



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter October 2015



### THE TOP 5 LIST

## Top 5 Questions To Ask Potential Defense Counsel

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

Litigation expenses are among the most significant cost drivers in a workers' compensation claim. Hiring the right defense counsel is key to mitigating those expenses. Here are some questions you should ask before hiring counsel:

### 1/What Is Your Average Legal Expense?

Too often, clients are fixated on hourly rates. That doesn't tell the whole story. The more crucial question is what the firm averages in litigation expenses per case. Any firm can wow you with a low rate, but overall expenses are a better indicator of whether the firm is a true business partner.

### 2/How Long Do Your Cases Stay Open?

Your defense counsel should always be focused on closing cases quickly and as cheaply as possible. You should not only ask how long the case will stay open, but what tools they use to move the cases along quickly.

### 3/Who Will Staff My Case?

No one likes the bait and switch, where the experienced attorney convinces you to hire them and is never seen again. Clients hire individuals, not firms. Be sure your defense counsel knows that you want your hand-selected team representing you.

### 4/How Many Trials/Appeals/Depositions Have You Handled?

Don't just inquire as to the years in practice from your potential defense counsel. Someone who has been in practice for 20 years but hasn't really taken a lead role in the trenches may not suit your needs. Ask specifically about how much actual workers' compensation handling experience your potential counsel has had.

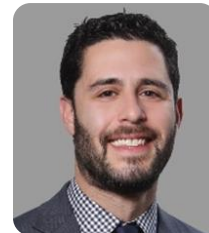
### 5/What Do You Know About My Company?

You should hire counsel who views their role as your business partner first and your lawyer second. It is important for your defense counsel to know what you do, know what your company does, what its goals are, its history, etc. You obviously don't want a defense counsel who simply sees you as just another corporation paying its bills.

Upcoming Webinar!  
10/22/15  
Workers' Compensation  
Horror Stories  
[Click Here to Register](#)



By: [Michael Milstein](#)



The Illinois legislature and Governor Rauner are still at an impasse as to how to resolve the budget crisis, which has left Illinois without a spending plan since 7/1/15. This inability to reach an agreement on the budget is also making it impossible for any other legislative work to be completed. Both SB0162 and HB4223, which deal with workers' compensation reforms, remain in the House Rules Committee.

We will continue to keep you updated on any developments concerning workers' compensation reform.



#### SOUND BITE: JUANITA IRIZARRY & FRED BATES

On Legal Face-Off's recent episode, newly appointed Executive Director, Juanita Irizarry, and Board Policy Co-Chair, Fred Bates from Friends Of The Park, join Rich to discuss FOTP's lawsuit against the planned George Lucas Museum Of Narrative Art.

**Rich:** Thanks for joining us, Juanita, will you tell us what the FOTP organization is?

**Juanita:** We are a 40 year old non-profit organization that is dedicated to preserving, protecting, improving and promoting the use of our parks' open space here in Chicago.

**Rich:** And what is your position on the upcoming Lucas Museum that is being planned for Chicago?

**Juanita:** We are opposed to the Lucas Museum being sited along the lakefront. We have not taken a position against the Museum itself, but we certainly do not think it should be sited on public trust land.

**Rich:** The drawings, the scaled down version that we've seen in the media, let's assume the new agreement has the 4.6 acres of park land, plus improvements to existing open space, an eco-park, a dune field, an event prairie, assuming that's all true, will that satisfy you?

**Juanita:** We are opposed to the location; they should not put the Lucas Museum on that site regardless of the design.

**Fred:** ... The city gets nothing out of this except one man's particular vision of art and no other museum that has been built on the lakefront has ever had one man's vision.

**Rich:** To be fair, I don't think that's entirely accurate. It's called the Lucas Museum of Narrative Art, so it's not just a monument to George Lucas. What has been announced is that it will feature not only George Lucas art and film, but narrative art which covers a broader spectrum. Let's assume that's correct and it is dedicated to George Lucas, if it wasn't, and was broader in scope, would you then drop your opposition to it?

**Juanita:** The location is problematic, but we do also have concerns that it's not a non-profit organization and a private individual...

[Click Here To Listen To The Full Episode:  
http://wgnplus.com/category/legal-face-off/](http://wgnplus.com/category/legal-face-off/)

#### Recent Topics:

- Lucas Museum lawsuit
- Salmonella trial
- Patrick Kane
- Sean Penn defamation lawsuit
- Michael Jordan civil suit
- Ashley Madison

#### Recent Guests

- Fred Bates and Juanita Irizarry from Friends Of The Park
- Food safety expert Bill Marler
- Milwaukee County Sheriff David Clarke
- Class action lawyer Joseph Siprut
- Alan Dershowitz, Professor of Law, Emeritus, Harvard Law School
- Attorney Gloria Allred

[Legal Face-Off: Lucas Museum Lawsuit, Salmonella Trial, Patrick Kane, Sean Penn, Michael Jordan And More](#)

[Legal Face-Off: Suing Ashley Madison, Sheriff Clarke On #BlackLivesMatter & Liability At Sports Stadiums](#)

[Legal Face-Off : Alan Dershowitz On Obama Iran Deal And Trump, Jared Fogle Update](#)

Please like us on [Facebook](#) and [subscribe in iTunes](#). 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.

## Geoff Bryce Presented To NBI



On **9/16/15**, Geoff Bryce presented “Mechanics’ Liens In Illinois” to the National Business Institute.

## Upcoming Seminars

- On **10/28/15**, **Rich Lenkov** will present to the Illinois Manufacturers' Association. He will discuss negotiation strategies and causation in Illinois workers' compensation claims
- On **11/5/2015**, **Storrs Downey** and **Maital Savin** will present a webinar regarding employee hiring. Stay tuned for more info
- On **1/13/16**, **Tim Alberts** will present “Effective Statements” in Des Moines, IA for [CEU Institute](#)

## Intervening Accident Breaks Causation

By: [Maital Savin](#)



In *Ray v. Apostolic Christian Skylines*, 12 IL. W.C. 14942 (Ill. Indus. Comm'n 2015), the Commission found that an intervening accident relieved the employer of further liability.

Petitioner tripped and fell at work, injuring her neck, right shoulder and back. She was diagnosed with a cervical strain, soft tissue injury and low back pain. A cervical MRI revealed minor discogenic changes without herniation. Approximately 7 months later, Petitioner fell while descending stairs at her home, landing on her right side. Shortly after the fall, an MRI suggested disk bulging and degenerative changes. Petitioner's treating doctor recommended surgery, which he opined was related to the work accident.

The arbitrator found Petitioner's condition related to the work injury and awarded benefits. However, the Commission found that Petitioner's fall at home constituted an intervening accident, which

broke the chain of causation. The Commission noted that Petitioner's accident at home changed the nature of her injury as she reported new and extensive pain and required more extensive treatment. Accordingly, the Commission vacated the arbitrator's award of benefits after the intervening accident date.

### Practice Tip:

Read every page of medical records you receive carefully. In *Ray*, the employer significantly reduced its exposure by doing just this. Whether it is an intervening accident, a pre-existing condition or inconsistent reports by the claimant, you never know what you will find.

## Accident Date Trumps Hearing Date In Wage-Diff Award

By: [Jessica Rimkus](#)



In *DiBenedetto v. IWCC*, 2015 IL App (1st) 133233WC, 35 N.E.3d 1129 (2015), the Appellate Court considered the issue of whether a maximum wage-differential award should be determined based on the state average weekly wage on the accident or hearing date.

Petitioner filed an Application, alleging a 12/12/06 accident date. After trial, the arbitrator issued its decision in 2012 and awarded wage-differential benefits, using the state average weekly wage applicable at the time of trial.

The Commission reduced the award, applying the state average weekly wage in effect on the accident date. The Circuit Court affirmed. Petitioner appealed, arguing that the intent of the Act is to compensate and financially protect injured workers. He argued that the state average weekly wage at the time of his hearing, rather than accident date five years prior, would place him “closer to the financial condition that he would have been in had the injury never occurred.”

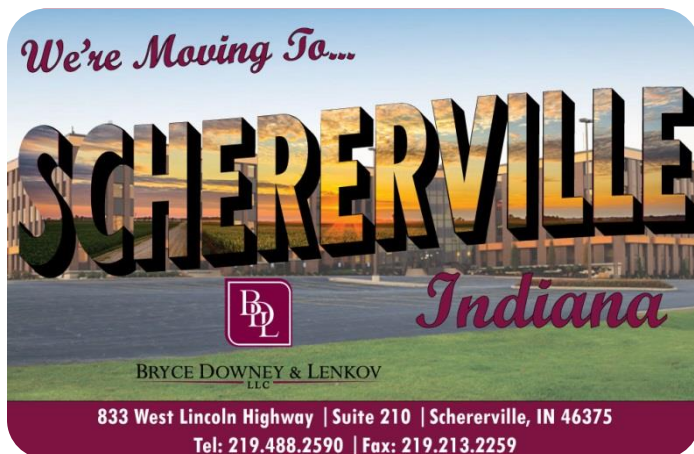
The Appellate Court affirmed the circuit court decision, rejecting Petitioner's argument. The Court noted that Petitioner failed to cite any authority in support of his argument. Further, the issue was addressed by the Supreme Court in *Grisby v. Industrial Commission*, in which the Court referenced several provisions of the Act that expressly adhered to the accident date in determining benefits.

### Practice Tip:

The accident date always prevails when assessing benefits. Especially when dealing with potential wage-differential claims, it is important to note the accident date and other aspects to help mitigate exposure.



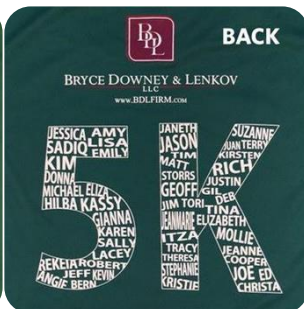
## New Indiana Office Location



Our Indiana office has moved to a new location. Our new address is **833 West Lincoln Highway, Schererville, Indiana**. The new office is more than twice the size of our previous space in the Crown Point office.

## Giving Back

### Race Judicata



BDL braved rain and mud to raise money for Chicago Volunteer Legal Services' Race Judicata 5K Race. CVLS is the first and pre-eminent pro bono civil legal aid provider in Chicago. This year, BDL won 3<sup>rd</sup> place in the annual t-shirt design contest!

## Did You Know?

In addition to workers' compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization and Governance](#)
- [Construction](#)
- [Employment & Labor](#)
- [Entertainment Law](#)
- [Insurance Coverage & Litigation](#)
- [Intellectual Property](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)



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### 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

- 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

- How Can I Lower My Real Estate Taxes?
- Illinois Appellate Court Interprets Section 30 Of The Mechanics' Lien Act  
And Limits Recovery To Sub-Subcontractors

## Free Monthly Webinars

Here is what attendees had to say about our 9/24/15 webinar, "Reducing Legal Expenses"

"As always, webinars given by Bryce Downey & Lenkov are informational, interesting and thorough. They are not boring!"

"Very informative. Always enjoy the quizzes."

"This was the first webinar that I have attended and felt it was very informative. I will definitely be attending other webinars."



### Upcoming

10/22/15

Workers' Compensation Horror Stories

Rich Lenkov

Suzanne Kleinedler

[Click Here to Register](#)

### Recent

- More Top 5 Lists
- Our Hottest Illinois Workers' Compensation Top 5 Lists
- Fighting Fraud Claims
- Accident Denials
- Causation In Illinois Workers' Compensation



If you would like a copy of any of our other prior webinars, please email our Marketing Coordinator Jason Klika at [jklika@bdlfirm.com](mailto:jklika@bdlfirm.com).

## Cutting Edge Legal Education

If you would like us to come to you for a free seminar,

[Click here now](#) or email Rich Lenkov at

[rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com)

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 2015 Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- 2015 National Workers' Compensation & Disability Conference
- RIMS Annual Conference

Some of our previous seminars include:

- 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 Rates At A Glance



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Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
1/15/10 - 7/14/10	\$1,243.00	\$466.13	\$922.45
7/15/10 - 1/14/11	1,243.00	466.13	925.08
1/15/11 - 7/14/11	1,243.00	466.13	930.39
7/15/11 - 1/14/12	1,261.41	473.03	946.06
1/15/12 - 7/14/12	1,288.96	483.36	966.72
7/15/12 - 1/14/13	1,295.47	485.80	971.60
1/15/13 - 7/14/13	1,320.03	495.01	990.02
7/15/13 - 1/14/14	1,331.20	499.20	998.40
1/15/14 - 7/14/14	1,336.91	501.34	1,002.68
7/15/14 - 1/14/15	1,341.07	502.90	1,005.80
1/15/15 - 7/14/15	1,361.79	510.67	1,021.34

Effective Dates	Maximum PPD
7/1/04 - 6/30/05	\$567.87
7/1/05 - 6/30/06	591.77
7/1/06 - 6/30/07	619.97
7/1/07 - 6/30/08	636.15
7/1/09 - 6/30/10	664.72
7/1/10 - 6/30/11	669.64
7/1/11 - 6/30/12	695.78
7/1/12 - 6/30/13	712.55
7/1/13 - 6/30/14	721.66
7/1/14 - 6/30/15	735.37
7/1/15 - 6/30/16	749.06

## 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

\*Number if children and/or spouse = number of dependents.

Minimum TTD & PPD	Single	Married	1 DEP.	2 Dep.	3 Dep.	4+ Dep.
TTD & PPD 7/15/10 - 7/14/16	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

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Fax: 678.352.0489

# PPD Benefits Schedule Of Body Parts

For Injuries Occurring	Before 7/20/05	7/20/05 - 11/15/05	11/16/05 - 1/31/06	2/1/06 - 6/27/11	On or after 6/28/11
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.

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