



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter September 2016

Upcoming Webinar!  
9/28/16

Indiana Forms:  
Taking A Claim  
From Start To Finish

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### THE TOP 5 LIST

## Top 5 Pieces Of Evidence You Should Give Your Defense Attorney

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

### 1/ Accident Reports

A completed, signed and dated Form 45 (the Illinois Workers' Compensation Commission official notice form) is critical. Additionally, I want to see any internal reports generated by my clients. It's important that all documents, especially accident reports, are signed and dated.

### 2/ Photos & Films

Obviously, any film or photos depicting the accident are crucial. Not only is it important for your defense counsel to see, but it is important to preserve that evidence in order to avoid a spoliation of evidence claim.

### 3/ Personnel Files

Some of my clients are reluctant to disclose Petitioner's personnel file. However, it is an invaluable piece of evidence that can turn an entire case. For example, disciplinary actions that occur shortly before an alleged accident are often red flags. Also, information about prior medical history contained in the personnel file can provide a valuable defense when causation is disputed.

### 4/ Claim Notes

An adjuster's claim notes provide a crucial road map of what has transpired before the file hits my desk. They are important in allowing me to quickly get up to speed.

### 5/ Cover Letter/Email

It is always very helpful and appreciated when a client takes the time to quickly summarize the case and lay out their impressions. As stated above, claim notes are helpful in this regard, but they don't tell the entire story. A concise cover letter is a great way for me to start a case.



By: [Michael Milstein](#)



In previous updates, we discussed reforms to the causation standard. Though these reforms would have an impact, they are not going to significantly alter the

workers' compensation landscape. However, the Illinois Policy Institute recently issued a report expressing support for an opt-out system, arguing that it would give employers the ability to lower costs and allow for a more flexible workforce.

The opt-out system, similar to how Texas and Oklahoma manage their workers' compensation systems, allows employers to leave the state's legislative mandated WC program and handle their own claims. It aims to benefit small and large business by giving them more control over their WC costs. Generally, the state will mandate a minimum level of benefits to ensure fairness to workers.

Critics of the opt-out system allege that employers cut services, though the statistics yield mixed results. Although an opt-out program is not in our immediate future, it will likely receive more attention as workers' compensation costs continue to rise.



**SOUND BITE:** “Breaking Through Bias” co-authors Andrea Cramer and Alton Harris discuss gender bias in the legal profession.

**Rich Lenkov:** The legal profession seems to have made strides, at least on its face. But according to you, we haven’t seen the advancements necessary. In fact, both in Chicago and nationwide we’ve seen some pretty prominent law firms being sued by female attorneys who are alleging that they are not receiving equal pay, equal advances and equal treatment as their male counterparts. My question to you is: in the legal profession are we behind the curve?

**Andrea Cramer:** I would think that the legal profession and others that were traditionally male-dominated professions are still behind the curve. Although we have seen some improvement, as a general rule law firms have been behind along with investment banks, accounting firms and similar professions.

**Jason Whiteside:** Rich and I are both business owners and attorneys. What advice can you give employers for avoiding gender discrimination or biases to make sure we’re looking out for this?

**Alton Harris:** One of the first things to do is to become aware of the operation of stereotypes and biases. Studies show that most men simply don’t believe that there are biases at work in their organizations. Most men, I think the great majority of men, are convinced that they are certainly not biased, that they are fair and gender-neutral. However, studies show that they are wrong and that the operation of these implicit or unconscious biases are at work in virtually everyone.

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

#### Recent Topics:

- Gender bias in the workplace
- Zika Virus
- Rod Blagojevich resentencing
- O.J. Simpson ESPN documentary
- Anthony Weiner sexting

#### Recent Guests:

- Alan Dershowitz
- Carl Douglas, former O.J. Simpson defense attorney
- Andrea Kramer and Alton Harris, co-authors of “Breaking Through Bias”
- Jeffrey Cramer, former Assistant U.S. Attorney
- David Susler and Christina Martini, Chicago Lawyer Magazine Inside Out columnists

[Anthony Weiner sexting, affluenza teen, workplace bias, zika virus and more!](#)

[Breaking News: Rod Blagojevich resentencing, amusement park liability, celebrity lawsuits and more!](#)

[Blagojevich’s attorney Len Goodman, social media in jury selection, lessons from the Roger Ailes case and more](#)

[Dream Team lawyer Carl Douglas on the ESPN O.J. documentary, Justice Ginsberg v. Donald Trump, celebrity lawsuits and more](#)

[Supreme Court panel, Led Zeppelin copyright verdict, Orlando PD’s response and celebrity lawsuits](#)

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 **9/15/16**, Jeanmarie Calcagno will present **State Law -- Consequences And Outcomes** at the NAMSAP 2016 Annual Meeting & Educational Conference. [Click Here](#) for more info and to register
- On **9/23/16**, Jeanmarie Calcagno will present "Lower Back Injury Claims" on behalf of Lorman Educational Services. [Click Here](#) for more info and to register with 50% off
- On **9/28/16**, Storrs Downey will present "The Ever Expanding Scope of the ADA: Accommodations, Remote Work, Transgender Issues, Defining Disability in Light of the ADAAA, Intersection of ADA and FMLA and the Interactive Process" at the 12<sup>th</sup> Annual National Employment Practices Liability Insurance ExecuSummit. [Click Here](#) for more info and to register

## Police Officer Fails To Secure Traveling Employee Benefits

By: [Ed Jordan](#)



In *Allenbaugh v. IWCC*, 2016 IL App (3d) 150284WC, the Appellate Court affirmed the Commission's decision that Petitioner's injuries from a motor vehicle accident while driving his personal vehicle to a mandatory training session at the police station did not arise out of or in the course of his employment.

Petitioner, a police officer, drove his personal vehicle to and from work every day. On the accident date, Petitioner was ordered by his employer to attend a mandatory training session outside of his normal work hours. Petitioner left his home with his police equipment in his car. Petitioner's vehicle was struck by another car as he was driving to the training session, causing him to sustain back injuries.

The arbitrator found that Petitioner's accident arose in the course of his employment because he was required to attend a training session outside of his normal work hours. The Commission reversed the arbitrator's decision and found that Petitioner was not a traveling employee at the time of the accident because he was driving his personal vehicle to his normal workplace. The Commission denied all benefits and the Circuit Court upheld that decision.

Petitioner appealed to the Appellate Court. The Appellate Court upheld the denial stating that the employer did not maintain enough control over Petitioner while he was commuting to the training session, even though he was required to drive to work outside of his usual work hours. The Court found that the traveling employee doctrine should not be extended to include any Petitioner who is involved in an accident on the way to their normal workplace while driving their personal vehicle, not receiving any additional compensation and not performing any work duties.

### Practice Tip:

Remember: motor vehicle accidents while a Petitioner is driving to or from their regular workplace are generally not compensable.

## Double (Recovery) Trouble

By: [Michael Milstein](#)



In *Chlada v. IWCC*, 2016 IL App (1<sup>st</sup>) 150122WC (not yet reported), the Appellate Court tackled the issue of whether a petitioner is entitled to receive simultaneous wage differential and permanent total benefits for 2 separate accidents. Petitioner was initially employed as a beer truck driver. He sustained an injury in 1999 that prevented him from returning to

that employment. He returned to a light duty position in the employer's warehouse, earning a lower wage. In 2002, Petitioner sustained a new injury, which deemed him an "odd lot" perm. total.

For the first accident, the arbitrator awarded TTD/maintenance benefits up until the date of the second accident. The Commission modified the decision and awarded wage differential benefits through the first day that Petitioner was kept off work for the second accident. However, the Circuit Court found that the Commission used the wrong rate in calculating the wage differential benefits. The correct rate was what Petitioner could have been earning at the time of the hearing and not his AWW. On remand, the Commission correctly calculated the wage differential benefits, but extended them until 4/22/14.

Respondent appealed the decision on whether Petitioner is entitled to receive simultaneous wage differential and perm. total benefits. The Appellate Court found that he is entitled to simultaneous benefits. Section 8(d)(1) of the Act states that wage differential benefits last for the "duration of his disability." The Appellate Court stated that "disability" in this situation is defined as "the reduced earning capacity." Therefore, the Commission was wrong to terminate his wage differential benefits as his second injury did not change the fact

that his first accident reduced his earning capacity. Petitioner's wage differential benefits would end "if and only if he later became able to earn the salary he formerly earned as a delivery truck driver." Accordingly, Petitioner's wage differential benefits continued alongside his subsequent perm. total benefits.

### Practice Tip:

When calculating a wage differential case, the starting point is determining what Petitioner could be earning in the full capacity of his/her job—not the calculated average weekly wage.

## Storrs Downey And Maital Savin Published In Professional Liability Defense Federation's Defense Quarterly

[Storrs Downey](#) & [Maital Savin](#)'s article "Increased Misclassification Litigation Stresses Importance Of Proper Worker Classification" was published in Professional Liability Defense Quarterly's Summer 2016 issue. [Click Here](#) to read the full article.



## Justin Nestor Recognized In The 2017 Edition Of Best Lawyers In America©

**Justin Nestor** was selected by his peers for inclusion in the 2017 Edition of *The Best Lawyers in America* in the practice area of Workers' Compensation Law - Employers. Justin has been recognized by *Best Lawyers*® since 2015.

[Click Here](#) to learn more about Justin and the 2017 Edition of *The Best Lawyers in America*©.



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



**Rich Lenkov** moderates a forum for Workers' Compensation Magazine. "The Forum" features an impressive cross section of workers' compensation leaders discussing hot topics.

[Click Here](#) to view the June/July article "Why Is Workers' Compensation Fraud Such A Major Problem?"



## Giving Back

### Rich Lenkov & Justin Nestor Present At Annual Workers' Compensation Conference

On 8/21-8/24/16, **Rich Lenkov** and **Justin Nestor** presented at the 71st Annual Workers' Compensation Educational Conference & 28th Annual Safety & Health Conference in Orlando, Florida.



## La Rabida Golf Outing

On 8/1/16, **Tina Paries**, **Alec Miller**, **Terry Kiwala** and **Bob Bramlette** participated in La Rabida Children's Hospital's 27th Annual Golf Classic at Harborside International. The outing supported La Rabida's mission to provide care to children with lifelong medical conditions, regardless of their family's ability to pay. La Rabida currently serves approximately 7,500 children annually who require primary and specialty care for chronic illnesses such as asthma, diabetes and sickle cell disease along with developmental disabilities.



## 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](#)

## Free Monthly Webinars

What you said about our 8/29/16 webinar,  
"Common Workers' Compensation Issues Defined"

*"Very helpful in understanding employer rights, as it pertains to TTD, PPD and UR."*

*"Covered a large number of topics, some of which were a bit new to me. It was nice to get a basic knowledge of the types of Illinois Forms."*

*"Detailed information regarding legal terminology as related to IL WC claims."*

*"I thought learning about the different terms that I was unfamiliar with was very interesting."*



### Upcoming Webinar

9/28/16

Indiana Forms:

Taking A Claim From Start To Finish

Justin Nestor

Kirsten Kaiser

[Click Here to Register](#)



### Recent Webinars

- The 5 Factors Determining Illinois Permanency: What Do They Really Mean?
- Reduce Your Legal Expenses NOW!
- WC Horror Stories
- WC Issues Raised By Millennials
- What The Movies Can Teach You About Handling WC Claims
- More Top 5 Lists
- Compensable Or Not? 10 Common Accident Scenarios And How To Defend Them



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

## Cutting Edge Legal Education

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

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

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

Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to a few people or dozens, to companies of all sizes and large national organizations. Among the national conferences at which we've presented:

- Claims and Litigation Management Alliance Annual Conference
- CLM 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

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
7/15/16 - 1/14/17	1,428.74	535.79	1,071.58

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	
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	755.22	

**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 - 1/14/17	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

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## PPD Benefits Schedule Of Body Parts

For Injuries Occurring	Before 7/20/05	7/20/05 - 11/15/05	11/16/05 - 1/31/06	2/1/06 - 6/27/11	On or after 6/28/11
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (Index) Finger	40	43	40	43	43
Second (Middle) Finger	35	38	35	38	38
Third (Ring) Finger	25	27	25	27	27
Fourth (Little) Finger	20	22	20	22	22
Great Toe	35	38	35	38	38
Each Other Toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal Tunnel Due To Repetitive Trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation Above Elbow	250	270	250	270	270
Amputation At Shoulder Joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation Above Knee	225	242	225	242	242
Amputation At Hip Joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation Of Eye	160	173	160	173	173
Hearing Loss Of One Ear (Under WC Act)	50	54	50	54	54
Hearing Loss Of Both Ears (Under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162

The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.

### Disclaimer:

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