



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter June 2015

Upcoming Webinar!
6/24/15
Our Hottest
Illinois WC Top 5 Lists
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THE TOP 5 LIST

Top 5 Ways To Maximize Surveillance Results

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov
Workers' Compensation Department

1/ Obtain Multiple Days Of Surveillance

The most common answer from a claimant caught on tape is that they were merely "having a good day." So, to mitigate the impact of this response, it's good to obtain multiple days of surveillance. It's always curious to me that claimants coincidentally have a good day on the day that we tape them.

2/Research Claimant

Make sure that the subject of the video tape is actually the claimant. Sometimes, that person lifting a keg of beer over his head isn't actually the claimant. Make sure that you and your investigator do your homework to ensure that it is.

3/Test Equipment

Keep a proper chain of custody. Make an exact copy of the original. These and other technical requirements are essential foundational requirements to admitting the surveillance into evidence.

4/Hire Competent Investigators

The best surveillance can be undermined if the investigator doesn't testify in a credible way. Make sure that your experts are not only good investigators, but also good witnesses. The investigator who testifies should be the same person who actually operated the camera. Your defense attorney should prepare the witness well in advance of trial. The investigator should show up to court on time and be professionally dressed.

5/Successful

Surveillance Can Turn An Entire Case Around

Surveillance is expensive. It's rarely successful. However, when it is successful, it can turn an entire case around. Accordingly, I will almost never disclose successful surveillance to my examining physician or to opposing counsel. There is no discovery in Illinois workers' compensation. You don't have to disclose video until after Petitioner has already testified. Using this element of surprise is crucial to successfully impeaching Petitioner's testimony. I don't believe it when a claimant's attorney tells me that if the surveillance really is strong, he or she will dismiss the case. I would rather hold on to that surveillance and use it at trial, obtaining a zero award, which we have done frequently, with strong surveillance.

If you would like a recording of our webinar "Using Surveillance In Your Workers' Compensation Claims," email me at rlenkov@bdlfirm.com.

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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: Legalities of FIFA Scandal, the Trouble of Dennis Hastert, IL Senate Republican leader Christine Radogno and The Legal Grab Bag](#)

[Legal Face-Off: Dennis Gragert \(Daily Whale\), Kristina Rasmussen \(Illinois Policy Institute\), legal lessons from Deflate Gate & The Legal Grab Bag!](#)

[Legal Faceoff: Adam Potter of the CLM, Prof. Donald Hubin, Robert Blagojevich & The Legal Grab Bag!](#)

Our most recent episode was released on 6/1 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



- On 7/15/15, **Dan Cooper** will present "Impact of Medicare on Liability & Workers' Compensation Cases" for [CEU Insitute](#)
- On 8/26/15, **Rich Lenkov, Justin Nestor and Maital Savin** will present at the WCDI Conference on Multi-State Workers' Compensation Laws. For more info, [Click Here](#)
- On 9/17/15, **Jeanmarie Calcagno** will present to the Illinois Manufacturers' Association
- On 10/29/15, **Tim Alberts** will present "Effective Statements" in Des Moines, IA for [CEU Institute](#)

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



Rich discussed red flags and the latest investigative techniques used to uncover fraud, including social media. He also explained cost effective strategies for pursuing fraud and achieving maximum recovery and how to deter future fraud.



Legislative Update

By: [Rich Lenkov](#) and [Michael Milstein](#)



One of the key components of Illinois Republican Governor Bruce Rauner's campaign was reforming the workers' compensation

and tort systems. However, he has faced a staunch Democratic dominated legislature, which opposes significant reform.

On 6/4/15, the Illinois House passed HB1287, which:

- Defines "arising out of an in the course of" and "traveling employee"
- Creates contribution action for employers in repetitive trauma cases
- Changes premium regulation and creates a task force to study premiums
- Provides incentives for safety and return to work programs
- Enhances self-insurance oversight

The bill was sent to the Senate. However it is unlikely that Governor Rauner will sign this legislation, as it amounts to very little actual reform. This bill merely clarifies much of the law that was already in effect. Moreover, it doesn't touch on some key savings provisions that we on the employers side want, including:

1. That work must be the primary factor, not simply one aggravating factor, for causal connection.
2. AMA ratings as that only factor in deciding PPD, rather than one of five factors.

We will continue to keep you posted on this issue.

Statute Of Limitations Trumps Re-filed Claim

By: [Jessica Rimkus](#)



In *Routt v. Wal-Mart Stores, Inc.*, 12 IL. W.C. 26412 (Ill. Indus. Comm'n), the Commission addressed whether Petitioner is barred from filing a second Application after the first Application for the same accident has been dismissed.

Petitioner filed her first Application on 2/8/11, alleging an 11/9/10 accident. The arbitrator dismissed the case on 12/23/11. On 6/29/12,

Petitioner filed a motion to reinstate the case, which the arbitrator denied. On 8/2/12, Petitioner filed a second Application, alleging the same accident date.

Respondent filed a motion to dismiss, alleging that the claim was barred by the dismissal of the first Application. The arbitrator granted Respondent's motion. However, the Commission held that the second Application was not barred by the dismissal of the first claim, as it was filed within the statute of limitations.

Respondent also argued that the Commission lacked jurisdiction to hear the review because Petitioner failed to file an authenticated transcript by the return date on review, which was required to appeal an arbitrator's decision. The Commission rejected this argument, following the Illinois Supreme Court's decision in *Chicago Rawhide Mfg. Co. v. Illinois Industrial Commission*, 35 Ill.2d 595, 221 N.E.2d 289 (1966), which determined that a dismissal for want of prosecution does not qualify as a "decision" on the merits of a case.

Practice Tip:

A claimant has three years from the accident date or two years from the date that benefits were last received to file an Application. If you receive an untimely filed Application, you should deny the claim.

Street Risk Doctrine

In *Nee v. IWCC*, 2015 IL APP (1st) 132609WC, the Illinois Appellate Court addressed whether an inspector for the City of Chicago who tripped on a curb on his way to an inspection site suffered an accident that arose out of and in the course of his employment.

The parties stipulated that Petitioner was a traveling employee and that he injured his knee walking from his car to a job site. However, Respondent argued that Petitioner was at no greater risk of tripping on a curb than the general public. The court disagreed. Citing the "street risk" doctrine, the Court stated, "when, as in this case, the claimant's job requires him to travel the streets, the risks of the street become one of the risks of his employment." The "street risk" doctrine is premised on the idea that traveling employees are exposed to everyday dangers in the "street" more often than non-traveling employees.

Practice Tip:

When evaluating whether a traveling employee experienced a compensable accident, remember that many everyday dangers of traveling are compensable pursuant to the "street risk" doctrine. However, such dangers must still be reasonable and foreseeable.

Meet The Team

Justin Nestor

Partner, Bryce Downey & Lenkov



I am licensed in Illinois and Indiana, and head up our firm's Indiana office in Crown Point. My practice is primarily focused on workers' compensation defense, and I also handle general liability and unemployment defense as well.

Prior to law school, I was a police officer for the Lowell, Indiana Police Department where I reached the permanent

rank of Corporal. While on the police department, I served in a variety of capacities in addition to patrol and investigative duties, including Field Training Officer, Traffic Safety Grant Coordinator and Police Pension Board Secretary. I attended the Valparaiso University School of Law part-time while working full time as a police officer. After graduation, I got my first legal job practicing workers' compensation defense where I have primarily practiced my entire career.

I was born and raised in Northwest Indiana, and currently reside in St. John with my family. Outside of work, I enjoy spending time with my wife, Becky, and daughters, Layla and Henley. I also enjoy running and spending time with friends and family. While sometimes painful, I am an avid fan of Chicago sports, like the Cubs and Bears.



Workers' Compensation 4 Ways: Strategies For Defending Claims In 4 States

On **6/4/15**, Bryce Downey & Lenkov, Litigation Solutions, CompAlliance, Poerio & Walter Inc. and Armstrong & Peak PLLC sponsored "Workers' Compensation 4 Ways: Strategies For Defending Claims In 4 States." Attendees noshed on Cincinnati style chili, learned about defense strategies, networked and took turns petting a penguin! We would like to extend a big thank you to our sponsors for making this event possible.



Publications

Maital Savin's article entitled "[After Young v. UPS: What Employers Need To Know To Help Prevent Pregnancy Discrimination Claims](#)," was published in the Defense Research Institute's 4/27/15 issue of *The Job Description*.

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

- Transgender Employees: News And Tips For Employers
- Supreme Court Weighs in on Pregnancy Discrimination
- Think you Should Terminate an Employee That Calls you a "Nasty MF"? Think Again

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 Defect Claim

Free Webinars

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

Here Is What Attendees Had To Say About Our May Webinar: Fighting Fraud Claims

"Informative and entertaining."

"Interactive questions."

"Informative on developing cases for fraud based on red flags and using the Price is Right case as a good example."

"Quick, but detailed information on the subject."

"The topic was very interesting. I enjoy learning about how to fight fraudulent claims."



Upcoming

6/24/15 – [Click Here to Register](#)

Hottest Illinois Workers' Compensation Top 5 Lists

Rich Lenkov & Maital Savin

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.

Giving Back

Bob Bramlette Judges 2015 ABA NAAC Competition



On 4/9/15-4/11/15, **Bob Bramlette** helped judge the 2015 ABA National Appellate Advocacy Competition. This competition focuses on developing oral advocacy skills with the addition of a realistic appellate advocacy experience. Participants wrote briefs and argued their cases to a mock court.

BDL Attends NRA Show 2015

On 5/19/15, BDL attended the 2015 National Restaurant Association Show. We represent several foodservice clients and like to stay informed of new developments and changes. BDL learned about hospitality updates and met some characters.



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:

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