



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter March 2017

Upcoming Webinar!
3/28/17

[Ups & Downs of
Handling Upper &
Lower Extremities](#)

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THE TOP 5 LIST

Top 5 Ways To Fight Malingering Medical Treatment

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ IME

Be aggressive in retaining solid experts who can question ongoing treatment. Obviously, you only want to retain one when the cost is worth the return.

2/ Utilization Review

Utilization Review is a very effective tool, yet often overlooked, in questioning prospective medical care.

3/ Nurse Case Management

An aggressive nurse case manager can do wonders in moving treatment forward. Make sure that your NCM has good communication and follow up skills, as they will quarterback the medical treatment and be your "eyes" and "ears" in the process.

4/ Question The Treaters

Don't be afraid to question the prescribed medical care. While you should obviously only do so under the auspices of your state's law regarding communicating with treating physicians, you should question a doctor who is recommending unlimited or questionable medical treatment.

5/ Terminate Benefits

If Petitioner is malingering or putting roadblocks in his/her care, consider terminating benefits. While you need to do so carefully, it is a worthwhile step if you have clear evidence of malingering.



By: [Michael Milstein](#)

The budget proposal, bundling 12 budget bills together in an all-or-nothing approach, has met its fate: death. Though some of the bills had passed, the Senate Republicans and Governor Rauner ultimately backed away from the deal. Illinois remains without a budget and is back to square one of negotiations.

In the near future, we expect that the Republicans will unveil their next approach. Whether the same workers' compensation reforms will be included remains to be seen. However, we can guarantee that some workers' compensation reform package will be included.

The Chicago Tribune editorial board recently said that reaching an agreement on workers' compensation could be a starting point for both sides to reach a compromise on the budget. As we have consistently stated, some reform is inevitable. The only question is how much longer will we have to wait?



SOUND BITE: University of Texas School of Law Professor and award winning legal scholar Stephen Vladeck discusses whether the Trump Administration violated The Logan Act.

Rich Lenkov: Last week when Trump fired General Flynn as National Security Advisor, he specifically said that it wasn't because Flynn broke a law. Rather, Flynn was fired because of a breach of trust over the communications he had with Pence. In your opinion, did Flynn violate The Logan Act?

Stephen Vladeck: I don't think so. The key on that point is the phrase "without authority of the United States." When you have a presidential transition team it's a bit of a stretch to argue that their communications with foreign governments are wholly without the authority of the United States. Frankly, it's just a matter of weeks before they're going to be the people exercising that authority more directly. So, I think it's a stretch even on the text of the statute.

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

Recent Topics:

- Airbnb ordinance
- NFL concussion settlement
- Workers' compensation reform
- Trump's Supreme Court nominee
- Chinese citizens hack American law firms

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Rev. Jesse Jackson
- Sheriff David Clarke
- Carl E. Douglas

[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](#)

Please like us on [Facebook](#) and [subscribe in iTunes](#). Send us your questions and we will answer them on air—nothing is off limits.

Court Denies Post-Award Additional Benefits

By: [Krista Sifuentez](#)



In *Murff v. (City of Chicago) IWCC*, 24 ILWCLB 209 (Ill. App. Ct., 1st 2017), the Appellate Court considered the issue of additional benefits for a material increase in disability after a final award.

Petitioner, a sanitation department worker, sustained an injury in 2009. On 1/22/14, the arbitrator issued a decision. Neither party appealed. 6 months later, Petitioner filed 19(h) and 8(a) petitions alleging a material increase in his disability and seeking additional benefits, based on a reduction in Petitioner's earning power.

The Commission denied the petitions for failure to present evidence demonstrating a change in physical or mental condition. The Circuit Court affirmed, as did the Appellate Court.

The Court held that the term "disability," as used in Section 19(h), refers only to physical and mental disabilities, not economic injuries, citing *Petrie v. Industrial Commission*, where it previously held that an increase in economic disability alone was not a proper basis for the modification of an award under Section 19(h). A petitioner must present evidence establishing a change in his/her physical or mental condition.

The Court also held that Section 8(a) does not authorize the Commission to award maintenance and vocational rehabilitation benefits after a final decision is entered, absent proof of a substantial and material change in disability. Here, Petitioner failed to make this showing.

Practice Tip:

Deny additional benefits after an award is entered, as it is Petitioner's burden to prove material changes to his/her physical or mental conditions.

Is Petitioner Even Your Employee?

By: [Jessica Rimkus](#)



In *Kwiatkowski v. Swift News Agency*, 24 ILWCLB 201 (Ill. App. Ct., 1st 2016), the Court considered the issue of whether Petitioner qualified as an employee of Respondent.

Petitioner delivered newspapers that were produced by Respondent. On the date of accident, he slipped and fell while delivering the papers. Evidence showed that he used his own vehicle, was not supervised by Respondent, and was allowed to call and miss shifts when another company had work for him. Further, he did not produce any paystubs to document his employment with Respondent. Medical records even indicated that Petitioner worked for another employer.

The arbitrator determined that Petitioner failed to prove that he was an employee of Respondent and denied benefits. The Commission, Circuit Court, and eventually Appellate Court, all affirmed.

The Appellate Court noted that even if Petitioner put forth some evidence of a relationship between him and Respondent, he failed to prove that he was an employee rather than mere independent contractor. Here, Respondent exercised almost no control over Petitioner.

Practice Tip:

In grey employer-employee areas, it is crucial to assess, primarily, the amount of control Respondent has over Petitioner and any other evidence of an employment relationship.

BDL Super Lawyers & Rising Stars 2017

We are proud to announce that [Rich Lenkov](#) and [Brian Rosenblatt](#) have been selected as Super Lawyers for 2017. Super Lawyers have been identified by their peers to be among the top 5% of lawyers in their state.



In addition, [Kirsten L. Kaiser Kus](#), [Michael Milstein](#) and [Maital Savin](#) have been selected as Rising Stars for 2017. Rising Stars have been identified by their peers to be among the top 2.5% of lawyers age 40 or younger in their state, unless they have practiced for no more than 10 years.



Upcoming Seminars

- On 5/24-25/17, [Rich Lenkov](#) will lead a panel on "Common Ethical Issues" at the 2017 CLM & Business Insurance Workers' Compensation Conference in Chicago. [Click Here](#) for more info and to register.
- 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.



Polar Plunge

On 3/5/17, the firm's bravest souls dove into the icy waters of Lake Michigan in support of [Special Olympics' annual Polar Plunge](#).

BDL's plungers donned [Hamilton: An American Musical](#) inspired costumes. [Download our plunge video here!](#)



Hustle Up The Hancock

On 2/26/17, Team BDL participated in Hustle up the Hancock. This year, **This year's event raised over \$1,023,000** for lung disease research, advocacy and education.

Our best times were Marketing Assistant Chris Hoffmann for the half climb (11:15-52 floors) and [Krista Sifuentez](#) for the full climb (20:55-94 floors).



Mock Trial

On 2/16/17, [Rich Lenkov](#), [Michael Milstein](#) and [Edward Jordan](#) presented a workers' compensation mock trial at the 2017 Artex Risk Management Conference in Las Vegas, Nevada with plaintiff's attorney [Jason Whiteside](#) and [Brian White](#) of Litigation Solutions.



Maital Savin Records Presentation For Illinois Manufacturers' Association

On 2/16/17, [Maital Savin](#) recorded a presentation on "Ten Things Employers Should Know When Updating Employment Handbooks" for the [Illinois Manufacturers' Association](#)'s video reference library.

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



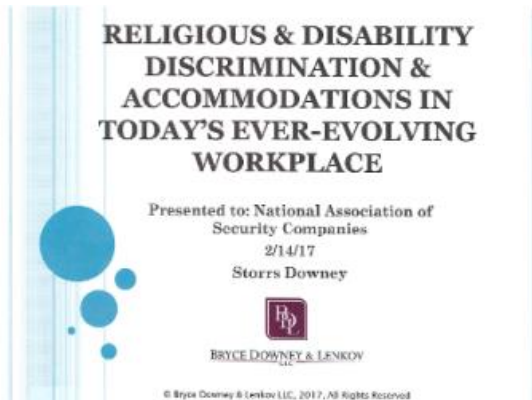
Storrs Downey Presents To Illinois Manufacturers' Association

On 2/16/17, [Storrs Downey](#) presented "Recent Developments With DOL & NLRB" to the [Illinois Manufacturers' Association](#) at Ditka's Restaurant in Oakbrook Terrace.



Storrs Downey Presents To National Association Of Security Companies (NASCO)

On 2/14/17, [Storrs Downey](#) presented "Religious & Disability Discrimination & Accommodations In Today's Ever-Evolving Workplace" to the [National Association of Security Companies \(NASCO\)](#) in Fort Lauderdale, FL.



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](#)

BDL Hits The Grammys!

Entertainment law practice co-chair **Brian Rosenblatt** joined clients of the firm and the music industry's biggest stars at the [59th Annual Grammy Awards Ceremony!](#)



Free Monthly Webinars

What you said about our 2/6/17 webinar,
"Illinois Workers' Compensation Reform"

"Interesting subject, engaging and knowledgeable participants."

"Important information shared in a way that is understandable and easy to listen to."

"Interesting news about a lack of budget in Illinois."

"Great topics! Enjoyed getting perspectives from a variety of speakers."



Upcoming Webinar

3/28/17

[Ups & Downs of Handling Upper & Lower Extremities](#)

Rich Lenkov

David Beigler, MD

[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.

Disclaimer:

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