



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter January 2017

Upcoming Webinar!  
1/26/17  
New OSHA Regulations  
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### THE TOP 5 LIST

## Top 5 Defense Tools You Shouldn't Overlook

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

Everyone knows that IME's, UR, Surveillance are effective defense tools. Here are some tools that are often overlooked that can really save you money:

### 1/Medical Provider Canvas:

It is imperative to know as much about a claimant's prior medical history as possible. If you are limiting your search to only those providers that the claimant has identified, you are only accomplishing half of your goal. A medical provider canvas is a very effective and inexpensive way to gather this information.

### 2/ ISO Report:

Again, information is power. Knowing your claimant's claim history is imperative to your defense

### 3/Personnel File:

There is frequently invaluable negative information in a claimant's personnel file. For example, disciplinary action close to an alleged accident date raises significant red flags that can help you dispute a questionable claim.

### 4/ Records Review:

Have you ever read an IME report hoping that it would give you what you wanted, only to be burned? An effective way to avoid that is to get a preview of the opinion through a records review only. If the doctor ends up giving you an opinion that you don't like, you do not need to disclose it.

### 5/ Motion to Dismiss:

While the Illinois Workers' Compensation Act does not explicitly allow for motions to dismiss, such motions are a tool that we use frequently to move cases forward. When a claimant is not compliant with medical treatment, misses IME's or skips out of vocational rehabilitation appointments, file a motion to dismiss, asserting that Petitioner is not fulfilling his or her duties in moving the case forward.



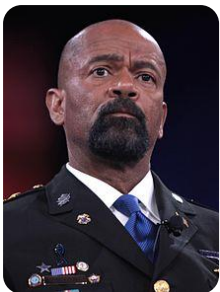
This year, BDL donated to the **Greater Chicago Food Depository** in lieu of sending [holiday cards](#). This non-profit organization provides training and food to those in need as an effort to end hunger. They focus on ensuring healthy food options for people in need, community-based responses to ending hunger and mobilizing the public to end hunger. **Each day they distribute an average of 200,000 pounds of food to people in need across Chicago and Cook County** through their network of partner agencies and programs, including mobile distributions and responses for children, older adults and veterans.

[Click here](#) to learn more about the Greater Chicago Food Depository.



**SOUND BITE:** Fox News contributor & Milwaukee County Sheriff David Clarke discusses the Facebook torture video and what it says about Chicago crime and policing.

**Rich Lenkov:** You mentioned Eddie Johnson, head of the police department here in Chicago. He was heavily criticized on social media for not coming out right away and stating that this was a hate crime. If this happened on your watch and you had a video where the attacker shouted “f\*\*\* white people,” and the victim was a special needs teen, would you have come out and said this was a hate crime? Or do you think Eddie Johnson handled it correctly?



**David Clarke:** I want to be a little careful because I don’t have all the information that he had. **That being said, it’s a no-brainer. Of course it was a hate crime.** But that’s not a satisfying answer. It doesn’t solve the real issue that needs to be dealt with here: how do we reduce the size of the black dysfunctional subculture that exists in many

neighborhoods in the city of Chicago so that we don’t see a recurring incident of this. The number of murder victims has been going up year after year so that tells you that they’re not dealing with this.

Forget about root causes. I’m talking about risk factors that lead to kids growing up without fathers. We know that when a young boy grows up without a father, to help him socially develop, he ends up turning into an unmanageable misfit that the police in the criminal justice system have to deal with. Those are the issues I would’ve liked Superintendent Johnson to talk about, some of these urban pathologies. Put this on the political class, “hey, you’ve tied the hands of my officers on the street because of this Laquan McDonald case.”

But, of course, he works for Rahm Emmanuel and he can’t throw the mayor under the bus or he’ll be fired. At the same time, this should be important enough for Superintendent Johnson to speak up.

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

#### Recent Topics:

- New Illinois laws
- Dylann Roof sentencing
- Trump is deposed
- Gender-based violence
- Legal marijuana under Trump

#### Recent Guests:

- Alan Dershowitz
- Gloria Allred
- Vincent Cornelius, ISBA President
- Jack Newton, Clio CEO
- Craig Anderson, IHSA Executive Director

[Sheriff David Clarke on Facebook hate crimes, WTTW’s Amanda Vinicky on new Illinois laws you need to know, Trump is deposed, Suing Apple and Run DMC](#)

[ISBA President on the future for Illinois lawyers, gender-based violence, Dylann Roof closing arguments, a 104-year old lawyer and more](#)

[Legal Marijuana under Trump, high school football lawsuit, Obama’s overtime rule, celebrity chef going to jail and more](#)

[How President Trump will reshape the Supreme Court, “forgotten baby syndrome”, Brendan Dassey, Tracy Morgan, Madonna and more!](#)

[Cosby, law firm diversity, Chicago Fire Dept gender discrimination, Cleveland Indians connection to Chicago legal community 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.

## Commission Reduces PPD Award Due To AMA Rating

By: [Tim Alberts](#)



In *Flexible Staffing v. IWCC*, 2016 IL App (1<sup>st</sup>) 151300WC, the Appellate Court affirmed the Commission's modification of the arbitrator's permanency award. The award was reduced from 30% loss of the right arm to 25%, based primarily on consideration of an AMA impairment rating.

Petitioner, a welder, injured his right bicep when he attempted to catch a metal railroad rail, weighing 400 pounds, resulting in a distal bicep tendon rupture. Petitioner underwent surgery with Dr. Arabindi, after which Petitioner completed physical therapy. Following therapy, Dr. Arabindi discharged Petitioner with instructions to return to full duty work.

Upon Petitioner's discharge, Respondent scheduled an IME and AMA Impairment Rating with Dr. Mark Levin. Dr. Levin assessed a 6% upper extremity impairment.

At trial, the arbitrator awarded 30% of the right arm, applying the factors set forth in Section 8.1b of the Act.

On Respondent's appeal, the Commission reduced the award to 25% of the right arm. The Commission did not elaborate as to the basis for the reduction. Petitioner appealed.

The Circuit Court remanded to the Commission with an instruction to articulate the facts and reasoning for the reduction. On remand, the Commission outlined its weighing of all 5 factors pursuant to Section 8.1b, noting that the impairment rating was not given any more weight than any other factor and maintained its 25% loss of the right arm award.

Petitioner again appealed to the Circuit Court, which affirmed the Commission decision. Petitioner then appealed to the Appellate Court, which also affirmed the Commission decision.

### Practice Tip:

When permanency is at issue at trial, always obtain an AMA impairment rating from a qualified physician.

## These Boots Are Made For... Falling

By: [Michael Milstein](#)



In *Jackson v. Lincoln's Challenge*, 24 ILWCLB 18, the Commission denied benefits after Petitioner's combat-style boots were caught on a work step.

Petitioner worked at a military school, training "at-risk" youth. He was required to wear a military uniform, which included combat boots.

On the accident date, Petitioner was moving cadets downstairs. As Petitioner walked down the stairs, his boot became caught on a stair and he injured his left knee.

At arbitration, the evidence proved that the stairs had no defects and there was nothing wrong with Petitioner's boots. Petitioner also testified that he used those stairs 20-25 times a day but was not in a hurry at the time of the accident.

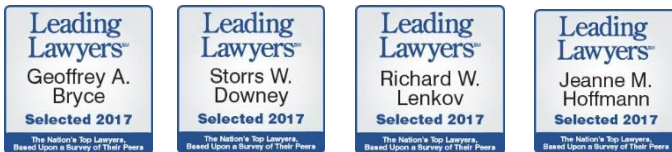
The arbitrator and Commission denied benefits, stating that the accident did not arise out of Petitioner's employment. Petitioner unsuccessfully tried to rely on *Young v. IWCC*, 13 N.E.3d 1252 (Ill. App. 4th Dist. 2014). In *Young*, Petitioner was awarded benefits for injuring his arm while reaching into a deep container to pick out parts. In this case, however, the Commission determined that Petitioner was engaging in an act of daily living by walking down stairs.

### Practice Tip:

Interestingly, Petitioner did not rely on the quantitative risk of using the stairs 20-25 times per day. This is an excellent case to cite in support of an accident defense for injuries involving stairs where there are no defects.

## BDL Leading Lawyers 2017

We are proud to announce that [Geoff Bryce](#), [Storrs Downey](#), [Rich Lenkov](#), [Jeanne Hoffmann](#), [Brian Rosenblatt](#), [Terry Kiwala](#), and [Alec Miller](#) have been selected as Leading Lawyers for 2017. Leading Lawyers are recommended by their peers to be among the top lawyers in their areas of practice. Less than 5% of all lawyers licensed in each state receive this distinction.



In addition, [Michael Milstein](#) and [Maital Savin](#) have been selected as Emerging Lawyers for 2017. Emerging Lawyers have been identified by their peers to be among the top lawyers age 40 or younger unless they have practiced for no more than 10 years. Less than 2% of all lawyers licensed in each state receive this distinction.



## BDL Is Growing!



Cook County State's Attorney's Office.

[Krista Sifuentez](#) handles workers' compensation and general liability. Krista earned her Juris Doctor from DePaul University College of Law where she received a CALI Award representing clients throughout all stages of litigation in the legal clinic. She also gained experience in the courtroom using her Supreme Court Rule 711 license to work for the Cook

In her free time, Krista enjoys traveling, cooking, exploring Chicago's culinary scene and spending time with family and friends.

## BDL Holiday Party

On **12/16/16**, BDL held its annual holiday party at [SPIN](#). We enjoyed food and cocktails while competing in ping pong. Give it up for our 1<sup>st</sup> and 2<sup>nd</sup> place winners, Robert Olszanski & [Michael Milstein](#).





# Dealing With Difficult People



**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 Oct/Nov article "How do you deal with difficult people?"

## Upcoming Seminars

- On 1/27/17, **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.
- On, 2/16/17, **Rich Lenkov**, **Edward Jordan** and **Michael Milstein** will present a workers' compensation mock trial to Artex Risk Management Solutions in Las Vegas, Nevada.
- On 2/16/17, **Storrs Downey** will present "Recent Developments With DOL & NLRB" to the Illinois Manufacturers' Association at Oakbrook Terrace.
- On 5/24-25/17, **Rich Lenkov** will present to the 2017 CLM & Business Insurance Workers' Compensation Conference in Chicago. [Click Here](#) for more info and to register.

# Giving Back

## Law Day 2016 With Agassiz Elementary

**Rich Lenkov**, a 3-term member of the Local School Council (LSC) at **Agassiz Elementary**, organized a career day for 8th graders on 12/12/16. Students visited the Daley Center and observed a medical malpractice trial. After the trial, Rich held a lunch and learn at BDL.



# 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](#)

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 [info@bdlfirm.com](mailto:info@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

## Free Monthly Webinars

What you said about our 12/13/16 webinar,  
"1<sup>st</sup> Annual Great American BDL WC Quiz"

*"The subject matter was interesting and the format was novel."*

*"It was fun and makes me want to pay attention even more"*

*"It was interactive and makes you think. Cannot wait until next year's questions!"*

*"It was a lot of fun. I enjoyed myself. I've only been with WC for 5 months; this tested my not so great skills."*



### Upcoming Webinar

1/26/16

New OSHA Regulations

Rich Lenkov

Maital Savin

[Click Here to Register](#)

### Recent Webinars



- 1<sup>st</sup> Annual Great American BDL WC Quiz
- 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

If you would like a copy of any of our other prior webinars, please email [webinar@bdlfirm.com](mailto:webinar@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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