

Border War: Key Differences Between Illinois & Indiana Traveling Employees

In a new column, two members of our Workers' Compensation team compare how Illinois & Indiana handle major workers' compensation issues. This month, associate [Natalie Christian](#) and associate [Renée Day](#) address **traveling employees**.



ILLINOIS

1. Generally, accidents coming and going from work are not compensable
2. However, an accident might be compensable if an employee is a traveling employee
3. A "traveling employee" is an employee who is required to travel as part of their job duties or their job duties are performed away from the employer's place of business
4. An accident is compensable if the traveling employee is engaged in reasonable and foreseeable activities that caused an injury
5. Accidents that occur during a deviation from travel are not compensable
6. A deviation is a departure from the zone of employment for a purpose that is not incidental to their employment



INDIANA

1. If place of employment is a fixed location, employees are not covered while traveling to and from work
2. An accident occurring while traveling to a remote work sites is compensable
3. Traveling employees such as salespeople are covered
4. An employee is covered if injured while being transported to and from work or work sites in an employer provided vehicle
5. A deviation from the route is not compensable if an employee deviates from work activities for personal reasons, even on company time or in a company vehicle
6. If travel is required for work, accidents occurring while traveling to and from work in an employee's personal vehicle are covered

Illinois Legislative Update

By [Michael Milstein](#)

Income Member



While there are no significant updates regarding pending or proposed legislation, Gov. Pritzker has been busy appointing and filling vacancies at the IWCC.

The following arbitrators were reappointed: Joseph Amarilio, Paul Cellini, Stephen Friedman, Gerald Granada, Jessica Hegarty, Adam Hinrichs, Jeffrey Huebsch

and Maureen Pulia.

In addition, there were 2 new arbitrator appointments*:

Crystal Caison — former Senior Public Service Administrator with the Illinois Department of Employment Security and a Panel Arbitrator for the State of Illinois.

Nina Mariano — practiced workers' compensation law on behalf of both Petitioners and Respondents.

Lastly, Carolyn Doherty is leaving her post as arbitrator to take over the role of commissioner for the IWCC and Commissioner Flores was appointed as an associate judge.

**All pending confirmation by the Illinois Senate.*

A Shortcut to Denial

By [Timothy Furman](#)

Income Member



In *Birkholtz v. Fountain Group*, 29 ILWCLB 133 (Ill. W.C. Comm. 2021), the Illinois Workers' Compensation Commission held that Petitioner's decision to take a dangerous shortcut resulted in her accident not being compensable.

After concluding her workday, Petitioner slipped and fell on a grassy median between her employer's building and the parking lot. Petitioner argued that the grass was wet and that she slipped on the mud underneath the wet grass. Respondent argued that rather than taking the less direct but much safer paved sidewalk to the parking lot, Petitioner took an unnecessary risk in crossing the grassy median. The Arbitrator held that the hidden mud constituted a hazardous condition and awarded benefits.

The Commission reversed and reasoned that Petitioner voluntarily exposed herself to an unnecessary personal risk for her own convenience. As a result, the Commission held that Petitioner's accident did not arise out of her employment.

Practice Tip:

The *McAllister* decision does not render all accidents compensable. Develop all facts and remain confident in denying cases where Petitioner was only acting in his/her own interest.

No Total Disability Without Rehabilitation Assessment

By [Daniel Flores](#)

Associate



In *CDW Corporation v. IWCC*, 2021 IL App (2d) 200562WC-U, the Appellate Court held that a vocational rehabilitation assessment is required to support a permanent total disability award under the IWCC rules.

Petitioner aggravated a pre-existing deteriorating disc condition when she pulled merchandise off a shelf. Her treating physician diagnosed aggravated lumbar spondylosis that restricted her from lifting more than 10 pounds. Petitioner's vocational expert opined that no stable labor market existed for Petitioner. Respondent's vocational expert identified 14 jobs that Petitioner could fill.

The arbitrator found a work-related back injury that resulted in permanent total disability. Petitioner was awarded temporary total disability, payment of medical bills, temporary partial disability benefits and odd-lot permanent total disability benefits.

The Appellate Court affirmed the Commission's decision that Petitioner did not meet her burden of proof as it was not apparent that her expert was more credible than Respondent's. They also held that section 9110.10(a) requires a vocational rehabilitation assessment if the work-related injury renders the claimant unable to resume her regular job duties. Because the Commission explicitly found that Petitioner was unable to resume her job duties, a rehabilitation assessment was "required" by the code.

Practice Tip:

Use vocational experts to refute alleged permanent total disability cases where Petitioner contends they cannot obtain work because no stable labor market exists.

Firm News

Thank You, Geoff Bryce



Following Bryce Downey & Lenkov's 20th anniversary, former Managing Capital Member [Geoff Bryce](#) is retiring.

Geoff founded the firm with Storrs Downey in 2001, with a focus on mentorship and building strong relationships. Geoff served as Managing Capital Member for 19 years and in addition to his construction and commercial

work, Geoff's practice encompassed business transactions, toxic tort and products liability cases. He is a recognized leader in the construction industry, serving as President of the Society of Illinois Construction Attorneys and has been named as a leading practitioner by Super Lawyers and Leading Lawyers.

Post-retirement, Geoff is looking forward to new adventures and spending more time with his family.

We cannot thank Geoff enough for his time and dedication to the firm. Please join us in sending Geoff well wishes in his next chapter.

Tim Furman and Emily Schlecte Named Income Members



We are pleased to announce that [Tim Furman](#) and [Emily Schlecte](#) have been elected to Income Members.

Tim ("TJ") Furman is an active speaker in the legal community, including presentations for Lorman Education Services, National Business Institute and other nationally recognized conferences. Tim has been selected to Super Lawyer's Rising Stars list for the last three years.

Emily Schlecte is especially noted for her thoroughness, due diligence and achieving positive results in the most cost-efficient manner for her clients. Emily secured two consecutive zero workers' compensation awards in less than a month, which are very difficult to come by in Illinois.

Tim and Emily have been valuable assets to our Workers' Compensation and General Liability teams.

They both embody firm culture and values with a client-focused approach and commitment to their communities.

Kirsten Kaiser Kus & Werner Sabo Named to 2022 Best Lawyers in America® List



We are pleased to announce that Income Member [Kirsten Kaiser Kus](#) and Of Counsel [Werner Sabo](#) have been recognized by their peers in the 28th Edition of Best Lawyers in America. This is Kirsten's third consecutive year selected for

her work in workers' compensation law. Werner was highlighted for his work in construction litigation. They both rank among the top 5% of private practice attorneys nationwide.

BDL Sponsors Harriet Tubman Elementary School's Fall Fun Run

This month, Bryce Downey & Lenkov was proud to sponsor Harriet Tubman Elementary School's 15th Annual Fall Fundraiser: Fun Run. The fall fundraiser brings the community together by promoting health and well-being. Funds raised will provide assistance to Harriet Tubman Elementary families in need due to issues related to COVID-19.

[Harriet Tubman Elementary](#) is a kindergarten through 8th grade Chicago Public School in the Lakeview neighborhood that serves families from around the city.



BDL Participates in CVLS Race Judicata® 2021

Bryce Downey & Lenkov was proud to participate in Chicago Volunteer Legal Services' (CVLS) Race Judicata® 2021 on 9/23. Race Judicata is a 5K Run/Walk benefiting CVLS' mission to coordinate, support and promote pro bono legal representation serving the city's low income community.

Of counsel [Werner Sabo](#) placed second place in his age group at 32:45! Thank you to everyone who stopped by our tent and a big thanks to Chicago Volunteer Legal Services for another fun and safe Race Judicata!

[Learn more about CVLS and Race Judicata.](#)



Rich Lenkov Presents to NIU's Externship Program

Capital member [Rich Lenkov](#) recently gave a lecture to [Northern Illinois University College of Law's](#) Externship program. Rich discussed the value of appropriate attire, promptness, language and writing skills, adequate research and more.

NIU's externship program provides practical and real-world experience for students entering the job market.

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



BDL Sponsors Higher Orbits STEM Education Charity Golf Tournament

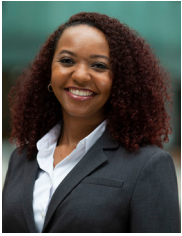
Bryce Downey & Lenkov proudly sponsored Higher Orbits' Inaugural Charity Golf Tournament on 9/27. Higher Orbits is a non-profit organization whose mission is to equip and inspire students through spaceflight in hands-on, project-based learning experiences that promote Science, Technology, Engineering, and Math.

Chicago associate [Natalie Christian](#) serves on the Board of Directors.



BDL Is Growing!

Please join us in welcoming Megan Dyson, Ryan O'Malley and Talia Shambee to the firm. They join us as workers' compensation and general liability associates.



Megan has experience representing clients in a wide range of workers' compensation, personal injury and civil litigations. She brings a unique perspective to the firm as she previously worked for a prominent Petitioner law firm.

In her free time Megan enjoys listening to music and attending sporting events.



Ryan utilizes his diverse skill set to resolve a variety of complex matters while achieving the best results for his clients in workers' compensation litigation. Prior to joining the firm, Ryan handled employee dismissal hearings for Chicago Public Schools.

Outside of work, Ryan enjoys training for triathlons, playing 16 inch softball and competing in bar trivia.



Talia brings a fresh viewpoint to her cases, having previously assisted with pro bono matters throughout all aspects of litigation. Prior to joining Bryce Downey & Lenkov, Talia handled toxic torts for a Chicago area law firm. In her spare time, Talia enjoys reading books with the book club that she started.

BDL Webinars

Watch our latest webinar:

Investigating IL & IN Repetitive Trauma Claims with Dr. Phillips & Dr. Yahuaca



View more information about our **Workers' Compensation practice.**

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Legal Face-Off

Legal Face-Off is a fast paced, high energy legal podcast dealing with the hottest issues of the day. Rich Lenkov and Christina Martini provide a point/counterpoint perspective on a variety of breaking legal news topics.



"I've seen lawyers who are already struggling and no longer have those outlets like 12-step where they can go and have human

connection for their support, so their drinking or substance use escalates. What I have seen substantially in the majority of lawyers is that isolation really hurts them....In 2020, there were 93,000 fatal overdoses [in the U.S.] That's not just in the legal profession, but you see a lot of people turning to substances to compensate for isolation and missing human connection."

– Brian Cuban on addiction struggles during COVID-19

Dallas attorney & influential speaker

[Listen to the full episode here](#)

Want to be a guest on a future episode? [Contact us.](#)

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- COVID-19 vaccine mandate lawsuits
- Texas abortion law
- Cuomo sexual assault allegations
- R. Kelly trial
- Bill Cosby release & lawsuit

Recent Guests

- Harry Litman
- Gloria Allred
- Alan Dershowitz
- IL Rep. Kam Buckner
- Michelle Shughart
- Ja'mal Green

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