



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter April 2015



### THE TOP 5 LIST

## Top 5 Misconceptions About Illinois Workers' Compensation Law

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov  
Workers' Compensation Department

There are a number of myths about Illinois Workers' Compensation law. Here are my top 5 misconceptions:

### 1/You Can't Defend A Case On Causation

The perception is that causation in Illinois is an incredibly liberal standard that employers never win. The legal standard is "might or could work have caused, aggravated, exacerbated" the condition. That said, we successfully dispute causation all the time, particularly for injuries like repetitive trauma or psychiatric claims. Petitioner still has the burden to prove causation, so don't concede on that issue.

### 2/All Arbitrators Are Liberal

The days of conceding an issue because of the arbitrator assigned to your case are over. Very few arbitrators allow their personal backgrounds influence how they'll handle a case. Most arbitrators will give each side a fair shot based on evidence.

### 3/Every Case, No Matter How Minor, Involves Some Permanent Impairment

Even in Illinois, Petitioner has the burden to prove permanent, partial disability. That is a 3 part test, and if Petitioner doesn't prove all 3 parts, he doesn't recover. So, you can take the position that certain minor injuries do not involve any permanency, and you don't have to pay anything on them

after you pay medical and TTD. We have obtained a zero on such minor cases on multiple occasions.

### 4/The Arbitrator Always Follows The Opinion Of A Treater Vs. An IME

This perception is wrong. There are a plethora of cases where the Respondent's retained expert was found more credible than the treater. This is especially true when you can argue that the IME doctor had more information, saw Petitioner more recently, was more qualified in the particular body part and was truly independent.

### 5/You Cannot Control Medical Costs

Not true. There are several ways to do so, including: Applying the fee schedule, questioning and denying unreasonable treatment/ bills, UR, nurse case management and IMEs.

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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: March Madness Edition: Who's the NCAA Suing & Should College Athletes Get Compensated?](#)

[Legal Face Off: Rene Sigman, Alan Dershowitz, Mark Gordon and This Week's Legal Grab Bag!](#)

[Legal Face Off: Is The Hit Show "Better Call Saul" More Than Meets the Eye When it Comes to Legal Issues?](#)

Our most recent episode was released on 3/25 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



- **4/13/15, Rich Lenkov** will present "10 Things To Know About Workers' Compensation In Mediated Settlements" for ADR Systems mediations.
- **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:
  1. **Rich Lenkov**, Capital Member, Bryce Downey & Lenkov LLC
  2. **Michael Kelley**, Senior Vice President, Director of Claim Operations, HUB International New England
  3. **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. For more info, [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 info, [Click Here](#)
- On **6/10/15, Tim Alberts** will present "Effective Statements" in Des Moines, IA for [CEU Institute](#)

# Fear Of Losing Job Not Compensable

By: [Tim Alberts](#)



In *Luann Pierard*, Petitioner, 03 IL. W.C. 48570 (Ill. Indus. Comm'n 2014), at issue was whether Petitioner's stress and fear of losing her job during her employer's investigations of her misconduct constituted a compensable accident.

Respondent accused Petitioner of improperly using Respondent's equipment and engaging in conflicting real estate transactions through her separate work as a real estate agent. Respondent initiated four different investigations of Petitioner's misconduct. Petitioner alleged that she "broke down," received mental health treatment and was diagnosed with anxiety, depression and post-traumatic stress disorder.

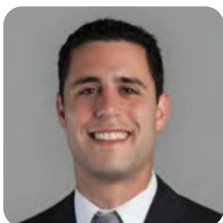
The arbitrator found that Petitioner failed to establish a compensable accident for a mental-mental claim. The Commission affirmed that arbitrator's decision denying benefits. The Appellate Court reiterated that for mental-mental claims, Petitioner must establish that he or she was exposed to stressors above those experienced by an objectively reasonable person; the court added that the standard is not an objectively reasonable person in the same job, but generally. Ultimately, the court affirmed the Commission's decision finding that Petitioner's stress and fear of losing her job did not rise above stress levels experience by an objectively reasonable person.

## Practice Tip:

When evaluating mental-mental claims, remember the legal standard for proving a compensable accident is high and is usually not met.

# Who Is A Traveling Employee?

By: [Michael C. Milstein](#)



In *Pryor v. Illinois Workers' Comp. Comm'n*, 2015 IL App (2d) 130874WC (2015), the Illinois Appellate Court addressed when an employee should be considered a "traveling employee."

Petitioner, a car hauler, was required to haul cars onto an 18 wheeler at the employer's terminal and then deliver those cars to various car dealerships. Respondent required Petitioner to drive his personal car

to the Respondent's terminal. One to two nights a week, Respondent required Petitioner to stay overnight in a hotel.

Petitioner alleged that on that date in question, he was getting into his personal car at his home on his way to Respondent's terminal and injured his back picking up a suitcase that he packed for an overnight work trip.

The arbitrator held that Petitioner failed to prove a compensable accident, finding that Petitioner would not have been a traveling employee until he arrived at Respondent's terminal. As Petitioner was not a traveling employee, the arbitrator analyzed whether Petitioner was exposed to an increased risk. The arbitrator found that Petitioner was not exposed to an increased risk and that Petitioner's accident did not arise out of his employment. Additionally, the arbitrator found that Petitioner's condition was not caused by the accident. The arbitrator's decision was affirmed on appeal by the Commission and the Circuit Court.

The Appellate Court also affirmed the arbitrator's decision, holding that an employee's regular commute from home to a fixed job site was not enough to make the employee a traveling employee. The court distinguished this case from cases where the employee was found to be a traveling employee, noting that Petitioner did not drive to his various work locations directly from his home; instead, he had to first travel to Respondent's facility.

Note: This case has not been release for publication in the permanent law reports until released, it is subject to revision or withdrawal.

## Practice Tip:

An employee traveling from home to a non-fixed job location is a traveling employee. To reduce increased exposure consider having employees commute to a fixed job site before any work-related travel.

## Meet The Team

### Kirsten Kaiser Kus

Associate, Bryce Downey & Lenkov



I grew up in Northwest Indiana with a close-knit, sport fanatic family. Football Sunday could be considered a war zone at our house!

I earned my B.A. at Ball State University and double majored in English and Political Science. After undergrad, I attended Valparaiso University School of Law. During law school, I gained experience in civil litigation as a law clerk at a local firm, where I eventually started my legal career as an attorney, and completed externships for Illinois Attorney General Lisa Madigan, the Honorable Judge Ronald Bartkowicz and the Honorable Judge Julie Cantrell.

Prior to joining BDL, I practiced for seven years as Plaintiff's counsel in workers' compensation, personal injury, medical malpractice, social security disability and criminal defense. I also served as Judge Pro Tempore for the Honorable Judge Julie Cantrell and as pro bono legal counsel for the Porter County Animal Shelter.

I joined the BDL team in September 2014 and work in our Indiana office. My practice focuses primarily on workers' compensation, general liability and criminal defense. Switching to the defense side of the law has been a great change in my career.

Outside of work, I enjoy attending Chicago White Sox, Chicago Blackhawks and Green Bay Packer sporting events. I love date nights, traveling with my husband and spending time with my family and friends. I currently live in Valparaiso with my husband, Brian, who I married in October 2014. Brian currently switched careers as well from working in flooring to working as a union glazier. We have two rescue pit bulls, Jax and Wrigley, that we love to walk and a rescue cat, Milo.



## Meet Our Clients

### Conway Nickerson

Corporate Risk Management Claims  
Coordinator, Health Care Service  
Corporation



**What are your responsibilities?** I have a variety of responsibilities, including:

- Coordination and preparation of loss notices to insurers
- Collaboration and coordination with HCSC's Legal, Human Resources, Facilities and Security departments
- Supervision of our outside defense counsel and TPA staff in the adjudication of WC and other claims
- Identification of emerging trends affecting our company's Insurance and Risk Program
- Ongoing analysis of HCSC's WC claims experience
- Preparation of legislative changes analysis white papers
- Preparation of internal coverage analysis reports
- Collaborating with various adjusters in the investigation and review of claims emanating from various lines of insurance

**Where are you originally from and where are you currently based?** I was born in Chicago. I am currently based in Chicago, with HCSC and I reside in Aurora, IL.

**What is the biggest challenge facing your workers' compensation program?** Since HCSC, its affiliates and subsidiaries operate in different states, the primary challenge is keeping abreast of various proposed legislative changes that HCSC must be compliant with. Tracking and monitoring the effect on non-traditional causes of WC losses (i. e. mental health, medical cannabis, etc.) on HCSC's loss experience can be difficult.

**What is your biggest pet peeve about Illinois workers' compensation?** The lack of an administrative rule to reign in lingering WC claims before the Commission due to lack of activity on the part of Petitioner to settle in a reasonable and timely basis.

**What do you do for fun when you're away from work?** I travel, collect movies and patiently wait for the next episodes of House of Cards! Oh and lest I forget, delving through the internet to find little-known, interesting facts about Canada in order to stump Mr. Lenkov.



## Free Webinars

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

### Here is what attendees had to say about our March webinar: Causation In Illinois Workers' Compensation Claims

"Very thorough and explanations given were detailed and clear."

"Concise educational answers were provided. The quizzes are good also."

"I thought the topic was very informative and that it had a lot of interesting points."

"I liked the interaction and found the Q & A topics interesting. It was good to brush up."

"Excellent topic and you touched on some common challenges when it comes to causation."

"The webinar shed some light on defending causation claims and let people know that some of these cases are defendable."

### Upcoming

**4/20/15** – [Click Here to Register](#)

#### Accident Denials

Rich Lenkov & Tim Alberts

### 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

### Legal Prep 3 on 3

On **3/7/15**, Teams BDL Ballers and BDL Ball Don't Lie played in the Chicago Legal Prep 3 on 3 Tournament. Ex-Chicago Bear Jerry Azumah co-hosted this event where players, supporters, students and faculty gathered together for fun competition and supported their athletic program. The final game score was a close 15-13!

Chicago Legal Prep Charter Academy is Chicago's first and only legal-themed charter high school. Bryce Downey & Lenkov was proud to sponsor this event and support Chicago Legal Prep. For more info, [Click Here](#)



### 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

- The "Open and Obvious" Defense- Restored By the Illinois Supreme Court
- Indiana Court of Appeals Affirms Admission of Testimony of Naprapath

#### Corporate & Construction

- Mechanics Lien Refresher: Are You a Contractor or a Subcontractor?
- Seventh Circuit Confirms Insurer Has No Obligation to Defend Construction

## 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 7/15/14-7/14/15	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

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