BRYCE DOWNEY & LENKOV LLC

General Liability Update
December 2013

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Bryce Downey & Lenkov Case Results

Rich Lenkov and **Rick Warner** successfully defended Stanley Steemer International, Inc. in a trip and fall tried before a jury in Cook County.

Plaintiff alleged that Stanley Steemer negligently caused its vacuum hose to lie across Plaintiff's concrete patio, causing him to trip and injure his shoulder. Rich and Rick successfully argued that Plaintiff was contributorily negligent and the jury allocated 50% fault to plaintiff. Plaintiff asked the jury for in excess of $60,000 but was awarded only $2,845.82.

Storrs Downey won a good faith settlement motion on behalf of his client, a third party defendant employer, who was sued for contribution arising out of an accident involving a forklift truck that rolled off a loading dock causing serious neck and back injuries to the Plaintiff employee. In addition to getting the third party claim against the client dismissed, we achieved a $1 settlement for permanent disability involving a substantial workers' compensation exposure and recovered a significant amount of the client's workers' compensation lien.

Rich Lenkov and **Brian Hindman** won a Motion for Summary Judgment on behalf of The Jump Up, Inc., a children's inflatable play facility. Plaintiff, a mother, sued Defendant for injuries she sustained while exiting an inflatable structure after assisting a child. Plaintiff alleged that the structure "collapsed" beneath her, causing her to fall forward on her hands and knees.

Defendant argued that Plaintiff waived her right to sue by signing a permanent waiver which stated in part: "I, for myself, my child(ren) and on behalf of my heirs, assigns, personal representatives and next of kin, hereby waive, release, and hold harmless… with respect to any and all claims for personal injury, disability, death, or loss or damage to person or property…"

The court agreed with Defendant's argument that the waiver was enforceable and that Plaintiff's fall was exactly the type

of fall that was contemplated by the waiver's clear language. The court granted Defendant's Motion for Summary Judgment.

Upcoming Seminars

- On **1/21/14 Jeff Kehl** will present a FREE WEBINAR **"NTSB Accident Investigations"** Click Here for more information and to register

- On **4/9/14** and **4/10/14**, Rich Lenkov will chair a roundtable session entitled **"Restaurant Liability: from A-Z"** at the Claims & Litigation Management Conference in Boca Raton, Florida and Storrs Downey will be presenting "Non Workers' Compensation Issues That Every Workers' Compensation Practitioner Needs To Know"

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Seventh Circuit Requires Indiana Insurer to Show Harm from Untimely Notice

In *National Union Fire Insurance Co. of Pittsburgh and Lexington Insurance Co. v. Mead Johnson & Company LLC,* ___ F.3d ___ , 12-3478 and 13-1526 (October 29, 2013), the Seventh Circuit Court of Appeals held that an insurer who is not notified of a claim until after trial must still show harm from the untimely notice in order to be excused from covering the judgment.

In the two companion cases, the insured did not notify either National Union or Lexington Insurance that there was a claim against it for false advertisement until after the case had proceeded to trial and the insured was hit with a $13.5 million verdict.

The U.S. District Court for the Southern District of Indiana entered summary judgment in favor of the two insurance companies in their declaratory judgment actions, finding that the notice was untimely. On appeal, the Seventh Circuit held that under Indiana law, an insurer cannot reject a late claim unless it can show the delay inflicted cost on the insurer. Indiana law recognizes a presumption of harm to an insurer where it is deprived of the opportunity to control the defense, but that presumption was rebutted by the fact that National Union would have used the same defense firm the insured used and it was presumed that Lexington would have done so also. Beyond that, neither insurer came forward with evidence that it would have been able to obtain a better verdict if they had controlled the defense.

Because the issue of whether the insurers actually suffered any harm as a result of the late notice was not clear from the record before it, the court reversed and remanded the case for trial.

Practice Tip:

Under Indiana law, never presume that late notice -- even notice that does not occur until after trial -- will excuse an insurer's obligation to cover the loss. An insurer must be able to articulate economic harm actually suffered by not being able to control the defense. While the presumption of harm becomes stronger the longer the delay, *National Union* warns that some actual harm must still be suffered with post-trial notice.

Are Your Claim Notes Privileged? Part Two: Indiana and Federal Law

In our last newsletter, we examined the attorney-client privilege, insurer-insured privilege, and the work product doctrine as applied in Illinois courts. In this issue, we look at how Indiana and federal courts apply these privileges and why insurers need to be wary in all three jurisdictions.

Indiana Attorney-Client Privilege:

Like Illinois, Indiana treats communications between an attorney and client that are intended to be kept confidential and which are made for the purpose of obtaining or providing legal advice as privileged and not subject to disclosure. However, recently the Indiana Court of Appeals held that the attorney-client privilege did not apply to attorney communications contained within a report to a corporation's special litigation committee.

In *TP Orthodontics, Inc. v. Kesling,* 995 N.E.2d 1057 (Ind. App. Sept 3, 2013), three shareholders brought a derivative action against the corporate president. The corporate board of directors formed a special litigation committee to determine whether the corporation should pursue the derivative action against the president. Under Indiana law, if the committee rejected the derivative action in good faith, then the shareholders' action has to be dismissed. In *Kesling*, the special committee conducted an investigation and prepared an extensive report before determining that the derivative action should be rejected. In response to the motion to dismiss, the shareholders sought production of the report the committee had prepared. The committee asserted that the attorney-client privilege prevented the disclosure of much of the report that contained communication by or with the committee's attorney.

The trial court ordered the production of the entire report, including the privileged communications. On appeal, the court observed that, in this instance, the attorney-client privilege was waived because the report was necessary to the litigation and its production was required out of fairness. In short, without the report, there would be no basis for determining if the corporate decision to reject the derivative claim was made in good faith.

Kesling should serve as fair warning that the attorney-client privilege is not inviolate and may be waived by the court due to public policy or fairness considerations. As discussed below, this is not the only privilege that evaporates when the substance of the information contained in the documentation goes to the heart of the claim.

Indiana Work Product Doctrine:

In Indiana, the work product doctrine is set out in Trial Rule 26(B)(3) which provides, in part:

> … [A] party may obtain discovery of documents and tangible things otherwise discoverable … prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and he is unable without undue hardship to obtain the substantial equivalent of the materials by other mean. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other

representative of a party concerning the litigation.

In *Auto-Owners Ins. Co. v. C&J Real Estate, Inc.,* 996 N.E.2d 803 (Ind. App. Aug 15, 2013), a property owner sought to have hail damage to its building repaired at the expense of its insurer. When the insurer denied the claim, the owner sued the insurer for bad faith. In the course of discovery, the owner sought identification and description of prior hail claims for similar properties. The owner also sought disclosure of the insurance reserve information for the owner's hail damage claim. The insurer objected claiming that such information was privileged under the work product doctrine because it included the mental impressions of persons handling the claims and contained information developed in anticipation of litigation and contained assessments of liability and insurance reserve amount. The trial court ordered the production of the requested information and the insurer appealed.

The Indiana Court of Appeals affirmed the trial court and held that the insurer was obligated to provide the information about prior claims. According to the court, all of the information sought was directly relevant to the issue of the insurer's good faith. With regard to the reserve amount, the court held that prior cases in which the work product doctrine prohibited disclosure of loss reserves were distinguishable because they concerned negligence, not bad faith, and involved requests for information pertaining to third parties. Here, however, the information regarding reserves pertained to the owner's own policy and not how the insurer set reserves on claims of third parties. Because evidence of the loss reserve was relevant to the issue of the insurer's bad faith and such evidence was only in the hands of the insurer, it was discoverable under Trial Rule 26(B)(3).

Auto-Owners, like *Kesling,* demonstrates that Indiana courts will disregard privileges where a strong notion of fairness and relevancy exist, even when the result may mean the disclosure of very sensitive claim information. Where the mental impressions of the insurer are at issue, it would appear that records evidencing those mental impressions are potentially discoverable.

Indiana's Insurer-Insured Privilege:

Obviously with the exception of cases involving bad faith and fair dealing, Indiana actually has a much broader insurer-insured privilege than Illinois. In *Holland,* the Illinois Appellate Court held that the insurer-insured privilege did not protect workers' compensation claim notes because they were not perceived as being made in anticipation of the litigation in which discovery was being sought. In Indiana, the privilege extends to communications between an insured and his insurer. *Richey v. Chappell,* 594 N.E.2d 443 (Ind. App. 1992). In fact, Indiana courts have held that this doctrine prevents a third party from obtaining statements made by an insured to his insurance agent even when the underlying incident is not the primary subject of the litigation in which the disclosure is sought. Indiana courts have stressed that it is essential that an insured be allowed to make a full statement to its insurer about an occurrence without the fear that the statement will be used by a third party. *Steinrock Roofing & Sheet Metal, Inc. v. McCulloch,* 965 N.E.2d 744 (Ind. App. 2012); *Strack & Van Til, Inc. v. Carter,* 803 N.E.2d 666 (Ind. App. 2004).

The Federal Privileges:

In federal courts, Rule 501 of the Federal Rules of Evidence instructs the courts to apply the attorney-client and insurer-insured privileges that exist under state

law. The work-product doctrine, however, is its own creature in the federal system. The doctrine is now contained in Rule 26(b)(3) of the Federal Rules of Civil Procedure.

Like Illinois and Indiana, the federal work product doctrine protects those documents prepared in anticipation of litigation or trial by or for another party or its representative. Like Indiana, the federal doctrine can be set aside where the party seeking discovery can demonstrate that the information sought is crucial to the case and cannot be obtained in any other manner without undue hardship. *Logan v. Commercial Union Ins. Co.,* 96 F.3d 971 (7th Cir. 1996). Unlike Illinois and Indiana, however, the federal courts in the Seventh Circuit do not apply the privilege to litigation-related investigations that are not "attorney led." In *Sandra T.E. v. South Berwyn School Dist.* 100, 600 F.3d 612 (7th Cir. 2010), the court held that the work product doctrine applied to documents prepared by a law firm which had been hired to conduct an investigation. According to the court, the work product doctrine "applies to attorney-led investigations when the documents at issue can be fairly said to have been prepared or obtained because of the prospect of litigation." 600 F.3d at 622.

Summary:

If the contest is which state has the most protective privileges, there is no clear winner. The attorney-client privilege goes to Illinois. It exists in all three forums and all three forums strictly construe it, but Indiana will waive it out of a sense of "fairness" as in *Kesling*. Illinois would seem to have the more expansive work-product doctrine since it would apply to the litigation related work of non-attorneys as long as it is intended to be given to an attorney, but Indiana seems to be more protective since it applies to the litigation related activities of non-lawyers as long as it is done in anticipation of litigation. Both Illinois and Indiana recognize the insurer-insured privilege, but neither State makes the privilege a certainty. After *Holland*, insurers need to be concerned that frank comments in claim files may be discoverable in unrelated Illinois litigation. After *Auto-Owners* and *Kesling,* insurers should be concerned that the Indiana courts will "waive" the insurer-insured privilege in similar circumstances in which they waived the other privileges.

Proposed Hike in Trucking Insurance Stalls

The so-called SAFE HAUL ACT, introduced in Congress in July as H.B. 2730 and which proposes to raise the financial responsibility for motor carriers from $750,000 to $4.422 Million was referred to the House Subcommittee on Highways and Transportation has not moved further. As reported in our September General Liability Update newsletter, the bill only has a 7% chance of getting through the Republican-controlled House Transportation and Infrastructure Committee and only a 2% chance of getting through the Republican-controlled House and enacted.

Illinois Appellate Court Confirms A Narrow Application to "Dual Capacity" Doctrine

The Illinois Appellate Court for the First District recently decided an interesting "dual capacity" case. In *Garland v. Morgan Stanley, et al.*, ____ Ill. App. 3d ____, 1-11-2121 (1st Dist. Sept 12, 2013), the court disallowed a dual capacity argument

pressed by the widow of an employee killed in a plane crash. The decedent was in a private plane piloted by a co-worker. They and other employees of Morgan Stanley had been to Kansas to see a prospective customer. The crash occurred upon the return trip in Illinois.

The widow of one of the employees filed a tort action in the Circuit Court of Cook County, Illinois. When Defendant/Employer, Morgan Stanley, invoked the exclusive remedy provision of the Illinois Workers' Compensation Act, Plaintiff countered with a dual capacity argument. She asserted that Morgan Stanley had two capacities – one as employer, and one as a provider of air transportation. The trial court granted Defendant's motion and accepted its argument. The dismissal of Plaintiff's action was affirmed by the Illinois Appellate Court, finding that the dual capacity doctrine did not apply.

The dual capacity doctrine essentially holds that the exclusive remedy principle may be avoided if an employer caused injury in a second capacity that confers upon it the obligations independent of those imposed on a mere employer. The court noted that in Illinois for this defense to be successful, it requires that the injured party show the employer was acting in two capacities: first as an employer and second as an entity acting as a separate legal persona from its role as employer. The court noted that this persona needs to be so completely independent from and unrelated to the actions as employer that the law would recognize that the second activity as being done by a separate legal person.

The court found the case did not meet either of these criteria. The court noted that the decedent was an employee of Defendant and embarked upon a regular business trip. The court noted that merely reimbursing its employees for use of their private aircraft did not create a second legal persona, finding that few employees had pilot licenses and fewer still had requested reimbursement for flight expenses. This did not rise to the level of putting Morgan Stanley in the air transportation business.

The case is instructive not so much for its holding, but to confirm that the courts will continue to take a very narrow view of the dual capacity doctrine and will continue to preserve the protections put in place by the exclusive remedy of the Workers' Compensation Act.

Practice Tip:

It is important to know, that the dual capacity exception to the employer's exclusive remedy exists. When a claim or complaint clearly names the employer in a non-Workers' Compensation setting, consideration of whether the claimant may be tacitly invoking the doctrine must be given. Although its application is quite narrow, its application can provide significant problems to employers and employers liability insurer.

Mediation: Benefits and Strategies

On 9/20/13, Judge A. Ward (Ret.) of ADR Systems and the attorneys of Bryce Downey & Lenkov met to discuss the benefits of and strategies for mediation, particularly in general liability cases involving workers' compensation liens and employers named

as third party defendants. This article highlights some important points discussed that may be helpful to your practice.

Helpful tips for lienholders to keep in mind before and during mediation:

1. Flexibility is the key to successfully mediating a case. Approach the mediation with "targets," rather than hard line numbers
2. As a lienholder, it is important to advise the Plaintiff's attorney of your lien amount as it may affect timely settlement negotiations
3. Ensure that you have up to date lien figures and breakdowns (medical, TTD, etc.) available at the mediation

Waiver

As a lien holder, you never want to waive your lien. But what do you do if the mediator asks you to waive your lien to facilitate settlement? Judge Ward suggested that a party need not give up its lien, but can still use language indicating that its position is flexible in order to facilitate settlement. For example, responding to the mediator with language such as "I don't think there is anything to worry about" allows you to indicate to the mediator that you have some flexibility without waiving the lien entirely. Should waiver be something you wish to consider, remember you need to receive something in exchange for waiver.

Practice tip:

Mediation has been a helpful tool in various areas of litigation and should also be considered in workers' compensation cases involving high-exposure claims.

Please contact Storrs Downey regarding any questions you may have regarding whether mediation may be appropriate to assist with resolution of your case.

Come Join the Party

Although Indiana does not recognize contribution actions in most forms of tort liability lawsuits as the state generally recognizes several liability only and not joint and several liability, pursuant to Statute, I.C.34-51-7-16, a defendant is allowed to bring a non-party action against parties whom the plaintiff either could have or was precluded from naming as a direct defendant. This includes naming the employer as a non-party defendant. By bringing such an action a defendant has an opportunity to possibly have a jury spread the loss and allocate less fault to it.

This is exactly what occurred in the case of Robert Fechtman, as Guardian of the Estate of *Roberto Hernandez v. United States Steel Corporation* 45A04-1209-CT-474. A contractor employer, Rogers & Sons, was hired to work at a U.S. Steel plant in Gary, Indiana. One of its employees, Robert Hernandez, suffered severe carbon monoxide poisoning after the area where he was working had a significant blast of such gas released into it for a dust catcher from a blast furnace. U.S. Steel had repeatedly notified all personnel over a public address system that the dumpcatcher was about to be dumped.

U.S. Steel was sued by plaintiff and in turn U.S. Steel named plaintiff's employer, Roger & Sons, as a non-party defendant.

The jury returned a verdict exceeding $4.65 million and allocated fault as follows: 80% to employer, 15% to U.S. Steel and 5% to plaintiff. Accordingly, U.S. Steel was liability for less than $700,000 of the verdict.

Practice Tip:

The *Hernandez* decision, and more specifically the underlying jury verdict, reinforces the importance of a direct defendant naming and adding to a lawsuit any potential third party defendant who might be partly culpable for the loss sustained by the plaintiff.

Who Let the Dog Out?

In the highest or one of the highest Illinois verdicts or settlements ever for a dog bite injury, a 15 year old male received $1.125 million settlement for his lawsuit brought in Lake County, Illinois. While riding his bicycle the young man was attacked by Kong, defendant's 120 lb. Bullmastiff dog. Over the 10 minute attack, the teenager sustained several punctures and lacerations to his head (requiring plastic surgery), legs, thighs, buttock and other body parts and developed PTSD. He had $150,000 in medical specials. It was reported that the dog had a prior bit history and numerous previous animal complaints. As a general concept, a dog owner can escape liability for a first dog bite but not for an unprovoked second biting of a victim.

Hazing Gone Wrong

A National fraternity's rules and enforcement procedures, applicable to the alcohol and hazing policies at one of its local chapters, created a genuine issue of material fact regarding whether it had assumed a duty to protect the pledges of its local chapter from the dangers of hazing and alcohol and whether an agency relationship existed between it and its local chapter, thus precluding the entry of summary judgment for the national fraternity.

In Smith v. Delta Tau Delta, 988 N.E.2d 325 (Ind. Ct. App. 2013), Smith, a freshman college student, and pledge at the fraternity, Delta Tau Delta, died as a result of drinking too much alcohol during the course of Homecoming activities at a chapter house at Wabash College in Crawfordsville, Indiana. His parents brought a wrongful death action against national governing organization for the fraternity. Plaintiffs alleged Delta Tau Delta was liable for violations of hazing and dram shop laws under an agency theory. Further, Plaintiffs included a negligence count based on a theory of assumed duty. Delta Tau Delta moved for summary judgment on all three counts: hazing, dram shop, and negligence. The trial court granted summary judgment and Plaintiffs appealed.

The designated evidence, considered by the Court of Appeals, showed that a condition of membership with the local chapter included participation in drinking alcohol with "fraternity families" and in participating in activities such as a "Hell Week" where fraternity pledges were subjected to hazing and sleep deprivation. Smith was no exception. During homecoming weekend, Smith drank heavily and was summoned to drink with his fraternity family. The night before he died, Smith became so inebriated that he fell down some stairs, could not walk, and could barely talk. He was carried to his room by other fraternity members who then commanded another freshman pledge to "keep an eye on him". The next morning Smith was found dead, lying in a pool of his own vomit. Subsequent testing showed he had a BAC of .40%.

The designated evidence also showed that Delta Tau Delta had enacted rules and responsibility guidelines forbidding hazing and warning of the dangers of excessive alcohol consumption. Pledge drinking

activities were expressly prohibited. These rules and guidelines included not only prohibitions against the foregoing, but also required positive steps and actions by its local chapters, including participation by local chapters and their members in alcohol education programs and the revision of local chapter guidelines to bring them into conformity with the national organization.

Further, the national organization of Delta Tau Delta had enforcement and sanctioning powers at its disposal for those local chapters that did not comply with the national organizations requirements. These powers ranged from suspending a local chapter or its members, issuing fines, imposing educational programming, and requiring that a local chapter provide verification of its compliance with the national Delta Tau Delta organization. Additionally, chapter advisors were often deployed to a local chapter house and were expected to report violations of hazing and alcohol policies to the national fraternity. Such a chapter advisor was actually present at the local chapter at the time of Smith's death.

In reversing the trial court, the Court of Appeals found that the foregoing rules and guidelines were not, "mere guidelines as would be understood in common parlance in the sense of being voluntary." Rather, the Court of Appeals characterized the forgoing as a sophisticated compliance and enforcement mechanism that ensured compliance from local chapters. While the Court of Appeals did not go so far as to say that such mechanism established an assumption of duty as a matter of law, it did find that a genuine issue of material fact existed regarding whether Delta Tau Delta's influence over the local chapter was sufficient to find an assumption of duty. Conflicting reasonable inferences existed that made the grant of summary judgment on that issue inappropriate.

Further, the Court of Appeals found that the evidence gave rise to a genuine issue of material fact regarding whether Delta Tau Delta had apparent authority over the local chapter. The Court of Appeals found that the local chapter's pledge recruiting activities served the interests of the national organization because member recruitment represented the "life-blood" of such organizations. Therefore, summary judgment was inappropriate because there was a genuine issue of material fact regarding whether an agency relationship existed between Delta Tau Delta and its local chapter.

Practice Tip:

National organizations that impose rules of conduct and oversight need to be mindful that their actions may result in liability.

Camper v. Burnside: A Further Expansion of the Anti-Indemnity Statute

The First District of the Illinois Appellate Court recently issued an opinion further restricting the use of indemnity clauses in construction-related contracts. In *Camper v. Burnside Construction, Inc.*, (lst Dist. October 28, 2013), Plaintiff, sustained injuries while working in a manhole on a construction worksite. He sued two contractors in construction negligence, and also sued Welch, the manufacturer of the manhole, under theories of strict product liability. Subsequently, Welch filed a third-party action against Camper's employer, Neptune, for both contribution and contractual indemnity.

The Agreement between Neptune and Welch for the provision of the manhole assembly in question contained typical indemnification language. Neptune moved to dismiss the indemnification claim under the Illinois Anti-Indemnity Statute which provides in its entirety:

> With respect to contracts or agreements, either public or private, for the construction, alteration, repair or maintenance of a building, structure, highway bridge, viaducts or other work dealing with construction, or for any moving, demolition or excavation connected therewith, every covenant, promise or agreement to indemnify or hold harmless another person from that person's own negligence is void as against public policy and wholly unenforceable.

The critical issue was whether providing and delivery of the manhole was an activity covered by the Statute. The appellate court noted that Welch manufactured and delivered the manhole by unloading it from a truck and setting it on the ground at the construction site. The court then held that these activities performed by Welch constituted "other work dealing with construction" and "for moving . . . connected therewith" to be within the scope of the Anti-Indemnity Act. Thus, the indemnification agreement was void as against public policy and unenforceable against Neptune in favor of Welch.

This case must necessarily be considered an expansion of the protection offered contractors from indemnification provisions presented by material and equipment suppliers. As a practical matter, the "contracts" which can create these rights are often signed by non-management personnel at the job site, who believe that they are merely accepting a delivery of equipment. Although there was very little explanation or rationale stated for the decision reached in the *Camper* opinion, it certainly supports the argument that where a supplier delivers equipment to a job site knowing that it is to be used for construction, a purported indemnification agreement in favor of the supplier will be invalid.

Practice Tip:

Many of our clients have been advised that -- to the extent there is a choice -- any agreement containing indemnification language should simply not be signed. With the recognition that that is not always possible, the chances become increasingly good that the indemnification language relating even to the peripheral aspects of construction may well be invalid. From the standpoint of contractors and suppliers, it is important to know which agreements are clearly unenforceable and which may not be. The same is true with respect to architects, engineers, insurers, developers and even lenders.

Bryce Downey & Lenkov is (Still) Growing!

Bryce Downey & Lenkov is pleased to announce the addition of Daniel Zlatic to our rapidly expanding Indiana office. He concentrates his practice on the defense of insurers and their insureds in workers' compensation and personal injury matters. Dan has successfully completed in excess of twenty first-chair jury trials.

Giving Back

A Very BDL Halloween…

How often do you get to sit down with Gene Simmons, Lady Gaga, Freddy Krueger, Poison Ivy and Khalessi, Mother of Dragons? Only at the Bryce Downey & Lenkov Halloween party! The annual firm costume contest saw everything from zombies to the guy from the Geico Money Man. This year's winners were Lady Gaga and Poison Ivy. Click here to view more photos on our Facebook page.

Happy Halloween from Bryce Downey & Lenkov!

Rich Lenkov & Rick Warner Scare for Charity

For the second year in a row, BDL attorneys Rich and Rick recently helped scare people at Fear City Haunted House. Fear City, one of the largest haunted houses in the Midwest, donates a portion of its proceeds to the National Multiple Sclerosis Society.

Race Judicata 2013 5k!

Every year, Bryce Downey & Lenkov employees participate in Race Judicata in support of Chicago Volunteer Legal Services Foundation. CVLS is the first and pre-eminent pro bono civil legal aid provider in Chicago. On 9/12/13, 33 runners from Bryce Downey & Lenkov participated in the race. Brian Hindman came in first for Team BDL with a time of 24:30.

Team BDL - Ready to Hustle

On 4/13/14, Team BDL will climb 94 floors to help raise awareness and funds for lung disease research, education and advocacy. Last year 19 members of our team participated in the Respiratory Health Association's Hustle up the Hancock. This year Team BDL is 24 strong!

Did you know? 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, at jklika@bdlfirm.com.

IL Workers' Compensation

- **Guns at Work: What Employers Need to Know**
- **Is a Petitioner Entitled to TTD When on FMLA?**

Labor & Employment Law

- **US Supreme Court Defines "Supervisor" for the Purposes of Employment Discrimination and Harassment Litigation**
- **Timing of Terminating Injured Worker Important in Retaliatory Discharge Cases**

Corporate & Construction

- **Trade Secrets: If it's not a "Trade Secret", How Do I protect it?**
- **Federal, State and Local Incentives Available for Businesses**

Contributors to the September 2013 General Liability Update

Bryce Downey and Lenkov attorneys who contributed to this update were Jeffrey Kehl, Storrs Downey, Maital Savin, Frank Rowland and Daniel Zlatic.

Free Seminars!

Our attorneys regularly provide free seminars on a wide range of general liability 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
- 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:

- *Curbing Litigation Expenses*
- *Expert Retention and Usage*
- *Possible Termination of Injured Worker: Employer's Rights and Obligations*
- *The Mediation Process*
- *Top Twenty Myths & Realities on Illinois/Indiana Premises Liability Laws*
- *Comparison of Illinois and Indiana Products and Liability Laws*
- *Illinois Premises Liability*

If you would like us to come in for a free seminar, please email Storrs Downey at sdowney@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

The attorneys at Bryce Downey & Lenkov are committed to keeping you updated regarding the latest developments in workers' compensation law in Illinois and Indiana. If you would like more information on any of the topics discussed above, or have any questions regarding these issues, please contact Storrs Downey or Jeffrey Kehl at 312.377.1501 or any member of the general litigation team.

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