



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter December 2015

Upcoming Webinar!

12/10/15

Ask A Workers'
Compensation Attorney
ANYTHING

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THE TOP 5 LIST

Top 5 Questions To Ask A Potential IME Doctor

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

Section 12 gives parties the right to select an independent medical examiner. Before getting stuck with a bad one, ask these questions:

1/ Are you board certified?

Board certification is not mandatory to practice medicine. However, it is almost a necessity when choosing an expert, as it connotes a certain level of expertise that you want in a retained physician.

2/ What percentage of your practice is devoted to litigation?

The best experts are ones that spend most of their time treating patients, rather than litigating. Professional litigants are not as credible as doctors who spend most of their time seeing patients. There is no magic number, but stay away from doctors who spend more than 15% of their time on litigation.

3/ Any disciplinary actions?

This is easily searchable on various web sites. It is important to know if your expert has had any disciplinary actions or medical malpractice cases that may adversely affect their credibility.

4/ Are you an expert in the specific subspecialty?

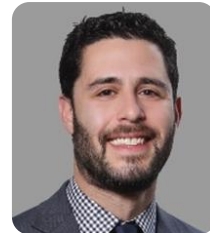
Hire an expert with a long and credible track record with the specific body part he or she is examining. A doctor who has treated thousands of patients with a similar condition is more credible than a generalist.

5/ How much work do you do for employees?

You want a doctor who works for both Petitioners and Respondents. One who exclusively represents employers could be perceived as a hired gun by the Commission.



By: [Michael Milstein](#)



The standstill between the Illinois legislature and Governor Rauner has entered its 6th month. No budget has been

approved and the workers' compensation reform bills remain pending in the House. Perhaps the only update comes from Chris Kaergard, a Springfield political reporter, who has refused to shave his beard until the budget impasse is resolved:



Until the legislative and executive branch can resolve their issues, we will not see movement on the pending workers' compensation reform bills or Chris Kaergard's freshly shorn face. We will continue to keep you posted. #budgetbeard.



SOUND BITE: IAN MILLHISER

On Legal Face-Off's recent episode, Senior Fellow at American Progress, Ian Millhiser, joined Rich and Jason to discuss the legal debate over accepting Syrian refugees.

Jason Whiteside: Ian, before Friday's attacks in Paris, the U.S. had no issue accepting refugees from anywhere in the world. Is this just a knee jerk reaction to the attacks and are the governors going to realize there's not much hope to fight this and accept the refugees?

Ian Millhiser: Certainly I think this is an ill-considered reaction to what has happened. You brought up the issue of religious discrimination, which is unconstitutional. One thing we cannot do under our constitution is say there can only be Christians and not Muslims admitted through a government program. But, as a matter of counter terrorism, that is a foolish thing. It is a reckless thing for American officials to say...

Rich Lenkov: So it seems clear that the governors are flat out wrong legally when they say they can do this, but what if the president comes out and says that he wants to ban refugees? What if we elect a president who now says, "well, I am changing our policy"? Does he have any legal standing to suddenly reverse course and say that we will not, as a country, accept refugees from Syria?

Ian Millhiser: The immigration law generally gives a tremendous amount of discretion to the executive branch of government. So yes, it

does matter a great deal who is president...But under the law, whoever the president of the U.S. is, that person has a great control over what the refugee policy is.

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

Recent Topics:

- Syrian refugee crisis
- Obama's release of nearly 7000 federal prisoners
- Charlie Sheen
- Taylor Swift
- Halloween-themed lawsuits
- Fantasy football legislation

Recent Guests

- Alan Dershowitz, Professor of Law, Emeritus, Harvard Law School
- Westy Egmont, Director, Immigrant Integration Lab, Boston College
- Steve Cook, President, National Association Of Assistant U.S. Attorneys
- Jenna Moll, Deputy Director, US. Justice Action Network
- Michele Jawando, Vice President, Center For American Progress
- Attorney Gloria Allred

[Legal Face-Off: Syrian Refugee Crisis, Obama's Release Of Nearly 7000 Federal Prisoners, Charlie Sheen, Taylor Swift And Much More](#)

[Legal Face-Off: Halloween-Themed Lawsuits, Fantasy Draft Legislation, Derrick Rose, Dennis Hastert's Guilty Plea And More](#)

[Legal Face-Off: Barbara Byrd-Bennett, Dennis Hastert, Lamar Odom, Gun Store Negligence And More](#)

Please like us on [Facebook](#) and [subscribe in iTunes](#). Send us your questions and we will answer them on air—nothing is off limits.

Upcoming Seminars

- On 1/13/16, **Tim Alberts** will present "Effective Statements" in Des Moines, IA for [CEU Institute](#)

Petitioner's Accident 'Tripped Up' By Commission

By: [C.Matt Alva](#)



In *Loeb v. Northshore University Health System*, 23 ILWCLB 155 (Ill. W.C. Comm. 2015), the Illinois Workers' Compensation Commission determined that Petitioner's tripping over a curb in her employer's parking lot did not arise out of her employment.

Petitioner, a nurse researcher, was required to travel to various hospitals in response to medical emergencies. Petitioner's parking spot was located in the main lot that was open to patients, visitors and hospital employees. On the accident date, Petitioner testified that she moved to avoid a vehicle and tripped over a curb, injuring her left arm.

The Commission, affirming the Arbitrator's decision, found that tripping over a curb was a risk faced by all members of the public. Therefore, there was no risk connected with or incidental to Petitioner's employment. The Commission noted that there was no defect in the curb or ice, snow or rain accumulation where Petitioner fell.

Practice Tip:

Tripping on a curb in an employer's parking lot is often considered a non-compensable, neutral risk. When assessing a parking lot case, be sure to consider whether the parking lot is open to the general public, whether there were any defects in the parking lot or curb at the time of the accident and whether the entrance is used by the general public.

The Weight Of An AMA Impairment Rating

By: [Tim Alberts](#)



In *Continental Tire of the Americas v. IWCC*, 2015 IL App. (5th) 140445WC, the Appellate Court considered the issue of permanent partial disability per Section 8.1b(b).

Petitioner sustained a left wrist injury in a compensable work accident. Prior to arbitration, Respondent secured an AMA impairment rating of 0% from Dr. David Brown, pursuant to Section 8.1b(a). Petitioner did not obtain or admit an AMA impairment rating report.

The arbitrator awarded Petitioner 5% loss of use of the left hand. Respondent appealed, and the Commission affirmed. Respondent appealed to the Circuit Court, which also affirmed.

On appeal, Respondent argued that Petitioner's PPD request should have been denied because he did not present a physician's report supporting a PPD finding. Respondent also argued that the Commission failed to give proper weight to Dr. Brown's impairment report, Petitioner's extremely limited treatment and his return to full duty at his prior earning capacity.

The Appellate Court affirmed the Commission's decision. The Commission reasoned that Section 8.1b(a) does not require each party to submit an AMA impairment rating report and such reports are to be considered along with the other four factors under 8.1b(b).

Practice Tip:

The decision in *Continental Tire* reassures us of the interpretation and impact (or lack thereof) of AMA impairment ratings and PPD awards. In evaluating PPD, it is important to consider all five factors (age, occupation, future earning capacity, corroboration of medical records and AMA impairment rating.)

Forecast For 2016

On 10/28/15, Willis Insurance and Bryce Downey & Lenkov co-hosted **Forecast for 2016**. BDL presenters included **Jeanne Hoffmann**, **Robert Bramlette**, **Jim McConkey** and **Mollie O'Brien**.



BDL Receives Corporate Citizenship Award



Bryce Downey & Lenkov received the 2015 Builders Association's Corporate Citizenship Award and will be honored at the Annual Builders Connect Conference on 12/10/15. The award is given to a company for its philanthropic contributions and strong commitment to public services. Among our efforts to give back, we have participated in several events to raise funds for charitable causes:

- Chicago Volunteer Legal Services' Race Judicata
- Respiratory Health Association's Hustle Up The Hancock
- Chicago Special Olympics' Polar Plunge

Storrs Downey Receives Premier 100 Designation From American Academy Of Trial Attorneys



This is a distinction reserved for attorneys who have established themselves through their professionalism and excellence in service.

Membership into AATA's Premier 100 requires the satisfaction of stringent criteria and standards as established by the AATA Board of Directors. Less than 1% of the 1.2 million attorneys currently practicing in the U.S. will be selected to receive this important and prestigious designation.

Publications



Storrs Downey and **Maital Savin's** article "Call Me Claimant? Understanding Transgender Employee Discrimination Claims And Legal Developments" was published in the October issue of Claims Management Magazine. [Click Here](#) to view the full article.

Giving Back

Hustle Up The Hancock



On **2/28/16**, Team BDL will participate in Hustle Up The Hancock. Last year Team BDL hustled and raised \$3,550 for lung disease research, advocacy and education. Our best times were Robert Olszanski, Subpoena Clerk, 9:49 for the half climb, and Jason Klika, Marketing Coordinator, 17:01 for the full climb.

Team BDL Plunges



On **3/6/16**, Team BDL will take the Polar Plunge into icy Lake Michigan. Last year, 9 Sharks raised over \$3,000 for the Chicago Special Olympics. This will be our 4th year braving freezing temperatures at North Avenue beach to raise funds and awareness for the Special Olympics Chicago. Special Olympics is the world's largest program for sports training and athletic competition for children and adults with intellectual disabilities. [Click Here](#) to donate to our page.

Did You Know?

In addition to workers' compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization & 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.

Labor & Employment Law

- DOL's Aggressive Interpretations Finds Most Workers are Employees Rather Than Independent Contractors Supreme Court Weighs in on Pregnancy Discrimination
- Seventh Circuit Finds FedEx Drivers Were Employees, Not Independent Contractors

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

General Liability Update

- Illinois Appellate Court Holds Store Owner Not Liable For Trip And Fall On Adjoining Property
- Indiana Still Looking To Change Landscape For Medical Malpractice Actions

Free Monthly Webinars

What you said about our 11/19/15 webinar,
"Crossing The Border: Top 5 Issues In Illinois & Indiana WC."

"I liked the clarification on variations of traveling employee doctrine."

"Topics were explained and applied to everyday situations."

"Informative, didn't remember or know about Illinois PPP and also the physician choice in Indiana."

"I liked the comparisons between states and scenarios of actual claims."



Congrats to our November webinar winner,
Amanda on winning your turkey tie!

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

Upcoming

12/10/15

Ask A Workers' Compensation Attorney

ANYTHING

Rich Lenkov

Jeanmarie Calcagno

[Click Here to Register](#)

Recent

- More Top 5 Lists
- Interviewing And Hiring: Best Practices With Video Examples
- WC Horror Stories
- Reduce Your Legal Expenses NOW!
- You Asked For It, You Got It: Your Most Requested WC Questions Answered

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

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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PPD Benefits Schedule Of Body Parts

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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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.

Disclaimer:

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