



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter July 2017

Upcoming Webinar!
7/20/17
Top 10 Differences
Between IL General
Liability & Workers'
Compensation
Claims
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THE TOP 5 LIST

Top 5 Ways to Maximize Surveillance Results

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation
Department

1/ Obtain Multiple Days of Surveillance

The most common answer from a claimant caught on tape is that they were merely "having a good day." So, to mitigate the impact of this response, it's good to obtain multiple days of surveillance. It's always curious to me that claimants coincidentally have a good day on the day that we tape them.

2/ Research Claimant

Make sure the subject of the video tape is the claimant. Sometimes, that person lifting a keg of beer over his head isn't actually the claimant. Make sure that you and your investigator do your homework to ensure that it is.

3/ Test Equipment

Keep a proper chain of custody. Make an exact copy of the original. These and other technical requirements are essential foundational requirements to admitting the surveillance into evidence.

4/ Hire Competent Investigators

The best surveillance can be undermined if the investigator doesn't testify credibly. Make sure your experts are not only good investigators, but also good witnesses. The investigator who testifies should be the same person who actually operated the camera. Your defense attorney should prepare the witness well in advance of trial. The investigator should show up to court on time and be professionally dressed.

5/ Successful Surveillance Can Turn an Entire Case Around

Surveillance is expensive. It's rarely successful. However, when it is successful, it can turn an entire case around. Accordingly, I will almost never disclose successful surveillance to my examining physician or to opposing counsel. There is no discovery in Illinois workers' compensation. You don't have to disclose video until after Petitioner has already testified. Using this element of surprise is crucial to successfully impeaching Petitioner's testimony. I don't believe it when a claimant's attorney tells me that if the surveillance really is strong, he or she will dismiss the case. I would rather hold on to that surveillance and use it at trial, obtaining a zero award, which we have done frequently, with strong surveillance.



By: [Michael Milstein](#)



On 7/6/17, Illinois lawmakers voted to override Governor Rauner's veto of the budget bills which were passed with bipartisan support. However, this override likely means

the end to any conversation concerning workers' compensation reform. We don't expect it to become a topic of concern until after the 2018 gubernatorial election.

There are still two bills, HB252 & HB2622 that were sent to the governor for his signature or veto. We believe they will be vetoed and the legislature will not override the veto, meaning no workers' compensation reform is likely in the near future.

This means that there will be no state-funded workers' compensation insurer, no credit for man as a whole injuries and the causation standard will remain the same. We will continue to keep you posted on these issues.



SOUND BITE: Illinois Retail Merchant Association Vice President and General Counsel Tanya Triche joins the show at WGN Studios to discuss breaking news involving her organization's lawsuit against the Cook County soda tax.

Rich Lenkov: Tell us about the lawsuit that you brought regarding the soda tax in Cook County, give us some background.

Tanya Triche: Back in November in 2016, the Cook County board had passed an ordinance to establish a tax on sweetened beverages and it's a pretty large category of products. They passed that tax at a penny per ounce which is a little different from all the other taxes that we generally encounter –it's really the first of its kind in the county and it presented a number of challenges for us and the way the tax was rolled out caused a significant number of issues up and down the chain, not only for the retail industry but for the distributors that also have to pay the tax.

Rich Lenkov: Did you attempt to figure out some of those issues with the county? What was the rush to put this in to effect July 1st?

Tanya Triche: We had identified multiple issues...

[Listen to the Full Episode](#)

Recent Topics:

- Texting teen conviction
- Trump sued by attorney generals
- Johnny Depp
- Flint water crisis indictments
- Fox News lawsuit

Past Guests:

- Alan Dershowitz
- Jesse Jackson
- Sheriff David Clark
- Robert Blagojevich
- Carl Douglas

[Gloria Allred on Cosby mistrial, texting teen conviction, Johnny Depp, Rebel Wilson and more breaking legal news](#)

[Cosby breaking news, Illinois budget, Fox News lawsuit, the Duggars lawsuit and more in this week's Legal Face-Off](#)

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[Gloria Allred on the Marine nude photo scandal, Trump fires all U.S. attorneys, Trump Hotel lawsuit, Neil Gorsuch and more](#)

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Don't Roll Over and Pay Bad Claims, STAND UP and Deny It

By: [Timothy Furman](#)



In *Neubauer v. Orland Fire Protection District*, 25 ILWCLB 57 (Ill. W.C. Comm. 2016), the Commission denied benefits for a petitioner who injured his knee while standing up from a crouched position.

Petitioner worked as a firefighter. On the date of the injury, Petitioner was in training that required him to remain in a crouched or squatting position for 15 minutes. As Petitioner was standing up from the crouched position, he injured his right knee.

The arbitrator and Commission denied benefits, stating that Petitioner failed to prove the accident rose out of his employment.

The Appellate Court found that the task Petitioner was performing prior to standing up did not place him at an increased risk of sustaining a knee injury. The court further relied on the fact that Petitioner was not holding anything and was not wearing any special equipment or gear as he stood up.

The court denied Petitioner's claim because the risk was one that Petitioner would have been equally exposed to outside of work, and because he failed to establish that he was exposed to the risk at a degree greater than the general public, Petitioner's injury did not arise out of his employment.

Practice Tip:

Employers should carefully examine their claims when assessing whether to accept or deny. An employee's injury during a neutral act is not automatically compensable simply because it happened at the workplace.

Just Because You Fell at Work Does Not Mean It Is Compensable

By: [Kirsten Kaiser Kus](#)



In *Farmer v. Illinois State Toll Highway Authority*, 25 ILWCLB 35 (Ill. W.C. Comm. 2016), the Commission denied benefits to a petitioner who injured her left knee when she fell while walking up steps at work.

Petitioner worked as a customer service representative. On the date of the incident, Petitioner arrived at work and parked in a lot at the north end of the building. She walked up concrete steps and fell when she reached a landing near the building's entrance.

The arbitrator denied benefits and found that Petitioner failed to prove that she sustained an accident that arose out of and in the course of her employment.

The Commission also found that Petitioner failed to prove that she sustained a compensable accident. Both the Commission and the arbitrator noted that Petitioner did not initially testify that she tripped, that her shoe got caught on something or that anything caused her fall. Instead, Petitioner testified that later in the day, she looked at the area where she fell and noticed cracks and an indentation in the sidewalk. Petitioner did not describe the size of the indentation and photographs that were presented at trial failed to show the indentation. The Arbitrator and Commission determined that Petitioner most likely did not know what caused her fall.

Practice Tip:

It is a claimant's burden to prove that their accident arose out of and in the course of their employment. If they are uncertain as to what caused their fall, deny the claim.

Firm News

False Claims & Whistleblowers - IMSCA

[Margery Newman](#) contributed an article for the [Illinois Mechanical & Specialty Contractors Association's](#) June 2017 issue of [SubStance](#). The article focuses on false claims and whistleblowing related to Disadvantaged Business Enterprises (DBEs) in Illinois.

Read the article as it originally appeared in [SubStance](#) [here](#).



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](#)

Valparaiso University School of Law Pre-Orientation



On 6/9/17, [Kirsten Kaiser Kus](#) presented about interview skills and practicing as an attorney to the pre-orientation law school class at her alma mater, [Valparaiso University School of Law](#).

Free Monthly Webinars

What you said about our 6/21/17 webinar,
"You Asked For It, You Got It Part II"

"Very informative and engaging webinar."

"There were some great tips about vocational rehab and handling causation."

"I enjoyed the discussion of factors influencing "deviation" and "credits" for previous injuries."

"Loved the use of interactive hypos. It really ensured that the viewers participated throughout the entire seminar."



Upcoming Webinar
7/20/17

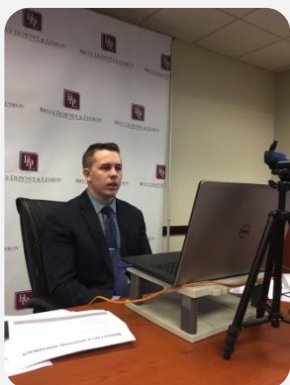
[Top 10 Differences Between IL
General Liability
& Workers' Compensation Claims](#)

Rich Lenkov
Ed Jordan

[Register](#)

Recent Webinars

- You Asked For It, You Got It Part II
 - What's This Claim Worth?
 - The Ups & Downs Of Upper & Lower Extremity Claims
 - Illinois Workers' Compensation Reform
 - New OSHA Regulations
 - 1st Annual Great American BDL WC Quiz
 - Common Workers' Compensation Issues Defined
 - Indiana Forms: Taking A Claim From Start To Finish
- If you would like a copy of any of our other prior webinars, please email us at mkt@bdlfirm.com.



Cutting Edge Legal Education

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

[Click here](#) or email [Rich Lenkov](#).

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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