



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter February 2017

Upcoming Webinar!  
2/6/17

[Illinois Workers'  
Compensation Reform](#)  
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### THE TOP 5 LIST

## Top 5 Ways To Reduce Your Legal Expenses

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

### 1/Manage Your Vendors

Whether its attorneys, surveillance experts, TPA's or any other kind of service provider, it is very important to keep these expenses in check. While vendors are worthwhile investments, they are also one of the leading cost drivers in our field. Accordingly, it is crucial to hire professionals with a single-minded focus on achieving the best results in a cost effective manner.

### 2/ Limit Medical Expenses

Medical bills are a leading cost driver. Closely monitoring medical treatment, being aggressive with return to work, employing the fee schedule and, most importantly, aggressively fighting questionable medical charges is important. Also, aggressive use of tools like IME's and UR will also help manage your medical costs.

### 3/ Conduct Thorough Accident Investigations

Reducing legal expenses starts at the ground level, before you hire counsel. Nail down the stories of key witnesses and secure evidence as soon as possible. This will prevent you from having to pay investigators to track down this information. It will also protect you from costly and time-consuming spoliation of evidence exposure.

### 4/ Use Effective Negotiation Strategies

Never start off too high. Use ADR early and often. Start negotiating (on your terms) as early as possible. These are a few of many negotiation strategies that will reduce your expenses.

### 5/Hire The Right Attorney

As mentioned above, the best vendors are partners, rather than mere service providers. Make sure you hire defense counsel that not only is going to give you excellent legal advice, but ones that will truly partner with you to prevent and reduce legal costs even before a claim occurs.



By: [Michael Milstein](#)



The new year has brought a flurry of activity to Springfield, with much of its focus on workers' compensation reform. The year began with Governor Rauner authoring an op-ed article where he targeted the current system

and highlighted the medical costs, traveling employees, man-as-a-whole awards and intentional conduct of employees. The Democrats submitted a budget which contained numerous provisions that are conditioned on all being passed together. The budget includes a minimum wage hike, money for Chicago teachers' pension, new casinos, property tax freeze, term limits, WC reform and other measures. Below are some of the most relevant reforms being proposed:

- **Traveling employee:** codifies the "reasonable and foreseeable" standard for determining compensability
- **Neutral risk:** injury compensable if employment quantitatively or qualitatively contributes in any way to the neutral risk
- **Fee schedule:** new provisions will be presented, but the changes are not based on the federal Medicare reimbursement standard
- **Drug formulary:** limits prescriptions by drugs and dosage
- **Credits:** "man-as-a-whole" credit will finally be available
- **Shoulder/hip:** shoulder would be part of the arm (rather than MAW) and hip part of the leg
- **Status calls:** can be attended telephonically or by other electronic means

These reforms fall far short of the sweeping changes promised by Governor Rauner. Notably, there are no proposed changes to the causation standard or to allocating more weight to the AMA impairment rating. We will continue to keep you posted.



**SOUND BITE:** Berkeley Research Group Managing Director Jeffrey Cramer discusses the Department of Justice report on the Chicago Police Department

**Rich Lenkov:** The Department of Justice report says that in some Black and Latino neighborhoods, residents have lost faith in the police department. Trust has been broken by a department that too often fails to investigate racially discriminatory policing and misconduct. They also found that many Chicago PD officers were poorly trained, supervised and led. I don't think this was surprising to those of us that follow this issue. On the other hand, the head of the police union came out very strongly against this report. Where does this leave us as a community going forward?

**Jeffrey Cramer:** I think the first point you made is spot on. This report could have been written fifteen years ago and, with the exception of certain incidents, not much would have changed. You could have written this report almost word for word a while ago. The difference here is the consent decree: a federal judge overlooking this, with a monitor, with powers to make changes. So this is not just a report that can be put into a drawer and there is some meat to the negotiations that will now happen between the city and the new attorney general.

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

#### Recent Topics:

- Chinese citizens hack American law firms
- El Chapo extradited
- Facebook hate crimes
- Paul McCartney v. Sony
- New Illinois laws

#### Past Guests:

- Alan Dershowitz
- Gloria Allred
- Rev. Jesse Jackson
- Sheriff David Clarke
- Carl E. Douglas

[Dept of Justice comes down hard on the Chicago PD, Chinese hack US law firms, Obama fails to pardon Blagojevich, El Chapo extradited, Paul McCartney v Sony 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](#)

[Gloria Allred on Trump sexual misconduct allegations, Dennis Hastert victim lawsuit, Ruth Bader Ginsburg, Colin Kaepernick & 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.

## Appellate Court Finds Compensability In 'Bending' Case

By: [Jessica Rimkus](#)



In *Mytnik v. (Ford Motor Co.) IWCC*, 2016 IL App. (1<sup>st</sup>) 152116 WC, the Appellate Court considered the issue of accident with respect to the act of bending down.

Petitioner, an assembly line worker, testified that he would stand at an assembly line for 9 hours a day and was required, among other activities, to lift packages of bolts onto his work station. On the alleged accident date, he reached down to pick up a fallen bolt when he felt a sharp pain in his back.

The arbitrator awarded benefits. The Commission reversed, determining that Petitioner failed to prove that his injury arose out of and in the course of his employment. The Circuit Court affirmed.

On appeal, the Appellate Court reversed the Circuit Court and Commission decision, finding for Petitioner. The Court held that while the act of bending may be performed by the general public on a regular basis, the evidence showed that bolts would regularly fall to the ground during the assembly process and, so, was an integral part of Petitioner's job duties.

Because the risk associated with bending down to pick up bolts was distinctly related to Petitioner's employment, the Court held that the injury arose out of his employment. The Court also noted that the manifest weight of the evidence did not show that Petitioner's pre-existing back condition was so deteriorated that it could give out during a basic activity.

### Practice Tip:

When investigating a questionable accident from a neutral risk standpoint, be sure to ascertain how often Petitioner is required to perform the activity at issue, which will be fundamental to your defense.

## Don't Fall For The Idea That Every Workplace Injury Is Compensable

By: [Timothy Furman](#)



In *Terry Noonan v. IWCC*, 2016 IL App. (1<sup>st</sup>) 152300 WC, the Commission denied benefits after Petitioner failed to establish that his injury arose out of his employment.

Petitioner worked as a clerk, which required him to fill out forms and answer phone calls. On the alleged accident date, Petitioner was sitting in a chair and dropped his pen. As Petitioner went to reach for his pen, he fell out of his chair and injured his right wrist.

The arbitrator and Commission denied benefits, stating that the accident did not arise out of Petitioner's employment, as Petitioner "failed to prove that the simple act of sitting in a rolling chair and reaching for a pen exposed him to an increased risk of injury that was beyond what members of the general public are regularly exposed to."

The Appellate Court found that the task of reaching for a dropped item was not a task Petitioner was instructed to perform or had a duty to perform. The Court further found that picking up the pen was not incidental to Petitioner's assigned duties.

The Court held that Petitioner's risk was one which he would have been equally exposed to outside of work. Petitioner's injury did not arise out of his employment as he failed to establish that he was quantitatively or qualitatively exposed to the risk at a degree greater than the general public.

### Practice Tip:

This is an excellent case to cite in support of an accident defense for injuries involving neutral acts.

## Monday On Main Street

BDL co-sponsored the Sundance Film Festival's 8<sup>th</sup> annual [Monday On Main Street](#) event on **1/23/17**. [Rich Lenkov](#) took part in the exclusive filmmaker social held at Butcher's Chophouse in Park City, UT. Monday On Main Street gives industry professionals a chance to mingle in a lively, upscale setting right in the heart of the fest.

Bryce Downey & Lenkov is involved in all areas of the entertainment sector, including music, theatre, motion pictures, television, live performances, publishing, multi-media and advertising. [Click Here](#) for more information on our entertainment practice.



## Legal Prep Charter Academy Honors United Airlines Executive

United Airlines Executive Vice President and General Counsel Brett Hart was honored by Legal Prep Charter Academy on **1/19/17**. The event, attended by Legal Prep Advisory Board Member [Rich Lenkov](#), raised a large sum of money for the school, a completely free, open-enrollment public high school that was founded in 2012 in the West Garfield Park neighborhood of Chicago.

Legal Prep uses its unique law-themed curriculum and culture of high expectations to cultivate compassion, self-motivation and reflection in young adults who will be prepared to succeed at outstanding four-year colleges and universities.





## Rich Lenkov Presents To Illinois Manufacturers' Association

On 1/19/17, [Rich Lenkov](#) recorded a presentation on "Workers' Compensation Under Trump" for the [Illinois Manufacturers' Association](#)'s video reference library.

[Click Here](#) to view the presentation.



## Upcoming Seminars

- On 2/14/17, [Storrs Downey](#) will present "Religious Discrimination" to the National Association of Security Companies (NASCO) in Fort Lauderdale, FL.
- On 2/16/17, [Rich Lenkov](#), [Edward Jordan](#) and [Michael Milstein](#) will present a workers' compensation mock trial at the 2017 Artex Risk Management Conference 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 lead a panel on "Common Ethical Issues" at the 2017 CLM & Business Insurance Workers' Compensation Conference in Chicago. [Click Here](#) for more info and to register.

- On 5/24-25/17, [Kirsten Kus](#) will lead a panel on "Top Employer Mistakes" at the 2017 CLM & Business Insurance Workers' Compensation Conference in Chicago. [Click Here](#) for more info and to register.

## 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 1/26/17 webinar,  
"New OSHA Regulations"

*"Explained the differences between OSHA regulations and WC considerations."*

*"The subject matter was critical, interesting and well-presented."*

*"It gave me knowledge of OSHA, their regulations and ability to assess fines/penalties."*

*"Great information. You made it easy to understand without legal jargon."*



### Upcoming Webinar

2/6/17

#### Illinois Workers' Compensation Reform

**Rich Lenkov**, Capital Member, Bryce Downey & Lenkov LLC

**Mark Denzler**, Vice President & Chief Operating Officer,  
Illinois Manufacturers' Association

**Jay Shattuck**, Executive Director, Illinois Chamber of  
Commerce's Employment Law Council

**David Menchetti**, Partner, Cullen, Haskins, Nicholson &  
Menchetti, P.C.

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#### Recent Webinars

- New OSHA Regulations
- 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 us at [mkt@bdlfirm.com](mailto:mkt@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
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
1/15/17 - 7/14/17	1,435.17	538.19	1,076.38

Effective Dates	Maximum PPD
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
7/1/16 - 6/30/17	775.18

### 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 - 7/14/17	\$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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