



## Illinois Legislative Update

By [Michael Milstein](#)

Capital Member



Gov. J.B. Pritzker recently appointed 2 new arbitrators. Efi James, a former Petitioner's attorney at Karchmar & Stone and Frank Brady, a former Respondent's attorney at Brady, Connolly & Masuda. We welcome their addition to the IWCC.

Additionally, the Illinois Legislature is now considering multiple new bills amending the Illinois Workers' Compensation Act:

1. HB1543- to be compensable an acute accident or repetitive trauma has to "significantly caused or contributed to both the resulting condition and disability."
  - a. If duration of repetitive trauma is less than 3 months and there is evidence that work with prior employer significantly caused or contributed...prior employer is liable.
2. HB1545- a traveling employee's accident is not compensable if commuting to and from home, during a personal deviation/errand, or from injury resulting from a personal risk.
3. HB1546- requires prescriptions to be limited to an adopted evidence-based drug formulary.
4. HB1547- reduces scheduled injuries to pre-2006 levels.
5. HB1548- makes the existing Fee Schedule inoperative after 8/31/24 to be replaced based on Medicare percentages.

All of these bills were referred to Committee. They would all represent a more stringent standard for compensability and medical bills. We will keep you updated on their progress through the Illinois Legislature.

## Indiana Legislative Update

By [Suzanne Kleinedler](#)

Associate



### PROCEDURAL GUIDANCE ON HOSPITAL AND FACILITY REIMBURSEMENT

Indiana's Worker's Compensation Board issued its **Final Medicare Guidelines** for payment to medical facilities for services and products provided. Under these guidelines, the following will apply for services/products after 7/1/14:

- **Ambulatory Outpatients Surgical Centers (ASCs)** are not considered "Medical Service Facilities," and shall be reimbursed under the traditional 80th percentile standard, and not 200% of Medicare.
- **Experimental and Investigational Services** excluded under Medicare regulations should be reimbursed "in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products," pursuant to Ind. Code § 22-3-6-1(k)(1) if not covered in a contract or payment agreement.
- **Medicare Reductions** – The 2% sequester reductions applied by CMS shall not be included in bill calculation under Ind. Code § 22-3-3-5.2.
- **Outpatient Procedures** – Facilities shall be reimbursed for procedures otherwise in contradiction with Addendum "E" to Medicare's inpatient prospective payment rules according to a prenegotiated fee arrangement between the facility and the employer, or a relevant pre-existing contract.
- **Physical Therapy** – Medicare caps will not apply to PT services in a hospital setting.
- **Repackaged Drugs** – Billing for repackaged legend drugs must include both the repackaged NDC and the original manufactures NDC, in that order, on the bill.

## INWCB ISSUES UPDATED PPI GUIDELINES

The Board also published PPI Guidelines in November 2022. The following is an abbreviated description of those guidelines:

1. A physician may use whichever edition of the AMA Guides they feel is appropriate. For example, if the 6th edition would preclude recovery for an impairment, earlier editions should be consulted.
2. When filing a 0% PPI rating, the guidelines state the process is the same for both indemnity and med only claims. A paper copy must be filed with a waiver and medical report.
3. When calculating a PPI value it is not necessary to translate a more specific body part to a whole person rating; Multi-Digit Calculations will no longer be applied; if there is no amputation, a hand rating will be approved;
4. A wrist injury that affects the hand should include a hand rating as well as an upper extremity rating;
5. Upper and lower extremity ratings will no longer be separated into above or below the joint except for amputations. Upper extremity ratings will be based on 50 degrees and lower extremities on 45 degrees;
6. The 5th and 6th AMA Guidelines should be used to rate ankle impairments;
7. Head, neck, shoulder, back, hip, hernias, and bilateral injuries are rated to the whole person;
8. Burn and skin impairments are written to the whole person. The PPI Guidelines go on to address amputations reminding that those evaluations are unique and encourages contacting the Board for assistance with those rating.

## Defense Analysis of Indiana Statute of Limitations

By [Abigail R. Iliovici](#)

Associate



Effective 7/1/22, the Indiana Statute of Limitations now reads “that is, after the occurrence of an accident, compensation is paid for temporary total disability or temporary partial disability, the two-year limitation period to file an Application for Adjustment of Claim begins to run on the last date for which compensation was paid.

Two Indiana decisions address a basic analysis a defense counsel must make to determine whether the Plaintiff’s case has been brought timely.

In *Gilley’s Antique Mall v. Sarver*, 157 N.E.3d 549 (Ind. Ct. App. 2020), the employee was injured upon falling through a foam board covering a hole in a roof. The employer was

uninsured, and liability fell on the employee. The employee filed an Application of Adjustment eighteen months after the incident then filed an amended application naming additional defendants two years, four months later asserting the employer lacked insurance coverage. The Court found that the Board improperly determined that the employee could add additional defendants at any time after his claim commenced, provided the initial Application was timely filed. The Court of Appeals reversed this decision emphasizing that initial claims must be filed against the employer and all potential defendants within two years after the occurrence of the alleged injury.

In *Sampson v. Kova Ag Products Inc*, the employee was injured, and the employer provided medical and temporary total disability benefits. After the employer issued notice that TTD would be discontinued after 15 months, the employee filed an application with the board two years and two days after the incident. The Board contended that the Application was timely filed. Since compensation for TTD has been paid, the employee has two years from the last date compensation was paid to file their Application.

### Practice Tip:

Make sure to vet the statute of limitations considering both the date of injury and the date when TTD was last paid.

## What You Say Matters!

By [Emily Schlecte](#)

Income Member



On 10/19/15, Petitioner treated but did not tell his physicians that his left shoulder pain was due to his work duties. Petitioner went back to his doctor with slightly different left shoulder pain in May 2016, and again failed to relate his pain to his work duties. Instead, Petitioner told his doctors that his pain occurred when lifting weights. Finally, Petitioner obtained a second opinion in July 2016, and changed his story. This time, Petitioner reported pain while performing his work duties.

Based on Petitioner’s subjective reporting, the treating surgeon opined that Petitioner’s left shoulder condition was caused or significantly aggravated by his work but recognized that he was not familiar with the weights and frequencies involved in the alleged activities. Respondent’s Section 12 examiner opined that Petitioner’s left shoulder complaints were classic symptoms of weightlifters due to lifting above shoulder level.

At trial, Petitioner testified that he initially sought treatment on 10/19/15, due to left shoulder pain while performing his work duties as a bus driver. He also admitted that he

exercised with free weights four days a week, including bench press, incline press, shoulder press, and lateral curls.

In denying benefits, the arbitrator placed great weight on Petitioner's initial reporting. Specifically, the arbitrator noted Petitioner's failure to mention pain during work duties until he sought a second opinion which cast doubt on his credibility. The arbitrator also reasoned that Petitioner's inconsistent testimony provided a basis to deny all benefits.

The IWCC affirmed and adopted the Arbitration Decision.

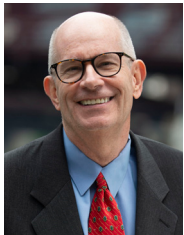
#### Practice Tip:

A claimant is more likely to be honest with their doctor at the start of a claim. Pay attention to what claimants tell their doctors and if that story changes during treatment.

## Illinois Workers' Compensation Act Not A Bar to Biometric Claims

By [Storrs Downey](#)

Capital Member



In a case of first impression, the Illinois Supreme Court held that the Illinois Workers' Compensation Act's exclusive remedy provisions do not preclude a civil claim by an employee against the employer for damages under the Illinois Biometric Privacy Act. *McDonald v. Symphony Bronzeville Park, LLC*, 2022 IL 126511.

Plaintiff filed a putative class action suit against his employer under the Privacy Act contending that he and other employees did not consent to be fingerprinted under the company's biometric system when this site was used to store and track employees' whereabouts during the workday.

In affirming the denial of the employer's motion to dismiss premised on the Exclusive Remedy Doctrine, the court reasoned that the form of injuries alleged by the class action members were distinguishable from physical and psychological injuries incurred at work.

#### Practice Tip:

As required by the Illinois Biometric Privacy Act, it is imperative that any employer who seeks to secure an employee's fingerprints, eye scan or similar personal identifying characteristics must secure the written consent of such employees to avoid a potential civil privacy claim for damages.

## Firm News

### Downey & Lenkov Attorneys Selected to Super Lawyers & Leading Lawyers

8 attorneys at Downey & Lenkov have been recognized by Super Lawyers® as leading practitioners in their field across both Illinois and Indiana. 10 attorneys have also been selected to Leading Lawyers' 2023 rankings.

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.

[Rich Lenkov](#), [Margery Newman](#), [Brian Rosenblatt](#), [Jessica Jackler](#) and [Samuel Levine](#) have been selected to both exclusive lists. Please join us in congratulating our selected attorneys!

[Read the full article here.](#)

#### WE ARE PLEASED TO ANNOUNCE OUR 2023 SUPER LAWYERS & LEADING LAWYERS

##### Super Lawyers



Rich Lenkov Jeffrey Kohl Margery Newman Brian Rosenblatt



Jessica Jackler Samuel Levine

##### Super Lawyers

RISEING STARS



Timothy Furman Emily Schlecte



Downey & Lenkov LLC

2023

##### Leading Lawyers™



Storrs Downey Jeanne Hoffmann Rich Lenkov Michael Milstein



Margery Newman Brian Rosenblatt Samuel Levine Werner Sabo

##### emerging lawyers™

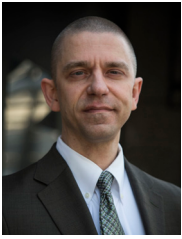


Merry Bennett Jessica Jackler

Exceptional Service. Proven Results.



## Chris Puckelwartz Named Income Member



We are pleased to announce that [Chris Puckelwartz](#) has been elected to Income Member!

Chris has been a longtime valuable asset to our General Liability team, having successfully represented many of the largest corporations and retail chains in the U.S. He embodies firm culture, values

and commitment to securing the best results for our clients. Please join us in congratulating Chris on a well-deserved advancement!

## Marcy Bennett & Dana Djokic Obtain Zero Benefit Award



Income member [Marcy Bennett](#) and Associate [Dana Djokic](#) secured a zero award on behalf of their logistics client. On 9/30/22 Arbitrator William Gallagher declined to award

prospective medical treatment, payment of medical bills, and additional TTD for a claimed cervical spine injury.

Petitioner alleged that her right shirt sleeve became caught in a machine and while pulling away, she fell to the ground. She failed to report neck pain until 8 months after the accident date.

The arbitrator noted that the IME physician disagreed with the treating physician's opinion that the cervical spine condition could go "under the radar". He further stated that an individual typically experiences cervical spine symptoms within six weeks of an injury. Along with no immediate report of cervical spine complaints, Petitioner never reported to her providers that she struck her head until well over a year after the incident.

Marcy and Dana's thoroughness and investigation led to the arbitrator declining to award any penalties and fees sought by Petitioner.

## Ryan Dezonno Secures Another Zero for Downey & Lenkov



Congratulations to Associate [Ryan Dezonno](#) for securing a zero award. On 1/9/23, Arbitrator Cellini ruled in favor of our client, a logistics company.

Petitioner worked as a picker/packer, lifting 40lb boxes daily. Petitioner alleged that she pulled her right lower back while performing the same job duties the same

way she always did.

Ryan focused on Petitioner's inability to present that any injury had occurred. He highlighted that Petitioner had signed Employee Handbooks that detailed company injury reporting policy. Petitioner also testified to being aware and reminded of the injury reporting process.

Arbitrator Cellini found that the case "**involved a significant amount of conflicting evidence**" with "**no known injury**," declining to award Petitioner any benefits. Additionally, our client was awarded credit for all medical expenses paid.

## Jessica Jackler Obtains Summary Judgment On An Illinois Case



[Jessica Jackler](#) secured an affirmance from the Illinois Fourth District Appellate Court granting summary judgment in favor of an employer on a retaliatory discharge claim brought by a former employee. The underlying case alleged the former employee was discharged in retaliation for exercising rights under the Illinois Workers' Compensation Act. After

the trial court ruled in favor of the employer, the employee appealed the summary judgment ruling as well as several discovery orders leading up to the summary judgment order. All rulings were affirmed in favor of the employer following extensive briefing and oral argument before a 3-judge panel.

## Kirsten Kaiser Kus & Werner Sabo Named to 2023 Best Lawyers in America® List

We are pleased to announce that Capital member [Kirsten Kaiser Kus](#) and of counsel [Werner Sabo](#) were recognized by their peers in the 29th Edition of *Best Lawyers in America*.

Kirsten was selected for her work in workers' compensation law while Werner was highlighted for his work in construction litigation. As a Best Lawyer, they both rank among the top 5% of private practice attorneys nationwide.

[Learn more about Best Lawyers®](#)



## Downey & Lenkov Gives Back During the Holidays

In lieu of sending holiday baskets this past year, Downey & Lenkov made monetary donations to the Greater Chicago Food Depository, Innocence Project and Earth Justice.



## DL Is Growing

Please join us in welcoming associates [Mark Dinos](#), [William Obuchowski](#), [Frank Swanson](#) and [Taylar Young](#) to the firm's Chicago office, as well as [Suzanne Kleinedler](#) to our Crown Point office.



Mark is an experienced attorney who focuses his practice in workers' compensation defense. He works closely to develop successful legal strategies to achieve the best results for his clients. Outside of work, Mark enjoys playing softball and basketball, as well as spending time with friends and family.



William has extensive experience representing clients in a wide range of general liability matters. He has a diverse skill set to resolve complex matters while achieving the best results for his clients. William previously achieved a winning record for jury trial and arbitration hearing in insurance defense.



Frank is a dedicated attorney concentrating on commercial and construction litigation. He has considerable experience handling insurance defense, civil litigation, personal injury claims, coverage litigation and federal criminal defense. In his spare time, Frank enjoys attending live music events, watching sports, and traveling.



Taylar concentrates her practice in workers' compensation and general liability. She is committed to defending her clients' interests with comprehensive legal counsel from start to finish. Prior to joining the firm, Taylor managed cases at a high-volume Chicago corporate defense firm.



Suzanne has an extensive legal background in personal injury, property damage, contracts and worker's compensation matters. Prior to joining the firm, Suzanne worked as in-house litigation counsel for a major insurance company.

# DL Webinars

## Ask Us Anything

4/19/23

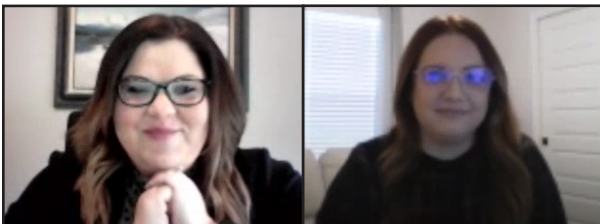
[Rich Lenkov](#) and [Taylor Young](#)



**REGISTER NOW!**

Watch our latest webinar:

## Indiana Forms: Taking a Claim From Start to Finish



**Click to View**

## Recent Webinars

- Breaking the Chain: How to Successfully Defend Causation Claims in Illinois
- Arising Out of the Ashes of McAllister: Accident Analysis Reborn
- Workers' Compensation Lessons Learned From Holiday Movies
- Illinois Forms You Need to Know
- Always Be Closing: Top Indiana Workers' Compensation Tips
- What Horror Movies Teach Us About Workers' Compensation
- The *McAllister* Supreme Court Decision & the Future of Denying Accidents in IL
- IL Workers' Compensation in the COVID-19 Era
- How To Get A Zero
- Understanding the New Illinois Workers' Compensation Law
- Workers' Compensation Post COVID-19: Occupational Injuries & Telemedicine

If you would like a copy of our other prior webinars, please email us at [mkt@dl-firm.com](mailto:mkt@dl-firm.com).

## Upcoming Events

- **3/22/23** - [Kirsten Kaiser Kus](#) will present "Advanced Worker's Compensation," for Indiana Continuing Legal Education Forum. For more information or to register, [click here](#).
- **3/30/23** - [Kirsten Kaiser Kus](#) will present "It Takes More Than Just Two - The Importance of the Relationship Between Insurance Carrier, Employer & Defense Counsel," at the 2023 CLM Annual Conference in Tampa, FL. For more information and to register, [click here](#).
- **3/30/23** - [Brian Rosenblatt](#) will speak on Sports Media at New York Law School's Sports Law Society's 2023 Sports Law Symposium. For more information or to register, [click here](#).
- **4/13/23** - [Jeanne Hoffmann](#) and [Brian Rosenblatt](#) will participate at the 15th Anniversary of the LAUNCH Music Conference and Festival in Lancaster, PA. For more information and to register, [click here](#).



# What's SERMA?



Sports & Entertainment Risk Management Alliance (SERMA) is the first risk management association devoted entirely to the sports and entertainment industries. Our mission is to be the world's foremost resource for information and networking in the sports and entertainment risk industries. We strive to provide a respectful, transparent and inclusive dialogue where members can share ideas, best practices and strategies in managing risk and claims. Visit [www.theserma.org](http://www.theserma.org) for more information.

## The SERMAPod



## SERMA Webinars



## First Annual SERMANar



## Chicago Sports General Counsel Panel



## CONNECT WITH US

Follow Us on [Facebook](#), [LinkedIn](#), [Twitter](#), [Instagram](#), [YouTube](#) and [Subscribe to the SERMAPod](#). Want to be a member? [Join us today!](#)

# 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.



**“There is something within all of us that enjoys seeing the mighty fall. Whether it’s a celebrity caught up in a scandal or a powerful politician. The idea that he was partly where he was with all of his homes and finances because he was stealing from people, I think adds an extra element of anger towards him from the everyday person. So to now know that he’s sitting there in his prison uniform and is going to be sitting in a prison cell for the rest of his life, I think people get a little joy from that.”**

**– Amanda Vicary on the public intrigue of Alex Murdaugh’s trial**

**Illinois Wesleyan University  
Associate Professor of Psychology**

[Listen to the full episode here](#)

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

## Recent Topics

- Gun laws
- Alex Murdaugh trial
- Anti-trans legislation
- Tyre Nichols/Memphis police
- Ticketmaster
- JetBlue/Spirit merger

## Recent Guests

- Clete Blakeman
- Bill Baer
- IL Rep. Kam Buckner
- Ald. Brendan Reilly
- Elie Honig
- Toi Hutchinson
- IL Cook County Sheriff Tom Dart

[Willinger on Gun Laws after Bruen, Barkow on Sayfullo Saipov Death Penalty Case, Martini and Susler on Inside Out, and much more](#)

[Memphis police accountability, Lisa Marie Presley estate, Lawyer/NFL referee and more](#)

[Alec Baldwin charges, Presidential confidential documents, Trump hush money and more](#)

[McConnell on 6-Year-Old Shooter, Kreis on Transgender Student Bathroom Case, Browder on Robot Lawyer, and much more](#)

[2023 IL laws, more on FTX, long SCOTUS arguments, new Elie Honig book and more](#)



Legal Face-Off's Legal Grab Bag

## CONNECT WITH US

Please Follow Us on **Facebook**, **LinkedIn**, **Twitter**, **Instagram** and **Subscribe on Apple Podcasts**. Send us your questions and we will answer them on air — **nothing is off-limits**.