



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter January 2018



THE TOP 5 LIST

Top 5 Workers' Compensation Resolutions For 2018

By: [Rich Lenkov](#)
Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Examine Your Accident Investigation Policy

A good defense starts at the ground level. By the time your defense counsel receives a questionable claim, it is often months or even years after the accident. By then, it can be too late to mount a successful defense. Resolve to work with your team members on the ground level to ensure that you interview key witnesses, document important facts and preserve evidence from the start.

2/ Make A Decision Quickly

If your employee has a legitimate claim, accept it, pay benefits and get them back to good health and work as quickly as possible. However, if they don't have a compensable claim, it is equally important to make that decision quickly and inform the employee of your denial. Waiting an inordinate amount of time or doing an indefinite "investigation" doesn't help you or the claim.

3/ Investigate Subrogation Early

Third party liability continues to be commonly overlooked, even though it is an excellent chance to recover money. Consider whether there is subrogation as early in the claim as possible, and proceed aggressively if there is a possibility of recovery.

4/ Use Your Resources

IMEs, UR, PPPs, Motions To Dismiss and surveillance are all effective tools in defending questionable claims. While they cost time, money and resources, they are invaluable tools in aggressively defending a claim in the right case.

5/ Get Perspective

Consider how your actions on the claim affect other claims. Treating legitimate claimants well, and aggressively fighting questionable or fraudulent claims, is important not only on the present claim, but also for its ripple effect on other employees.

Upcoming Webinar!

1/19/18

The Other Side: 5 IL WC
Issues From A Petitioner's
Attorney's POV

[Register Here](#)



By: [Michael Milstein](#)



The Illinois Workers' Compensation Commission recently rejected a proposal by the Medical Fee Advisory Board that would have increased costs of most physician interactions by 30 percent for all workers' compensation claims in Illinois. The argument made in favor of the proposed rate hike was that the low reimbursement rates for doctors that treat workers' compensation patients limit their access to care. However, Illinois ranks 6-8th (depending on what metrics are used) in overall costs.

The Commission voted 5-4 against the proposal.



SOUND BITE: Illinois State Senator [Daniel Biss](#) discusses his run for Illinois governor

Rich Lenkov: We can't talk about Illinois governor without talking about the Illinois Speaker Michael Madigan, the longest serving speaker in American political history. Tell us your relationship with Madigan.

Daniel Biss: Michael Madigan has been there too long, he's too powerful and I think that's held the state of Illinois back, I think it's held the Democratic Party back and so the question is 'what you do about it?' I think what you need is a governor who is independent, someone who has a record of being able to stick up for what the people of Illinois need, after what's right, regardless of what Madigan wants. I also think you need a governor, who can work with everybody; Democrats, Republicans including Michael Madigan, including everybody else and that's how I'm going to be. I've been in the legislature for 7 years, I have been one of those independent members of the Democratic party prepared to call out Michael Madigan.



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

Recent Topics:

- "Fire & Fury" / Trump
- "Time's Up"
- Newtown legacy
- Supreme Court decisions

Past Guests:

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

[Cook County Board candidates Lowry & Degnen, a former football pro turned barrister, the Newtown legacy & more in the last LFO of 2017!](#)

[Can Trump obstruct justice?, Bob Fioretti on his run for Cook County Board President, Blago](#)

[Jeffrey Cramer on Mueller indictments, Amanda Vinicky on Rauner's re-election campaign, Jesse Ruiz on running for IL attorney general](#)

[Colin Kaepernick, baseball injury liability, gun control legislation after Vegas](#)

[Upcoming Supreme Court term, OJ/Blago/Weiner's time @ Club Fed, Inside Out & much 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](#)

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

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

Car Accident On The Way To Doctor's Office Not Compensable

By: [Tim Alberts](#)



In *Gaytan v. Flanders Precisionaire*, 25 ILWCLB 190 (Ill. W.C. Comm. 2017), Petitioner was injured in a motor vehicle accident while on her way to a doctor's appointment for an earlier work-related injury. Respondent had its HR manager travel with Petitioner to the doctor's office to translate. While Petitioner was following her HR manager to the doctor's office, Petitioner's vehicle was struck by a truck.

Petitioner filed a new workers' compensation claim arising from the motor vehicle accident but the arbitrator denied it as Petitioner's injuries did not arise out of and in the course of her employment.

On review, the Commission affirmed the arbitrator's decision and denied benefits. The Commission found it significant that Respondent did not exert control over Petitioner's physician choice and there was no obligation to attend the appointment. The Commission added that as Petitioner was not paid for her time to attend her medical appointments, it further exhibited an absence of control by Respondent.

Practice Tip:

Accidents occurring while attending medical appointments for a prior, work-related injury are typically not in the course of employment.

MMI Is Not Required To Terminate TTD

By: [Jesse Lanshe](#)



In *Holocker v. IWCC*, 2017 IL App (3rd) 160363WC, the Appellate Court affirmed the Commission's denial of TTD benefits although Petitioner was not at MMI.

Petitioner was operating a crane when he was struck in the face and chest by a loose strap. Petitioner was released to full-duty work but could not operate a crane. Respondent accommodated Petitioner's restriction with work meeting his job description of "transportation operator".

Petitioner was subsequently terminated for unrelated reasons and terminated his TTD benefits despite still treating.

At arbitration, Petitioner sought TTD but Respondent offered evidence that there were jobs within Petitioner's restrictions.

The arbitrator found it important that Petitioner was not at MMI and awarded benefits.

The Appellate Court affirmed the Commission's TTD denial, holding that Petitioner's work-related injuries were stabilized and he was able to reenter the workforce.

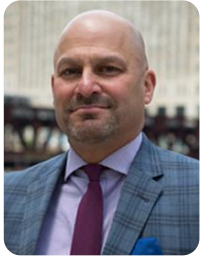
The Appellate Court declined to interpret *Interstate Scaffolding* as requiring that a claimant's having reached MMI be the sole dispositive inquiry in determining entitlement to TTD benefits. The Appellate Court ruled that the test is whether the employee remains temporarily totally disabled as a result of a work-related injury **and** whether the employee is capable of returning to the work force. The Appellate Court confirmed that, under *Interstate Scaffolding*, Petitioner is not entitled to TTD when his work injuries no longer impact his ability to work or his employability.

Practice Tip:

Employers should be diligent in reviewing a claimant's work status on a case-by-case basis, as the possibility may exist to terminate TTD prior to reaching MMI under appropriate factual circumstances.

Firm News

"What Does Workers' Compensation Pay For?" – Super Lawyers Illinois



On 12/13/17, [Rich Lenkov](#) was quoted in the *Super Lawyers* article, "What Does Workers' Compensation Pay For?" The article discussed coverage for injured employees in Illinois.

Click [here](#) to read more.



'85: The Greatest Team In Football History

On 1/3/18, the Pro Football Hall of Fame in Canton, Ohio hosted the world premiere of "'85: The Greatest Team in Football History.", a film produced by Rich Lenkov and director Scott Prestin. The documentary is the definitive story of the 1985 Chicago Bears. It features interviews with key members of the team like Mike Ditka, Mike Singletary and Jim McMahon, as well as noted Bears fans Barack Obama, Bill Murray and Joe Mantegna. It hits the screen 1/29/18 in more than 200 theaters nationwide. For a list of theaters, [click here](#).



Rich Lenkov Published In Workers' Compensation Magazine

[Rich Lenkov](#) moderated a discussion on "2018 Workers' Compensation Predictions" in CLM's Winter issue 2017 of *Workers' Compensation Magazine*. Read the full article [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](#)

Upcoming Seminars

- On **1/24/18**, Bryce Downey & Lenkov will co-host "Forecast For 2018" with Willis Towers Watson. Topics include a bankers' roundtable, design risks and solutions for construction project owners and hot topics in construction law. For more information or to RSVP, [click here](#).
- On **1/30/18**, [Storrs Downey](#) will present "Avoiding Claims of Religious, National Origin & Race Discrimination in the Current Political Climate" at the American Conference Institute: 26th National Conference on Employment Practices Liability Insurance. For more information or to register, [click here](#).
- On **2/2/18**, [Storrs Downey](#) will present "Sexual Harassment In The Workplace" at the Illinois Manufacturers' Association's *Small Manufacturers Council Meeting* in Oak Brook, IL. For more information or to register, [click here](#).
- On **2/23/18-2/24/18**, [Jeanne Hoffmann](#) and [Geoff Bryce](#) will attend the 36th Annual CAI Illinois Condo-HOA Conference & Expo at the Donald E. Stephens Convention Center in Rosemont, IL. Be sure to stop by our booth! For more information or to register, [click here](#).

Free Monthly Webinars

What you said about our 12/19/17 webinar,
"Ask Us ANYTHING"

"I liked the ability to fire off questions that came to mind. I look forward to a part 2"

"Clear concise answers"

"I liked asking questions - it addressed more complex issues which I deal with"

"Good variety of questions and it was interactive"



Upcoming Webinar

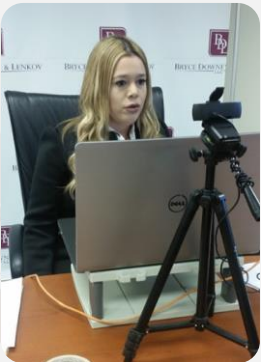
1/19/18

The Other Side: 5 IL WC Issues From A Petitioner's Attorney's POV

[Rich Lenkov](#)

[David Menchetti](#)

[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 that we've presented at are:

- 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	
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	

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

CHICAGO, IL:
200 N. LaSalle Street
Suite 2700
Chicago, IL 60601
Tel: 312.377.1501
Fax: 312.377.1502

SCHERERVILLE, IN:
833 West Lincoln Highway
Suite 210
Schererville, IN 46375
Tel: 219.488.2590
Fax: 219.213.2259



BRYCE DOWNEY & LENKOV
LLC

www.BDLFIRM.com

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:

The content of this document has been prepared by Bryce Downey & Lenkov LLC for informational purposes. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. You should not act upon this information without seeking advice from a lawyer licensed in your own state. In considering prior results, please be aware that: (1) each matter is unique and (2) you should not rely on prior results related to past performance to predict success or results in future matters, which will differ from other cases on the facts and in some cases on the law. Please do not send or disclose to our firm confidential information or sensitive materials without our consent. If you would like more information on any of the topics discussed above, or have any questions regarding these issues or any aspect of Illinois Workers' Compensation law, please contact Rich Lenkov at 312-327-0038 or rlenkov@bdlfirm.com or any member of our workers' compensation team.

Advertising Material