

What are some creative ways to shut down 10+ year-old cases?

— Donna, Itasca, IL

Dear Rich



Illinois Perspective

By [Rich Lenkov](#)

Workers' Compensation Practice Chair

These "old dogs" are tough because they get worse and obviously cost more the longer they stay open. Here's how to close them NOW:

1. **Make an offer.** Don't wait for a demand. Waiting means giving up control of the case to Petitioner. Making a proactive offer forces a response.
2. **Conduct a pretrial.** Pretrials can be a strong tool to move the case forward, especially if Petitioner needs their "day in court."
3. **Mediation.** While not frequently used in Illinois workers' compensation, it is an effective tool our firm uses as a means to resolve older and expensive cases.
4. **Settlement Day.** Again, we use this tool more than any other firm and are successful in closing about 75% of cases at Settlement Day. For further information, [click here](#).
5. **Cut off benefits.** Don't be afraid to stop benefits, which will immediately inject energy into a stale claim. Of course, do so only when you have a good faith basis to terminate, but don't be hesitant to do so when the time is right

Dear Kirsten



Indiana Perspective

By [Kirsten Kaiser Kus](#)

Income Member

1. **Vocational rehabilitation.** Look for ways to get Plaintiff back to work. A Plaintiff's mental state can spiral if stuck at home for an extended amount of time. Vocational rehabilitation can help evaluate Plaintiff to utilize skills and find a job that works for them if they are unable to do their past relevant work.
2. **Request a Board IME.** Plaintiffs aren't the only ones that can request a Board IME. A Board IME holds a lot of weight with the Hearing Members, so have that independent set of eyes look at the matter and evaluate Plaintiff.
3. **Mediate.** We frequently use mediation in Indiana. We can get an experienced mediator to help craft a settlement that takes into account Medicare Set Aside issues, Medicare beneficiaries, future medical issues, etc. We frequently mediate disputed cases or those that are not at MMI.
4. **Place surveillance** on Plaintiff, issue discovery and set Plaintiff's deposition. Nothing is better than a Plaintiff who testifies that they are restricted and can't return to work being presented with surveillance to the contrary in a deposition. It does wonders to move and settle cases.
5. **Try the case.** Get your evidence in order and try the case.

Please submit your most pressing workers' compensation questions to mkt@bdlfirm.com and Rich will respond in the next newsletter.

Standing Up From Kneeling Injury Not Compensable

By [Margaret Bentley](#)

Associate



In *McAllister v. Ill. Workers' Comp. Commission*, 2019 IL App (1st) 162747WC, a sous chef injured his knee as he stood up after volunteering to look for a pan for a cook. Petitioner was diagnosed with a meniscus tear and underwent arthroscopic surgery. The arbitrator found that Petitioner sustained a compensable injury. The Commission reversed, finding

that Petitioner failed to prove that his knee injury arose out of his employment. The circuit court upheld the Commission's decision.

The appellate court affirmed, finding that Petitioner was not injured as a result of an employment-related risk. Petitioner failed to establish that he was instructed or required to perform the activity (i.e., looking for a food product); nor was it apparent that the activity was incidental to Petitioner's employment.

The court also determined that while Petitioner had been exposed to a neutral risk, Petitioner failed to establish that he was exposed to that risk to a greater degree than the general public. Petitioner testified that he was not carrying or holding anything as he stood up, nothing stuck or fell on his knee, he did not trip over anything or slip on a wet surface and he did not notice any cracks or defects in the floor.

The majority of the appellate court addressed the special concurrence's contention that only a neutral risk analysis should govern claims that involve "everyday activities" or common bodily movements, as set forth in *Adcock v. Ill. Workers' Comp. Commission*, 2015 IL App (2d) 130884WC. Rejecting *Adcock* and its analysis, the court majority held that the neutral risk definition set forth in *Adcock* was inconsistent with the purpose of the Act, overly broad and unsupported by precedent.

Practice Tip:

McAllister narrows the definition of a neutral risk. Under *McAllister*, a risk that is required by an employee's work and necessary for fulfillment of an employee's job duties removes it from the realm of neutral risk, even if the activities attendant to the risk involve common bodily movements.

Petitioner Gets Boxed Out of Benefits

By [Chase Gruszka](#)

Associate



In *Dowdle v. South Berwyn School District No. 100*, 27 ILWCLB 82 (Ill. W.C. Comm. 2018), the Commission held that Petitioner's injury sustained in an afterschool basketball game was not compensable.

Petitioner, a teacher, was injured during an after school student vs. staff basketball game. Before the game, school

administration sent out several emails to teachers/staff offering opportunities to "participate" in the game, including playing, helping set up or simply attending and cheering on the participants. Only three of the 75 teachers/staff actually chose to play in the game.

After trial, the arbitrator found that Petitioner's injury did not arise out of or in the course of employment. There was no evidence that the decision to either play or not play would impact Petitioner's job performance and Petitioner was not required to participate as a condition of her employment. The arbitrator recognized that building rapport with students outside of the classroom could be construed as furthering the employer's interests, but ultimately found that the case fell squarely within Section 11 of the Act's Voluntary Recreational Exception.

The Commission affirmed and adopted the arbitrator's decision on review.

Practice Tip:

When offering voluntary recreational opportunities, don't make attendance mandatory. Use the full court press and box out benefits by making it clear, in writing, that attendance is voluntary and that there won't be repercussions if employees don't participate.

View more information about our [**Workers' Compensation practice.**](#)

Our other practices include:

- [Appellate Law](#)
- [Business Law](#)
- [Condominium Law](#)
- [Construction Law](#)
- [Entertainment Law](#)
- [General Liability](#)
- [Healthcare Law](#)
- [Insurance Law](#)
- [Intellectual Property](#)
- [Labor & Employment](#)
- [Products Liability](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation Law](#)

Firm News

Kevin Kaufman Presents Psychiatric Diagnosis Webinar to CCMSI

Associate [Kevin Kaufman](#) presented "Pre-existing Psychiatric Diagnosis and Impact on Treatment" for CCMSI institute on 8/22/19. The presentation discussed categorization of mental disabilities, pre-existing psychiatric and psychological conditions, and forensic psychiatric evaluation processes.

Rich Lenkov & Tim Alberts Present at Annual Workers' Compensation Educational Conference

[Rich Lenkov](#) and [Tim Alberts](#) presented at the [74th Annual Workers' Compensation Educational Conference and 31st Annual Safety & Health Conference](#) on 8/14/19 at the Orlando World Center Marriott. The Multi-State Workers' Compensation Law breakout session compared workers' compensation issues and updates in 13 different states.

A member of Workers' Compensation Defense Institute (WCDI), we also co-sponsored WCDI's "Night at the Movies" happy hour.

[See full agenda here.](#)



Rich Lenkov Published In *Workers' Compensation Magazine*

Capital member [Rich Lenkov's](#) quarterly forum for CLM's *Workers' Compensation Magazine* is now available. "Using Your Skills to Reduce Exposure" discussed the necessary resources and skills to efficiently and economically manage workers' compensation claims.

[Read "Using Your Skills to Reduce Exposure."](#)



Timothy Furman Presents Psychological Disorders Webinar

[Timothy "T.J." Furman](#) presented "Psychological Disorders and the Effects in the Work Place" for Broadspire's National Webinar on 8/14/19. The webinar discussed Diagnostic System for Mental Conditions, cognitive screening tests including Functional Psychological Evaluation and return to work strategies for those with mental illness.

Storrs Downey Featured in *Lawyer Monthly Magazine*

Capital member [Storrs Downey](#) was recently featured in an interview with *Lawyer Monthly* magazine. "Addressing the Ever-Expanding Issue of Biometrics and Privacy in the Workplace" covered privacy challenges many employers face in today's technology-driven environment.

Storrs discussed what biometrics are and how they're used in the workplace, significant case law, Illinois' Biometric Information Privacy Act and what employers should do to avoid litigation.

[Read "Addressing the Ever-Expanding Issue of Biometrics and Privacy in the Workplace."](#)

Timothy Furman Presents Impaired Workers Webinar

[Timothy "T.J." Furman](#) presented "Impaired Workers and Workers' Compensation Claims" for [Lorman Education Services](#) on 7/26/19. The webinar provided a better understanding of how to recognize an impaired employee in the workplace, how to respond in workers' compensation claims and successful defenses involving drugs.

[See the full agenda.](#)



Upcoming Events

- **9/12/19** – We are proud to sponsor CVLS' Race Judicata® 2019. For more information or to register, [click here](#).



Legal Face-Off is a fast paced, high energy legal program dealing with the hottest issues of the day. Rich Lenkov and Christina Martini provide a legal point/counterpoint perspective on issues ranging from Hollywood celebrities, athletes, politicians and everything in between.

Sound Bite: Illinois Congressman Mike Quigley joins Rich and Tina in studio to discuss possible impeachment proceedings against Trump.

Rich Lenkov: You recently wrote a *Tribune* op-ed piece that we should begin impeachment proceedings against Trump now and not wait until he's out of office. Tell us why.

Mike Quigley: Let's do the math: statute limitations on obstruction of justice is five years. If the President serves for two terms, he can serve past the statute of limitations, so it occurred to me as we look at the Justice Department's determination, it's policy that a seated President can't be indicted. It's hard for me to imagine that our founding fathers wanted to create a situation in which a seated President could be above the law, so the alternative is altering the Justice Department's regulations or opening an impeachment inquiry. I think it does several things: it spells out the crimes and misdemeanors we're talking about and it elongates the Mueller testimony into a period of time to educate and inform the American people so we know exactly what we are addressing.



[Listen to Full Episode Here](#)

Recent Topics

- Gun Control
- Mueller's testimony
- Illinois' new cannabis law
- Obesity under the ADA
- E-scooter epidemic

Recent Guests

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- Former Solicitor General Gregory Garre
- Directors Julie Cohen and Betsy West of RBG

[Sharon Fairley on Mueller's testimony, David Ruskin on Illinois' new cannabis law, new John Wayne Gacy documentary and more](#)

[SCOTUS Panel, scooter injuries, a meowing lawyer and much more](#)

[Kim Goldman on her new OJ podcast, drugged driving, is obesity covered by the ADA and more](#)

[Matt Ford on fixing the Supreme Court, IL Legislative Recap with Amanda Vinicky, limiting notoriety of mass shooters and more](#)

[IL State Rep. Ann Williams on Abortion Laws, Kyle McEntee on bar exam passage rates, Joseph Siprut & Chicago Magazine on Litigation Finance and more](#)



CONNECT WITH US

Please Like Us on **Facebook**, **Twitter** and **Subscribe on iTunes**. Send us your questions and we will answer them on air — **nothing is off-limits**.

BDL Webinars & Seminars

Upcoming Free Webinars

3rd Annual BDL Great American WC Quiz

September 24, 2019

Rich Lenkov and Michael Milstein



REGISTER NOW!



Watch a clip from our latest webinar.



Cutting Edge Continuing Legal Education

If you would like us to come to you for a free seminar, [Click here](#) or email [Rich Lenkov](mailto:Rich.Lenkov).

Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to companies of all sizes and national organizations. Among the national conferences at which we've presented:

- Chicagoland Safety, Health and Environmental Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- RIMS Annual Conference
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- Workers' Compensation Educational Conference Claims and Litigation Management Alliance Annual Conference

©2019 Bryce Downey & Lenkov LLC. All rights reserved. The content of this document has been prepared by Bryce Downey & Lenkov LLC for informational purposes. The information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. You should not act upon the information contained in this document without seeking advice from a lawyer licensed in your own state. Please do not send or disclose to our firm confidential information or sensitive materials without our consent.

Recent Webinars

- WC Spinal and Pain Management Issues
- Top 10 Myths About IL Workers' Compensation
- New Case Law You Need To Know
- Indiana Forms: Taking A Claim From Start To Finish
- How Does The IWCC Work?
- Top Reasons Why Plaintiffs Retain Counsel
- Top 10 Red Flags
- WC Issues Raised by Millennials
- WC Horror Stories
- Defending Shoulder and Knee Injuries, feat. Chicago Bulls & White Sox Doctor Brian Cole

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