

Case **Successes**

Rich Lenkov Secures Another Zero



Congratulations to Capital Member Rich Lenkov for proving that Petitioner is not entitled to workers' compensation benefits as she was injured in a voluntary recreational activity.

Petitioner worked at a university and fell off her bicycle, fracturing her ankle while participating in their annual costume contest dressed as "Bicycle Barbie."

Arbitrator Seal denied benefits, finding that:

1. Petitioner was participating in a voluntary recreational activity when she injured herself.
2. Petitioner's risk of injury was personal, and not employment-related.

Under Section 11 of the Act, accidental injuries "incurred while participating in voluntary recreational programs" are not compensable. In arguing that Petitioner was not entitled to benefits, Rich stressed that Petitioner:

1. Presented no evidence that she was ordered to participate in the event.
2. Submitted a get-well card explicitly stating that she was "encouraged" to dress up.
3. 2 additional employees testified and neither were reprimanded for not participating in the costume party.

Arbitrator Seal agreed with Respondent's arguments and denied Petitioner's request for benefits. He also agreed that, even if Petitioner was not participating in a voluntary recreational activity under Section 11, Petitioner's injury was still not compensable as:

1. Risk of injury was personal, not employment related.
2. Work conditions did not significantly contribute to her injury.

Inconsistent Histories Do Matter! Ryan Dezonno Secures Appeal Victory



Associate Ryan Dezonno appealed an Arbitration Decision, and the Commission reversed it entirely, leaving our client owing next to nothing.

It was undisputed that Petitioner slipped on a metal bar and fell to the ground. She testified that she fell on her knees and then her outstretched hands. During treatment, she consistently complained about bilateral knee pain and mentioned arm pain once. Petitioner was released to full duty and was not treated for another 6 months. Upon resuming treatment, Petitioner modified her accident history to emphasize the majority of the force she felt during her fall was through her hands, which impacted her shoulder. Petitioner's doctor recommended shoulder surgery for a rotator cuff tear.

In denying the shoulder surgery, the Commission emphasized the lack of Petitioner's credibility drawn out by Ryan's cross-examination and IME doctor. Petitioner never reported shoulder pain complaints until 8 months after the accident. She could not determine the exact time when her pain started. Objective exams revealed full shoulder range of motion, which would have been impossible if Petitioner had a full rotator cuff tear. For these reasons, the Commission, in its Decision on Review, granted Respondent's Petition for Review and reversed the Arbitrator's Decision, denying the shoulder surgery and finding Petitioner to be at MMI just 4 weeks after the accident for knee contusions.

Traveling Employees

By: Rachell Horbenko
Associate



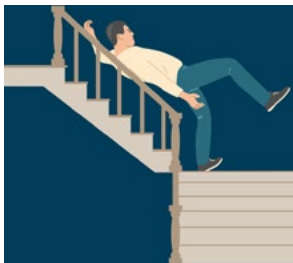
Earlier this year, the Appellate Court published an opinion which helps shape traveling employee case law.

In *Town of Cicero v. Illinois Workers' Compensation Commission*, 2024 Ill. App. (1st) 230609WC, Petitioner was hired by the City of Cicero as a blight inspector. His duties included inspecting buildings for broken

windows and the condition of paint, checking the condition of garages and lawns and inspecting properties to determine if rubbish was accumulating.

Petitioner testified that his job required him to arrive at Cicero's Town Hall every morning at 7:30 am, where he would gain access to the south entrance of the building using a key card. He would then use the south stairwell to go to the second floor where his office was located. Once he arrived in his office, he would retrieve his work phone, gather his assignments for the day and descend the south stairwell, exit through the south entrance and go to his employer-provided vehicle.

Petitioner would then drive through Cicero to identify blighted properties. Petitioner testified that throughout the day, he would be required to return to the town hall multiple times to receive work assignments and would often travel the south stairwell three to four times during a workday.



On 7/2/18, after arriving at the Cicero Town Hall for work, Petitioner spent about 20 minutes in his office and went down the south stairwell, intending to continue his workday. According to Petitioner, as he started to descend the stairs, his right foot slipped off the edge of the second-floor landing and he fell down the stairs, striking his

right side, right side of his head, right shoulder, left shoulder, neck and back. Petitioner subsequently made a workers' compensation claim.

The City of Cicero's argument was two-pronged:

1. Petitioner's injuries due to traversing stairs were a neutral risk, pursuant to *McAllister v. Illinois Workers' Compensation Commission*, 2020 IL 124828, and the injuries Petitioner sustained did not arise out of his employment.
2. Petitioner was a commuter traveling to his normal place of business in the Town Hall and did not commence his workday until he left the Town Hall again with his assignments. The City of Cicero relied on *Pryor v. Illinois Workers' Compensation Commission*, 2015 Ill. App. 2d 130874 WC for this argument. In *Pryor*, the claimant was injured when he bent over to pick up his suitcase in his personal car before embarking to his employer's facility to begin his workday.

The arbitrator agreed with the City of Cicero and found in favor of Respondent. However, on the Petition for Review, the Commission reversed the Arbitrator's Decision and concluded that Petitioner's injuries were both in the course of and arising from his employment. They reasoned that the act of descending the stairs from Petitioner's second-floor office to the exit where his vehicle was parked was reasonably foreseeable and incidental to his job duties. Petitioner's job began when he entered the building at 7:30 am to collect his assignments and cell phone, making him a traveling employee and within the scope of his employment.

Respondent then filed for review in The Circuit Court of Cook County and there the Court affirmed the Decision on Review, and the Illinois Appellate Court affirmed unanimously.

Practice Tip:

An employer may be liable for workers' compensation if a traveling employee is injured while participating in an activity that is reasonably foreseeable as related to their work travel.

Chain of Events Analysis



By: Ryan O'Malley
Associate

In *Lisa Baird v. Solace Hospice*, the Commission used the "chain of events" analysis, overruling the Arbitration Decision and awarded Petitioner benefits.

Petitioner worked for Respondent performing holistic care for hospice patients. Petitioner's responsibilities included transporting patients and feeding them breakfast, lunch and dinner. At the time of accident, Petitioner was carrying a tray of food for a patient when her left knee gave out causing her to fall and hit her knee on the floor.

The arbitrator found that Petitioner failed to prove an accident and denied the claim. The Commission overturned the Decision, stating that a preponderance of the evidence supported a work-related aggravation of a pre-existing condition under *Sisbro, Inc., v. Industrial Comm'n*, 207 Ill.2d 193 (2003). The Commission applied the "chain of events" analysis that looked at the totality of Petitioner's workday leading up to the accident.

On the accident date, Petitioner started her shift at 7:00 am and worked straight through until the injury occurring at approximately 1:15 pm. Directly preceding the accident, Petitioner had transported a patient from the salon to the dining area and was preparing their food. Petitioner then fell carrying the same food she just prepped for the patient.

The Commission relied on *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52,58 (1989), which stated that an injury is said to arise out of one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury.

The Commission also relied on *McAlister*, 2020 IL 124848 that stated a risk is incident to employment when it belongs to or is connected with what the employee has to do in fulfilling her job duties. Through this analysis, the Commission found that Petitioner had a work-related accident and awarded workers' compensation benefits.

Practice Tip:

When filing a claim with your carrier, provide a detailed timeline of Petitioner's workday events.

Terminating Employee With Pending Workers' Compensation Claim

By: Storrs Downey
Capital Member



In *Emerson v. Dart*, No. 23-3029 (7th Cir. 7/26/24), the Seventh Circuit Court held that for a former employee to establish a viable retaliatory discharge claim, more evidence is needed than just an ongoing workers' compensation claim at the time the employee was terminated.

Further, where such an employee was terminated while off for a work-related injury, this was insufficient alone to establish an inference of a retaliatory motive by the employer.

Practice Tip:

Employers should not be afraid to consider terminating employees with pending workers' compensation claims even when they are off work for an extended period of time where the reason for such termination is solely unrelated to the work injury. However, employers should also be cautioned to be certain they comply with the ADA and FMLA for any such employees on a leave of absence.

It is highly recommended to consult with the employers' labor and employment attorney before terminating such an employee.

Firm News Welcome to the Team

Please join us in welcoming our new Illinois Associate Logan March.



Logan concentrates in workers' compensation and general liability defense. Before joining Downey & Lenkov as a law clerk, Logan worked at a nonprofit medical-legal partnership focused on addressing healthcare issues through a legal approach. He also engaged in civil rights and prison reform efforts.

Jessica Jackler Named Income Member



We are pleased to announce that Jessica Jackler has been named an Income Member!

Since joining as an associate, Jessica has focused on the defense and evaluation of employment claims and various issues facing employers, consistently providing clients with cost-effective and practical strategies to mitigate employment litigation risks. Her work in drafting employment handbooks, policies, and agreements, along with her guidance in personnel management and compliance, has been invaluable. Beyond her professional accomplishments, Jessica enjoys spending time with her family, cooking and traveling.

Downey & Lenkov At Annual WCI Conference

Our Downey & Lenkov workers' compensation team was well represented at the Annual WCI Conference in Orlando. As a member firm of the Workers' Compensation Defense Institute for Illinois and Indiana, Attorneys Rich Lenkov, Kirsten Kaiser Kus, Timothy Furman and Abigail Iliovici participated in various panel presentations as well as other fun activities throughout the conference.



Wisconsin Worker's Compensation Practice

Downey & Lenkov defends and handles all types of Wisconsin Workers' Compensation claims. We continue to provide dedicated service in the defense of employers, insurers and third-party administrators with proven cost-effective results.

Should you need assistance, please contact Ryan Danahey at rdanahey@dl-firm.com or (312) 884-1093.

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CLM Focus Conference



Join Capital Members Kirsten Kaiser Kus and Michael Milstein at the CLM Focus Conference on February 11 -12, 2025 in Lake Buena Vista, FL.

Kirsten Kaiser Kus will co-present "Navigating New Trends and Risks in Work Comp Cases" on 2/11/25 at 2:30 pm EST.

Kirsten joins Evelyn Eury, Attorney Ya'Sheaka Williams and Ron Carter to discuss emerging trends and risks in workers' compensation cases. This esteemed panel will share strategies for successfully navigating these challenges while ensuring optimal outcomes.

Michael will co-present "Navigating the Risks and Rewards of AI in Claims and Litigation" on 2/12/25 at 11:15 am EST.

Michael joins Kevin Lederer and Marci Reading to explore AI's transformative impact on the claims and litigation process. This distinguished panel will discuss best practices and key considerations for leveraging AI while managing associated risks.

Register here: [CLM Focus Conference](#)

Downey & Lenkov Participates in USLI's October Stronger Together Auction

Downey & Lenkov was proud to participate in USLI's October Together—Stronger Together Silent Auction benefiting Breastcancer.org.

October Together is a month of fundraisers and events where all proceeds benefit Breastcancer.org, a non-profit organization that helps women and their families by providing expert medical information about breast health and breast cancer, as well as peer support through their large online community.

The silent auction features a variety of items donated by companies. This year, Downey & Lenkov donated "Get Cooking - Italian theme".



Downey & Lenkov and SERMA Sponsored RISE Ice Cream Social

We were thrilled to be a sponsor at the RISE Professionals Chicago Pop-Up! It was a great opportunity to connect and network with insurance professionals.



Downey & Lenkov Fall Outing

Our team took a break from the office for a fun-filled outing at Puttery Chicago. Thanks to everyone who joined in on the fun!



Downey & Lenkov Holiday Party

We're rolling into the season with style! Our team had a blast celebrating the holiday season at 10pin Bowling Lounge. Happy Holidays from all of us to you!



Tis' The Season

We'd like to pause and extend our warm wishes for a joyful holiday season and a happy New Year.

Thank you for your continued confidence and trust in our firm. We look forward to working together in 2025.

In the spirit of giving this season, we've made contributions to the Greater Chicago Food Depository, PAWS Chicago, Hostages and Missing Families Forum, American Cancer Society and Urban Autism Solutions.



Downey & Lenkov Tee Up Support as Proud Sponsors of Multiple Golf Outings



Downey & Lenkov proudly sponsored a hole for Kids' Chance of Indiana, a fundraiser dedicated to empowering the children of Indiana workers who have faced serious or fatal injuries in work-related accidents by providing them with essential college and vocational scholarships.



Downey & Lenkov sponsored a foursome at La Rabida's 30th Annual Golf Classic. La Rabida Children's Hospital treats children with chronic or complex needs. More than 250 golfers hit the links to support their patients and families. Capital Member Jeanne Hoffman and Special Counsel Bob Bramlette were both in attendance.



Downey & Lenkov was proud to sponsor a hole at the annual Valparaiso Pop Warner Golf Outing. Funds from this outing are used to make sure the football and cheer athletes have safe equipment and also provides financial registration assistance to those athletes in need as every child deserves an opportunity to play sports.

DL Webinars

Recent Webinars

- Eerie Lessons in Illinois Workers' Compensation
- Always Be Closing – Top Indiana Workers' Compensation Tips
- Ask Us Anything
Indiana Forms: Taking A Claim From Start to Finish
- Top 10 Red Flags
- Beyond the Basics: Advanced Approaches to Workers' Compensation Billing
- Hidden Treasures Revealed Within the Illinois Workers' Compensation Act & Rules
- IL, IN and WI Workers' Compensation Liens & Subrogation Recovery: There's More Than Meets the Eye!

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

Wisconsin Worker's Compensation – Investigation Strategies

Wisconsin Worker's Compensation Investigation Strategies

11/14/24
Ryan Danahey
Bob Dean

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What Holiday Movies Teach You About Handling Workers' Compensation Claims

WHAT HOLIDAY MOVIES CAN TEACH YOU ABOUT HANDLING WORKERS' COMPENSATION CLAIMS

Brian Rosenblatt
Ryan Dezonno
12.18.24

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Speaking Engagements

SERMA Founder & CEO Rich Lenkov was a featured speaker at the Stadium Managers Association Regional Forum at Guaranteed Rate Field, home of the Chicago White Sox yesterday! Rich discussed "Top 5 Legal Issues Every Stadium Manager Needs To Know."



Upcoming Speaking Engagements

Join SERMA Founder & CEO Rich Lenkov at the Stadium Managers Association Annual Seminar from February 9 to 13, 2025, at the Omni Rancho Las Palmas in the Coachella Valley, CA. For more information, please visit: <https://bit.ly/3BK5CdC>



The Sports & Entertainment Risk Conference



Volunteers & Sponsors needed

LEGAL FACE-OFF

10TH ANNIVERSARY



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.



- Erika Harold on bullying in the legal profession

Executive Director of Illinois Supreme Court Commission on Professionalism

“When you consider the legal profession and the values it is meant to uphold—such as quality, due process and fostering public confidence in the rule of law—it becomes clear that if the profession itself fails to embody these principles, it undermines its essential role and function in society.”

[Listen to the full episode here](#)

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Recent Topics

- Transgender Healthcare Ban
- Hunter Biden
- Immigration Enforcement
- Commutations
- Mayor Eric Adams

Recent Guests

- Jonathan Thompson
 - National Sheriffs' Association Executive Director and CEO
- Brittany Patterson
 - Mother arrested in Georgia
- David D. Cole
 - Georgetown Law Professor and former ACLU Legal Director
- Jill Barton
 - University of Miami School of Law Professor and Award-Winning Journalist

[Brittany Patterson, immigration enforcement, lawyer bullying and much more](#)

[Love on Hunter Biden Pardon, Cole on SCOTUS and Transgender Ban, Barton on the Supreme Guide to Writing, and Much More](#)

[Netanyahu arrest warrant, slip & fall scams, \\$70,000 engagement ring dispute and much more](#)

[Painter on Trump's legal proceedings, Gulati on Study of Trump Appointed Judges, Bergman on AI and Teen Suicide, and Much More](#)



Legal Face-Off's Legal Grab Bag

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