



BRYCE DOWNEY & LENKOV
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Workers' Compensation Newsletter April 2017

Upcoming Webinar!

4/20/17

[Case Law Update](#)

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THE TOP 5 LIST

Top 5 Defense Tools You Shouldn't Overlook

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Medical canvas

It is imperative to know as much about a claimant's prior medical history as possible. If you are limiting your search to only those providers that the claimant has identified, you are only accomplishing half of your goal. A medical provider canvas is a very effective and inexpensive way to gather this information.

2/ ISO report

Again, information is power. Knowing your claimant's claim history is imperative to your defense. Believe it or not, claimants are not always forthcoming about their prior history!

3/ Personnel file

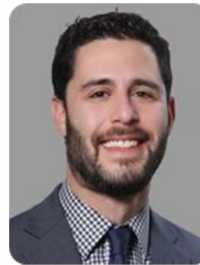
There is frequently invaluable information in a claimant's personnel file. For example, disciplinary action close to an alleged accident date raises significant red flags that can help you dispute a questionable claim.

4/ Records review

Have you ever read an IME report hoping that it would give you what you wanted, only to be burned? An effective way to avoid that is to get a preview of the opinion through a records review. If the doctor ends up giving you an unfavorable opinion, you do not need to disclose it.

5/ Motion to dismiss

While the Illinois Workers' Compensation Act does not explicitly allow for motions to dismiss, they are a key tool that we use to move cases forward. When a claimant is not compliant with medical treatment, misses IMEs or skips out of vocational rehabilitation appointments, file a motion to dismiss, asserting that Petitioner is not fulfilling his or her duties in moving the case forward.



By: [Michael Milstein](#)

The ongoing budget crisis has taken a toll on the popularity of the two most powerful politicians in Illinois. Governor Rauner's and House Speaker

Michael Madigan's disapproval ratings hover around 60%, making them two of the most disliked politicians in the state.

Recently, Governor Rauner doubled-down on his intention to make serious reforms to the workers' compensation system. Speaking to a group of manufacturing business leaders, he said that the reforms can't be "small," or he won't be able to recruit manufacturers back to Illinois.

In IWCC news, Governor Rauner appointed Ms. Deborah Simpson (current arbitrator) and Ms. Elizabeth Coppoletti (current Respondent's attorney) to the Illinois Workers' Compensation Commission. In addition, Ms. Ketki Steffen was appointed as an arbitrator. This will be Ms. Steffen's second stint as an arbitrator.



SOUND BITE: Matthew Topic, Better Government Association General Counsel joins Rich & Jason to discuss his lawsuit uncovering Mayor Rahm Emanuel's personal emails.

Rich Lenkov: Tell us about the fight to get Rahm's emails released; there were about 2,700 of his private emails released. Many say that he was trying to conceal them. Tell us about why that was and your involvement in that fight.

Matthew Topic: Well after the big news about Hilary Clinton's private emails first came out, the BGA was interested to seeing whether local public officials were doing the same thing and so we sent a request to the governors' office, the mayor's office, to other state agencies to try and get an answer to that question.

Rich Lenkov: What was the response from the administration to your initial request?

Matthew Topic: Their position was that because the records weren't in the possession of the City of Chicago then they are not public records of the City of Chicago and there's no obligation for them to go get them. That doesn't work though because the definition of public records in our statute is broader than just the government possesses includes things that are under the government's control, it includes things that were prepared for, prepared by the government and our position which we prevailed on was that if the Mayor was writing an email and it relates to his job as the Mayor then he is doing that as an agent for the City of Chicago and so those are records of the city even if they are not in the city's possession.

[Click Here To Listen To The Full Episode:](http://wgnplus.com/category/legal-face-off/)
<http://wgnplus.com/category/legal-face-off/>

Recent Topics:

- Marines nude photo scandal
- Lack of lawyers in Trump's cabinet
- Trump fires 46 U.S. attorneys
- The Logan Act
- Airbnb
- Trump's Supreme Court nominee

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- Sheriff David Clark

[Logan Act, Airbnb ordinance, NFL concussion settlement and more.](#)

[Trump's Supreme Court nominee, sending in the troops to Chicago, workers' compensation reform and more.](#)

[Dept of Justice comes down hard on the Chicago PD, Chinese hack US law firms, Obama fails to pardon Blagojevich, El Chapo extradited, Paul McCartney v Sony and more!](#)

[Sheriff David Clarke on Facebook hate crimes, WTTW's Amanda Vinicky on new Illinois laws you need to know, Trump is deposed, Suing Apple and Run DMC.](#)

[ISBA President on the future for Illinois lawyers, gender-based violence, Dylann Roof closing arguments, a 104-year old lawyer and more.](#)

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Personal Shopping After Work Dooms Petitioner's Claim For Benefits After Robbery

By: [Edward Jordan](#)



In the case of *Turner v. Wal-Mart*, 24 ILWCLB 213 (Ill. W.C. Commission, 2016), the Commission considered whether benefits were owed to an employee who was attacked in the parking lot after her shift ended.

Petitioner worked as a part-time cashier for Wal-Mart. On the accident date, she finished her shift and clocked out at 10:03 p.m. Petitioner then went grocery shopping at Wal-Mart. She paid for her groceries at 10:23 p.m. Petitioner then exited the store and went to her car. Petitioner parked in an employee-designated area near the store. Petitioner was attacked and robbed after she put her groceries in the car.

The arbitrator denied benefits, finding that Petitioner was not in the course and scope of her employment once she clocked out and engaged in her own personal grocery shopping. The Commission affirmed, stating that Petitioner's personal shopping trip severed the nexus to her employment as she was not performing any activities for Wal-Mart's benefit.

The Commission also analyzed whether Petitioner's claim was compensable because it occurred in the employee parking lot. However, the Commission found that Petitioner's incident did not arise out of her employment because both customers and employees parked in the lot, and there was no evidence that Petitioner was exposed to an increased risk of criminal assault in the area.

Practice Tip:

Always conduct an early investigation after any alleged work accident. Wal-Mart had very strong evidence, including time cards and shopping receipts, to show that Petitioner was no longer "on the clock" and had engaged in personal activities before the accident.

Attacking Aggravation Claims

By: [Maital Savin](#)



In *Stanly v. (Matteson, Village of)*, IWCC, 24 ILWCLB 218 (Ill. App. Ct. 1st 2016), the Illinois Appellate Court addressed the issue of temporary versus permanent aggravations.

Petitioner, a firefighter and paramedic, alleged that he injured his knee while lifting a heavy patient at work. He was diagnosed with knee arthritis.

The arbitrator awarded benefits, finding an aggravation of Petitioner's underlying condition. The arbitrator noted that Petitioner had no problems with his knee prior to the work accident and successfully passed all required physical exams for his job.

On review, the Commission partially vacated the arbitrator's award, noting that Petitioner only suffered a temporary aggravation of his pre-existing degenerative knee condition. The Appellate Court noted that, contrary to Petitioner's assertions, the treating physician did not find causal connection but, rather, that Petitioner reached MMI for his work injury six months after the alleged accident date. Furthermore, the Appellate Court noted that two examining doctors did not find Petitioner's need for partial or total knee arthroscopy to be causally connected to the work accident.

Practice Tip:

Even if your IME finds causation for an aggravation, you can substantially mitigate exposure if you can prove that the aggravation was merely temporary. Be sure to ask your IME regarding the duration of any aggravation.

Upcoming Seminars

- On 5/24-25/17, [Kirsten Kus](#) will lead a panel on “Top Employer Mistakes” at the 2017 CLM & Business Insurance Workers’ Compensation Conference in Chicago. [Click Here](#) for more info and to register.



Maital Savin Presents to IMA On Reducing Sexual Harassment

On 3/16/17, [Maital Savin](#) recorded a presentation on “How To Reduce Sexual Harassment Claims In Your Workplace” for the [Illinois Manufacturers’ Association](#)’s video reference library.

[Click here](#) to view the presentation.



Did You Know?

In addition to workers’ compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization & Governance](#)
- [Construction](#)
- [Employment & Labor](#)
- [Entertainment Law](#)
- [Insurance Coverage & Litigation](#)
- [Intellectual Property](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)

Please join us for **3 Common Ethical Dilemmas From 3 Different Perspectives**

5/25/17 • 9:45 AM CST

at the 2017 CLM & Business Insurance Workers' Compensation Conference
Chicago Marriott Downtown Magnificent Mile, Chicago, IL

[Click Here to register](#)

We hope you can make it.



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The CLM is the largest professional association in the insurance industry with a membership of more than **35,000 professionals** in the claims resolution and litigation management industries. Founded in 2007, the CLM membership benefits from our networking events, continuing education programs, and a wide variety of industry resources.

Free Monthly Webinars

What you said about our 3/28/17 webinar,
"The Ups & Downs Of Lower & Upper Extremity Claims"

"Dr. Beigler did a great job on explaining injuries and the pictures were insightful."

"The information was informative and relevant"

"Dr. Beigler described the injuries, the recovery period & the tools used for repair well, also loved the pictures."

"I liked learning about the compartment syndrome"



Upcoming Webinar
4/20/17

Case Law Update

**Rich Lenkov
Edward Jordan**

[Click Here to Register](#)



Recent Webinars

- Illinois Workers' Compensation Reform
- New OSHA Regulations
- 1st Annual Great American BDL WC Quiz
- Common Workers' Compensation Issues Defined
- The 5 Factors Determining Illinois Permanency: What Do They Really Mean?
- Reduce Your Legal Expenses NOW!
- WC Horror Stories
- WC Issues Raised By Millennials

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

Cutting Edge Legal Education

If you would like us to come to you for a free seminar,

[Click here now](#) or email Rich Lenkov at

rlenkov@bdlfirm.com

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

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

Some of our previous seminars include:

- Turning The Tables: Using An Employee's Own Actions As A Defense To Their Workers' Compensation Claim
- Closing The Nightmare Case
- Workers' Compensation 101
- Mandatory CMS Reporting Requirements: What You Need To Know
- Managing & Closing WC Claims In A Cost-Effective Manner
- Top 10 Ways To Reduce Legal Expenses NOW
- The Mediation Process
- Balancing Aggressive Pursuit Of Lien Recovery With Associated Litigation Expenses
- Dealing With Difficult Claimants
- Health-Related Leave: Workers' Compensation, ADA and FMLA

Illinois Rates At A Glance

Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
1/15/11 - 7/14/11	1,243.00	466.13	930.39
7/15/11 - 1/14/12	1,261.41	473.03	946.06
1/15/12 - 7/14/12	1,288.96	483.36	966.72
7/15/12 - 1/14/13	1,295.47	485.80	971.60
1/15/13 - 7/14/13	1,320.03	495.01	990.02
7/15/13 - 1/14/14	1,331.20	499.20	998.40
1/15/14 - 7/14/14	1,336.91	501.34	1,002.68
7/15/14 - 1/14/15	1,341.07	502.90	1,005.80
1/15/15 - 7/14/15	1,361.79	510.67	1,021.34
7/15/15 - 1/14/16	1,379.73	517.40	1,034.80
1/15/16 - 7/14/16	1,398.23	524.34	1,048.67
7/15/16 - 1/14/17	1,428.74	535.79	1,071.58
1/15/17 - 7/14/17	1,435.17	538.19	1,076.38

Effective Dates	Maximum PPD
7/1/05 - 6/30/06	591.77
7/1/06 - 6/30/07	619.97
7/1/07 - 6/30/08	636.15
7/1/09 - 6/30/10	664.72
7/1/10 - 6/30/11	669.64
7/1/11 - 6/30/12	695.78
7/1/12 - 6/30/13	712.55
7/1/13 - 6/30/14	721.66
7/1/14 - 6/30/15	735.37
7/1/15 - 6/30/16	755.22
7/1/16 - 6/30/17	775.18

Minimum Rate Death & Total Permanent Disability:

50% of the Statewide Average Weekly Wage

Maximum Rate Death Benefit:

The greater of \$250,000 or 20 years
Effective 2/1/06 – the greater of
\$500,000 or 25 years

Temporary Total Disability (TTD) Rate:

66-2/3% (.667) x AWW

Permanent Partial Disability (PPD) Rate:

60% (.6) x AWW

*Number if children and/or spouse = number of dependents.

Minimum TTD & PPD	Single	Married	1 Dep.	2 Dep.	3 Dep.	4+ Dep.
TTD & PPD 7/15/10 - 7/14/17	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00



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PPD Benefits Schedule Of Body Parts

For Injuries Occurring	Before 7/20/05	7/20/05 - 11/15/05	11/16/05 - 1/31/06	2/1/06 - 6/27/11	On or after 6/28/11
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (Index) Finger	40	43	40	43	43
Second (Middle) Finger	35	38	35	38	38
Third (Ring) Finger	25	27	25	27	27
Fourth (Little) Finger	20	22	20	22	22
Great Toe	35	38	35	38	38
Each Other Toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal Tunnel Due To Repetitive Trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation Above Elbow	250	270	250	270	270
Amputation At Shoulder Joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation Above Knee	225	242	225	242	242
Amputation At Hip Joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation Of Eye	160	173	160	173	173
Hearing Loss Of One Ear (Under WC Act)	50	54	50	54	54
Hearing Loss Of Both Ears (Under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162

The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.

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