BRYCE DOWNEY & LENKOV LLC

General Liability Update
February 2016

Key Changes Made To Federal Rules Regarding Discovery

The Federal Rules of Civil Procedure underwent significant modifications that took effect on December 1, 2015. Some of these changes directly affect how parties issue and respond to discovery requests.

Previously, "scope of discovery" under **Rule 26** was broad and allowed discovery of anything "reasonably calculated to lead to the discovery of admissible evidence." The Rule now states that the scope of discovery encompasses any information relevant to the claims and defenses raised by parties. The Rule still allows for discovery of information even if it may not be admissible.

A major change to Rule 26 is identifying "proportionality" as an aspect affecting the scope of discovery of relevant information. Under Rule 26(b), a party is permitted to obtain any non-privileged information relevant to a party's claim or defenses. Now, the Rule specifically states that the scope of discovery has to be proportional to the needs of the case.

Rule 26(b)(1) identifies several factors relevant to determining whether the scope of discovery sought in a particular discovery request is "proportional." Specifically, proportionality is based on:

- The importance of the issues at stake in the litigation.
- The importance of the requested discovery in resolving those issues.
- The amount in controversy in the case.
- The parties' relative access to relevant information.
- The parties' respective resources.
- Whether the burden of expense of the proposed discovery outweighs its likely benefit.

Due consideration of these factors should prevent abusive discovery aimed at forcing a party to expend time and resources responding to discovery requests that offer little value to any party's claims or defenses.

While it appears that it is the burden of the party seeking discovery to establish "proportionality," the issue (as with most discovery issues) would have to be raised through an objection or motion for protective order by the responding party. In this regard, it is important to note that the Rules Committee observed that boilerplate or unsupported objections should be avoided. Objections should be supported with facts showing why the six factors weigh against the proposed discovery.

We anticipate seeing "proportionality" becoming a key issue regarding discovery of electronically stored information (ESI), which has become the newest frontier for abusive discovery requests and obstructive discovery responses.

Rule 34 has also been amended to require parties responding to document production requests to specifically state the nature of their objection and disclose whether any information is being withheld because of that objection.

Rule 37(e) has also been specifically amended to address sanctions based on loss or destruction of ESI. In order for sanctions to be imposed for ESI loss or destruction, three elements must be established:

- The ESI "should have been preserved in anticipation or conduct of litigation."
- The ESI must have been lost or destroyed because the party "failed to take reasonable steps to preserve it."
- Lost or destroyed ESI cannot be restored or replaced through additional discovery.

It is important to note that the Committee observed "perfection in preserving all relevant ESI is often impossible." The goal of the changes to Rule 37(e) is to encourage proper discovery and avoid litigation being determined by technical shortcomings in the retention or production of ESI. Imposing sanctions is further limited by Rules 37(e)(1) and (e)(2). Under Rule 37(e)(1), sanctions may only be

entered if a party can establish prejudice by loss of ESI. The form of the sanctions must be no greater than necessary to cure the prejudice.

When loss or destruction of the ESI is found to be due to a party acting to deprive the other party access to the ESI, Rule 37(e)(2) allows a court to presume prejudice and fashion sanctions fitting the offense, including entering default or dismissal against the offending party.

We anticipate an emerging body of case law applying these changes to Rules 26, 34, and 37 shaping how litigants address discovery and particularly e-discovery. We will be discussing cases involving these rules in future newsletters.

Cook County Circuit Court Rules Six-Member Jury Limitation Unconstitutional

We previously reported in our November 2015 newsletter that, effective June 1, 2015, all new cases seeking a jury trial were to be tried with a six-member jury, under an amendment that went into effect June 1, 2015. In *Kakos v. Butler*, 2015 L 6691 (December 21, 2015), Cook County Circuit Court Judge William Gomolinski, held that the recently enacted amendment to Section 2-1105 of the Illinois Code of Civil Procedure requiring all civil jury trials to be tried by a jury of 6 is unconstitutional.

In *Kakos,* Plaintiff filed a lawsuit on June 30, 2015. Defendants filed their appearance and sought a twelve-member jury which was refused by the Clerk of the Court. Defendants then sought a court order directing that the case proceed with a twelve-member jury, arguing that the six-member jury limitation directly conflicted with the Illinois Constitution.

On December 21, 2015, Judge Gomolinski agreed with the defendants. Judge Gomolinski traced the history of the six different Illinois constitutions and the treatment of the right to trial by jury. Judge Gomolinski noted that at the 1970 Constitutional Convention, Delegates gave great consideration to the history of the right to a trial by jury and rejected a proposal allowing the General Assembly the ability to modify jury trial rights as a means to address caseload backlog and trial delay. Per convention delegates, the 1970 Illinois Constitution provision reading that the "right of trial by jury as heretofore enjoyed shall remain inviolate" was intended to mean juries must be comprised of twelve members in criminal or civil cases unless parties agree otherwise.

Judge Gomolinski also examined the Illinois Supreme Court interpretation of the right to trial by jury. Noting that as far back as 1897, the Illinois Supreme Court viewed the right to a jury trial to mean the right to a jury of twelve, Judge Gomolinski pointed out that the Illinois Supreme Court and appellate courts have consistently held that the Illinois Constitution guarantees the right to a trial by a jury of twelve members. Judge Gomolinski also noted that, unlike the Sixth Amendment to the United States Constitution guaranteeing a right to trial by a jury in criminal prosecutions, the Illinois constitutional provision is broader and protects the right to a trial by a jury of twelve in civil cases as well.

Judge Gomolinski also found that the statutory amendment allowing a six-member jury trial violates the doctrine of separation of powers by allowing the legislature to exercise powers exclusively belonging to the judiciary.

Finally, Judge Gomolinski stated that public policy considerations required the court to find that the amendment was invalid. According to Judge Gomolinski, "[a] larger jury panel allows for a larger sample of the diverse array of people present in a community, both in terms of demographic categories like race, age, sex as well as diversity of opinions and views. Decreasing the number to six provides a less-accurate cross-section of the public."

Per Judge Gomolinski, a jury is supposed to represent a cross-section of the community and a jury of six compromises this goal. While a six-member jury may have shorter deliberation times, with twelve-member juries, the value of lengthier deliberations with greater consideration and sharing of ideas outweighs the benefit of shorter deliberations.

A notice of appeal was filed on January 20, 2016. We will continue to report on the arguments and rulings made before the appellate court.

Thinking Point:

Based on this ruling, due consideration should be given to seeking a twelve-member jury in cases in which a larger jury is viewed as potentially better for the defendant.

Indiana Court Of Appeals Holds Physicians' Own Affidavits Insufficient To Defeat Summary Judgment

In *Scripture v. Roberts*, 49 A02-1504-CT-211 (Ind.Ct.App., February 1, 2016), the Indiana Court of Appeals held that the self-serving affidavits of Defendant physicians in a medical malpractice action were insufficient to defeat a motion for summary judgment that was predicated solely on the report of decision of the medical review panel.

The Plaintiff, Julia Roberts, suffered an injury from treatments received from the doctors. She submitted the case to a medical review panel. The panel found that the doctors failed to comply with the applicable standard of care and this failure was a factor in Plaintiff's injury.

Plaintiff filed a complaint in state court against the doctors and moved quickly for summary judgment, designating the medical review panel opinion as supporting evidence.

In response, the doctors filed affidavits stating that they provided care to the Plaintiff, were familiar with treatment of the other doctors, were familiar with the standard of care applicable to the doctors and their treatment met the applicable standard of care and were not responsible for Plaintiff's injuries.

The trial court found that the affidavits were insufficient to establish the existence of a question of fact and Plaintiff was entitled to summary judgment.

On appeal, the court of appeals expressly stated that it was not ruling on whether a doctor sued for malpractice could defeat a motion for summary judgment by filing a self-serving affidavit claiming that he did not violate the standard of care. Rather, the court held that the affidavits were insufficient to establish a question of fact because the affidavits did not set forth facts regarding Plaintiff's care. The court of appeals distinguished the succinct affidavits of these doctors with affidavits found to support and defeat summary judgment in other cases involving physicians. The court noted that successful affidavits contain references to facts regarding the condition, treatment and resulting injury.

Notwithstanding the fact that Plaintiff relied on the written decision of the medical review panel which simply stated that the doctors had not complied with the applicable standard of care and that their conduct was a proximate cause of Plaintiff's injury, the court held that the affidavits, which stated that the doctors did comply with the applicable standard of care and were not the cause of Plaintiff's injury, were insufficient. Accordingly, the court affirmed summary judgment in favor of Plaintiff.

Thinking Point:

The court's decision seems to apply a double standard for the quantum of proof required to support a summary judgment and the quantum of proof required in opposition to a motion for summary judgment in medical malpractice cases. While a plaintiff only needs to attach the written opinion of the medical review panel stating that the standard of care was violated and the violation caused injury, a non-moving party has to come forward with expert testimony or an affidavit supported by additional facts in order to defeat the summary judgment.

The ease with which a plaintiff in a medical malpractice case can quickly move for summary judgment following a favorable medical review panel determination makes it imperative for healthcare providers, against whom a medical review panel has ruled, to be prepared to submit detailed affidavits to respond to such motions.

Illinois Appellate Court Expands Deliberate Encounter Exception To Open And Obvious Doctrine

In *Metke v. Harlem Irving Companies Inc.*, 2015 IL App (1st) 143368 – U (December 30, 2015), the Illinois Appellate Court for the First District held that the deliberate encounter exception to the open and obvious doctrine applies to pedestrians who choose to traverse a hazard on a sidewalk that is a direct route to their intended location.

In *Metke*, Plaintiff was shopping at an outdoor shopping mall and walking along a sidewalk from one store to another. As she was walking, she noticed a 13" wide accumulation of ice or water running across the sidewalk. She thought that the accumulation was simply water. Once she walked across the sidewalk and slipped on the substance, she realized that there was also ice.

Plaintiff sued the owner of the outdoor shopping mall who, in turn, sued a fire protection company that was likely the source of the water. Twenty minutes prior to Plaintiff slipping and falling on the sidewalk,

the fire protection company had been at the mall and opened up water pipes near the sidewalk as part of its quarterly inspection of the fire protection system. In her deposition, Plaintiff was unable to identify the source of the water. She speculated that it came from snow that had melted.

Both the mall owner and the fire protection service moved for summary judgment on the theory that the water on the sidewalk was a natural accumulation for which no liability attached. The mall owner and the fire protection service also moved for summary judgment on the basis that the condition was an open and obvious condition for which no liability attached. The trial court granted summary judgment to both the defendant and third-party defendant based on both theories.

On appeal, Plaintiff argued that there was a fact question as to whether the water was a natural accumulation or an unnatural accumulation based upon the deposition testimony. The appellate court agreed. According to the court, there was sufficient evidence that the ice or water was an unnatural condition given the time between when the fire protection service opened an adjacent water valve and when Plaintiff fell. The fact that Plaintiff was unable to specifically identify the water as being an unnatural accumulation did not mean that there was not a factual issue given the circumstantial evidence.

More significantly, the appellate court found that, while this may have been an open and obvious condition, the condition was still actionable. The court acknowledged that the condition was an obvious condition even though Plaintiff perceived it to be water and not ice. The fact remained that the Plaintiff wanted to avoid the condition and she made an effort to step over it.

However, the court held that liability still existed even though the condition was open and obvious because of the deliberate encounter exception to the open and obvious doctrine. Under the deliberate encounter exception, a landowner still has a duty to protect an invitee from an open and obvious condition when the landowner should expect that the invitee will proceed to encounter the open and obvious condition because the benefit of doing so outweighs the risk of the encounter.

In the past, Illinois courts have held that the deliberate encounter exception applies only when there is some economic compulsion for the encounter, such as the need to encounter the hazard as part of employment.

In *Metke*, the court applied the deliberate encounter exception even though there was no economic compulsion for Plaintiff to encounter the water on the sidewalk. The court was also not dissuaded by the fact that there might have been alternative paths by which Plaintiff could have gone from one store to another. According to the court, the factor to be considered is whether the landowner could foresee that the Plaintiff would choose to encounter the condition.

Thinking Point:

Metke is clearly a departure from existing case law which holds that the deliberate encounter exception only applies when there is some economic compulsion attached to the encounter. Hopefully, we will not see any more appellate court decisions obviating the necessity for economic compulsion. Otherwise, it will be nearly impossible to assert the open and obvious doctrine in a motion for summary judgment when there is any basis for a plaintiff to maintain that it was foreseeable that invitees would encounter a hazard because it is a direct route from point A to point B.

7th Circuit Court Of Appeals Affirms Summary Judgment On Reasonableness Of Inspection Of Crane

In *Carson v. ALL Erection and Crane Rental Corporation*, 14-3243 (7th Cir., February 3, 2016), the United States Court of Appeals for the Seventh Circuit held that a crane rental company was entitled to summary judgment on the issue of breach of duty and proximate cause in a case brought by a laborer claiming the rental company was negligent by failing to discover an intermittent defect in the cruise control of a crane at a wind farm in Indiana.

In *Carson*, Plaintiff, a White Construction Company employee, was helping move a crane rented from ALL Erection and Crane Rental Corp. Plaintiff was standing on one end of the wooden matting. As the crane was being moved onto the wooden matting on a roadway, its weight caused the matting to lift up and Plaintiff slid down towards the crane. The crane moved forward, crushing Plaintiff's right foot.

The crane driver testified that he took the crane out of the "travel detent," a setting that works like cruise control. This should have prevented the crane from moving forward. The driver testified he did not know what caused the crane to move forward or caused the controls to reengage and move the crane forward.

After the accident, a safety inspector laboriously examined the crane and found that the crane could be moved forward due to an intermittent malfunction in the solid state electrical system affecting the travel detent. The record established that the malfunction would be intermittent and difficult to replicate or detect.

Plaintiff sued ALL claiming that it failed to conduct a reasonable inspection of the crane and caused his injury. Because the case focused on chattel's supplier liability and not the employer or manufacturer liability, the issue of duty was limited to whether ALL had a duty to reasonably inspect the crane.

ALL moved for summary judgment, arguing that a proper inspection would not have revealed the travel detent defect and as such, it was entitled to summary judgment on the issue of whether it breached the duty of care and whether any such breach was a proximate cause of Plaintiff's injury. The District Court for the Northern District of Indiana agreed, finding that no reasonable jury could return a verdict for Plaintiff because there was no evidence that any alleged breach caused Plaintiff's injury.

On appeal, the Seventh Circuit Court of Appeals held that ALL was entitled to summary judgment on both the issue of breach and proximate cause. With regard to whether ALL breached its duty, ALL argued that there was no breach because there was no way to detect the defect in the solid state electrical circuitry. It was not possible to inspect that circuitry. Plaintiff argued that since the defect was capable of being discovered after the accident, it could have been discovered before the accident. According to the court, however, the post-incident testing showed the condition was intermittent at best. More importantly, the court found the post-incident testing was laborious and it would be unreasonable to expect that type of testing as part of regular inspection of the crane.

Addressing proximate cause, Plaintiff argued there was no evidence that the travel detent had ever been used in the three months White Construction had leased the crane. As such, Plaintiff claimed that a fact question exists as to whether the defect should have been observed by the employer and put ALL on notice that its inspection process was insufficient. The Seventh Circuit rejected this argument noting that, without evidence of how often the detent was used, there was no way a jury could draw any inference favoring the Plaintiff on the issue of proximate cause. ALL was entitled to summary judgment because Plaintiff could not prove one or more elements of a cause of action, and was unable to establish proximate cause.

Thinking Point:

Carson is good authority for the proposition that summary judgment on the issue of whether a defendant conducted a reasonable inspection of equipment can be entered when the defect could not be readily observed except through a laborious inspection in which the defect may or may not be replicated.

Illinois Appellate Court Upholds Summary Judgment Against Claim That A Defective Condition Was Exacerbated By A Natural Accumulation Of Water

In *Porzezinski v. Wal-Mart Stores, Inc.*, 2015 IL App (2d) 141246 – U (August 13, 2015), the Illinois Appellate Court for the Second District, affirmed summary judgment in favor of a retailer after Plaintiff slipped and fell while entering the lawn & garden center of the store.

On August 9, 2012, Plaintiff was entering the Wal-Mart store when she slipped on water tracked into the entranceway. Eyewitness accounts establish that the tracked-in water had formed into puddles in the entranceway. Plaintiff slipped and fell on this water and sustained injury. She sued Wal-Mart claiming that the water was a dangerous and defective condition.

Wal-Mart moved for summary judgment on the basis that the water was a natural accumulation for which no liability existed. In her complaint, Plaintiff maintained that a hazard was created due to a defective floor design. She argued that a defective design made the floor "smooth" or "slippery." The trial court granted summary judgment in favor of Wal-Mart on the basis that the incident was due to a natural accumulation of water.

On appeal, the appellate court acknowledged there is no liability for a natural accumulation of water unless the plaintiff can show that a defective condition was exacerbated by the natural accumulation, turning it into an unnatural accumulation. Plaintiff argued that she alleged that a defective condition existed but Defendant did not address it in their motion for summary judgment. Plaintiff maintained that the burden never shifted to her to establish a fact question precluding summary judgment.

The appellate court disagreed, holding that because Defendant argued that Plaintiff failed to present evidence of an unnatural accumulation, it did not need to address the unsupported allegation of a defective design. "In arguing that Plaintiff presented no evidence of an unnatural accumulation, Defendant argued that Plaintiff presented no evidence that the floor was defective."(141246, ¶ 22).

Thinking Point:

While the court's syllogism is somewhat askew, *Porzezinski* stands for the proposition that in the absence of evidence of a defective condition, a defendant may move for summary judgment solely on the basis that the condition was a natural accumulation. A defendant would not be obligated to refute allegations that a dangerous condition was exacerbated by a natural accumulation when the Plaintiff has presented no evidence to support that claim.

Motions To Dismiss: Often the Avenue To Advantageous Settlements

Dispositive motions to dismiss a civil lawsuit may not always be successful, but they can still substantially lower the value of a case. Motions to dismiss can be based upon the facts, statutes of limitations, or even the untimely service of the civil complaint. As we pointed out in our November 2015 Newsletter, dismissals based on failure to promptly suits on defendants are becoming more prevalent.

Presenting viable motions of dismiss lawsuit can also be a very effective negotiating tool (particularly where the motion is reasonably strong but could be decided either way.) We have seen pending motions to dismiss prompt plaintiffs to pursue settlement for a fraction of what a jury might have awarded if the case proceeded to trial.

Indiana General Assembly Considers Another Proposal To Increase Caps And Thresholds For Medical Malpractice Actions

In the past year, we have reported on several proposed changes to the Indiana Medical Malpractice Act. We continue the practice with a report on yet another proposed change to the Act.

The Indiana General Assembly is considering Senate Bill 152 which would raise the maximum malpractice award from $1.25 Million to $1.65 Million with periodic adjustments to be made based on the Consumer Price Index. The cap on the amount recoverable from qualified health care providers would also be raised from $250,000 to $450,000.

The Bill would also allow bringing direct actions in state courts instead of through a medical review panel in any case in which the claim does not exceed $75,000. The current law allows claims for $15,000 or less to skip the medical review panel process.

Over the past year, three similar bills were rejected by the General Assembly. We will track this Bill and any new proposals in upcoming newsletters.

Recent Seminars

- On **11/4/15**, **Rich Lenkov** and **Mitchell Dane-Henry** presented "Legal Issues Presented By Millennials" at the Central Ohio RIMS Partner Day.
- On **11/5/15, Storrs Downey** and **Maital Savin presented** "Hiring Do's And Don'ts (With Video Examples.)"
- On **11/18/15**, **Justin Nestor** and **Bob Bramlette** presented a seminar about litigation and real estate issues involving selling and purchasing, financing, and leasing commercial, industrial and office properties to the Lakeshore Chamber of Commerce Small Business members.
- On **11/20/15**, **Geoff Bryce** presented "The Legal Impact of Business Decisions Facing the Construction Industry" to IICLE and SOICA.

- On **12/15/15**, **Geoff Bryce** and **Maital Savin** presented "Is Your Independent Contractor Actually An Employee?"

Upcoming Seminars

- On **4/7/16**, **Rich Lenkov** will present "Stratified General Liability Claims: Fast Tracking and Other Techniques" at the CLM 2016 Annual Conference in Orlando, FL with: Eric Spalsbury (Director Of Risk Management, Stanley Steemer), Michelle Middendorf (Manager, Stanley Steemer) and Joe Skinger (Account Manager, CorVel Corporation.) Click Here for more info and to register.

Free Webinars

Bryce Downey & Lenkov hosts monthly webinars on pressing issues and hot topics

Upcoming

3/8/16– Click Here to Register
Top 10 Employer Mistakes
Storrs Downey & Maital Savin

4/27/16– Click Here to Register
Lien Waivers And Protecting Workers' Compensation Liens
Jeff Kehl & Mollie O'Brien

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

Legal Face-Off On WGN Plus

Legal Face-Off on WGN Plus is a high energy, legal podcast covering current news stories from both the defense and plaintiff perspectives with expert opinions from industry leaders such as Rev. Jesse Jackson, Alan Dershowitz and Gloria Allred. Listeners subscribe in iTunes and listen online at: **http://wgnplus.com/category/legal-face-off**.

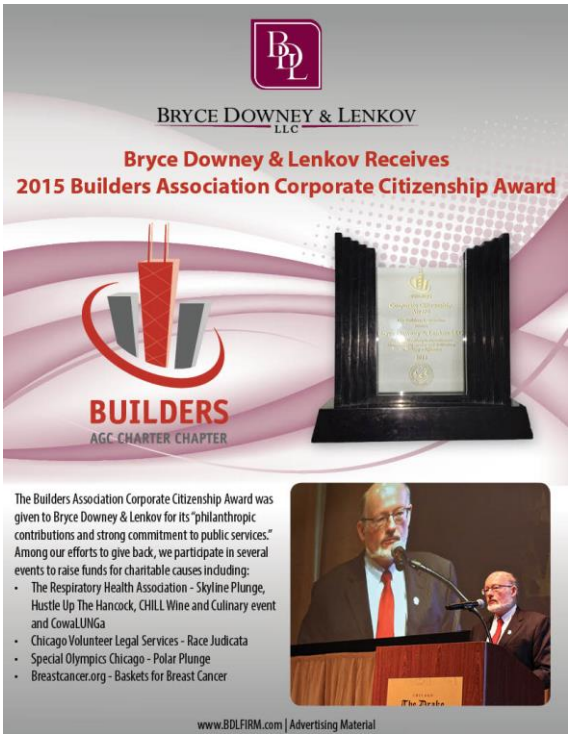
Co-hosted by Rich Lenkov and Jason Whiteside (Whiteside & Goldberg), Legal Face-Off started in September 2014 as a concept to provide listeners with quality legal education on today's breaking news. The bi-monthly podcast spotlights national headlines in news, sports, entertainment and politics, but delivers it with a unique perspective that is seldom found in traditional media.

Recent Accomplishments

We are excited to announce that several of our attorneys have been recognized as industry leaders.

- **Geoff Bryce**, **Storrs Downey**, **Rich Lenkov**, **Terrence Kiwala** and **Terrence Madden** were selected to the Leading Lawyers list. Leading Lawyers recognizes 5% of all lawyers licensed to practice law in Illinois
- **Justin Nestor**, **Maital Savin** and **Michael Milstein** were selected to the Emerging Lawyers list. Emerging Lawyers recognizes the top 2% of lawyers of exceptional character and experience under the age of 40 in Illinois
- **Rich Lenkov** was selected to the Super Lawyers List. The Super Lawyers designation is given to no more than 5% of lawyers in Illinois
- **Maital Savin** and **Michael Milstein** were selected to Rising Stars. Rising Stars is an exclusive list, recognizing no more than 2.5% of lawyers in Illinois
- **Storrs Downey** received the 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. 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
- BDL received the AV Preeminent rating. This rating recognizes that a lawyer's peers rank them at the highest level of professional excellence
- Bryce Downey & Lenkov was listed in Best's Directory Of Recommended Insurance Attorneys. This is a prestigious list of over 3,000 client-recommended attorneys

BDL Receives Corporate Citizenship Award



Bryce Downey & Lenkov received the 2015 Builders Association's Corporate Citizenship Award and was 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: Skyline Plunge, Hustle Up The Hancock, Chill Wine and Culinary event, CowaLUNGa
- Chicago Special Olympics' Polar Plunge
- Baskets For Breast Cancer

Geoff Bryce To Receive Martin Luther King Jr. Drum Major Honor

Geoff Bryce will be awarded the Martin Luther King Jr. Drum Major Honor. This award was created based on Martin Luther King's "Drum Major Instinct" sermon about the desire to lead with selfless motives. "Yes, if you want to say that I was a drum major, say that I was a drum major for justice; say that I was a drum major for peace; I was a drum major for righteousness… We all have the drum major instinct." Geoff Bryce and Bryce Downey & Lenkov are being recognized for their philanthropic efforts and pro bono work.

BDL Is Growing!

BDL is pleased to welcome Werner Sabo and James Zahn.

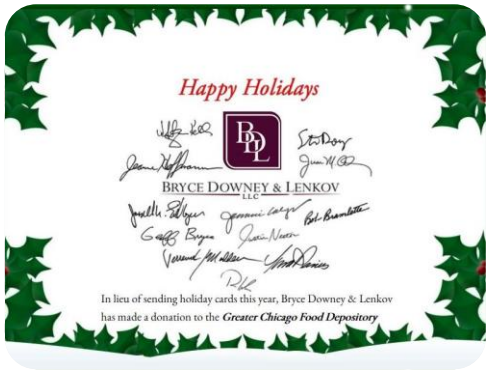
Werner Sabo concentrates his practice in construction, copyright and real estate law. His clients include architects, owners, contractors, construction managers, engineers and consultants to the construction industry as well as other businesses.

Werner is also a licensed architect, having practiced architecture for a number of years prior to establishing his law practice in 1981. His architectural practice included work for large and small firms, as well as a large corporation. Projects ranged from large commercial structures, schools and offices, to smaller buildings and interior work. He is a member of the AIA, ALA and CSI, has been an officer and director of the Chicago Chapter AIA, President of the Chicago Chapter, Construction Specifications Institute from 1995-1996 and has written several articles for the Chicago Chapter Chicago Architect (formerly the AIA Focus), the National CSI Construction Specifier and other publications.

James K. Zahn is an attorney and architect. As a registered architect since 1971, he brings a unique depth of knowledge of the construction industry. Having chaired the Illinois Council AIA Registration and Education Task Force (1983-1988) he received the AIA's highest state award for assisting in the revision of the Illinois Architecture Act, now adopted into law. While working for some of Chicago's largest and most prestigious architectural firms, he was involved in all phases of the practice, including production, specifications, technical matters and legal concerns. His efforts involved planning and construction of several thousand architectural projects. This understanding of the profession and the industry gives him insight that few other attorneys bring to clients.

Giving Back

Chicago Food Depository



This year, BDL donated to the Greater Chicago Food Depository in lieu of sending holiday cards. This non-profit organization provides training and food to those in need as an effort to end hunger. They focus on ensuring healthy food options for people in need, organizing community-based responses to ending hunger and mobilizing the public to end hunger. This past year they gathered 11.7 million pounds of high-quality food and delivered it to food pantries, soup kitchens and shelters. They also distributed 68 million pounds of food. Click Here to learn more about the Greater Chicago Food Depository.

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

- Medical Marijuana: Colorado Supreme Court Upholds Decision in Favor of Employers
- Seventh Circuit Finds FedEx Drivers Were Employees, Not Independent Contractors

Corporate & Construction

- Will Interest Rates Rise? Economic Slow Down? Time To Talk To Your Banker
- Parties May Be Entitled To A Lien Even If The Project Never Proceeds

Workers' Compensation

- Wage Differential May Not Necessarily Require Wage Loss
- Accident Date Trumps Hearing Date In Wage-Diff Award
- Collateral Source Rule Does Not Apply To Workers' Compensation Cases

BDL Hits Main Street

Bryce Downey & Lenkov sponsored Monday On Main Street at Sundance. This is an exclusive filmmaker social event taking place every year in Park City, UT during Sundance Film Festival. This event offers talented experts a chance to enjoy themselves in an upbeat, upscale setting in the heart of the fest. Attendees dined and networked at Butcher's Chophouse. This was Bryce Downey & Lenkov's third year sponsoring.

Student Mock Trial Competition

On **2/20/16**, **Kirsten Kaiser Kus** returned to help judge the student mock trial competition at the Hammond Federal Courthouse. Students were grouped into teams and prepared opening arguments, present witnesses and evidence, make objections based on federal rules and present closing arguments. This event gives students a great opportunity to expand their understanding of the legal system and enhance their critical thinking skills. This is in preparation for the state final competition, which will take place May 12-14. Click Here for more information.

Hustle Up The Hancock

On **2/28/16**, Team BDL will participate in Hustle Up The Hancock. Last year Team BDL hustled to raise $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.

Contributors to the February 2016 General Liability Update

Bryce Downey and Lenkov attorneys who contributed to this update were Storrs Downey and Jeffrey Kehl.

Cutting Edge Legal Education

If You Would Like Us To Come In For A Free Seminar, Click Here Now Or Email Storrs Downey At sdowney@bdlfirm.com

Our attorneys regularly provide free seminars on a wide range of general liability 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 our previous seminars include:

- Risky Business: Drugs, Sexual Orientation And Guns In The Illinois Workplace
- Spills, Thrills and Bills: The True Story Behind Illinois and Indiana Premises Liability Law
- Subrogation Basics for Workers' Compensation Professionals
- Employment Law Issues Every Workers' Compensation Professional Needs To Know About

Who We Are

Bryce Downey & Lenkov is a firm of experienced business counselors and accomplished trial lawyers committed to delivering services, success and satisfaction. We exceed clients' expectations everyday while providing the highest caliber of service in a wide range of practice areas. With offices in Chicago, Schererville, Memphis and Atlanta, and attorneys licensed in multiple states, we are able to serve our clients' needs with a regional concentration while maintaining a national practice.

Our attorneys represent small, mid-sized and Fortune 500 companies in all types of disputes. Many of our attorneys are trial bar certified by the federal court and have been named Leading Lawyers, AV Preeminent and were selected to Super Lawyers and Risings Stars lists. Our clients enjoy a handpicked team of attorneys supported by a world-class staff.

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: