for a good psychiatric IME, please contact us.

## Group Benefits Toll Notice

By: [Jorge Rovelo](#)



In *Steiner v. Rentech Energy Midwest Corp.*, 08 IL.WC. 37819 (Ill.Indus.Comm'n 2014), the Commission determined that pursuant to Section 8(j), the 45 day notice requirement is tolled where an employee receives benefits under a group health insurance plan that covers non-occupational injuries and which is contributed to either wholly or partially by the employer, until such benefits are terminated.

In *Steiner*, Petitioner filed an Application for Adjustment of Claim on

### Practice Tip:

Timely, thorough investigation and reporting of workplace accidents are crucial to properly evaluating whether you may successfully assert a notice defense.

8/26/08, alleging a 5/7/17 accident. The arbitrator determined that Petitioner's condition was causally related to his workplace accident, but found that Petitioner failed to provide timely notice. The arbitrator concluded that Petitioner did not provide notice until he filed his Application on 8/26/08, which was beyond the 45 day requirement.

However, the Commission concluded that pursuant to Section 8(j), the 45 day notice requirement did not begin until Petitioner's group health insurance benefits ceased. Therefore, although Petitioner did not provide notice until 8/26/08, Petitioner's 45 day notice requirement did not begin until 8/12/09, when his group health benefits ended.

## Meet The Team

### Jorge Rovelo

Associate, Bryce Downey & Lenkov



I am an Associate in BDL's workers' compensation and labor and employment practice groups.

I grew up in the northern suburbs of Chicago and earned my B.S. from Cornell University in Industrial and Labor Relations. Following undergrad, I worked in human resources for a year before attending law school. I went to law

school at Case Western Reserve University in Cleveland, Ohio, during which I clerked for an Administrative Judge of the EEOC, the State of Ohio's Bureau of Workers' Compensation, the United Auto Workers and the Cleveland Metropolitan Bar Association, where I worked in legal ethics and professional responsibility.

Prior to joining BDL, I represented Chicago Transit Authority management in all aspects of labor relations. I currently live in the River North neighborhood of Chicago with my boyfriend and our dog, Otis. Outside of work, you can usually find me exploring the many neighborhoods and restaurants of Chicago and spending time with my friends and family--though, much of my free time these days is spent indulging my dog, Otis, at Chicago's various dog parks and beaches.



Spending time with my boyfriend



Enjoying time with my boyfriend and Otis

## Meet Our Clients

### Barry Wilson

Director of Risk Management and Insurance, Express



**What are your responsibilities?** Our department oversees enterprise risk management, business continuity, insurance, claims management and Environmental, Health & Safety.

**Where are you originally from and where are you currently based?** I am originally from Dayton, Ohio (Birthplace of Aviation) and currently work in Columbus, Ohio.

**What is the biggest challenge facing your workers' compensation program?** The biggest challenge we face is getting our associates to submit incidents in a timely manner. We have a younger workforce and they tend to think that they will be fine after an incident.

**What is your biggest pet peeve about Illinois workers' compensation?** The "limited" ability to directed medical care.

**What do you do for fun when you're away from work?** I enjoy listening to music and playing my drums when I am away from work.



## 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).

### Labor & Employment Law

- Ready for Illinois' New Pregnancy Accommodation Law?
- First EEOC Transgender Suit
- Get Smart About Your Smart Phone Policy

### General Liability

- Indiana Supreme Court Takes a Swing at the Baseball Rule
- Illinois Court of Appeals Holds Tort Immunity Act Does Not Protect Municipality From Liability for Forcing Pedestrian to Walk in Roadway

### Corporate & Construction

- Mechanics Lien Refresher: Are You a Contractor or a Subcontractor?



## Free Webinars

Bryce Downey & Lenkov hosts monthly webinars on hot Workers' Compensation topics.

### Here is what attendees had to say about our February webinar: Strategies and Tactics for Defending Indiana WC Claims

"I liked the subject material and how much was covered in the short time frame."

"Very concise and to the point/very informative."

"Well organized, easy for first time users, and it was nice being able to send in questions."

"Great topic, the webinar was not rushed."



Kirsten Kaiser Kus and Justin Nestor

### Upcoming

**3/24/15** – [Click Here to Register](#)

#### Causation In Illinois Worker's Compensation Claims

Rich Lenkov & Jeanmarie Calcagno

### Recent

**AMA Ratings With Dr. Leon Benson**

Defending Pain Claims: A Medical & Legal Perspective

Using Surveillance In Your Workers' Compensation Claim

Exploiting The Internet In Your Pre-Suit Investigation

10 Tricky Employment Termination Questions Answered

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).

## Giving Back

### Chicago Polar Plunge Benefitting Special Olympics Chicago



On **3/1/15**, the BDL Left Sharks took the Polar Plunge into 32-degree Lake Michigan. This was our third year braving freezing temperatures at North Avenue beach to raise funds and awareness for the Special Olympics Chicago. Special Olympics is the world's largest program for sports training and athletic competition for children and adults with intellectual disabilities. This year, 9 Sharks raised over **\$3,000** for the Chicago Special Olympics. Congratulations Team BDL!

### Hustle Up The Hancock



On **2/22/15**, Team BDL joined more than 4,000 others in the American Respiratory Health Association's Hustle Up The Hancock. Full climbers (94 flights of stairs) and half climbers hustled and raised **\$3,550** for lung disease research, advocacy and education. Our best times were Robert Olszanski, Clerk, 9:49 for the half climb, and Jason Klika, Marketing Coordinator, 17:01 for the full climb. Congratulations Team BDL!

## 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
1/15/15 to 7/14/15	1,361.79	510.67	1,021.34

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	735.37

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	309.33	320	
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
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (index) finger	40	43	40	43	43
Second (middle) finger	35	38	35	38	38
Third (ring) finger	25	27	25	27	27
Fourth (little) finger	20	22	20	22	22
Great toe	35	38	35	38	38
Each other toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal tunnel due to repetitive trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation above elbow	250	270	250	270	270
Amputation at shoulder joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation above knee	225	242	225	242	242
Amputation at hip joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation of eye	160	173	160	173	173
Hearing loss of one ear (under WC Act)	50	54	50	54	54
Hearing loss of both ears (under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162
The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.					

## 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
- CLM 2014 Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- 2014 National Workers' Compensation & Disability Conference
- 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:

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