



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter January 2013

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- **Storrs Downey** - Insurance, Insurance Coverage and Reinsurance and Personal Injury Defense



- **Geoffrey Bryce** - Commercial Litigation and Construction Law



- **Terry Madden** - Insurance, Insurance Coverage and Reinsurance, Medical Malpractice Defense and Personal Injury Defense



- **Terry Kiwala** - Insurance, Insurance Coverage and Reinsurance and Toxic Tort Defense

2013 Leading Lawyers

Peer Reviewed.
Leading Lawyers NetworkSM
Find a better lawyer, faster.

We are pleased to announce that several of our attorneys have been named 2013 Leading Lawyers. This distinction has been earned by **fewer than 5%** of all lawyers licensed to practice law in Illinois. You cannot buy the distinction of being a Leading Lawyer and during the survey process; lawyers could not recommend themselves or other lawyers at their own firm.



- **Rich Lenkov** - Workers' Compensation Defense and Personal Injury Defense

2013 Super Lawyers - Illinois Rising Stars



We are also pleased to announce that 3 of our attorneys have been selected for the 2013 *Illinois Rising Stars* list. These individuals have been recognized for distinguishing themselves in their legal practice.

Only 5% of Illinois lawyers are named Super Lawyers



- **Noah Frank** - Employment and Labor (Noah was also a 2012 Illinois Rising Star)



- **Brian Hindman** - Workers' Compensation



- **Alec Miller** - Entertainment and Sports

As always, Bryce Downey and Lenkov will continue to serve our clients in the manner that allows us to achieve these prominent awards.

Upcoming Seminars:

- On 2/1/13, Jack O'Grady and Ed Jordan will present "Workers' Compensation: Back-to-Work Programs, Reducing Injuries and Other Issues" to the Illinois Manufacturers' Association at 8:00 a.m. at the Oak Brook Marriott. For more information or to register, please email Kim McNamara at kmcnamara@ima-net.org.
- On 3/6/13, Rich Lenkov will present "Dealing With Workers' Compensation Claims" at the North American Mining Summit in St. Louis, Mo. This exciting Summit brings together experts in the fields of property, casualty, surety, claims, and coverage to discuss current trends and topics.
- On 4/11/13, Rich Lenkov will present "PREMISES LIABILITY -The Big Three: Premises Liability Problems (and how to fix them!)," at the CLM Annual Conference in San Antonio. If you are interested in signing up for the conference, go to www.theclm.org.

CLM

The Claims and Litigation Management Alliance (CLM) continues to grow. Current membership is over 18,000.00, and it adds approximately 500 members per month. CLM is an organization that promotes and furthers the highest standards of claims and litigation management and brings together the thought leaders in both industries. Its members include risk and litigation managers, insurance and claims professionals, corporate counsel, outside counsel and third party vendors. CLM sponsors education programs, provides resources and fosters communication among the industry.

Rich Lenkov is chair of the Greater Chicago Chapter of CLM. He also serves as co-chair of the Workers' Compensation Committee.

Here are some exciting upcoming CLM Events:

- **3/7/13:** Ethics Lite: Exploring Professional Responsibility Through Hypothetical Exercises, 4-7 pm., 200 North LaSalle Street
- **4/10/13:** CLM Annual Conference, San Antonio
- **7/12/13:** 7am - 1pm Workers' Compensation Conference, Double Tree Chicago

For more information or to register for any of these events, please visit www.clm.org

Handling Medical Bills on Disputed Cases

By Eva Imrem



Typical scenario in Illinois: Petitioner files a disputed workers' compensation claim. He finds a doctor willing to perform treatment, even surgery, without

getting approval from the insurance carrier. The provider racks up tens, sometimes hundreds, of thousands of dollars in medical bills. Petitioner reaches MMI, and both sides are stuck in the mutually unfortunate position of trying to settle a case which, at one time, was easily resolvable.

Is there anything that could have been done to prevent this recurring situation? If the claim is accepted and Petitioner is receiving benefits, we have standing to bring a reverse 19(b) and force the matter to hearing before the medical bills are incurred. Is the IWCC telling us that it is better to pay benefits on a disputed case so that we can have an expedited trial?

It is clearly preferable to have a trial prior to exorbitant medical bills being incurred, as opposed to being faced with a situation where a sympathetic arbitrator may be more inclined to stick an insurance carrier with bills. It is also far more preferable to have an expedited trial rather than being forced to sit by and watch a disputed claim pend on the IWCC docket for an undetermined amount of time.

Unless Respondents are allowed to bring a case to an expedited hearing where they are not paying benefits, these medical bills will continue to accumulate, hindering reasonable settlement and clogging the IWCC docket. Acting aggressively by filing a Request for Hearing and Motion to Dismiss will bring the topic to the arbitrator's attention early on so that we can petition the IWCC to step in and grant an expedited hearing. Beyond that, changes will have to be made within the legislature to resolve this growing issue.

7th Circuit Mandates Placement Of Less Qualified Disabled Employee

By Noah Frank



On 9/7/12, the Seventh Circuit Court of Appeals held that, consistent with Supreme Court's decision in *U.S. Airways, Inc. v. Barnett*, 535 U.S. 291 (2002), the Americans with Disabilities Act ("ADA") mandated that a qualified employee with a disability be appointed to a vacant position instead of the best or more qualified candidate, unless the employer could show an undue hardship. The case is *EEOC v. United Airlines*, 11-C-1774 (7th Cir. Sep. 7, 2012).

Employer United Airlines ("UAL") provided employees needing accommodations the ability to submit unlimited transfer applications, a guaranteed interview, and priority consideration over similarly qualified (e.g., equally qualified) candidates. The Seventh Circuit adopted the EEOC's position, holding that UAL's employment policy violated the ADA as reassignment to a vacant position is a reasonable accommodation provided only that the person with a disability is "at least **minimally** qualified to do the job." (emphasis added). UAL's policy violated the ADA by not advancing a disabled employee over a more qualified employee.

The Seventh Circuit held that a two-step, case-specific approach would apply:

First, the employee must show that the accommodation (e.g., placement into a vacant position) was reasonable on its face.

Second, the burden shifts to the employer to show that the accommodation would be an undue hardship (e.g., violation of a bona fide seniority system under a union contract).

The ultimate burden then shifts back to the employee to prove by a showing of special and case specific circumstances that the requested accommodation is reasonable.

Practice Tip: All ADA matters require case-specific analysis, including engaging in the interactive accommodation process with an employee with a known disability, or who requests an accommodation.

However, we note that this decision does not mean that an employer must place an unqualified employee in to a vacant position merely because that employee has a disability. Rather, the sweeping implication is that a relatively minimally-qualified employee with a disability must be placed in a vacant position over a more qualified candidate, which could lead to the more qualified candidate seeking to advance his or her career with a new employer.

Utilization Review

By Edward Jordan



On 12/20/12, Andrew Boron, the Director of Insurance of the Illinois Department of Insurance issued a memo directed to Third Party Administrators (TPA) and Utilization Review (UR)

organizations. This memo states that TPAs performing services regarding Illinois insureds are prohibited from conducting business outside of the United States and UR activities must be performed within the State of Illinois. While the requirement relating to TPA organizations should not affect workers' compensation activities, this may have an impact on future utilization reviews. Director Boron's memo states that the Managed Care Reform and Patient Rights Act require UR functions to be conducted "in this State" to ensure that the UR is conducted based upon local standards of care and records are accessible by Illinois courts and administrative agencies. We encourage everyone to read this memo at www.iwcc.il.gov/CB2012-12.pdf.

The impact of this rule is yet to be determined. If all future UR organizations performing services on Illinois claims must be conducted

within the state, it could significantly impact the system. This rule would require management of UR vendors to make sure reviews are conducted within Illinois. This memo does not specifically address how it applies to workers' compensation insurers. Therefore, we expect further guidance from the Department of Insurance and Illinois Workers' Compensation Commission on this issue. We will continue to provide updates as further information is received.

Giving Back:

Bryce Downey & Lenkov is involved in a number of charitable organizations. Some recent and upcoming activities:

- In October 2012, Rich Lenkov, Rick Warner & Elliott Riebmán helped scare people at Fear City Haunted House. Fear City is one of the largest haunted houses in the Midwest. Fear City donates a portion of its proceeds to the National Multiple Sclerosis Society. You can find out more at www.fearcitychicago.com and also the following is a link to their Facebook page; <https://www.facebook.com/?sk=welcome#!/photo.php?fbid=376853402390273&set=a.376853255723621.87526.114543975287885&type=3&theater>



- Hustle up the Hancock: On 2/24/13 we will be climbing to raise money and awareness for the Respiratory Health Association. For more information, visit their web page: <http://hustleupthehancock.org/eveninfo.htm>

- Polar Plunge: On 3/3/13 we will be jumping into frigid Lake Michigan to raise money for the Special Olympics. To donate please contact: <http://www.firstgiving.com/fundraiser/RichLenkov/13thannualchicagopolarplunge>.

ILLINOIS RATES AT A GLANCE

EFFECTIVE DATES	MAXIMUM TTD	MINIMUM PTD and DEATH	STATE AVERAGE WEEKLY WAGE
7/15/02 to 1/14/03	998.12	374.30	748.59
1/15/03 to 7/14/03	1004.41	376.66	753.31
7/15/03 to 1/14/04	1012.01	379.51	759.01
1/15/04 to 7/14/04	1019.73	382.40	764.80
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

EFFECTIVE DATES	MAXIMUM PPD
7/1/02 to 6/30/03	542.17
7/1/03 to 6/30/04	550.47
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
7/1/08 to 6/30/09	664.72
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

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 before 2/1/06	100.90	105.50	108.30	113.40	117.40	124.30
PPD before 2/1/06	80.90	83.20	86.10	88.90	91.80	96.90
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 7/15/10-1/14/12	220.00	*	253.00	286.00	319.00	330.00

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

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/Indiana Workers' Compensation Law, please contact Richard 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?

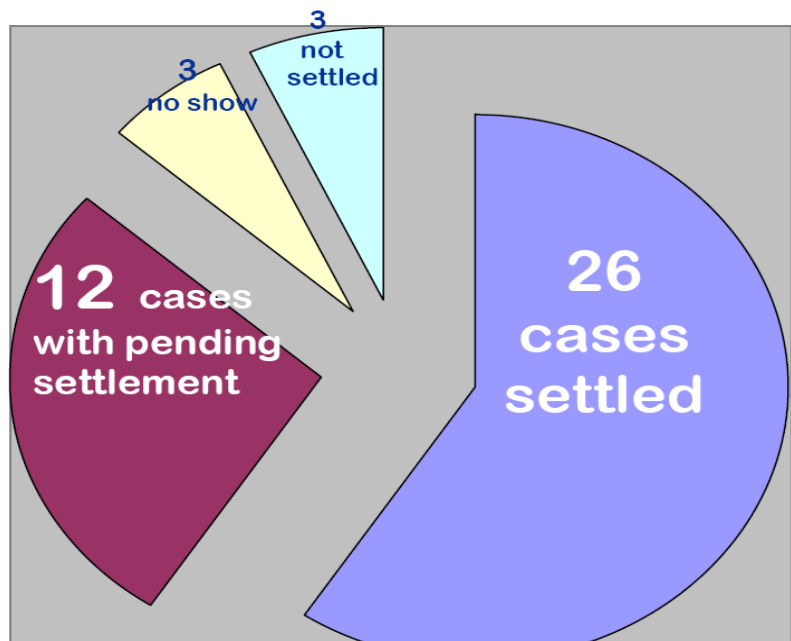
Two or three cases scheduled for each 30-minutes block between 9 am and 5 pm, over one or two days

WHY?

From 8/1/11 – 8/1/12, we closed **134** 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

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 & Exhibition

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*

If you would like us to come in for a free seminar, please 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
Environmental Law
Insurance Coverage
Insurance Litigation

Intellectual Property
Medical Malpractice
Professional Liability
Real Estate
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 or any aspect of Illinois and Indiana workers' compensation law, please contact Richard Lenkov at 312.377.1501 or rlenkov@bdlfirm.com, or any member of our workers' compensation team. © Copyright 2012 by Bryce Downey & Lenkov LLC, all rights reserved. Reproduction in any other publication or quotation is forbidden without express written permission of copyright owner.

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