



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter October 2017

Upcoming Webinar!
10/26/17

Horror Stories: The 666
Scariest Cases in IL
Workers' Compensation

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LEGISLATIVE UPDATE



THE TOP 5 LIST

Top 5 Questions To Ask Potential Defense Counsel

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ What Is Your Average Legal Expense?

Too often, clients are fixated on hourly rates. That doesn't tell the whole story. The more crucial question is what the firm averages in litigation expenses per case. Any firm can wow you with a low rate, but overall expenses are a better indicator of whether the firm is a true business partner.

2/ How Long Do Your Cases Stay Open?

Your defense counsel should always be focused on closing cases quickly and as cheaply as possible. You should not only ask how long the case will stay open, but what tools they use to move the cases along quickly.

3/ Who Will Staff My Case?

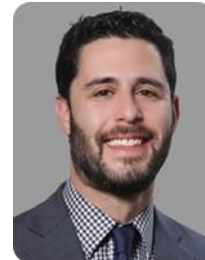
No one likes the bait and switch, where the experienced attorney convinces you to hire them and is never seen again. Clients hire individuals, not firms. Be sure your defense counsel knows that you want your hand-selected team representing you.

4/ How Many Trials/Appeals/Depositions Have You Handled?

Don't just inquire as to the years in practice from your potential defense counsel. Someone who has been in practice for 20 years but hasn't really taken a lead role in the trenches may not suit your needs. Ask specifically about how much actual workers' compensation handling experience your potential counsel has had.

5/ What Do You Know About My Company?

You should hire counsel who views their role as your business partner first and your lawyer second. It is important for your defense counsel to know what you do, know what your company does, what its goals are, its history, etc. You obviously don't want a defense counsel who simply sees you as just another corporation paying its bills



By: [Michael Milstein](#)

The Illinois legislature returns to Springfield the weeks of October 23rd and November 6 for a veto session to override Governor Rauner's vetoes from the prior session. As you will recall, Governor Rauner vetoed HB 2525 whose highlights were codifying "in the course of," "arising out of" and travelling employees. It also allowed for apportionment of fault for repetitive injuries between employers and included a credit for person-as-a-whole injuries. Governor Rauner also vetoed HB 2622, which created the Illinois Employers Mutual Insurance Company, a not-for-profit company.

In order to override the veto, there needs to be 71 votes in the House and 36 in the Senate. HB 2525 only received 64 & 35 votes (House & Senate) when it initially passed and HB2622 only received 67 & 32 votes.

We will keep you posted on what transpires at the veto session.



SOUND BITE: Wall Street Prison Consultants Director Larry Levine discusses the luxury penal accommodations of Anthony Wiener, OJ Simpson & Rod Blagojevich.

Rich Lenkov: Bocce ball, continental breakfast, pool table, a full gym, basketball court, a greenhouse...

Larry Levine: Anthony Wiener is not going to go to a club fed camp. Anthony Wiener has a public safety factor on him and they're going to put a management variable on him. In other words, any other person who really has no criminal history that picked up a 21 month sentence and in those 21 months when you give him 'good time', it's really only 15 months. They would go to a minimum security institution. He's a threat to the community because he's a sex offender. He's going to go behind the fence, he's going to be in a federal correctional institute, not a federal prison camp and he's going to be rubbing shoulders with bank robbers, drug dealers other violent offenders. They will not, he will never see a camp, not with his charges. Neither will that other idiot Martin...



[Click Here To Listen To The Full Episode:](#)

Recent Topics:

- Upcoming Supreme Court term
- Club Fed
- Former Gov. Blagojevich
- Chicago tent city
- CPS pensions

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Sheriff David Clarke

[Blago, Right To Yelp law, hazing liability and the monkey selfie](#)

[Trump's pardon of Arpaio, CPS pension funding, Judicial Hellholes, legal Issues in the wake of Harvey and more](#)

[Constitutionality of hate speech, \\$417 baby powder verdict, legal issues surrounding the eclipse and more](#)

[Supreme Court panel, Cook County soda tax, Charlie Gard, Venus Williams, and more](#)

[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](#)

[Trump FBI probe, important Supreme Court decisions, fighting opioid dependency and more](#)

[Alan Dershowitz on Trump/Comey, feds investigate Fox News, Fyre Festival, Penn State hazing liability and much more](#)

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Doctor Alleges Fraud & Conspiracy

By: [Chase Gruszka](#)

On 9/19/17, a putative class of doctors filed a class action lawsuit in the U.S. District Court for the Southern District of Illinois against various insurance carriers, third-party administrators (TPAs) and claims adjusting companies (CACs).



In *Michael E. Beatty, M.D. et al. v. Accident Fund General Insurance, Company, et al.*, 3:17-cv-01001, Dr. Beatty filed suit against 44 various insurance carriers, TPAs and CACs, alleging violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 502/2). Dr. Beatty, a Madison County plastic surgeon, claimed that the defendants systematically and routinely fail and refuse to make interest payments on late or unpaid medical bills under the Illinois Workers' Compensation Act.

Beatty appears to be an attempt to sidestep the recent Illinois First District Appellate Court decision in *Marque Medicos Fullerton, LLC v. Zurich Insurance Co.*, 2017 IL App (1st) 160756. In that case, the court affirmed the trial court's dismissal of the medical providers' claims for interest under the Workers' Compensation Act, finding:

1. The medical providers were not intended third-party beneficiaries of workers' compensation insurance policies issued by the defendants;
2. The workers' compensation policies did not constitute implied-in-fact contracts since the defendants were already obligated to pay medical providers interest on late bills under the Act;
3. The Act does not create a private cause of action for the medical providers as the provision for interest's primary goal is to compensate employees and not providers.

Given the appellate court's decision in *Marque Medicos Fullerton, LLC*, the doctors in *Beatty* appear to attempt a new strategy by using the private cause of action in the ICFA. They allege that they are akin to consumers because by agreeing to treat an employee covered by the Act, they become entitled to the ILWC Act's benefits, such as interest. We will keep you posted.

Don't Hold Back; Uninformed IME Reports Fall Flat

By: [Timothy Furman](#)



In *Destri v. Vandermeersch Lawn Services, IWCC*, 25 ILWCLB 117 (Ill. App. Ct., 3rd 2017), Petitioner was a laborer who alleged a back injury while lifting heavy items at work. Petitioner had a preexisting condition that resulted in the same symptoms 3 years prior. Respondent's IME opined that Petitioner's symptoms were not causally connected to the work accident. Petitioner's treating physician opined that the accident occurred while Petitioner was working and was causally related to work.

The Commission denied benefits. The Appellate Court reversed the Commission's denial. The Appellate Court held that Petitioner's testimony, and the treating physician's opinion, outweighed a "speculative" IME report. The court noted that the IME doctor did not have a clear understanding of Petitioner's job duties.

Practice Tip:

Bolster your IME doctors with all available tools including records, job descriptions and accident reports.

Firm News



Another Win For BDL

On 8/29/17, Arbitrator Hegarty issued a full defense verdict in a case tried on Petitioner's emergency petition and denied all benefits. The case involved accident and causation defenses. Timothy Furman tried the case and was able to successfully attack Petitioner's credibility with several pieces of key evidence. We used social media evidence to attack Petitioner's credibility. Arbitrator Hegarty specifically pointed to several of these social media posts in determining that Petitioner was not credible. Most notable was a photograph of Petitioner using a shovel, without his wrist brace, to dig a garden in his backyard.

Petitioner is likely to file an appeal.

Practice Tip:

Careful and thorough investigation of a claim is pivotal to the chance of success, including social media.

Giving Back

Lawyers For The Creative Arts 2017

Bryce Downey & Lenkov was proud to support Lawyers For The Creative Arts 2017 Benefit Luncheon on 10/18/17. LCA works to provide legal services to artists who cannot afford market rate services. LCA is the only pro bono legal service organization in Illinois specializing in the arts. For more information, [click here](#).



11th Annual Agassiz Walk-a-Thon

Bryce Downey & Lenkov was proud to sponsor the Agassiz Elementary Walk-a-Thon on 10/13/17. The Walk-a-Thon is a great way to rally the school at the start of the year and the community while emphasizing healthy habits like exercising and walking.



Healing To Action

Bryce Downey & Lenkov was proud to participate in Healing to Action's launch celebration & fundraiser, *Brewing Hope: Building Communities, Ending Violence* on 9/18/17. Guests enjoyed delicious food and drinks from local businesses, had the opportunity to connect with leaders in Chicago's social justice community, and learn more about Healing to Action's work.

[Healing to Action](#) advances a worker-led movement to end gender violence and envisions worker leaders creating safe, just workplaces and stable economic futures. To learn more, [click here](#).



HEALING TO ACTION

Did You Know?

In addition to workers' compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization & Governance](#)
- [Construction](#)
- [Employment & Labor](#)
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- [Insurance Coverage & Litigation](#)
- [Intellectual Property](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)

Free Monthly Webinars

What you said about our 9/26/17 webinar,
"Top 10 Differences Between IL GL & WC Claims"

"Great presentation & format, interesting & loved the personal experiences with the WC system relayed"

"It was clear, concise and to the point"

"As always, very informative & provides reminders/refresher"

"The hypothetical questions challenged us to think carefully about the topic"



Upcoming Webinar

10/26/17

Horror Stories: The 666 Scariest Cases in IL Workers' Compensation

Rich Lenkov
Julia Alcaraz

[Register Here](#)

Recent Webinars

- 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
7/17/17 - 1/14/18	1,440.60	540.23	1,080.45

Effective Dates	Maximum PPD	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
7/1/05 - 6/30/06	591.77	
7/1/06 - 6/30/07	619.97	
7/1/07 - 6/30/08	636.15	Maximum Rate Death Benefit: The greater of \$250,000 or 20 years
7/1/09 - 6/30/10	664.72	Effective 2/1/06 – the greater of \$500,000 or 25 years
7/1/10 - 6/30/11	669.64	
7/1/11 - 6/30/12	695.78	Temporary Total Disability (TTD) Rate: 66-2/3% (.667) x AWW
7/1/12 - 6/30/13	712.55	
7/1/13 - 6/30/14	721.66	Permanent Partial Disability (PPD) Rate: 60% (.6) x AWW
7/1/14 - 6/30/15	735.37	
7/1/15 - 6/30/16	755.22	
7/1/16 - 6/30/17	775.18	

*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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