



Workers' Compensation Newsletter July 2015

Upcoming Webinar!
7/23/15
More Top 5 Lists
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THE TOP 5 LIST

Top 5 Red Flags For Fraud

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov
Workers' Compensation Department

Workers' compensation fraud is a continuous problem in all states. While any one of these might not be a sufficient basis for prosecuting fraud, they are definite warning signs that something may be amiss with a workers' compensation claim.

1/Late Notice

Although Illinois gives claimants 45 days to report a work related injury, anything more than a few days should raise a red flag. Why would a legitimate claimant wait 45 days to report a work related injury? This is especially true when they are trained to report injuries right away.

2/Non-responsiveness

A legitimate claimant will communicate with you regularly. After all, you are trying to pay them benefits and get them back to work. A claimant who does not respond should raise questions regarding the veracity of their claim.

3/Monday Injury

We have all seen it, the claimant who alleges a work-related injury minutes after starting work on Monday. Did they really hurt themselves at work, or was it something they did over the weekend?

4/History Of Discipline

Always examine a claimant's personnel file. Many alleged injuries are reported soon after disciplinary action. Fear of being terminated may be the motivating factor for the injury allegation, rather than a legitimate accident.

5/Excessive

Treatment/Doctors/ Complaints

A claimant treating excessively, seeing a large number of doctors and has complaints that are out of touch with reality are all signs of a questionable claim.

If you would like a recording of our webinar "Fighting Fraud Claims," please 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: Landmark Supreme Court Decisions, Marijuana Legalization and the Legal Grab Bag](#)

[Legal Face-Off Full Show: IL Marijuana Laws, NY Prison Break](#)

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

Our most recent episode was released on 7/1 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 Institute](#)
- On 7/23/15, **Storrs Downey** will present "Solving Common Settlement Problems" and "Successful Subrogation" for [CEU Institute](#)
- 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](#)



BDL Speaking At WCDI Conference On Multi-State Workers' Compensation Laws



On 8/26/15, **Rich Lenkov**, **Justin Nestor** and **Maital Savin** will present at the Orlando WCDI Conference on Multi-State Workers' Compensation Laws. Attendees will learn about various legislative changes and feature an interactive panel discussion with claims managers. For more info, [Click Here](#)



An Overview Of Orthopedic WC Case Studies



On 6/19/15, **Jessica Rimkus** presented at "An Overview of Orthopedic Workers' Compensation Case Studies" at Hub 51, providing insight on several workers' compensation case studies from a defense perspective. Attendees were also able to hear a Petitioner's attorney weigh in for an effective point/counterpoint demonstration.

Geoff Bryce Elected To SOICA Steering Committee



Geoff Bryce was recently elected to SOICA Steering Committee. This committee membership is limited to attorneys practicing construction law at least ten years, who have made a great impact in the construction industry and demonstrated high ethical and professional standards of practice.

Illinois Workers' Compensation Reform

Democrats and Governor Rauner were unable to agree on a 2016 budget before the new fiscal year started on 7/1/15. Additionally, a one month spending plan failed to pass in the House. As a result, Illinois is operating without a budget. In an effort to manage the government without a budget and help remedy Illinois' dire economic situation, Governor Rauner continues to insist that the legislature enact reforms, including workers' compensation reforms.

We recently interviewed Illinois Senate Republican leader, Christine Rodagno on Legal Face-Off about these changes. For more info, [Click Here](#).

Injuries Do Not Always Result In PPD

By: [Michael Milstein](#)



In *Cargill v. Illinois Workers' Comp. Comm'n*, 2015 IL App (4th) 140501WC-U, the Illinois Appellate Court held that injuries do not always result in permanent partial disability. The case involved bilateral carpal tunnel. Petitioner underwent surgery and returned to work without restrictions. Petitioner had no complaints of lingering numbness or pain.

At trial, the arbitrator found Petitioner suffered no permanent partial disability and the Commission affirmed. The Circuit Court reversed and awarded Petitioner 15% loss of use of each hand. The Circuit Court reasoned that though Petitioner didn't have any symptoms, he still had scars and scar tissue. The Appellate Court reversed, noting that Petitioner's carpal tunnel symptoms completely resolved and found that Petitioner was not entitled to a PPD award.

Practice Tip:

Though it is rare for a case to receive no permanent partial disability, it is possible. When a claimant has an excellent recovery without any residual complaints, take the case to trial and fight for a zero PPD award.

Your Independent Contractor May Be Your Employee

By: [Ed Jordan](#)



In *Steel & Mach. Transp., Inc. v. Illinois Workers' Comp. Comm'n*, 2015 IL App (1st) 133985WC, the Illinois Appellate Court affirmed the Commission's decision, finding that Petitioner was an employee despite signing an agreement stating that he was an independent contractor.

Petitioner was an over-the-road truck driver who was injured in a motor vehicle accident while making a delivery for Respondent. Petitioner signed an "Independent Contractor Agreement" when he began working for Respondent. The agreement stated that Petitioner was responsible for maintaining and repairing the truck and Respondent had to provide liability insurance and reimburse Petitioner for fuel. Petitioner testified that Respondent required him to make deliveries within a set timeframe and assessed a late charge if he missed the deadline. The arbitrator found that Petitioner was Respondent's employee and awarded him benefits. The Commission, Circuit Court and Appellate Court agreed with the arbitrator's finding.

In finding an employment relationship, the Court noted that the independent contractor agreement provided that the equipment Petitioner used was for Respondent's exclusive possession, control and use. The evidence showed that Petitioner was required to complete an application, take a drug test, display Respondent's name on his equipment and attend an orientation, suggesting an employment relationship. Although Petitioner was paid on a per-job basis and taxes were not withheld, the agreement stated that Petitioner or Respondent could terminate the agreement at any time for any reason, which also suggested employment.

Practice Tip:

With the right facts, be aggressive about arguing that an individual is an independent contractor rather than an employee. Remember, an independent contractor is not entitled to any workers' compensation benefits under the Act.

Meet The Team

[Tim Alberts](#)

Associate, Bryce Downey & Lenkov



Tim graduated with honors and earned his Juris Doctor degree from John Marshall Law School. Prior to joining Bryce Downey & Lenkov, Tim gained significant experience in workers' compensation defending employers in cases at all stages of litigation.



Tim was born in Chicago, but moved to New Jersey at age 7, returning to Orland Park just before high school. Currently, Tim and his wife Beth are kept very busy by their 7-month old son, Harrison.

In his free time, Tim enjoys cheering on his beloved Bears, Blackhawks, Bulls, White Sox and hanging out with friends and family

BDL Is Growing

Associates Matt Alva And Shadiq Shariff



BDL welcomes Matt Alva and Sadiq Shariff.

Matt handles workers' compensation and general liability. Prior to joining BDL, Matt defended clients in civil litigation matters concerning product and premises liability. Matt previously worked as a public school history teacher in Chicago. Matt graduated from the University of Illinois and Chicago-Kent College of Law.

Sadiq handles workers' compensation and general liability. Prior to joining BDL, Sadiq represented municipalities, healthcare providers and other insureds in all types of state and federal civil litigation matters. Sadiq graduated from Loyola University and Drake University Law School, where he was a member of the ABA Negotiations Team and International Academy of ADR Mediations Team. Along with his law degree, Sadiq also earned a Certificate in Litigation and Dispute Resolution.

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 June Webinar: Our Hottest Illinois Workers' Compensation Top 5 Lists

"The speakers gave very helpful and good information that I can use today."

"The topics were very close to certain situations on my desk right now. It was enlightening."

"Straight forward solutions to the difficult issues we constantly encounter."

"Excellent presenters, great information."



Upcoming

7/23/15 – [Click Here to Register](#)

More Top 5 Lists

Rich Lenkov & Ed Jordan

Recent

Fighting Fraud Claims

Accident Denials

Causation in Illinois Workers' Compensation

Strategies And Tactics for Defending Indiana Workers' Compensation Claims

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

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