



Indiana Legislative Update

By [Abigail Iliovici](#)

Associate Member



In March 2023, the Indiana PPI Guidelines were updated and citations have been corrected following the passage of PL 160. The following is a description of those guidelines:

- 1.** A physician may use whichever edition of the AMA guidelines they feel most appropriate to the individual case. For example, if the 6th Edition would preclude recovery for an impairment, an earlier edition should be consulted. Specifically, the 5th Edition considers the severe loss of grip strength experienced with amputation of multiple digits on one hand, while the 6th Edition does not.
- 2.** When filing a 0% PPI rating, the guidelines state the process is the same for both indemnity and medical only claim. A paper copy must be filed with a waiver and a medical report.
- 3.** Impairment rating should be the most specific body part affected. Exceptions apply when multiple body parts are involved. The Board will no longer apply the multi-digit calculation. If multiple digits are impaired, but 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 rating will no longer be separated into above or below the joint except for the amputations. Upper extremity ratings will be based on 50 degrees and lower extremities on 45 degrees.

6. The ankle/foot conversion table in 5th and 6th Editions are sometimes used for Ankle impairments. Sometimes, the physician will rate the lower extremity, similar to treatment of a wrist injury. The Board will accept both but will not take the injury out to the whole body.

7. Head, neck, shoulder, back, hip, hernias, and any bilateral injury are currently rated to the whole person. An exception is the shoulder injury that occurs to the "ball". This will be rated to the upper extremity.

8. If two body parts are injured in the same accident, they are rated individually and then converted to a whole person rating. Amputations are the exception and will always be calculated separately then added to a whole person rating or the impairment of the other body part.

9. Burn and skin impairments are written to the whole person.

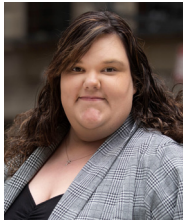
10. In a case where multiple digits are amputated and the physician rated no impairment/loss of use to the hand/foot, the digits will be added together and doubled and not combined with a foot or hand impairment. Serious consideration should be given to the use of the 5th Edition for amputation of multiple fingers.



Wage Differential v. Loss of Trade

By [Taylor R. Young](#)

Associate Member



In *Haepf v. IWCC*, 2022 IL App (1st) 210634WC the court grappled with the evidentiary issues associated with wage differential under 8(d)(1) and loss of trade under 8(d)(2) of the Illinois Workers' Compensation Act.

One of the key differences between wage differential and loss of trade is that the wage differential has an expiration date based on age. Petitioners would only be entitled to wage differential benefits until the age of 67 years old. In practice, this matters less because often these settlements are paid as a lump sum, but the age limit can minimize exposure.

For a petitioner to win a wage differential claim, they must prove that they are partially incapacitated from doing their normal job and that they have an impaired earning capacity. Petitioner's "earning capacity" can be difficult to quantify, but the court specifies that it is petitioner's burden to prove their actual earnings for a substantial period before their accident and after they return to work.

A loss of trade under 8(d)(2) signifies that petitioner's injuries do not necessarily prevent petitioner from returning to work but that they would be disabled from other occupations. Petitioner must also show that they are partially restricted from pursuing the duties of their usual and customary employment, but these restrictions do not impair petitioner's earning capacity.

In terms of practical use, we tend to see a loss of trade more often employed by petitioner attorneys to inflate settlement value. Depending on petitioners' age at the time, and the circumstances surrounding their return to work, a wage differential may afford a discounted settlement due to the age cap and petitioner's burden to prove their earning capacity.

Practice Tip:

To best minimize exposure, be sure to understand the difference between wage differential and loss of trade. It is the petitioner's burden to prove entitlement for either.

Indiana Mileage Payments: When and How Much?

By [Jen Meyer](#)

Income Member



The Indiana Workers' Compensation Act provides that if the employee is requested or required by the employer to submit to treatment outside the county of employment, the employer shall also pay the reasonable expense of travel ... necessary during that travel.

When looking at whether an employee is entitled to mileage, we look at:

- The county where the employer is located
- The county where the treatment occurs.

If the injured worker is driving themselves to defense-authorized, directed medical care, (or if a friend or family member is driving them), they are entitled to round-trip mileage reimbursement. Some clients require that injured workers keep track of this mileage reimbursement request on a specific form, and others simply require that they keep track of the mileage by date and submit it for reimbursement.

There is a separate section of the Act that addresses mileage reimbursement to injured workers for round-trip travel to a defense-arranged second opinion. For second opinions, the Act does not limit mileage reimbursement to travel outside the county of employment. So, for second opinions, the employer would pay door-to-door mileage reimbursement to an injured worker for travel to and from the second opinion appointment. However, if the injured worker has moved out of state, the mileage reimbursement for second opinion examinations is limited to reimbursement from the nearest Indiana border to the place of the second examination.

If the injured worker does not drive themselves or have a driver to take them, then the Board expects employers to make transportation arrangements for the injured worker to get to and from authorized, directed medical appointments.

The Act provides that mileage is paid at the same rate the State pays its employees. Indiana's Department of Administration sets the State Mileage Rate and provides guidance, which was most recently updated as of June 15, 2022. The current mileage rate is \$0.49 per mile.

Practice Tip:

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

Firm News

Downey & Lenkov Presentation at CLM Work Comp, Casualty & Risk Management Conference

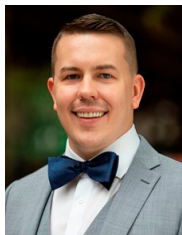
Capital Members Michael Milstein and Kirsten Kaiser Kus as well as Income Member Timothy Furman each presented at the 2023 CLM Work Comp, Casualty & Risk Management Conference.

Capital Member Michael Milstein co-presented "A New Frontier: Remote Work and Workers Compensation Claims"

Capital Member Kirsten L. Kaiser Kus co-presented "Don't Go in Blind: Defending Unwitnessed Workers Compensation Cases"

Income Member Timothy Furman co-presented "Holding vs. Folding: How to Play Your Workers Compensation Hand"

[Read the full article here.](#)



Rich Lenkov MARSH Presentation



Capital Member Rich Lenkov presented "When to Draft, And When to Put the Pedal to the Metal – Litigation Management, Legislative Reform & Claim Management Strategies" alongside Lauren McBride at the MARSH Retail Safety & Claims Summit on May 24.

ACS selected NIU Chapter President Felix L. Mitchell As 2023 class of Next Generation Leaders (NGL)



We are pleased to announce that our law clerk [Felix L. Mitchell](#) has been selected by the American Constitution Society (ACS) as its 2023 class of Next Generation Leaders(NGL).

NGLs are recent and forthcoming law school graduates who have demonstrated special leadership in their work with

ACS's student chapters, and who have the interest, skills, and ability to remain vital members of the ACS community for years to come. As an ACS NGL, Felix plans to spearhead the development of the BIPOC law student pipeline, voter rights initiatives, and reproductive rights protections.

Felix is currently focusing on General Liability & Workers' Compensation defense and Sports and Entertainment Law with Sports and Entertainment Risk Management Association (SERMA). Felix graduated with his Juris Doctor from Northern Illinois University College of Law on May 27, 2023.

Margery Newman & Samuel Levine To Be Recognized At ISBA Awards Recognition Reception

We are proud to announce that Income Member Margery Newman and Of Counsel Samuel Levine will be recognized at the Illinois State Bar Association Member Appreciation and Recognition Reception!

Income Member Margery Newman will receive the 2021-2022 ISBA Newsletter Editor Service Award for five years of service as Editor of the Construction Law newsletter.

Samuel will receive the 2021-2022 ISBA CLE Distinguished Service Award. Congratulations on your well-deserved recognition!



DL Webinars

Tomorrow is Here: AI's Impact on Claims

7/26/23

Michael Milstein and Ryan Dezonno



REGISTER NOW!

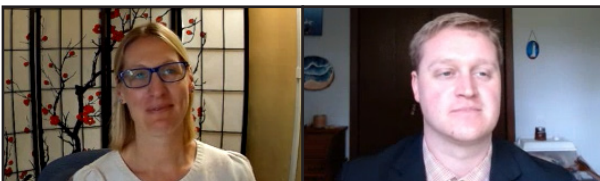
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- Always Be Closing: Top Indiana Workers' Compensation Tips
- What Horror Movies Teach Us About Workers' Compensation
- IL Workers' Compensation in the COVID-19 Era
- How To Get A Zero

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

Upcoming Events

- **8/21/23** – Rich Lenkov, Kirsten Kaiser Kus, Timothy Furman, & Jennifer Meyer speaking at the 77th annual Workers' Compensation Educational Conference in Orlando, FL

Downey & Lenkov Sponsorship



NIU Sponsorship: Downey & Lenkov proudly sponsored Northern Illinois University College of Law's 18th Annual Golf Outing. Proceeds from the golf outing will be used for an annual Scholarship Award, which is presented to a third-year law student at commencement.

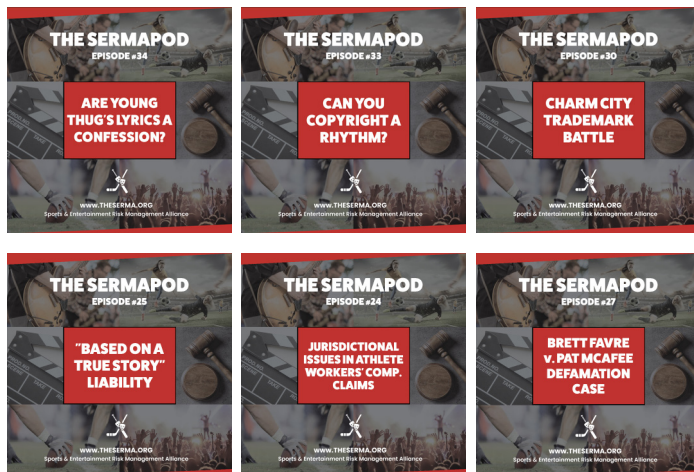
Rich Lenkov is a 1995 NIU College of Law alumnus as well as an NIU Board of Visitors Member. He previously received the 2013 Alumnus of the Year Award and the 2016 NIU College of Law Outstanding Alumni Award.

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 for more information.

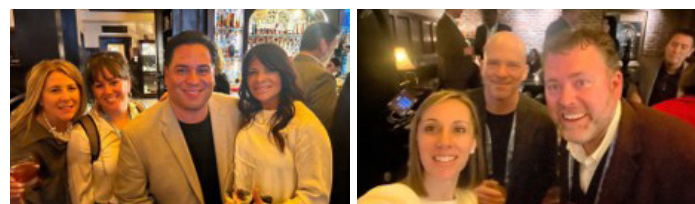
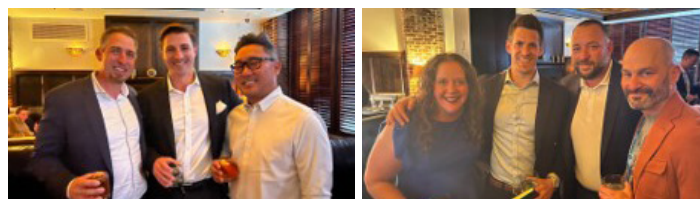
The SERMAPod



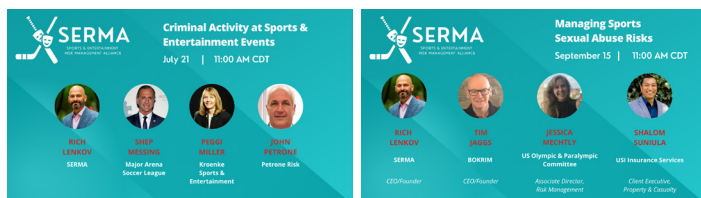
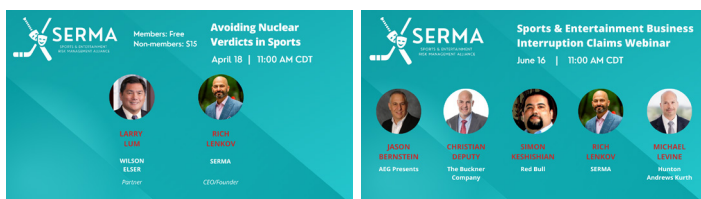
Sports & Entertainment Reputational Risk Symposium



RIMS RISKWORLD In Atlanta



SERMA Webinars



Upcoming Events

- **7/18/23** - Members Only Town Hall
- **7/27/23** - Webinar: Managing Stanley Cup Final Risk
- **7/28/23** - Happy Hour in Phoenix, Arizona
- **8/4/23** - Lollapalooza Risk Management Panel

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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.



“AI is going to have a monumental impact on both art, on music and how the artist seeks to get paid. For example in music,

it should be a publishing split and the original artist, if they want to go along with the technology, should take a substantial portion of the publishing and benefit from the use of their likeness.”

- Albert Soler on the evolution of AI and it's impact on IP Litigation
Scarini Hollenbeck IP Litigation
Co-Chair

[Listen to the full episode here](#)

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

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- Alex Murdaugh trial
- Anti-trans legislation
- Dominion v. Fox case
- Abortion
- Copyright

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- Christopher Melcher
- Pat Milhizer
- IL Cook County Sheriff Tom Dart

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Legal Face-Off's Legal Grab Bag

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