Bryce Downey & Lenkov LLC

General Liability Newsletter

April 2021

Proposed Illinois Law Imposing 9% Prejudgment Interest on Personal Injury Claims Vetoed

In less than 48 hours on 1/13/21, the Illinois General Assembly passed a substantial change to the civil justice system in HB3360. The issue of prejudgment interest was decided in the final days of a lame duck session without any meaningful opportunity to consider the issue.

This time the effort was stopped by Gov. Pritzker, who vetoed the bill, citing the negative impact the prejudgment interest would have on healthcare systems and businesses. As passed by both houses of the General Assembly, HB3360 would impose 9% prejudgment interest per year on future money damages in personal injury actions. The interest would accrue beginning "on the date the defendant has notice of the injury from the incident itself or a written notice."

At 9%, HB3360 would provide for one of the highest interest rates—and earliest start dates—for prejudgment interest in the country. Various approaches have emerged in other states that allow for prejudgment interest awards. Some states require the rejection of a formal demand with specific requirements (Missouri, Section 408.040 RSMo.), others from the date of the loss (Florida, Fla. Stat. Section 687.01) and still others from the date of the filing of the complaint (Michigan, Mich. Comp. Laws Section 600.6013).

Based on the two-year statute of limitations for personal injury actions in Illinois, the bill has the potential to increase a judgment award by almost 20% or more before a defendant is even served with process. Thereafter, interest may compound for another two or three more years at 9% while the case works its way through the court system. As a result, the judgment value could then increase by 40-50%.

For example, under this bill a $2 million claim that is filed two years after the injury date and takes three years to reach a verdict would result in an additional $1,077,247 of prejudgment interest. The bill has the potential to increase a judgment award even more where the statute of limitations is greater than two years, like in construction cases with a four year statute of limitations, or a case involving an injury to a minor plaintiff wherein the statute can be tolled until the plaintiff's age of majority.

While the Governor vetoed the measure, the fact that the bill sailed through the General Assembly is enough cause for alarm that prejudgment interest is soon likely to become part of Illinois law in some fashion.

Indiana Court of Appeals Affirms Defense's Use of Medical Bills in Pain & Suffering Claim

Juries in Indiana personal injury suits are not given line-item verdict forms to separately determine damages for past and future medical expenses, pain and suffering, disability, lost wages, etc. Instead, juries are instructed to consider those factors along with the nature and extent of the injuries and life expectancy. Often, a plaintiff will have relatively low medical expenses that suggest that the plaintiff did not sustain a very serious or permanent injury. In those cases, plaintiffs will frequently forgo presenting medical expenses as evidence and instead rely on evidence of pain and suffering and permanency to support a higher verdict.

In Indiana, a jury is instructed to consider the reasonable medical expenses associated with the injury. When a plaintiff presents evidence of the gross medical bills incurred, the defendant is allowed to present evidence that through write-offs or discounts, the healthcare provider accepted a lower amount. Juries do not know whether the write-offs or discounts were due to insurance agreements or Medicare or Medicaid protocol. A plaintiff may decide not to present evidence of the gross medical expenses if the write-offs and discounts were significant and result in the actual net medical expenses being very low or non-existent.

No previously reported Indiana appellate decision ever addressed whether a defendant could still present evidence of a plaintiff's medical expenses as evidence against pain and suffering where the plaintiff did not present evidence regarding medical expenses.

On 3/24/21, in *Gladstone v. West Bend Mutual Insurance Company*, 20A-CT-1499, the Indiana Court of Appeals held that it was not abuse discretion for a trial court to allow a defendant to present evidence of a plaintiff's gross and net medical expenses where Plaintiff was not seeking damages for past medical expenses. In very clear terms, the court rejected Plaintiff's argument that there should be a bright-line prescription against admitting medical expenses when a plaintiff is only seeking damages for pain and suffering.

According to the court, the amount of medical expenses may have probative value on the issue of a plaintiff's pain and suffering. Whether evidence has probative value is a very low threshold to meet under Indiana Rule of Evidence 401 and "[c]ommon sense and experience dictate that a more serious injury generally brings with it greater medical expenses as well as greater pain and suffering." To the extent that Plaintiff's medical expenses were only $2,000 after write-offs and discounts, such evidence was probative on the issue of pain and suffering.

The court also rejected Plaintiff's argument that the probative value of the medical expenses was outweighed by the prejudicial effect the evidence might have on the jury. The court noted that the trial court should have held the expenses to be inadmissible under Rule 403 which allows a court to exclude evidence that is more prejudicial than probative.

According to the court of appeals, Rule 403 is a tool to be used sparingly by trial courts and that exclusion of probative evidence is warranted only when the prejudice to the other party is "unfair." Here, Plaintiff's trial strategy was to minimize the probative effect of the medical expenses through testimony regarding his post-incident pain, and limitations, as well as testimony from his physician-expert that the injury would likely continue to cause Plaintiff pain. Under the circumstances, any prejudice Plaintiff may have realized by admitting the medical expenses was not unfair and did not outweigh the probative value of the evidence.

The court of appeals held that while in some cases it may be an abuse of discretion to allow evidence of medical expenses when a plaintiff was not seeking to recover them as damages, *Gladstone* was not that case. Accordingly, the court upheld the jury verdict awarding Plaintiff nothing for his UIM claim.

Practice Tip:
Given the growing number of cases in which plaintiffs do not present medical expenses because of the negative effect on potential recovery, *Gladstone* will be an important precedent for defendants seeking to have a jury consider low medical expenses in evaluating claims for pain and suffering.

Illinois Supreme Court Seizes the Moo-ment and Holds Breach of Contract Cannot be Grounds for Contribution Claim Based on Escaped Cow

In *Raab v. Frank*, 2019 IL 124641 (12/1/20), the Illinois Supreme Court held that a breach of contract claim cannot be the basis for liability under the Illinois Contribution Act.

In the underlying suit, Rabb sued Frank after one of Frank's cows escaped through a fence and wandered onto the highway, where it was struck by Raab's vehicle. Frank then filed a third-party complaint for contribution against his neighbor, Grossen, seeking contribution under the Illinois Joint Tortfeasor Contribution Act. In the third-party complaint, Frank alleged that Grossen was negligent under both the Animals Running Act and the Fence Act, and because Grossen breached the terms of the fence agreement executed by Grossen's predecessor.

Raab and Frank eventually settled their claim but Frank pressed on with the third-party complaint. The trial court granted Grossens' motion for summary judgment on the grounds that the Animals Running Act barred any contribution from non-owners and non-keepers of livestock. It also granted summary judgment under the Fence Act claim because Frank failed to notify the Grossens of any known deficiencies in the fence. The trial court also granted a subsequent motion for summary judgment on Grossens' argument that breach of the fence contract cannot create liability in tort to Raab, the underlying victim.

The appellate court reversed the summary judgment under the Animals Running Act, holding that Raab's inability to pursue an action against the Grossens as non-owners of the cattle had no bearing on Frank's ability to seek contribution under the Contribution Act. The court also affirmed the trial court's ruling on the Fence Act claim. However, the court reversed summary

judgment on the breach of contract claim, finding that even though the Grossens were not liable in tort, the agreement nonetheless established a relationship between the parties that made contribution equitable.

The Illinois Supreme Court granted the Petition for Leave to Appeal and ruled that there was no common law liability for injury or damage caused by an animal running at large. In turn, the Animals Running Act codified that owners and keepers were to be held to a negligent standard rather than a standard predicated on strict liability; nothing in the Act created liability to non-owners of livestock. Accordingly, the court held that the trial court properly entered summary judgment for Grossens on the claim of liability under the Animals Running Act.

The other issue was the claim that the fence agreement was breached by the Grossens and therefore Frank had a viable contribution claim based upon that breach.

The court held that under the Contribution Act, while there is no requirement that the basis for liability for contributors be the same, there must be some liability to the original plaintiff in order for contribution liability to attach. Here, there was no statutory or common law basis to impose liability on the Grossens as non-owners or non-keepers of the livestock. Beyond this, however, Frank asserted that the Grossens could be held liable for contribution under the fence agreement because Raab was "an incidental third-party beneficiary" of the agreement. The court disagreed, holding that absent potential tort liability, a breach of contract claim does not warrant third-party contribution. In other words, because Frank did not otherwise establish potential liability in tort, the breach of contract claim alone could not give rise to liability under the Contribution Act.

Practice Tip:
Raab demonstrates that there is a fine, but significant difference between a breach of contract claim and a contribution claim based upon the breach of contract. One should carefully read any third-party complaint to determine whether the contribution claim is predicated on a breach of contract. If so, under *Raab,* that may lead to dismissal or summary judgment.

Indiana Court Declines to Limit Liability Protection for Religious Non-Profits

In *Henderson v. New Wineskin Ministries Corp.*, 160 N.E.3d 582 (Ind. Ct. App. 2020), the Indiana Court of Appeals addressed premises liability statutory limitations enjoyed by religious nonprofit organizations, and declined Plaintiff's prayer to curtail the limitation.

Plaintiff planned to attend a morning service at New Wineskin Ministries and parked her vehicle in the Ministries' parking lot. Snow and ice covered the parking lot. Plaintiff got out of her vehicle, took two steps and fell, injuring her shoulder, back and neck. Plaintiff sued New Wineskin Ministries for negligence for failing to warn of a hidden danger.

Defendant moved for summary judgment based on Ind. Code § 34-31-7-2, which limits the liability of nonprofit religious organizations. Specifically, such organizations owe only two duties to individuals entering their premises with permission: (1) to warn of hidden dangers, and (2) to refrain from causing intentional harm. The trial court granted summary judgment, determining that the injury occurred on defendant's premises and the condition causing Plaintiff's fall was not hidden.

On appeal, Plaintiff argued: (1) the parking lot, was not included in the statute's definition of "premises" and thus not subject to liability limitation; and (2) that the condition causing Plaintiff's fall was a hidden danger, and thus summary judgment was not appropriate.

The court affirmed summary judgment, noting that the definition of "premises" in the subject statute had not been litigated yet. The court noted that while the term was defined in the subsequent section as being limited to a building, the legislature intentionally left out the definition in the relevant intention and found it improper to apply the limiting language to the statute at hand. Instead, the court applied the general definition of "premises" common in jurisprudence, which includes buildings, along with their grounds.

Furthermore, the court held that the undisputed evidence confirmed that the snow and ice Plaintiff slipped and fell on was not hidden, and therefore summary judgment was appropriate.

Practice Tip:
Henderson affirms Indiana courts' reluctance to limit the statutory liability protections afforded certain entities. Revisit the specific protections carved out in the Indiana Code when defending a premises liability action.

Illinois Supreme Court Holds Jury Verdict Entitled to Substantial Deference

In an important decision for determining causation and the standard for judgment notwithstanding verdict, the Illinois Supreme Court in *Steed v. Rezin Orthopedics and Sports Medicine*, S.C, 2021 IL 125150, reversed the appellate court and reinstated a jury verdict in favor of an institutional defendant.

In *Steed*, Plaintiff's decedent suffered a partial tear of his Achilles tendon on 1/29/09 and first sought treatment on 2/17/09. The treatment plan was to set his leg in a cast and return in two weeks for a follow-up appointment. The treating physician his recommendation about the follow-up appointment. The receptionist scheduled the decedent's casting appointment for 2/19/09, but did not schedule the follow-up appointment.

When the cast was applied, another receptionist at Rezin Orthopedics scheduled the decedent's follow-up appointment for 3/13/09. Shortly thereafter on 2/25/09, the decedent spoke to another receptionist and requested a change in his follow-up appointment to 3/12/09.

During discovery, the decedent's wife testified that he experienced discomfort and achiness in his leg and that on the evening of 3/7/09, he experienced pain in his thigh for the first time. He planned to call Rezin Orthopedics on the upcoming Monday, but suffered a deep vein thrombosis ("DVT") and resulting pulmonary embolism ("PE") on 3/8/09, and died.

The decedent's representative brought a wrongful death and survival action against Rezin Orthopedics, which focused on its alleged failure to timely schedule a follow-up appointment within two weeks of casting the decedent's leg pursuant to the physician's order. Plaintiff claimed that as a direct and proximate result of that failure, the DVT and resulting PE were not discovered, diagnosed and/or treated, resulting in the decedent's death. Plaintiff's expert testified that the risk of developing a DVT is low, that a blood clot in the leg is not life threatening and that had the decedent been examined and diagnosed within two weeks, he likely would have survived.

Rezin Orthopedics presented expert testimony that whether the decedent's follow-up appointment was scheduled within two weeks or three weeks was insignificant. It also presented expert testimony that showed decedent was not high risk for DVT development, that the incidence of DVT formation following an Achilles tendon rupture is very low and that virtually none of those incidents result in a fatal PE.

At trial, the jury returned a verdict in favor of the treating physician and Rezin Orthopedics. Plaintiff moved for judgment notwithstanding verdict ("judgment n.o.v.") and a new trial against Rezin Orthopedics, which was denied. The appellate court reversed, finding that the evidence overwhelmingly favored Plaintiff and proved that Rezin Orthopedics breached the standard of care by failing to follow the written order that instructed the receptionists to schedule the follow-up appointment within two weeks of 2/19/09. The appellate court also found that the failure to schedule a follow-up appointment within two weeks was a proximate cause of the death. The appellate court remanded the case for entry of judgment against Rezin Orthopedics and for a trial on damages only.

The Supreme Court discussed the *Pedrick* standard, which provides that judgment n.o.v. should be granted only when "all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors [a] movant that no contrary verdict based on that evidence could ever stand." *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967).

Utilizing *Pedrick*, the Supreme Court found that the evidence on proximate cause did not overwhelmingly favor Plaintiff and the appellate court ignored evidence supporting a reasonable conclusion that the DVT formed after 3/3/09. This date was not within the two-week time frame for the prescribed follow-up appointment. The Supreme Court also criticized the appellate court for failing to address legal cause (i.e. whether the decedent's injury was the natural, and not merely a remote, consequence of Rezin Orthopedics' failure to schedule his follow-up appointment within two weeks of his initial appointment). According to the Supreme Court, expert testimony on that point showed that the decedent's development of a DVT and subsequent fatal PE were medically unforeseeable. In other words, the evidence at trial revealed that the decedent's death was so "highly extraordinary" that imposing liability was unjustified.

Practice Tip:
Steed is a fresh reiteration of the 54 year-old *Pedrick* standard and stands as a valuable precedent to support a defense verdict when there is any evidence at all, suggesting a lack of foreseeability.

Indiana Senate Bill 1: Civil Immunity Related to COVID-19

Gov. Holcomb signed Indiana Senate Bill 1 into law on 2/18/21. The bill's intent is to provide civil immunity to individuals, associations, institutions, corporations, companies, trusts, limited liability companies, partnerships, political subdivisions, government entities, nonprofit corporations and any other organization or entity from COVID-19 related tort-based lawsuits.

Specifically, the bill limits tort actions which include actual, alleged or possible exposure to or contraction of COVID-19 while on the premises of an individual/entity, or while participating in an event sponsored by the individual/entity. The immunity extends to COVID-19 related services, treatment or other actions. The immunity does not extend to actions or omissions that constitute gross negligence or willful or wanton misconduct; worker's compensation is specifically excluded.

In addition, the bill establishes immunity for manufacturers and suppliers of COVID-19 protective products, which include:

- personal safety equipment
- medical devices
- equipment or supplies, even if used or modified from their approved use, to treat or prevent the spread of COVID-19

- medication used to treat COVID-19, including those prescribed or dispensed for off-label use; and
- cleaning and disinfecting products

This immunity also excludes actions or omissions that constitute gross negligence or willful or wanton misconduct, as well as worker's compensation claims.

Finally, the bill prohibits class action lawsuits based on the above. In practice, Senate Bill 1 provides sweeping immunity for most tort actions related to both the transmission and treatment of COVID-19, as well as any damages arising from medication or products intended to assist in the treatment of COVID-19. This includes transmission from employees to business patrons, patron to patron while on the businesses' premises and transmission in health care and assisted living facilities. It also appears to include immunity for health care providers from medical malpractice claims for damages arising from COVID-19 medical treatment.

The bill potentially leaves the door open for liability if an entity disregards available safeguards to prevent the transmission of COVID-19.

The bill is set to expire 12/31/24.

Exclusive Remedy Doctrine Bars Suit Against Non-Employer Who Agreed to Provide Workers' Compensation Insurance

In *Donovan Munoz v. Bulley & Andrews, LLC*; et al. 2020 IL App (1st) 200254-U, the Illinois Appellate Court held that a construction management company could assert the exclusive remedy doctrine of the Workers' Compensation Act, in a suit brought by the subsidiary's injured employee. The suit followed the construction management company's contractual agreement to provide workers' compensation insurance coverage for the employees of the subsidiary.

In March 2015, South Riverside ("Riverside") entered into a contract with Bulley LLC to be the construction manager on a project at a building that Riverside owned. The contract called for Bulley LLC to obtain a workers' compensation insurance policy for its employees as well as the employees of Bulley & Andrews Concrete Restoration, LLC ("Bulley Concrete"), its wholly owned subsidiary. Although Bulley Concrete was a wholly owned subsidiary of Bulley LLC, the companies had different presidents, employed different people and had different specialties. Prior to beginning any work, Bulley LLC obtained workers' compensation insurance for the project and named both Bulley LLC and Bulley Concrete as insureds on the policy.

Bulley LLC performed much of the concrete work itself and used Bulley Concrete's employees for said work, including Plaintiff Donovan Munoz. During the course of project, Plaintiff sustained an injury. Bulley LLC paid for Plaintiff's medical bills out of pocket. In April 2019, Plaintiff sued Bulley LLC and Riverside in a Circuit Court action. Plaintiff also filed a workers' compensation claim against Bulley Concrete.

Bulley LLC filed a motion to dismiss and argued that the exclusive remedy provision (820 ILCS 305/5(a), 11) applied because it had a preexisting legal obligation to pay for Plaintiff's workers' compensation benefits and had paid said benefits. Plaintiff argued that Bulley Concrete was his employer, not Bulley LLC, and that while Bulley Concrete was a wholly owned subsidiary of Bulley LLC, they were nevertheless distinct entities and therefore the exclusive remedy provisions of the Act did not bar him from suing Bulley LLC.

The trial court granted Bulley LLC's motion to dismiss and held that the exclusive remedy provision applied to Bulley LLC. The court reasoned that the contract between Bulley LLC and Riverside obligated Bulley LLC to pay for the workers' compensation insurance and benefits for Bulley Concrete's employees. The court further reasoned that there was no evidence that Bulley Concrete was self-insured or that Bulley LLC had the option to reimburse Bulley Concrete for any payments that Bulley Concrete may have made.

Plaintiff appealed and again argued that because Bulley Concrete was his employer, not Bulley LLC, the exclusive remedy provision should not apply.

In analyzing the application of the exclusive remedy provision of the Act, the appellate court noted three primary cases:

1. *Laffoon v. Bell & Zoller Coal Co.*, 65 Ill. 2d 437 (1976);
2. *Ioerger v. Halverson Const. Co.*, 232 Ill. 2d 196 (2008);
3. *Burge v. Exelon Generation Co.*, 2015 IL App (2d) 141090.

In *Laffoon*, the Illinois Supreme Court addressed whether the exclusive remedy provisions of the Act provided general contractors with immunity from litigation when they became responsible for workers' compensation claims. The court held that it had to interpret the exclusive remedy provisions "as conferring immunity upon employers only from common law or statutory actions for damages by their immediate employees" and "[t]o hold otherwise in light of the present factual situations would be violative of the injured employee's right to due process and equal protection of the laws." In essence, the court found that a general contractor did not become an injured worker's employer for purposes of the Act merely because it paid workers' compensation benefits.

In *Ioerger*, the Illinois Supreme Court analyzed the application of the exclusive remedy provision in the case of a joint venture. The court held that "the immunity afforded by the Act's exclusive remedy provisions is predicated on the simple proposition that one who bears the burden of furnishing workers' compensation benefits for an injured employee should not also have to answer to that employee for civil damages in court." Because the joint venture was the entity ultimately responsible for paying the workers' compensation premiums and making benefits available to any injured workers, "it was entitled to avail itself of the Act's exclusive remedy provisions."

Finally, in *Burge*, the Illinois Supreme Court held that "immunity under [exclusive remedy provisions] cannot be predicated on [a] defendant's payment of workers' compensation unless [the] defendant was under some legal obligation to pay (such as the contractual obligation imposed by the joint-venture agreement in *Ioerger*)."

In *Munoz*, the appellate court held that despite the fact that Bulley LLC was not Plaintiff's direct employer, it was obligated to provide workers' compensation benefits for Plaintiff and was therefore entitled to avail itself to the exclusive remedy provisions. The appellate court reasoned that Bulley LLC had sufficiently proven it had a preexisting legal obligation to pay for workers' compensation benefits of Bulley Concrete's employees and that it had satisfied its obligation by obtaining workers' compensation insurance that named it and Bulley Concrete as named insureds.

Practice Tip:
Munoz provides a great opportunity for non-employers and their general liability carriers to avoid liability in direct suits by another entity's employees where the non-employer contractually provided workers' compensation benefits for the plaintiff-employees. Any underlying contract review that relates to work performed by a plaintiff as an employee of another entity should include a determination of whether the obligation to pay workers' compensation benefits for plaintiff was transferred or assigned.

Illinois Appellate Court Affirms Limitation on Medical Malpractice Expert's Ability to Testify

In *Ackerman v. Yapp*, 2020 IL App (1st) 182708 (10/31/20) the Illinois Appellate Court affirmed a trial court's ruling barring a medical malpractice plaintiff's expert from testifying regarding causation. The expert was barred after determining that he did not examine Plaintiff nor review recent medical records.

In *Ackerman*, Plaintiff accidentally ingested a dental device and sought medical treatment for its removal. The device was approximately 2 x 1.7 centimeters and was comprised of two teeth and wires that closely resembled a fishhook.

Defendant Dr. Yapp, determined that the most appropriate way to remove the device was to use an endoscope. Unfortunately, during the procedure the esophagus was punctured resulting in the need for further medical treatment for Plaintiff, including a thoracotomy.

At trial, Plaintiff sought to present evidence establishing that the use of the endoscope did not meet the standard of care and that an overtube with a diameter of 1.67 centimeters could have been used to remove the device.

In addition to suggesting the overtube, Plaintiff's expert testified that Plaintiff's subsequent issues with constipation and pain could have or might have been caused by the thoracotomy, the procedure used to repair the torn esophagus. The court disallowed the testimony because the expert had neither examined the Plaintiff nor reviewed any recent medical records concerning her constipation and pain.

The jury returned the verdict for the defendant and Plaintiff appealed. Among the many evidentiary issues raised by Plaintiff was the trial court's refusal to allow Plaintiff's expert to testify regarding the causation of the constipation and pain.

The appellate court affirmed the verdict and held that the trial court did not abuse its discretion in finding that Plaintiff's expert did not provide a reliable basis for his opinions regarding causation. According to the court, a physician may testify as to what might or could have caused the injury, but only so long as the facts in which he bases his opinions are reasonably relied upon by experts in the particular field. Normally, physician causation testimony is based upon their examination of the Plaintiff or their review of recent records which are considered sources of information reasonably relied upon professions in their respective field. Here, however Plaintiff's expert neither examined nor reviewed her recent records. Accordingly, the expert had no identifiable facts to base his opinion that her physical condition and pain could have been caused by the thoracotomy.

Practice Tip:
Ackerman reminds us that while experts are routinely allowed to testify on a myriad of issues, their ability to testify on those issues can be successfully precluded by challenging the basis upon which those opinions are built.

Newsletter **Contributors**

Storrs Downey, Jeff Kehl, Timothy Furman, Chase Gruszka and Daniel Korban contributed to this newsletter.

Firm **News**

Bryce Downey & Lenkov Attorneys Selected to Super Lawyers and Leading Lawyers

We are pleased to announce that 15 Bryce Downey & Lenkov attorneys have been recognized as 2021 Super Lawyers. 12 of our attorneys have also been selected for Leading Lawyers' 2021 rankings across multiple practice areas.

Super Lawyers recognizes attorneys who exhibit excellence in their practice based on professional achievement and peer recognition. Leading Lawyers provides rankings of the most respected and experienced attorneys nationwide. No more than 5% of all attorneys in each state are selected for either distinction.

Geoff Bryce, Rich Lenkov, Michael Milstein, Margery Newman, Brian Rosenblatt, Tim Alberts and Samuel Levine have been selected to both exclusive lists.

Read the full press release.

Comprehensive Overview of IL & IN Premises Liability Law

Every day, companies face an abundance of premises liability claims such as comparative negligence, open and obvious hazards, natural accumulation, spoliation of evidence and many more.

Capital member Storrs Downey and income member Jeff Kehl recently co-authored an updated comprehensive overview of Illinois & Indiana premises liability that all employers and insurers can use as a resource for some of their most challenging claims.

This treatise makes a handy and useful desktop reference.

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Jeff Kehl Authors Article on Landmark Ruling Protecting Workers' Compensation Carriers for *CLM Magazine*

Income member Jeff Kehl published "Discovering New Protections" for *CLM Magazine*. Jeff breaks down *Burdess v. Cottrell, Inc.*, a case of first impression Jeff successfully argued before the Illinois Appellate Court. The case examined whether a workers' compensation lienholder is subject to written discovery from a party in an existing lawsuit.

Jeff provides an in-depth analysis of Section 5(b) of the IL Workers' Compensation Act and IL Supreme Court Rule 201(d)(3), demonstrating why the case serves as a valuable precedent for employers and carriers in third-party civil suits going forward.

Read "Discovering New Protections.

Rich Lenkov & Brian Rosenblatt Give Presentation for NIU College of Law

Capital member Rich Lenkov and income member Brian Rosenblatt recently gave a presentation to Northern Illinois University College of Law's Entertainment Law class on 3/24/21. Rich and Brian, along with director Scott Prestin, discussed producing "'85: The Greatest Team In Football History" and how the team successfully defended a federal copyright lawsuit.

Rich also presented a lecture to NIU College of Law's Externship program on 3/23/21. Rich discussed how to deal with difficult opposing counsels, best billing practices, negotiation skills, the importance of marketing and more. On March 18, Rich also participated in practice interviews for first-year law students, providing an opportunity for students to improve their interview skills.

Rich is a 1995 NIU College of Law alumni and has served on the Board of Visitors for 13 years.

Kirsten Kaiser Kus Volunteers for Valparaiso University's Mock Interview Week

Income member Kirsten Kaiser Kus conducted mock interviews for Valparaiso University on 3/17/21. Kirsten acted as the students' mock interviewer, helping them identify their interview strengths & weaknesses as they prepare them to enter the workforce.

VALPARAISO UNIVERSITY

Bryce Downey & Lenkov Supports Legal Prep's 9th Annual Trivia Night

Capital member Rich Lenkov led a team including income member Juan Anderson and firm clients for Legal Prep Charter Academy's 9th Annual Trivia Night. NIU College of Law Chief of Staff and Assistant Dean of Strategic Communications Melody Mitchell also led a team of students for the event.

All ticket sales benefited Legal Prep's support and enrichment programs, offering scholarship opportunities for Legal Prep students and alumni. The West Side high school uses a law-themed curriculum to prepare young adults for college, grow their professional careers and positively impact society.

Learn more about Legal Prep.

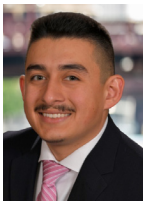
LEGAL PREP CHARTER ACADEMY

Our Indiana Office Has Moved!

Our Indiana office has moved! We have relocated to 11055 Broadway, Crown Point, IN effective 2/1/21. Our service, phone number and fax number remain the same.

We are always available to assist with your claims and thank you for your continued confidence in our firm.

BDL Is **Growing!**



Please join us in welcoming Emilio Campos to the firm as a workers' compensation associate. Emilio previously worked at the firm as a paralegal and law clerk before law school.

In his spare time, Emilio enjoys cycling and spending time with his family and friends.

View more information on our **General Liability practice.**

Our other practices Include:

- Appellate Law
- Business Law
- Condominium Law
- Construction Law
- Entertainment Law
- Healthcare Law
- Insurance Law
- Intellectual Property
- Labor & Employment Law
- Products Liability
- Professional Liability
- Real Estate
- Transportation Law
- Workers' Compensation

Who We Are

Bryce Downey & Lenkov LLC is a full-service law firm with offices in Illinois and Indiana. Our expertise spans across several practice areas, providing transactional, regulatory and business solutions for clients across the nation. The firm's continued growth is a result of an aggressive, results-oriented approach. Unlike larger law firms however, we do not face massive overhead and are able to charge more reasonable rates that both small and larger employers can more readily afford.

We evolve with our clients, representing Fortune 500 and small companies alike in all types of disputes. Bryce Downey & Lenkov is a team of experienced, proactive and conscientious attorneys that have been named Leading Lawyers, Super Lawyers, Rising Stars and AV Preeminent.

Cutting Edge Continuing Legal Education

If you would like us to come to you for a free seminar, Click here or email Storrs Downey.

Our attorneys provide free seminars on a wide range of general liability topics regularly. We speak to individuals and companies of all sizes. Some national conferences that we've presented at are:

- American Conference Institute's National Conference on Employment Practices Liability Insurance
- Claims and Litigation Management Alliance Annual Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-Conference
- Employment Practices Liability Insurance ExecuSummit
- National Workers' Compensation and Disability Conference & Expo
- National Workers' Compensation & Disability Conference
- RIMS Annual Conference

Previous seminars include:

- Assessing Liability in *Evans v. Walmart*
- Kotecki at 25: The Minefield of Employer Liability in Third Party Tort Actions in Illinois
- Public Entity Claims in Illinois and Indiana
- Exploiting the Internet in Pre-Suit Investigations
- Use of Drones: Ag Cases
- Sexual Harassment in the Workplace: Confronting & Addressing This Growing Problem
- 10 Tricky Employment Termination Questions Answered
- Approaching LGBT Issues in Today's Workplace
- Employment Law Issues Every Workers' Compensation Professional Needs to Know About

If you would like a copy of our other prior webinars, please email us at mkt@bdlfirm.com.