



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter April 2016



### THE TOP 5 LIST

## Top 5 Accidents That You Should Question

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

Our 3/24/16 webinar was titled "Compensable Or Not – 10 Common Accident Scenarios And How To Defend Them." In a similar vein, here are 5 common accidents that you should question:

### 1/Any Accident Away From Work

In order to be compensable, an accident has to arise out of and in the course of employment. The further away from work that the accident occurs, the more you should question it. To be compensable, an accident occurring away from work has to have some nexus to employment and benefit the employer.

### 2/Traveling Employees

Similarly, you should question any accident occurring when an employee is traveling. Just because an employee is traveling, doesn't make them a "traveling employee," eligible for benefits. And even if they are a "traveling employee," their actions still have to be reasonable and beneficial to work.

### 3/Commuters

Commuting to and from work is generally not compensable.

### 4/Intoxication

You should deny any claim where there's evidence that the claimant was under the influence of drugs or alcohol. In Illinois, employers receive a rebuttal presumption that drugs or alcohol caused the accident, rather than work.

### 5/Repetitive Use

There are very few jobs repetitive enough to cause an injury. In order to prove their repetitive trauma claim, the employee must provide evidence, most often backed up by an expert, proving that their job involved prolonged and repetitive gripping hand movement. This is very difficult to prove. The most likely cause of these types of injuries has nothing to do with work.

Upcoming Webinar!

4/28/16

Defending Pain Claims

[Click Here to Register](#)



By: [Michael Milstein](#)



The last month has seen little movement in resolving the budget impasse or agreement on workers' compensation reform. House Minority

Leader (R-Western Springs), Jim Dunkin, suggested that workers' compensation reform may be the springboard for resolving the budget crisis. He commented that both sides believe workers' compensation is an extremely important issue and must be "part of the big picture."

Dunkin understands that the Democrats will not support changing the causation standard but believes that both parties can agree in other areas. Democrats continue to oppose the Governor's reform proposals, fearing that they will decrease wages and hurt middle-class families. It appears that there is no end in sight to the impasse.



**SOUND BITE: Attorney Gloria Allred discusses transgender discrimination.**

**Rich Lenkov:** Gloria, you're one of the most famous lawyers alive, so we really appreciate you coming to Legal Face-Off. First off, your lawsuit against a barbershop representing a transgender man who was denied a haircut. Can you tell us a little bit more about that?

**Gloria Allred:** What happened was on March 4th, Rose and his domestic partner, Laura Lozano, were walking in Long Beach, California, when Rose decided to get a haircut in a nearby barbershop. Rose and Laura entered the Hawleywood shop, and Rose asked the barber for a haircut. The barber stated that Hawleywood only provided services to customers who have an appointment. Rose then asked for an appointment time and asked if there were any available that day. The barber then stared at Rose, as if he was examining Rose's appearance, and stated, "We don't cut women's hair." Well, Rose is a transgender male with a masculine gender expression... A business that excludes women, that refuses to service women and confirms a discrimination policy in its advertising is in violation of the law. Also, a business that refuses to serve a customer based on gender or perceived gender identity is also in violation of the law.

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

**Recent Topics:**

- Alan Amron, inventor of Post-It Notes, suing 3M
- Chicago Teacher's Union strike
- Corruption in Illinois
- Merrick Garland
- O.J Simpson series
- Documentary about Tasers- Killing Them Safely
- U.S. vs. Apple
- Sandra Bland

**Recent Guests**

- Alan Dershowitz, Professor Of Law, Emeritus, Harvard Law School
- Professor Robert Bruno, University Of Illinois, School of Labor & Employment Relations
- Alan Amron, Post-It Notes Inventor
- Professor Dick Simpson, UIC Department Of Political Science
- Kim Goldman, Author of *Media Circus: A Look At Private Tragedy In The Public Eye*
- Andy DeVooght, Loeb & Loeb & former US Supreme Court Clerk
- Gloria Allred

[Gloria Allred discusses OJ & Cosby, CTU vs CPS, Blagojevich, Drew Peterson, Elton John and more on Legal Face-Off](#)

[Merrick Garland, Alan Dershowitz discusses inaccuracies in the OJ Simpson Series, corruption in Illinois, Inside Out Columnists, Hulk Hogan and much more in this week's Legal Face-Off](#)

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

# Rich Lenkov Spoke At CLM 2016 Annual Conference



On 4/7/16, **Rich Lenkov** presented "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 (Workers' Compensation Manager, Stanley Steemer) and Joe Skinger (Account Manager, CorVel Corporation).

## Upcoming Seminars

- On 6/7/16, **C. Matt Alva** will present "Fundamentals Of Workers' Compensation" for SES. [Click Here](#) for more info and to register
- On 6/16/16, **Tina Paries** will present "Drafting and Negotiating Construction Contracts" for NBI. [Click Here](#) for more info and to register

## Smoking Kills...The Claim

By: [Michael Milstein](#)



What happens when surgery is recommended, but Petitioner cannot undergo the procedure because she failed to quit smoking? This precise issue was decided by the IWCC in *Schoonover v. Porta Community Unit School District* No. 202 15IWCC 0634 (2015).

Petitioner's treater recommended a lumbar fusion surgery. However, the treater would not operate until Petitioner stopped smoking. The arbitrator held that the proposed surgery was reasonable and necessary but premature, as none of the pre-op testing could be performed until there was proof that Petitioner's nicotine level was at zero.

The Commission modified the arbitrator's award and was more critical on Petitioner's failure to quit smoking. It held that Petitioner's symptoms "must not be as significant as she claims or she would have ended her smoking long ago." The Commission therefore found that Petitioner reached MMI on the date the treater *first stated* surgery would not be performed unless Petitioner quit smoking.

### Practice Tip:

If a claimant won't follow physician's treatment recommendation, deny benefits.

## Lazy Job Search Terminates Benefits

By: [Ed Jordan](#)



In *Sobolyev v. Yellow Transportation* No. 15IWCC0623 (2015). Petitioner was unable to return to his former job after sustaining a work injury. Therefore, Petitioner started vocational rehabilitation. He alleged that he was searching for jobs and creating job search logs.

Respondent showed that these logs did not contain any information regarding the job contact date, name of the person contacted or position applied for. Petitioner also alleged that he was searching for jobs in Illinois while actually living in Ukraine and other states.

The Commission noted that the job search logs did not contain job application results or proof that even one application was completed. His testimony of looking for work in other states was not evidence of a valid job search.

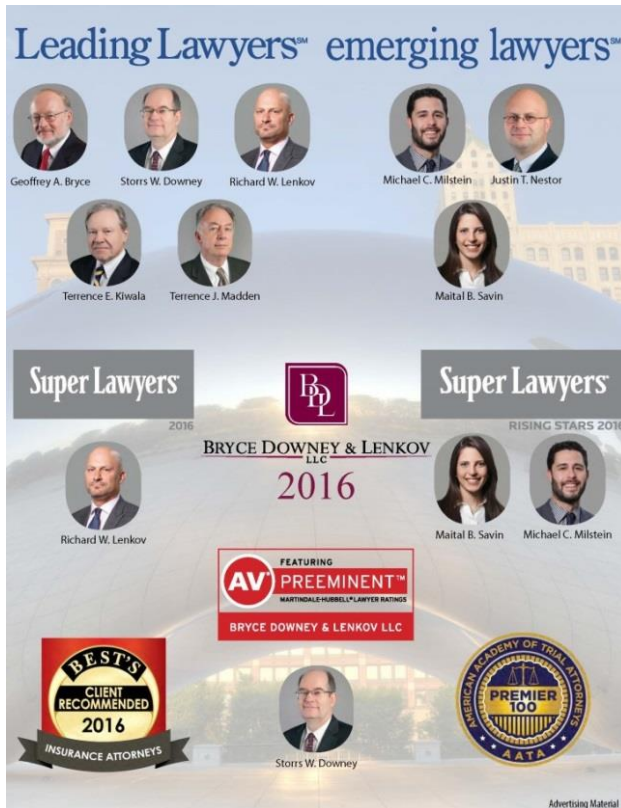
The Commission found that Petitioner was not entitled to maintenance benefits because he failed to provide sufficient proof of a job search. The Commission denied additional benefits, finding that Petitioner is not entitled to maintenance benefits without an adequate job search or participation in vocational rehabilitation.

### Practice Tip:

If you are forced to provide Petitioner with vocational rehabilitation, always aggressively monitor their participation and compliance with job searches. Often times, a claimant doesn't comply with all requirements or fails to properly apply for jobs, which is a basis to terminate benefits.

## Recent Accomplishments

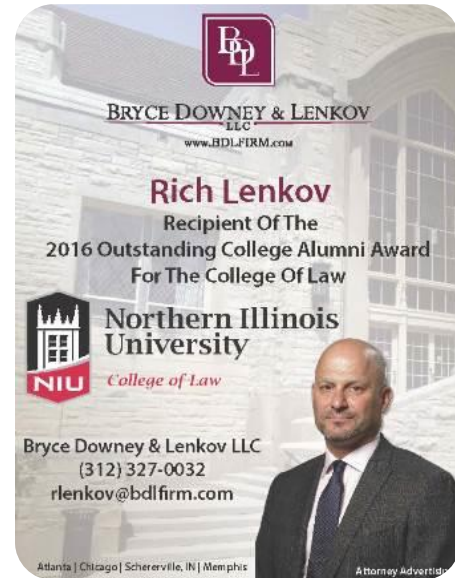
We are excited to announce that several of our attorneys have been recognized as industry leaders.



- **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

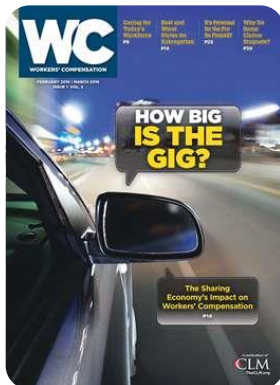
## NIU 2016 Outstanding College Alumni Award



**Rich Lenkov** will receive the NIU 2016 Outstanding College Alumni Award. He will be honored at the 2016 NIU Alumni Awards dinner on April 22.

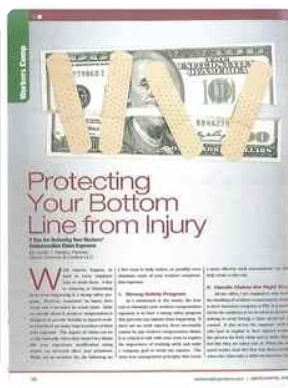
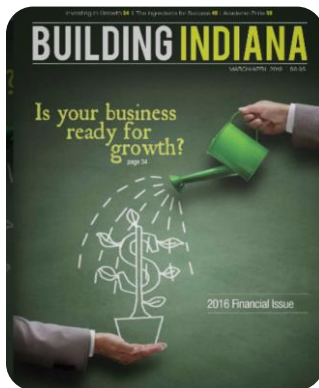


## Rich Lenkov Published In CLM's Workers' Compensation Magazine



**Rich Lenkov** recently moderated a forum for Workers' Compensation Magazine. The forum of workers' compensation professionals discussed ways to resolve stagnating claims. "Why Do Claims Stagnate?" was published in the February/March issue of Workers' Compensation Magazine. [Click Here](#) to view the full article.

## Justin Nestor Published In Building Indiana Magazine




**Justin Nestor's** article "Protecting Your Bottom Line From Injury: 5 Tips For Reducing Your Workers' Compensation Claims Exposure" was published in the March/April issue of Building Indiana Magazine. [Click Here](#) to view the full article.

## BDL At C2E2

BDL regularly attends events that showcase new industry trends. This month, Rich Lenkov (who handles entertainment law, as well as workers' compensation) and Jason Klika stopped by the Chicago Comic and Entertainment Expo. C2E2 showcases the latest trends and upcoming happenings in the entertainment industry. C2E2 is well attended by celebrities, enthusiasts and plenty of characters!





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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

- Illinois & Federal Government Push Equal Pay Initiatives Seventh Circuit Finds FedEx Drivers Were Employees, Not Independent Contractors
- Lessons From Retaliatory Discharge Verdicts In Illinois & Indiana

#### 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

- Cook County Circuit Court Rules Six-Member Jury Limitation Unconstitutional
- Illinois Appellate Court Upholds Summary Judgment Against Claim That A Defective Condition Was Exacerbated By A Natural Accumulation Of Water

## BDL Is Growing



BDL welcomes [Brian Rosenblatt](#). Brian's practice is focused in three areas: entertainment (including media and advertising,) intellectual property and litigation. His practice focuses on entertainment transactions, media clearance and liability, advertising injury, defamation and 1st Amendment issues. He also handles intellectual property transactions and litigation, specifically copyright, trademark matters and unfair/deceptive trade practice litigation. Brian represents and has represented high-profile individuals and entities, including a former Speaker of the House of Representatives, a U.S. Presidential candidate, high-ranking officials and clergy within the Arch-Diocese, NBA All-Stars, international athletics gear manufacturers, award winning songwriters, multi-platinum selling recording artists, national recording artists, producers, record labels, managers and national platform festivals. Brian has also represented concert promoters in contract negotiations and class action litigation. He has locally and nationally worked on numerous film, television and literary projects. He counsels start-ups, media and internet companies. He serves as general counsel for on-line magazines, record labels, concert promoters and tech companies.

## 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](#)

## Congratulations Sally Mendoza On Your Retirement

Bryce Downey & Lenkov would like to thank Sally Mendoza for almost 10 years of service as Office Administrator. We wish you well in retirement!



## Free Monthly Webinars

### What you said about our 3/24/16 webinar, "Compensable Or Not? 10 Common Accident Scenarios And How To Defend Them"

*"Webinar was very informative for me. I am new to IL jurisdiction so this helps a lot."*

*"One of the best ones. I liked the interactive questions."*

*"The seminar covered a lot of scenarios which allowed me to see how the lines are drawn by the court in determining coverage. For me, as a new adjuster, these types of hypos are good because I am given exposure to claims which I have not been assigned yet."*



**Dr. John Hong** is the founder and President of Gateway Spine & Pain Physicians. He is double board certified in Pain Medicine and Anesthesiology by the American Board of Anesthesiology.

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).

#### Upcoming Webinar

4/28/16

#### Defending Pain Claims

Rich Lenkov

Dr. John Hong

[Click Here to Register](#)

#### Recent Webinars

- Reduce Your Legal Expenses NOW!
- WC Horror Stories
- More Top 5 Lists
- WC Issues Raised By Millennials
- What The Movies Can Teach You About Handling WC Claims

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

Effective Dates	Maximum PPD	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
7/1/04 - 6/30/05	\$567.87	<b>Maximum Rate Death Benefit:</b> The greater of \$250,000 or 20 years Effective 2/1/06 – the greater of \$500,000 or 25 years
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	<b>Temporary Total Disability (TTD) Rate:</b> 66-2/3% (.667) x AWW
7/1/11 - 6/30/12	695.78	
7/1/12 - 6/30/13	712.55	<b>Permanent Partial Disability (PPD) Rate:</b> 60% (.6) x AWW
7/1/13 - 6/30/14	721.66	
7/1/14 - 6/30/15	735.37	
7/1/15 - 6/30/16	755.22	

\*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

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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