



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter February 2016

Upcoming Webinar!

2/25/16

What the Movies Can
Teach You About
Handling WC Claims

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THE TOP 5 LIST

Top 5 Things Employers Should Do Before An Injury Occurs

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/Maintain A Safe Workplace

This is obvious but most important. A culture of safety should pervade your workplace. One great way to do this is to incentivize employees who maintain good safety records.

2/Put Formal Safety Policies And Procedures In Place

Your company handbook should list steps that must take place to prevent accidents. Make sure these policies are well known and enforced.

3/Promote A Healthy Workplace

Providing regular breaks, good medical benefits, healthy diets and lifestyles are all keys to creating a healthy and balanced workforce leading to less workers' compensation claims.

4/Hire A Safety Coordinator

It is important to empower an individual responsible for safety. Provide this person with tools to create a safe work environment.

5/Know The Law

It's a good idea to read up and be aware of OSHA regulations and updates.



By: [Michael Milstein](#)



The budget impasse continues, with commentators noting that reforms to the workers' compensation system are at the heart of the stalemate. On 1/27/16, Governor Rauner gave his State Of The State address and said workers' compensation reform was needed to "save state and local taxpayers over \$300 million per year, while protecting those who suffer workplace injuries and grow more careers at higher wages." However, he did not specifically outline his proposed reforms.

Given how arduous this budget battle has been, each side will be looking to claim victory when it ends. We anticipate reforms will be made, but expect them to be minor compared to 2011 reforms.



SOUND BITE: Reporter Emily Matesic, WBAY-TV

On Legal Face-Off's 1/24/16 episode, Rich Lenkov and Jason Whiteside discussed Making A Murderer.

Rich Lenkov: Emily, you were the lead reporter for WBAY, the Green Bay Wisconsin ABC affiliate, you are featured prominently in the Netflix series! What did you think of the finished product? Was it an accurate depiction of what was going on in the trial?

Emily Matesic: I was shocked after almost 10 years that it actually came to fruition. The two producers had been around since 2005 covering the case and always said they wanted to create a documentary... As far as the series itself, I give the two women a lot of credit for putting something together. We sat through hundreds of hours of testimony, saw close to 1000 pieces of evidence in the case and they were able to dwindle it down to 10 hours. Did it include everything that was included at trial? No. Did it cover some of the high points? Yes. Did they miss some other points, yes, but if you wanted to see the whole trial and the whole case then you should have come to Manitowoc County from Nov. 2005 – April 2007, to see everything.

Jason Whiteside: You know, the documentary kind of paints it in a picture that the Manitowoc County Police Department is out to get Steven Avery. When you were going through that, did you get that sense while you were covering the trial?

Emily Matesic: No, not at all. I didn't think that there was any sort of vendetta against Steven Avery on behalf of the Manitowoc County Sheriff's Department.

Jason Whiteside: There's a lot going on on the internet right now about what evidence was not include in the Netflix series, can you walk us through a couple of items that were present in the trial but not included in the Netflix documentary?

Emily Matesic: Her cell phone and camera were found in the burn barrel outside Steven Avery's home, he had specifically requested her to come out to the salvage yard to take pictures, when he called Auto Trader he used the name "Barb Janda" which is his sister's name (who lived in the trailer next to him), when he called Halbach's cell phone number he used "69" to disguise the number that it was coming from... the bleach on Brendan Dassey's jeans and the DNA evidence on the hood latch of Teresa Halbach's vehicle that was found on the salvage lot...

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

Recent Topics:

- Making A Murderer
- Ted Cruz Eligibility For President
- Camille Cosby
- Obama Gun Control Proposals

Recent Guests

- Alan Dershowitz, Professor Of Law, Emeritus, Harvard Law School
- Frederick Bates, Board Chair, Friends Of The Parks
- Cannon Lambert, Sandra Bland's family's attorney
- Bernard Sieracki, author of A Just Cause: The Impeachment and Removal of Governor Rod Blagojevich
- Chicago Lawyer Magazine columnists Tina Martini and David Susler
- WBAY-TV Reporter Emily Matesic
- Attorney Gloria Allred

[Lucas Museum Lawsuit, Sandra Bland's Attorney, Blagojevich Author, Inside Out Columnists, Cosby, OJ Simpson And More On This Week's Legal Face-Off!](#)

[Chicago Man Exonerated, Making A Murderer Reporters, Supreme Court Cases, Ted Cruz And Much More](#)

[Making A Murderer, Camille Cosby, Affluenza Teen, Chipotle, Obama Gun Control Proposals, This Month's Inside Out Segment 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 **2/11/16**, **Justin Nestor** will present "A Day In The Life Of A Workers' Compensation Claim" at the Sixth Annual Beyond Safety Conference & Expo. [Click Here](#) for more info and to register
- 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)
 - Joe Skinger (Account Manager, CorVel Corporation)[Click Here](#) for more info and to register

Wage Differential May Not Necessarily Require Wage Loss

By: [Jeanmarie Calcagno](#)



In *Jackson Park Hospital v. IWCC*, 2016 IL App. (1st) 142431SC (2016), the Court considered the issue of a wage differential without actual wage loss. At the time of the accident, Petitioner was earning \$23.61 per hour as a stationary engineer. Petitioner returned to work in a light duty capacity as a public safety officer, earning the same wages she had in her former position.

At arbitration, Petitioner had been at her new position for 4 years and continued to earn \$23.61 per hour. Other public safety officers earned only between \$8 and \$10 per hour. A vocational assessment report substantiated that "there was not a presently viable and stable labor market," and she may be able to earn between \$8 and \$9 per hour if she's able to find an employer willing to hire her without a GED. Additional evidence established that public safety officers were required to have a high school diploma and undergo a certification class. Petitioner had an 8th grade education, failed the GED examination twice and did not undergo the certification class.

Petitioner was awarded 40% MAW, and her claim for wage differential benefits was denied. The arbitrator acknowledged that Petitioner could no longer perform the job duties of a stationary engineer, but Petitioner could not show an actual reduction in income. Both parties appealed.

Pending review, Petitioner was terminated. Petitioner filed an emergency motion to remand the case to reopen proofs to allow additional evidence regarding the termination. The Commission denied the motion and Petitioner appealed. The Circuit Court remanded the matter to the Commission with directions to enter a wage differential award. Respondent ultimately appealed to the Appellate Court.

The Appellate Court determined that the Commission abused its discretion when it entered the original PPD award by limiting admission of evidence relevant to a wage differential award.

The Court opined that the Commission's analysis of the pre and post injury wages was "flawed," as the impairment of earnings requires "consideration of other factors, including the nature of the post-injury employment in comparison to wages the claimant can earn in a competitive job market."

This Decision was issued on 1/8/16 and is not yet final.

Practice Tip:

In cases involving a return to work in a different position but at the same pay rate, it is worthwhile to have a labor market survey and testimony from a qualified vocational expert confirming the availability of work at the same wage within a stable labor market.

Pre-injury Permanent Restrictions Voids Vocational Rehab/TTD

By: [Sadiq Shariff](#)



In *Mendoza v. Andy Frain Services*, 15 I.W.C.C. 0429 (Ill. W.C. Comm. 2015), the Commission denied vocational rehabilitation and TTD benefits because Petitioner had the same permanent restrictions that he had pre-injury.

On 5/10/11, Petitioner, a security officer, was injured when a coworker hit him while he was on his motorcycle in the parking lot. Petitioner was treated for back and bilateral leg pain. Lumbar x-rays revealed post-surgical changes from a previous fusion. Petitioner was diagnosed with muscle strains and contusions. By 11/28/11, Petitioner had reached MMI and was released back to work with permanent restrictions.

On remand by the Circuit Court, the Commission affirmed the arbitrator's decision that Petitioner failed to establish a connection between the work accident and Petitioner's permanent restrictions. The evidence indicated that Petitioner had permanent restrictions in place before being hired by Respondent in 2010. Subsequently, Petitioner was able to work full duty until the 5/10/11 accident.

The Commission found that Petitioner received treatment related to the 5/10/11 accident. Further, by 11/28/11, Petitioner had reached MMI and was released back to work under his pre-injury permanent restrictions. Accordingly, causal connection to the 5/10/11 accident terminated on 11/28/11. As Petitioner had returned to his condition prior to the 5/10/11 accident, Respondent was not responsible for vocational rehabilitation and TTD benefits.

Practice Tip:

Vocational rehabilitation and TTD should only be provided if Petitioner's permanent restrictions are causally related to the workplace injury. Determination of Petitioner's pre-existing permanent restrictions was critical to Respondent's defense.

Collateral Source Rule Does Not Apply To Workers' Compensation Cases

By: [Jeanmarie Calcagno](#)



addressed this in 2011.

The Appellate Court ruled that Respondent's obligation under Section 8(a) is satisfied by paying or reimbursing an injured employee for the amount actually paid to the medical service providers. In *Tower Automotive v. IWCC*, 407 Ill. App. 3d 427, 943 N.E. 2d 153 (2011), the Court held that Petitioner was only entitled to recover medical expenses in the amount actually paid. The Court specifically held that the collateral source rule did not apply to workers' compensation proceedings, as there was no tortfeasor or wrongdoer in a claim brought under the Workers' Compensation Act. The Court determined that Respondent's obligation under Section 8(a) was satisfied by paying or reimbursing an injured employee for the amount actually paid to the medical service providers.

On any matter involving Medicare beneficiaries, be certain to request a Conditional Payment Letter (CPL). The CPL will detail all Medicare payments for the related treatment, and specific amounts for which reimbursement is required.

Practice Tip:

The amounts paid by Medicare or a group insurance carrier are typically below the fee schedule. Be certain to request confirmation from the group insurance carrier of the exact amounts paid for medical bills.

What Blake Griffin Can Teach Us

By: [Kevin Borozan](#)



altercations between coworkers result in injury. In Illinois, an employer could be responsible for such injuries.

Injuries resulting from a physical confrontation that is purely personal in nature are not compensable. However, an altercation between employees resulting from a quarrel relating to work, such as a disagreement as to how the work is to be done or the manner of doing it, can be compensable. Notably, the initial aggressor's injuries will not be compensable. Unlike many other states, Illinois has retained the "aggressor defense." The aggressor in a workplace assault cannot recover benefits for his or her own injuries. It can be difficult to discern which of the participants in the altercation was the initial aggressor. It is not necessary that the aggressor struck the first physical blow. Antagonistic words which can be expected to provoke an altercation will suffice. Illinois courts have held that in an altercation between employees, there can be only one initial aggressor.



Practice Tip:

When an injury results from an altercation at work, investigate into the cause or reason for the fight. The difference between denial and acceptance of a claim will be based on whether the altercation was due to a personal issue or work-related disagreement.

BDL Is Growing



[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. 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 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 management, specifications, technical matters and legal concerns. His efforts involved planning and construction of several thousand architectural projects.

Giving Back

Student Mock Trial Competition



On 2/20/16, [Kirsten Kaiser Kus](#) will be returning to help judge the student mock trial competition at the Hammond Federal Courthouse. Students will be grouped into teams and will prepare 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.

BDL Hits Sundance

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.



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



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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

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](#)
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Free Monthly Webinars

What you said about our 1/27/16 webinar,

"WC Issues Raised By Millennials"

"Content was very interesting. I really enjoy these webinars. I learn something (sometimes many things) at each one. Thank you!"

"The claim examples or cases discussed provided relevant information to today's work place and you gave good direction and advice. Also, I enjoyed the fictitious characters and humor in presenting the claim examples."

"I just love the scenarios; they really help dig deeper into a situation to help the adjuster focus in on what's important."



Upcoming

2/25/16

What The Movies Can Teach You About Handling WC Claims

Rich Lenkov
C. Matt Alva

[Click Here to Register](#)



Recent

- 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
- More Top 5 Lists

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

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
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
7/15/15 - 1/14/16	1,379.73	517.40	1,034.80
1/15/16 - 7/14/16	1,398.23	524.34	1,048.67

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.

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