



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter November 2016

Upcoming Webinar!
11/22/16
1st Annual Great
American BDL WC Quiz
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THE TOP 5 LIST

Top 5 Ways To Protect Your Lien

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Identify Whether Subrogation Exists:

Prior to asserting your lien, you must determine whether a viable third party action exists. Subrogation commonly involves claims involving motor vehicle accidents and products, although there are a host of other scenarios that could involve subrogation.

2/ Consider Fault:

Whereas workers' compensation is typically a no fault system, that is not the case in a civil setting. You must consider the degree to which Plaintiff is at fault, as his or her right to recover will be diminished commensurate with his or her level of fault. Illinois is a modified comparative fault state. This means that Plaintiff can only recover if they are 50% or less at fault.

3/ Put Everyone On Notice:

While technically your lien exists without you putting the other parties on notice, it is important for you to assert your lien clearly and often. Do so in writing, and be specific about the benefits that are recoverable.

4/ File A Petition To Intervene:

Once a lawsuit is filed (assuming that it was not you who filed it), file a Petition to Intervene. This allows you to access pleadings, discovery and case management conferences, all of which are very valuable parts of the case that you want to track. It will also make it almost impossible to settle the case without your agreement.

5/ Be Tough:

Remember, when the civil parties are pressuring you to waive your lien, stand firm. You have a statutory right to recover a portion of the benefits that you've paid. While we often do negotiate our liens, it is important to maintain your leverage during negotiations.



By: [Michael Milstein](#)

While we typically focus on the happenings in Springfield and the progress (or lack thereof) on any new reforms getting through the legislature, it is also important to discuss why workers' compensation reform is still an issue after 2011.

A recent study by an Oregon Government agency found that Illinois ranked 8th in the U.S. for WC premium rates. Our rate is \$2.23 per \$100 of payroll, while the national median cost was \$1.85. In 2014, Illinois ranked 7th. Though the prior reforms have helped in some areas, Illinois premiums are still among the highest in the country, which leaves employers demanding additional changes.

In a recent meeting of the Illinois Self Insurers' Association, the following were noted to be the key issues surrounding WC reform: causation, travelling employees, self-insurance regulation, premium regulation, PPD awards, AMA guidelines, fee schedule and limits on physical therapy, prescriptions, etc.

We will continue to update you on the status of proposed WC reforms and how the proposed changes could impact the current Illinois WC system.



SOUND BITE: Famed attorney and “Fight Back and Win” author Gloria Allred discusses her client, Summer Zervos’s claim that Republican nominee for President Donald Trump, sexually assaulted her.

Rich Lenkov: Trump has come out firing against all of his accusers. He said about your client that “it never happened.” He also questioned why it took so long for her to come forward. Why did it take your client some time to come forward and, generally, having represented over the course of thirty years many victims of sexual abuse, why it takes women a while to come forward?

Gloria Allred: That’s a great question and it’s very understandable: because often they fear retaliation by the person whom they allege assaulted them. They’re concerned that they will not be believed, that they will be threatened or unfairly attacked by someone who is rich, powerful, famous and has a lot of supporters. Fear is essentially the weapon that keeps women down and, for many, in a position of subordination.

What’s changed now is women are breaking their silence. They are becoming empowered. They’ve found their voice and they want to speak, what they say, is their truth. That is helping to make certain public figures accountable for injustices they’ve inflicted on women. It does take a great deal of courage. There are risks but women want to take those risks if it will help make the wrongdoer accountable and if they think that that it will help to get the truth out about him.

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

Recent Topics:

- Chicago Fire Department alleged gender discrimination
- Lack of diversity in law firms
- Reducing the American prison population
- Trump sexual misconduct allegations
- Chicago Cubs playoffs

Recent Guests:

- Leslie Hairston, Chicago Alderman
- Jessica Jackson Sloan, Director & Co Founder of #cut50
- Alan Dershowitz
- Carl Douglas, former O.J. Simpson defense attorney
- Gloria Allred

[Cosby, law firm diversity, Chicago Fire Dept gender discrimination, Cleveland Indians connection to Chicago legal community and more](#)

[Gloria Allred on Trump sexual misconduct allegations, Dennis Hastert victim lawsuit, Ruth Bader Ginsburg, Colin Kaepernick & more](#)

[Erwin Chemerinsky on the presidential election and SCOTUS, the 9/11 victims bill, Sandra Bland, Hurricane Matthew, Derrick Rose, Chicago Cubs playoffs and much more!](#)

[Alderman Brian Hopkins on hiring additional police, Chicago’s war on food trucks, “Fight for Fifteen,” JonBenet, Trump charity, Brangelina, Jim Carrey wrongful death suit](#)

[Alan Dershowitz on Trump v Hillary, Supreme Court diversity, online court access, Fox News lawsuits and much more](#)

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

Upcoming Seminars

- On 1/26/17, **Storrs Downey** will present “Approaching LGBT Issues in Today’s Workplace: Heightened Focus on Sexual Orientation, Gender Identity and Gender Expression Discrimination Claims” at the American Conference Institute’s 25th National Conference on Employment Practices Liability Insurance in New York, NY. [Click Here](#) for more info and to register

Commission Rejects Typing As Trigger For CTS

By: [Jeanmarie Calcagno](#)



In *Brooks v. Illinois-American Water*, 24 ILWCLB 135 (Ill. W.C. Comm. 2016), the Commission reversed the arbitration decision upon finding that Respondent’s IME doctor was more credible than the treating physician.

In *Brooks*, Petitioner sought benefits, including prospective surgery, for her carpal tunnel syndrome. At the time of the alleged accident, Petitioner was employed as a Customer Service Representative. She performed substantial typing and used a mouse and headset. The treater opined that Petitioner’s work activities either caused or aggravated a pre-existing carpal tunnel syndrome. The arbitrator gave greater weight to the treater’s causation opinion based, in part, on his knowledge of Petitioner’s work activities and awarded benefits.

On appeal, the Commission placed greater weight on the IME opinion and found no causal connection between Petitioner’s work activities and her carpal tunnel syndrome. The IME opined that Petitioner’s job duties did not place her at an increased risk for mild carpal tunnel or cubital tunnel syndrome. The Commission noted that Petitioner’s job duties did not require any forceful gripping/grasping, nor was she exposed to significant vibratory impact. Further, the Commission noted that Petitioner was diagnosed with carpal tunnel syndrome of the left hand, but operated her mouse with her right hand.

Practice Tip:

In repetitive trauma cases, provide your IME with as much information as possible to allow for a thorough understanding of the job duties, including a detailed job description, outline of all work activities and work schedule. The more information your IME has regarding the job duties and medical treatment, the stronger his/her causation opinion will be.

Bus Driver Steers Clear Of Benefits As Initial Aggressor

By: [Jessica Rimkus](#)



In the case *Charles-Hoover v. Pace Bus*, 24 ILWCLB 134 (Ill. W.C. Comm. 2016), the Commission considered the compensability of workplace assaults. Petitioner, a bus driver, testified that she was confronted by a woman with a question about her bus route. The woman proceeded to douse Petitioner with the beverage that she had in her hand. Then, Petitioner allegedly got off the bus “to find a security guard” when she confronted the woman again, ending up in another physical altercation and sustaining injuries.

Questioning the credibility of Petitioner’s version of events, the arbitrator denied benefits. Further, based on Petitioner’s testimony, there was an intervening opportunity when Petitioner was safe from danger, in between altercations. Petitioner also did not follow the employer’s mandated procedure of staying in the bus and calling dispatch for help. Petitioner’s actions in leaving the bus instead of calling for assistance were interpreted as instigating a second confrontation, in which Petitioner was the aggressor.

The Commission affirmed and adopted the arbitration decision.

Practice Tip:

Even in assault claims where Petitioner was not the first one to instigate the aggression, they can be found non-compensable where Petitioner re-initiates an altercation.

BDL Is Growing!



BDL welcomes [Roslyn Lampkin-Smiley](#). Roslyn concentrates her practice in workers' compensation defense. Prior to practicing law, Roslyn was a critical care and occupational health nurse issues. Roslyn also worked as a legal nurse consultant for insurance companies and defense firms preparing medical record reviews. After graduating from

Northern Illinois University College of Law, she was an active member of Amnesty International and worked with the Illinois Innocence Project. In her free time, Roslyn enjoys playing golf, spending time at the Shakespeare Theater and spoiling her dog and grandchildren.



BDL welcomes [Timothy A. Furman](#). Tim is a member of the workers' compensation team where he zealously defends employers and insurance carriers in related litigation. Tim earned his Juris Doctorate from DePaul Law School where he served as the Editor-in-Chief of the Business and Commercial Law Journal. Tim was also a dedicated member, and vice-

president, of DePaul's Moot Court team. In his free time, Tim enjoys attending Chicago sporting events, traveling and spending time with his family.

Halloween Skate To Wrigley Field

On **10/29/16**, **Geoff Bryce** participated in Windy City Skaters end of the year Halloween Skate. The team skated to Wrigley Field to show support for the Chicago Cubs before Game 4 of the World Series.



Halloween At BDL

BDL had a spooktacular time at our annual Halloween party. There's no better way to celebrate Halloween than with great costumes, delicious food and fun games.



Association of Licensed Architects (ALA) Conference

On 10/4/16 **Geoff Bryce**, **Werner Sabo** and **Jim Zahn** presented “Additional Insured Coverage For Worksite Accidents” at the 19th Annual ALA Midwest Architecture Conference and Product Show. BDL also had a booth for the event.



Annual Trip: Stanford vs Notre Dame Football Game

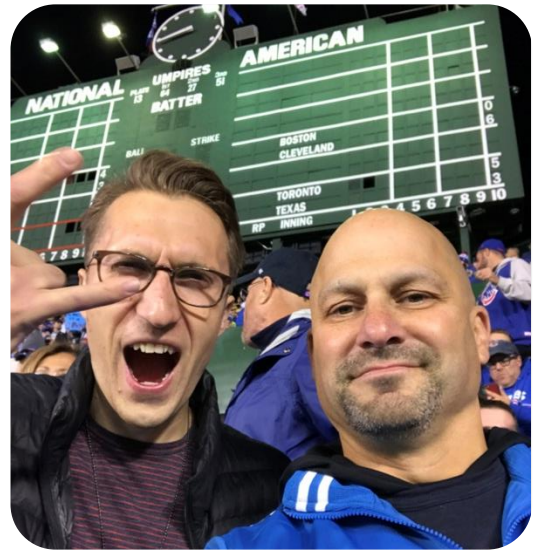
Geoff Bryce, **Terry Kiwala**, **Kirsten Kus** and **Bob Bramlette** made their annual trip to Notre Dame to see the Irish take on the Stanford Cardinal. They were joined by executives from Willis Insurance, Trout Glass and Mirror and Her Closet Boutique. Unfortunately, the Cardinal came from behind to upset the Irish; however, a good time was had by all!



Chicago Cubs Win World Series!

On **November 2, 2016** the Chicago Cubs won their first World Series title since 1908. Wednesday night's victory marked the end of over a century of curses and disappointment.

No one is more excited about the Cubs' historic win than Team BDL!
Go, Cubs, Go!



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 10/27/16 webinar,
"Common Workers' Compensation Issues Defined Part II"

"Very informative and presented in a way that is very clear and understandable."

"I think the scenario questions were very good. Got me to look at things from a different perspective."

"Informative regarding the IL WC process. Easy to follow."

Poll questions/examples were very helpful!"

"Informative without being too technical."



Upcoming Webinar

11/22/16

1st Annual Great American BDL WC Quiz

Rich Lenkov

Jeanmarie Calcagno

[Click Here to Register](#)

Recent Webinars

- Common Workers' Compensation Issues Defined
- 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
- 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.

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 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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