



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter May 2015



THE TOP 5 LIST

Top 5 Tips For Defending Psychiatric Claims

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov
Workers' Compensation Department

1/Regular Stress Is Not Compensable

A claimant alleging mental disability due to stressful working conditions must show exposure to emotional strain and tension greater than that which all employees experience. Specifically, the conditions producing the mental disability must be extraordinary and must objectively exist. Garden variety stress is common to everyone's job and is not compensable.

2/Question Permanency

Even for legitimate psychiatric claims, it is very rare to have lasting, permanent impairment. Generally, the stress subsides fairly quickly, and most credible psychiatrists will not find ongoing permanency.

3/Research

Conduct a background check. Check social media. Obtain all of the claimant's prior medical records. I'll bet you that someone claiming work caused his or her mental stress also has a history of prior issues, most of which are more likely causes of his or her present condition than work.

4/Know When To Hire An Expert

Retaining a credible, qualified psychiatrist is often a sound strategy. Doing so is very expensive and can generally cost \$5,000 to \$10,000. Before you spend that money, make

sure that you actually need to. Frequently, the claim is not supported by a causation opinion from a board certified psychiatrist. If the claimant simply provides an opinion from a physical treater or therapist, you likely don't need to go through the time and expense of hiring your own psychiatrist. Remember, it is the claimant's burden to prove causation.

5/ Closely Monitor Treatment & Narcotics

More than ever, claimants alleging work-related mental stress are taking serious opiates. These narcotics are very addictive. It is imperative to fully manage these expensive drugs through utilization review, experts, nurse case management and the fee schedule.

[Page 2](#)

Legal Face-Off

[Page 3](#)

Does TTD Retire After Retirement?

[Page 4](#)

BDL Is Growing

[Page 5](#)

Free Webinars

Upcoming Seminars

Commission Gets It Right: Bending Over
Not Compensable

Meet The Team

Rich Lenkov Presenting 'WC Fraud: What
You Can Do About It'

Meet Our Clients

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: Robert Blagojevich Rails against "Sham" Federal Prosecution](#)

[Legal Face-Off: Aaron Hernandez and His Bouts with Police as told by Bristol County Sheriff Tom Hodgson, Top 5 Misconceptions of Illinois Workers' Compensation and The Legal Grab Bag!](#)

[Legal Face-Off: Indiana's Religious Freedom Law Controversy With Lambda Legal's Jennifer Pizer, Germanwings Liability with Aviation Attorney Mike Miska and More!](#)

Our most recent episode was released on 5/3 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 to interact with the show. Send us your questions and we will answer them on air—nothing is off limits.



Upcoming Seminars



- **5/7/15**, "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 **5/27/15**, **Daniel Cooper** will present "Attorney Induced Disability Syndrome" webinar for [CEU Institute](#)
- On **6/2/15**, **Michael Milstein** will present "Trial & Appellate Procedures" at the Advanced Workers' Compensation conference in Naperville, IL. For more info, [Click Here](#)
- On **6/10/15**, **Tim Alberts** will present "Effective Statements" in Des Moines, IA for [CEU Institute](#)
- On **7/15/15**, **Dan Cooper** will present "Impact of Medicare on Liability & Workers' Compensation Cases" for [CEU Institute](#)

Rich Lenkov Presenting "WC Fraud: What You Can Do About It" At SEAK



Rich will discuss red flags and the latest investigative techniques used to uncover fraud, including social media (with video examples.) He will also explain cost effective strategies for pursuing fraud and achieving maximum recovery and how to deter future fraud. For more info and to register, [Click Here](#)

Does TTD Retire After Retirement?

By: [Jeanmarie Calcagno](#)



In *Sharwarko v. IWCC*, 2015 IL App (1st) 131733WC (2015), the Illinois Appellate Court addressed whether an employer or carrier is liable for TTD after Petitioner retires.

In *Sharwarko*, Petitioner injured his elbow at work. Respondent initially accommodated his work restrictions, but could no longer do so after Petitioner underwent surgery. Respondent offered and Petitioner accepted an early retirement package, while he still had work restrictions. Respondent granted Petitioner's request to retire and terminated TTD benefits.

At trial, Respondent testified that it would have been able to accommodate Petitioner's work restrictions had Petitioner not retired; however, Respondent did not present any evidence that Respondent made a job offer to Petitioner accommodating his work restrictions. Medical evidence demonstrated that Petitioner treated for his elbow after retiring. Petitioner's vocational expert opined that there was no work in a stable labor market for Petitioner, but testified that Petitioner had not looked for work since retiring.

The arbitrator awarded post-retirement TTD benefits, but the Commission reversed, holding that Petitioner's voluntary retirement was the equivalent of refusing the light duty work offer.

Petitioner appealed to the Appellate Court, which affirmed the Commission's denial of post-retirement TTD. The Court held that when an injured employee does not accept work available that accommodates his or her work restrictions, TTD is not due as the employee's lost earning are due to voluntarily removing him or herself from the work force, not his or her work-related injuries.

Practice Tip:

Employers should consider whether they can accommodate work restrictions related to a work injury prior to offering an employee early retirement. If not, employers should carefully consider the cost of early retirement in terms of possible post-retirement TTD that may be due.

Commission Gets It Right: Bending Over Not Compensable

By: [Maital Savin](#)



In *Mytnik v. Ford Motor Co.*, 09 IL. W.C. 26257 (Ill. Indus. Comm'n 2014), Petitioner, an assembly line worker, alleged a new lumbar spine herniation resulting from reaching down to retrieve a bolt while performing work duties. The arbitrator found the claim compensable, but the Commission reversed, holding that Petitioner failed to prove that his injuries arose out of employment.

At trial, Petitioner and a co-worker testified that bolts often fell and had to be retrieved to avoid jams in the machinery. Notably, the Commission held that bending down was an intermittent act dependent solely on a bolt falling and that Petitioner was simply performing an everyday activity of bending down. The Commission found that Petitioner was not exposed to a greater risk than the general public due to intermittently picking up bolts.

The Commission also noted that Petitioner had long-standing degenerative disc disease and that if his lumbar discs gave way with the simple act of bending forward, any activity of normal life was sufficient to injure Petitioner's spine. While generally, "you take your Plaintiff as you find them," the Commission held that if the employee's health was so deteriorated that any normal daily activity is an overexertion or the activity created no greater risk than that to which the general public is exposed, compensation will be denied.

Practice Tip:

When an act of everyday living allegedly causes an injury, closely examine the severity of any degenerative conditions. If the claimant has a severe degenerative condition, you may have a good basis to deny the claim.

BDL Is Growing

Alexander Gerteis



BDL welcomes Alexander Gerteis. Alexander focuses his practice on workers' compensation and general liability.

Alexander graduated magna cum laude from DePaul University College of Law and the University of Wisconsin – Madison. In his free time, Alexander enjoys exploring

the Chicago music scene.

Meet The Team

Rich Lenkov

Partner, Bryce Downey & Lenkov



I head up our firm's workers' compensation department, which consists of approximately 15 attorneys. I am very proud to provide our clients with what I consider the best workers' compensation team in the industry. I also handle general liability and entertainment law.

I grew up in Montreal. I became a US citizen about 12 years ago, but am still very proud of my Canadian heritage. I maintain my allegiance to the sports teams I grew up watching, including the Montreal Canadiens. I am also counting the days until the Montreal Expos return to my hometown.



Away from work, I devote most of my free time to my family, which consists of my wife, Patti and my children, Emma and Cooper. My daughter is the celebrity of the family, starring in many plays and musicals. She also [sang on stage with Bruce Springsteen](#) at Wrigley Field in 2012. I also enjoy giving back to my community, serving on

boards for several organizations, including Northern Illinois University College Of Law Board Of Visitors, The Legal Prep Charter Academy Board of Advisors and the Agassiz Elementary School Local School Council.



Meet Our Clients



Todd DeStefano

Business President, York Risk Services Group

What are your responsibilities? I have Profit and Loss responsibility for York's portfolio of customers within Risk Management and Carrier Direct business units. Unlike other TPAs, York is

organized around our customers, rather than geography or line of business. This includes responsibility for client retention and new growth, both organic and acquisitive, driving key customer relationships and providing executive oversight of the quality and outcomes we deliver to customers.

Where are you originally from and where are you currently based? I was born and raised in New Milford, New Jersey. I received my Bachelor's degree from Seton Hall University at night while working as an outside adjuster during the day for Allstate Insurance. Over the course of my career, I spent time with AIG and Zurich. I moved around quite a bit, living in places such as Atlanta, New Orleans, Charlotte and Ft. Lauderdale. Currently, I am back living in Glen Rock, a small suburban town in New Jersey, located about 20 minutes from New York City.

What is the biggest challenge facing your workers' compensation program? Putting together strategies and solutions for our customers around the escalating prescription drug costs, physician dispensing issues and overall extensive narcotic usage. Prescription costs now make up about 22% of the total medical costs and it continues to grow year after year. However, more specifically, as an industry, we are challenged by the long term use of opioids. Injured workers who are addicted to opioids do not return to work. I am excited that through York's Team Comp approach of predictive analytics and clinical triage, we have been able to help manage this. We are able to calculate how much more expensive claims are or can be when the patient has opioids than when they do not and are proactive in identifying those claims early in the process to work with medical providers on more conservative treatment options and getting employees back to work.

What is your biggest pet peeve about Illinois workers' compensation? That an employer in Illinois is primarily responsible for the aggravation of an injury - even if the employer is only 1 % responsible for causing or aggravating an injury, they are responsible for 100 % of the cost. As a TPA, we are an extension of the employer and continue to face a challenging environment for managing workers' compensation risks and controlling high costs.

What do you do for fun when you're away from work? I enjoy spending time with my wife and daughters. I travel so much and miss much of the day-to-day family activity, so it is nice to be home. I am also a sports fanatic. Whenever I can sneak in a day baseball game, it's a great day.

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.

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

Free Webinars

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

Here Is What Attendees Had To Say About Our April Webinar: Accident Denials

"Great topic. Loved the interaction and questions from the group."

"Explained what to gather in order to help with denial of claims based on compensability."

"Focused topic: you did not stray off on different areas. I really like the question poll you have. The Q & A at the end is great."

"The information was pertinent and helpful."



Upcoming

5/21/15 – [Click Here to Register](#)

Fighting Fraud Claims

Rich Lenkov & Michael Milstein

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.

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. 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.