



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter January 2015



# THE TOP 5 LIST

## Top 5 Ways To Reduce Your Legal Expenses

By: [Rich Lenkov](#)  
Chair, Bryce Downey & Lenkov  
Workers' Compensation Department

### 1/Manage Your Vendors

Whether it's attorneys, surveillance experts, TPA's or any other kind of service provider, it is very important to keep these expenses in check. While vendors are worthwhile investments, they are also one of the leading cost drivers in our field. Accordingly, it is crucial to hire professionals with a single-minded focus on achieving the best results in a cost effective manner.

### 2/Limit Medical Expenses

Medical bills are a leading cost driver. Closely monitoring medical treatment, being aggressive with return to work, employing the fee schedule and, most importantly, aggressively fighting questionable medical charges is important. Also, aggressive use of tools like IME's and UR will also help manage your medical costs.

### 3/Conduct Thorough Accident Investigations

Reducing legal expenses starts at the ground level, before you hire counsel. Nail down the stories of key witnesses and secure evidence as soon as possible. This will prevent you from having to pay investigators to track down this information. It will also protect you from costly and time-consuming spoliation of evidence exposure.

### 4/ Use Effective Negotiation Strategies

Never start off too high. Use ADR early and often. Start negotiating (on your terms) as early as possible. These are a few of many negotiation strategies that will reduce your expenses.

### 5/Hire The Right Attorney

As mentioned above, the best vendors are partners, rather than mere service providers. Make sure you hire defense counsel that not only is going to give you excellent legal advice, but ones that will truly partner with you to prevent and reduce legal costs even before a claim occurs.

As always, we would like to hear your thoughts. How have you reduced your legal expenses? Email me at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com) and we'll publish your comments in our next newsletter

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## Legal Faceoff – WGN PLUS



Legal Faceoff is a fast paced, high energy legal podcast airing every other Friday on WGN PLUS. Each week, **Jason Whiteside** (an exceptional Chicago plaintiff's attorney) and **Rich Lenkov** provide a legal point/counterpoint perspective on the hottest issues in sports, Hollywood, politics and current events. Of course, with a couple of jabs here and there.

[Our most recent episode was released on 1/8 and you can listen to it here: http://wgnplus.com/category/legal-face-off/](http://wgnplus.com/category/legal-face-off/)

Please like us on [Facebook](#) and follow us on [Twitter](#). Email [legalfaceoff@gmail.com](mailto:legalfaceoff@gmail.com) to interact with the show. Send us your questions and we will answer them on air—nothing is off limits.



## Upcoming Seminars



- On **1/19/15**, **Rich Lenkov** will present "Trial Preparations" in Danville, IL for [CEU Institute](#)
- On **1/22/15**, the CLM Greater Chicago Chapter hosts "What Are They Thinking: Secrets Revealed From Risk Professionals." For more info and to register, [Click Here](#)
- On **2/5/15**, **Rich Lenkov**, **Sherri Johnson** (Senior Director of Corporate Claims, Interstate Hotels & Resorts) and **Cameron Shirley** (Director of Global Claims and Litigation Management at Starwood Hotels & Resorts) will present "General Liability and Workers' Compensation Issues Unique to the Hotel Industry" at the CLM 2015 Retail, Restaurant & Hospitality Committee Conference in Orlando, FL. For more info, [Click Here](#)
- On **3/25/15**, **Rich Lenkov** will present "What the Movies Can Teach You About Defending Workers' Compensation Claims" at The CLM 2015 Annual Conference in Palm Desert. For more info, [Click Here](#)
- On **6/2/15**, **Rich Lenkov** will present "Trial & Appellate Procedures" at the Advanced Workers' Compensation seminar in Naperville. Stay tuned for more details.
- On **6/9/15**, **Rich Lenkov** will present "Workers' Compensation Fraud: What You Can Do About It" at the SEAK 35th Annual National Workers' Compensation and Occupational Medicine Conference in Chicago. For more info, [Click Here](#)

## Statute Of Limitation Doesn't Bar Evidence

By: [Tim Alberts](#)



In *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, the Court addressed whether the Act's 3-year statute of limitation bars evidence regarding job activities from more than 3 years prior to the alleged accident date.

Petitioner alleged a 3/22/10 repetitive trauma injury to her left shoulder resulting from her work with Respondent. At trial, Petitioner testified regarding the work she performed during her 38-year history working for Respondent. Respondent's counsel objected to Petitioner's testimony regarding work performed prior to 3/22/07 based on the 3-year statute of limitation. The arbitrator overruled Respondent's counsel's objections, finding that Petitioner's left shoulder injury was compensable. The Commission made only minor corrections to the award. However, the Circuit Court remanded back to the Commission and granted Respondent's interlocutory order certifying the issue to the Appellate Court.

### Practice Tip:

In evaluating the compensability of a claim, remember that the statute of limitation only bars certain claims from being filed, but does not bar the admission of evidence.

The Appellate Court affirmed the Commission's decision and held that the statute of limitation does not bar evidence of work activities occurring more than 3 years prior to the accident date or manifestation date of a repetitive trauma injury.

## Injury In A Restricted Work Area Restricts Benefits

By: [Jessica Rimkus](#)



In *Dawson v. CR Coating & Logistics Mgmt.*, 12 IL. W.C. 29594 (Ill.Indus.Com'n Apr. 7, 2014), the Commission addressed whether an injury sustained by an employee acting outside the scope of his or her duties is compensable.

Petitioner worked as a Team Lead, requiring that he ensure machines were running and that team members performed their jobs. On the accident date, he identified a problem with a machine, which he knew how to fix, as he had done so before. He met with the machine operator, hit the safety shut down button on the machine and entered the machine area to fix the machine. Petitioner injured his head while working on the machine.

### Practice Tip:

Always determine whether a claimant was acting within the scope of his or her authorized job duties at the time of injury. If not, this may be a basis for denying the claim. Prompt and thorough accident reporting and detailed job descriptions can be particularly helpful in making this determination.

The Commission denied benefits, finding that Petitioner entered a restricted area when he attempted to repair the machine, which he was neither qualified nor authorized to do. Moreover, Petitioner entered the restricted area through the belt area, rather than the doorway, to avoid setting off the alarm, further evidencing that Petitioner acted outside the scope of his prescribed duties.

## Meet the Team

### Suzanne Kleinedler

Associate,  
Bryce Downey & Lenkov



I am an Associate at BDL's Crown Point, Indiana office. My practice primarily focuses on workers' compensation, but I also have experience in civil litigation and appellate work.

My legal career began more than a decade ago working as a paralegal for a mid-sized civil defense firm in Indiana. Prior to earning my Juris Doctor from Valparaiso University Law School, I earned a Bachelor of Science in Journalism from Saint Joseph's College. While attending VU Law, I had the privilege of clerking for United States District Court Magistrate Judge, Andrew P. Rodovich, in the Northern District of Indiana. I am admitted to practice before the Supreme Court of Indiana and the United States District Court for the Northern District of Indiana.



When I am not working, my focus is on my nine year-old son, Joseph. We enjoyed Disney World for the first time last summer, and recently began taking Tang Soo Do classes together. As a family, Joseph and I aspire to engage in more travel vacations and to (eventually) earn black belts in Tang Soo Do.



## Meet Our Clients

### Sue Litchy

**Workers' Compensation Claims Supervisor,**  
Lumbermen's Underwriting Alliance

**What are your responsibilities?** I supervise workers' compensation adjusters handling claims in multiple states.

**Where are you originally from and where are you currently based?** I've always been a Minnesotan.

**What is the biggest challenge facing your workers' compensation program?** The biggest challenges for my program are changes in technology, laws, etc.

**What is your biggest pet peeve about Illinois workers' compensation?** My biggest pet peeves are large awards and that there is no apportionment for prior MAW awards.

**What do you do for fun when you're away from work?** Outside of work, I enjoy spending time with family, friends and my dog.

## Other Newsletters

Bryce Downey & Lenkov regularly issues several practice area newsletters. If you would like a copy of any of the below articles from other BDL newsletters, please email our Marketing Coordinator Jason Klika at [jklika@bdlfirm.com](mailto:jklika@bdlfirm.com).

### General Liability

- Illinois Court of Appeals Broadens Distraction Exception to Open And Obvious Doctrine
- Two Illinois Appellate Courts Reach Different Conclusions In Accumulation Of Ice Cases

### Labor & Employment Law

- Medical Marijuana Update: Eye On The Pot
- Game Changing News: NLRB Rules Northwestern Football Players Are Employees

### Corporate & Construction

- Trade Secrets: If It's Not A "Trade Secret," How Do I Protect It?
- Federal, State And Local Incentives Available For Businesses

## Free Webinars

Bryce Downey & Lenkov hosts monthly webinars on pressing issues and hot topics

### Here is what attendees had to say about our December webinar

"I liked the subject matter and a chance to hear the opposite viewpoint."

"I liked hearing the claimant's point of view."

"Relevant topic & guest speaker."

"It is nice to hear from a petitioner's attorney."

### Upcoming

**1/16/15** – [Click Here to Register](#)

#### AMA Ratings: A Legal & Medical Perspective

Rich Lenkov and Dr. Leon Benson  
Illinois Bone & Joint Institute

**1/22/15** – [Click Here to Register](#)

#### Your Top 10 Tricky Employment Termination Questions Answered

Storrs Downey and Maital Savin

### Recent

Defending Pain Claims: A Medical & Legal Perspective

[Using Surveillance In Your Workers' Compensation Claim](#)

Exploiting The Internet In Your Pre-Suit Investigation

[Spills, Thrills & Bills: The True Story Behind Illinois & Indiana Premises Liability Law](#)

If you would like a copy of any of our prior webinars, please email Marketing Coordinator Jason Klika at [jklika@bdlfirm.com](mailto:jklika@bdlfirm.com).

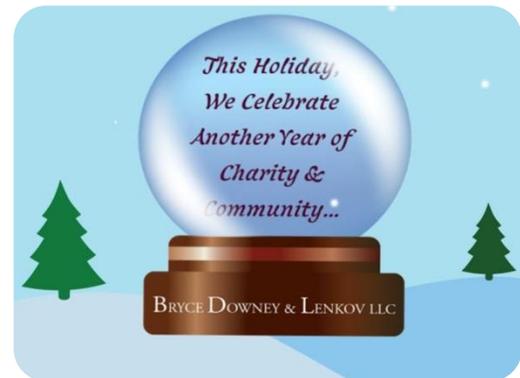
## Giving Back

### BDL Donates To The Chicago Food Depository



This year in lieu of sending holiday cards, Bryce Downey & Lenkov has made a donation to the Greater Chicago Food Depository. This non-profit organization provides training and food to those in need as an effort to end hunger.

[Click Here](#) to learn more about the Greater Chicago Food Depository.



### Team BDL Plunges



On 3/1/15, Team BDL will plunge into frigid Lake Michigan to raise funds and awareness for the Special Olympics Chicago. This will be our third year braving frigid temperatures to do the Polar Plunge at North Avenue beach. Special Olympics is the world's largest program for sports training and athletic competition for children and adults with intellectual disabilities. Last year we had 7 Polar Plungers and raised over \$3,000 for the Chicago Special Olympics. [Click Here](#) to donate.

## Illinois Rates At A Glance

EFFECTIVE DATES	MAXIMUM TTD	MINIMUM PTD & DEATH	STATE AVERAGE WEEKLY WAGE
7/15/04 to 1/14/05	1,034.56	387.96	775.92
1/15/05 to 7/14/05	1,051.99	394.50	788.99
7/15/05 to 1/14/06	1,078.31	404.37	808.73
1/15/06 to 7/14/06	1,096.27	411.10	822.20
7/15/06 to 1/14/07	1,120.87	420.33	840.65
1/15/07 to 7/14/07	1,148.51	430.69	861.38
7/15/07 to 1/14/08	1,164.37	436.64	873.28
1/15/08 to 7/14/08	1,178.48	441.93	883.86
7/15/08 to 1/14/09	1,216.75	456.28	912.56
1/15/09 to 7/14/09	1,231.41	461.78	923.56
7/15/09 to 7/14/10	1,243.00	466.13	932.25
1/15/10 to 7/14/10	1,243.00	466.13	922.45
7/15/10 to 1/14/11	1,243.00	466.13	925.08
1/15/11 to 7/14/11	1,243.00	466.13	930.39
7/15/11 to 1/14/12	1,261.41	473.03	946.06
1/15/12 to 7/14/12	1,288.96	483.36	966.72
7/15/12 to 1/14/13	1,295.47	485.80	971.60
1/15/13 to 7/14/13	1,320.03	495.01	990.02
7/15/13 to 1/14/14	1,331.20	499.20	998.40
1/15/14 to 7/14/14	1,336.91	501.34	1,002.68
7/15/14 to 1/14/15	1,341.07	502.90	1,005.80

EFFECTIVE DATES	MAXIMUM PPD	
7/1/04 to 6/30/05	567.87	Minimum Rate Death & Total Permanent Disability:
7/1/05 to 6/30/06	591.77	50% of the Statewide Average Weekly Wage
7/1/06 to 6/30/07	619.97	Maximum Rate Death Benefit:
7/1/07 to 6/30/08	636.15	The greater of \$250,000 or 20 years
7/1/09 to 6/30/10	664.72	Effective 2/1/06 – the greater of \$500,000 or 25 years
7/1/10 to 6/30/11	669.64	Temporary Total Disability (TTD) Rate:
7/1/11 to 6/30/12	695.78	66-2/3% (.667) x AWW
7/1/12 to 6/30/13	712.55	Permanent Partial Disability (PPD) Rate:
7/1/13 to 6/30/14	721.66	60% (.6) x AWW
7/1/14 to 6/30/15	Will be posted 1/15	

MINIMUM	SINGLE	MARRIED	1 DEP.	2 DEP.	3 DEP.	4+ DEP.	
TTD & PPD 7/15/08-7/14/09	206.67	*	237.67	268.67	299.67	310	*number if children and/or spouse = number of dependents
TTD & PPD 7/15/09-7/14/10	213.33	*	245.33	277.33	319	330	
TTD & PPD 7/15/10-7/14/13	220	*	253	286	319	330	
TTD & PPD 7/15/13-1/14/14	220	*	253	286	319	330	
TTD & PPD 1/15/14-7/14/14	220	*	253	286	319	330	
TTD & PPD 7/15/14-1/14/15	220	*	253	286	319	330	

## PERMANENT PARTIAL DISABILITY BENEFITS SCHEDULE OF BODY PARTS

For injuries occurring	Before 7/20/2005	7/20/2005 - 11/15/2005	11/16/2005 - 1/31/2006	2/1/2006 - 6/27/2011	On or after 6/28/2011
<b>Disfigurement</b>	150	162	150	162	162
<b>Thumb</b>	70	76	70	76	76
<b>First (index) finger</b>	40	43	40	43	43
<b>Second (middle) finger</b>	35	38	35	38	38
<b>Third (ring) finger</b>	25	27	25	27	27
<b>Fourth (little) finger</b>	20	22	20	22	22
<b>Great toe</b>	35	38	35	38	38
<b>Each other toe</b>	12	13	12	13	13
<b>Hand</b>	190	205	190	205	205
<b>Carpal tunnel due to repetitive trauma</b>					28.5 - 57
<b>Arm</b>	235	253	235	253	253
<b>Amputation above elbow</b>	250	270	250	270	270
<b>Amputation at shoulder joint</b>	300	323	300	323	323
<b>Foot</b>	155	167	155	167	167
<b>Leg</b>	200	215	200	215	215
<b>Amputation above knee</b>	225	242	225	242	242
<b>Amputation at hip joint</b>	275	296	275	296	296
<b>Eye</b>	150	162	150	162	162
<b>Enucleation of eye</b>	160	173	160	173	173
<b>Hearing loss of one ear (under WC Act)</b>	50	54	50	54	54
<b>Hearing loss of both ears (under WC Act)</b>	200	215	200	215	215
<b>Testicle--1</b>	50	54	50	54	54
<b>Testicle--2</b>	150	162	150	162	162
<b>The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.</b>					

## Free Seminars!

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
- Illinois Work Comp Forum
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- REBEX
- RIMS Annual Conference

### Some of the topics we presented are:

- 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 State Overview
- Traveling Employees In Illinois Workers' Compensation

If you would like us to come in for a free seminar, [Click Here Now](#) or email Rich Lenkov at [rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com)  
We can teach you a lot in as little as 60 minutes

Bryce Downey & Lenkov is a firm of experienced business counselors and accomplished trial lawyers who deliver service, success and satisfaction. We exceed clients' expectations while providing the highest caliber of service in a wide range of practice areas. With offices in Chicago, Crown Point, IN, Memphis and Atlanta and attorneys licensed in multiple states, Bryce Downey & Lenkov is able to serve its clients' needs with a regional concentration while maintaining a national practice. Our practice areas include:

- Business Litigation
- Business Transactions & Counseling
- Corporate/LLC/Partnership Organization and Governance
- Construction
- Employment and Labor Counseling & Litigation
- Entertainment Law
- Insurance Coverage
- Insurance Litigation
- Intellectual Property
- Medical Malpractice
- Professional Liability
- Real Estate
- Transportation
- Workers' Compensation

## Disclaimer:

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