BRYCE DOWNEY & LENKOV LLC

General Liability Update
July 2014

Case Results	1
Another Fraternity Win in Indiana	1
Illinois Appellate Court Holds Amusement Park Owner Not Liable for Death of Worker Who Fell While Dismantling Ride Structure	2
Indiana Appellate Court Orders Dismissal of Products Liability Suit Against Indiana Manufacturer Under Doctrine of *Forum Non Conveniens*	4
Illinois and Indiana Courts Address Sanctions	5
Illinois Appellate Court Holds Plaintiff's Pursuit of Discovery Trumps Defendant's Effort to Expedite Summary Judgment	7
Indiana Supreme Court Applies Fraudulent Concealment Statute to Wrongful Death Action	9
Upcoming Seminars	9
Recent Seminars	10
FREE Webinars	10
Bryce Downey & Lenkov is Growing!	10
Giving Back	11
Around the Office	12

Bryce Downey & Lenkov Case Results

Jeanne Hoffman recently argued successfully for the dismissal of a multi-count class action suit brought in DuPage County against a homeowners' association. Jeanne convinced the court to dismiss the entire action just prior to a scheduled evidentiary hearing on Plaintiffs' petition for a preliminary injunction. The court dismissed most of the counts of Plaintiffs' complaint with prejudice, leaving Plaintiffs with the task of trying to properly replead only a few counts.

Another Fraternity Win in Indiana

The Supreme Court of Indiana has again held in favor of a national fraternity in a serious hazing episode occurring at Wabash College. In *Smith v. Delta Tau Delta*, 2014 WL 2210511 (Ind. May 28, 2014), the court considered a wrongful death action brought by the parents of a Wabash college student. Although the specific facts are not detailed in the opinion, the case involves a purported hazing episode which resulted in the death of a pledge of the defendant fraternity due apparently to excessive alcohol consumption. The case was brought in three counts against the national fraternity: 1)Negligence *per se* for engaging in hazing; 2)Negligence in furnishing alcoholic beverages to a minor; and, 3) Breach of assumed duties of protecting pledges from hazing and excessive alcohol contribution and to render aid to third parties.

In affirming the trial court's entry of summary judgment on behalf of the national fraternity, the Supreme Court of Indiana essentially followed the same framework as it used in disposing of similar claims in *Yost v. Wabash College*, decided approximately four months ago. (See discussion of *Yost* in our March 2014 newsletter). The critical factor found by the court was the absence of evidence indicating that the national fraternity had a right to

exercise day-to-day oversight in control of the local fraternity and its members. As in *Yost*, the national fraternity issued policies on hazing and responsible drinking, which included penalties for infractions of the policies and the plaintiffs argued that the broad policies of the national fraternity and its enforcement rights created both an agency relationship and a known risk assumed by the national.

In disposing of the agency and assumed control arguments, the court noted that the fraternity had no right to control the local chapter members' personal actions or behavioral duties. Interestingly, the court noted that the national fraternity had broad enforcement powers against the local chapter for violation of national policies. However, these enforcement powers were *remedial only*. In essence, the court found that the right to punish the local chapter for transgression of the national fraternity's policies *after the fact* did not establish sufficient "control" to provide a basis for liability.

Thinking Point:

Although both *Smith* and *Yost* cases deal with Indiana fraternities, they treat general issues of law on agency and alleged breaches of assumed duties with respect to national fraternities. Accordingly, even in cases outside of Indiana, these opinions are very persuasive authority for those arguing on behalf of national fraternities. It should be noted that the Supreme Court of Indiana has now ruled in favor of national fraternities in cases involving alcohol over-indulgence, physical hazing, and date rape.

Illinois Appellate Court Holds Amusement Park Owner Not Liable for Death of Worker Who Fell While Dismantling Ride Structure

The Illinois Appellate Court recently affirmed a lower court decision that a property owner is not vicariously liable for the negligence of its contractor for injuries to the contractor's employee where it does not retain sufficient control over the operative details of the contractor's work. In *Donna L. Lee v. Six Flags Theme Parks, Inc.*, 2014 IL App (1st) 130771 (May 9, 2014), the court held that there was a lack of evidence as to any form of control as to raise a genuine issue of material fact on the issue of direct liability or premises liability by the employer. The case clarifies the scope of the "retained control" exception to the longstanding principle that one who employs an independent contractor is not liable for the acts or omissions of the independent contractor.

The case arose following the death of Thomas Lee, a heavy equipment mechanic for contractor Campanella & Sons. Campanella had been contracted by Six Flags Theme Parks, Inc. (Six Flags) to dismantle its "Splash Water Falls" amusement ride by disconnecting and removing the structural steel. Thomas and his co-workers disconnected and removed a motor on the ride platform leaving an opening forty-three (43) feet above the ground which was not covered or barricaded. In the process of preparatory work involving connecting cables from a crane to the equipment, Thomas fell through the opening created by the removal of the motor from the platform and died.

Plaintiff filed a wrongful death suit against Six Flags in Cook County on theories of construction negligence and premises liability. Plaintiff alleged that Six Flags, as the theme park owner, (1) held sufficient control over the

means and methods of the safety aspects of the project to incur vicarious liability for the negligence of Campanella; (2) had actual and constructive knowledge of the hazardous condition and failed to exercise its supervisory control with reasonable care as a precondition for direct liability; and (3) knew or should have known that the condition involved a reasonable risk of harm to invitees for premises liability.

Six Flags moved for summary judgment arguing that it could not be vicariously liable for the negligence of Campanella because it did not retain any control over the means and methods of work on the project and was completely unaware of the hazard created shortly before Thomas' death. The trial court agreed and Plaintiff appealed.

The first issue before the appellate court was whether a genuine issue of material fact existed regarding the extent of Six Flags' retained control over the job that Thomas was performing. Identifying three types of control that could result in vicarious liability on the part of an owner, the court held that Six Flags did not have sufficient control to impose liability.

As to *contractual control*, the court reasoned that the language in the Agreement between Campanella and Six Flags made Campanella solely responsible for the construction means, methods, techniques, sequences, and procedure for the work Thomas performed. Additionally, Campanella was required to provide and pay for all labor, materials, equipment, and services necessary for the proper execution of the work and was responsible for OSHA compliance. In the court's view, these provisions removed any contractual control over Campanella's performance of the work.

With regard to *supervisory control*, the court recognized that pervasive supervision and monitoring may lead to the imposition of a duty, but Campanella was not required to submit daily work reports and Six Flags representatives only visited the site to check on the progress of the project. Thus, Six Flags did not exert supervisory control over the site to sufficient to trigger vicarious liability for the negligence of Campanella.

The court also found that Six Flags did not exercise *operational control* such that Campanella was not free to perform its work in its own way. The evidence indicated that Thomas was not following any instruction from Six Flags in performing his work at any time and Six Flags personnel were not on site at the time of the incident.

On the issue of direct liability, the court found that Six Flags did not supervise the job, conduct regular safety meetings, or exercise authority to stop Campanella's work. There was no evidence presented that Six Flags knew that the platform would be removed or was even aware that a hole would be created in doing so. The court concluded that there was no evidence which would establish that Six Flags personnel knew or should have known Campanella was performing its work in an unsafe manner or creating a hazardous condition so as to be liable for direct negligence.

Having found that Six Flags had no actual or constructive knowledge of a dangerous condition, the court also disposed of the premises liability claim on the same reasoning as the direct liability issue. It noted that a possessor of land can only be liable for physical harm caused to his invitees by a dangerous condition on the land *if* he knew or should have known that the condition involved a reasonable risk of harm. There being no finding of actual or constructive knowledge, summary judgment

was proper as to Plaintiff's claim of premises liability against Six Flags.

Thinking Point:

Owner liability for injuries to contractor and subcontractor employee injuries resulting during construction activities will most often hinge on the extent of the owner's control. Contractually requiring contractors to comply with safety regulations, limiting regular site visits to assessment of work progress, and allowing contractors to determine the means and methods of performing work are three very important ways to for owners to avoid liability for construction related mishaps.

Indiana Appellate Court Orders Dismissal of Products Liability Suit Against Indiana Manufacturer Under Doctrine of *Forum Non Conveniens*

The Indiana Appellate Court has held that a products liability suit brought against an Indiana company responsible for manufacturing and selling prosthetic hip implants did not belong in Indiana under the *forum non conveniens* provision of Trial Rule 4.4(C).

In *DePuy Orthopaedics v. Brown*, 2014 WL 2440375 (Ind. Ct. App. May 30, 2014), Plaintiffs brought a product liability suit against DePuy Orthopaedics, a hip implant manufacturer with a principle place of business with offices, a manufacturing facility and warehouses all located in Kosciusko County, Indiana. The suit was brought on behalf of 19 people from Virginia and Mississippi who had had hip prosthetics implanted between 2007 and 2009. The lawsuit was filed in Marion County, Indiana in 2012 following a product recall from DePuy in August 2010. DePuy moved to dismiss pursuant to Trial Rule 4.4(c), the *forum non conveniens* provision that allows a trial court to transfer or dismiss a cause of action that should more appropriately had been brought in another venue.

In support of its motion, DePuy pointed out that all the acts alleged by Plaintiffs took place outside of Indiana and that the key witnesses and evidence were beyond the subpoena power of Indiana courts. It also pointed out that it had submitted a stipulation that it would submit to the personal jurisdiction of Virginia and Mississippi and would waive any statute of limitations defenses available in those states.
In response, Plaintiffs asserted that video depositions could always cure any lack of the subpoena power that an Indiana court may have and that the Plaintiffs wanted an earlier trial date than they would have received in either Virginia or Mississippi.

After the trial court denied the motion to dismiss, DePuy appealed as of right. The appellate court reversed, holding that the trial court abused its discretion in denying the motion. Reviewing the facts of record in conjunction with the four elements of Trial Rule 4.4(C), the court found that Indiana was not a proper forum for this action.

First, the court noted that from a standpoint of personal jurisdiction, DePuy had stipulated that it would consent to personal jurisdiction in either Virginia or Mississippi as required under Trial Rule 4.4(D).

With regard to the issue of convenience to the parties, the court observed that all of the plaintiffs lived in either Virginia or Mississippi. DePuy, being a corporation conducting business nationally, would likely face inconvenience no matter where it was sued. However, because most of the witnesses were in Virginia or Mississippi, the inconvenience caused by

litigating in Indiana weighed against the case proceeding in Indiana.

Turning to the consideration of the choice of law, the court noted that Virginia and Mississippi laws would apply to the respective claims. There is a significant local interest in having localized controversies decided at home. Consequently, because Virginia and Mississippi product liability law was notably different from the product liability law in Indiana, it was appropriate for these suits to be heard in the home states of the applicable law.

Finally, the court considered the fact that there was no evidence that Virginia or Mississippi were inadequate forums for these claims to be heard and that a federal multi-district litigation panel had already been in place to hear similar claims in Ohio with the intent of transferring claims to the jurisdictions under which the claims arose.

In light of its analysis of these four factors, the appellate court ruled that Indiana was not the proper form for these claims and remanded the case to the trial court with instructions to dismiss the claims in accordance with Trial Rule 4.4(C).

Thinking Point:

When faced with claims brought by non-resident plaintiffs, it is important to look at such issues as the national presence of the defendant and the substantive law that would be applicable in the states in which the injuries occurred. *DePuy* is a prime example of why it is important to evaluate interstate claims even when the defendant is an Indiana resident or corporation.

Illinois and Indiana Courts Address Sanctions

In a series of cases this year, it is clear that courts in Indiana and Illinois are not holding back on imposing sanctions against attorneys and parties for both vexatious litigation and discovery abuses.

In *Coppert v. Cassens Transport Company*, 2014 IL App (2d) 120877-U (April 23, 2014), the Illinois Appellate Court examined sanctions that could be imposed pursuant to Illinois Supreme Court Rule 137. In *Coppert,* Plaintiff filed a Retaliatory Discharge Complaint alleging that he was fired by Cassens for prosecuting a workers' compensation claim. In his Complaint, Plaintiff alleged that he had a good disciplinary record. Cassens presented evidence that Plaintiff was actually fired because he physically assaulted a co-employee. In the course of discovery, Cassens provided proof that Plaintiff had 23 disciplinary write-ups. Plaintiff acknowledged receiving this information before amending his Complaint, yet his Amended Complaint did not correct the allegation regarding his disciplinary record.

The trial court granted Cassens' Motion for Summary Judgment on the retaliatory discharge claim. It also entered sanctions against Plaintiff and his attorney and ordered additional sanctions of $8,900.00 for attorneys' fees incurred by Cassens in prosecuting its motion for sanctions.

On review, the Illinois Appellate Court observed that sanctions under Rule 137 are permitted in two circumstances. First, when a pleading, motion, or other paper is not "well grounded in fact" or is not "warranted by existing law or good faith argument for the extension, modification, or reversal of existing law," sanctions are appropriate. The second

circumstance is when conduct of a party is interposed for purposes such as to "harass or to cause unnecessary delay or needless increase in the cost of litigation." Id. at *8. According to the court, the purpose of sanctions is to punish a litigant who pleads a frivolous or false matter or brings suit without a basis in law. An honest belief is not enough to avoid sanctions. An attorney's signature is an assertion that he has reasonably investigated the facts, and as such, an attorney must make reasonable inquiries into the facts to support a legal claim.

The appellate court, while determining that sanctions were appropriate, held that the trial court did not properly determine the amount directly attributable to the sanction or conduct. According to the court, the fees must be tied to the specific untrue statements. The nature of the statements involved here were not the cornerstone of the whole lawsuit, only a portion of it.

A similar result was reached by the Indiana Court of Appeals in *State Farm Fire & Casualty Company v. H.H. Niswander*, 7 N.E.2d 295 (Ind. Ct. App. 2014). In *Niswander,* the insured's pick-up truck caught on fire, causing damage to the truck and his home. His property insurance carrier, State Farm, brought suit against the mechanic, Niswander, because Niswander was the last entity to work under the hood of the pick-up truck prior to the fire. Niswander had performed an oil change a week or so before the incident.

Discovery revealed that prior to filing suit, State Farm had secured an expert's evaluation of the cause of the fire which did not attribute the fire to anything that Niswander did. Despite this, State Farm still sued Niswander to recover the amounts it paid its insured.

Niswander succeeded in getting the case dismissed with prejudice.

Niswander also succeeded in obtaining court orders directing State Farm to pay Niswander's attorneys $12,503.39 as sanctions for bringing a frivolous lawsuit.

On appeal, the appellate court affirmed. Under IC §34-52-1-1(b), a litigant is entitled to recover attorneys' fees resulting from a party's bringing or continuing a frivolous lawsuit. Similar to Illinois Rule 137, the Indiana provision provides that the court may award attorneys' fees if the court finds that either party, brought the action or defense on a claim or a defense that is "frivolous, unreasonable, or groundless." The second basis for awarding fees would be a party's continued litigation of an action or defense after the party's claim or defense clearly became frivolous, unreasonable or groundless. Indiana adds a third element that allows for fees to be imposed when the case is litigated in bad faith.

Because State Farm knew prior to the lawsuit ever being filed that its own experts had concluded that the fire was not caused by anything Niswander had done, the court determined that an award of fees was appropriate.

It does not always take a final resolution of a case in order for sanctions to be imposed against a party for conduct which is otherwise groundless or obstructive. In *Fraser v. Jackson*, 2014 IL App (2d) 130283 (March 27, 2014), the Illinois Appellate Court upheld sanctions against a defendant for refusal to admit in a response to request for admissions that medical bills were reasonable and necessary.

The court held that, in a response to a request to admit the reasonableness of medical services

and the reasonableness of the cost for such medical services, a party has a good faith obligation to make a reasonable effort to secure answers that are within the responding party's reasonable control. In a response to a request to admit, a defendant has an affirmative obligation to admit, deny, or object to the impropriety of a request on the basis that it is improper due to a privilege, form or some other reason.

In *Fraser*, the defendant argued that he did have a good reason to deny a reasonableness of the medical bills because his own expert had determined that the treatment involved was not related to the accident. Defense counsel pointed out that he chose not to take the discovery depositions of the two treating physicians and therefore did not know that these doctors would offer testimony regarding the reasonableness of their medical expenses. On appeal, the court found that this strategy did not establish good faith for refusing to admit the reasonableness of the medical bills. As such, it was appropriate to enter an order imposing sanctions in the form of fees and expenses relating to presenting testimony regarding the reasonableness and necessity of the medical bills.

Thinking Point:

These recent cases demonstrate the willingness of trial and appellate courts to impose sanctions when a party fails to engage in reasonable efforts to investigate the claim or related issues or when a party pursues a litigation strategy that is unsupported or which suggests an agenda of simply being obstructive. Anything that arguably wastes the court's time and resources is a fair target for sanctions in both Indiana and Illinois.

Illinois Appellate Court Holds Plaintiff's Pursuit of Discovery Trumps Defendant's Effort to Expedite Summary Judgment

In *Jiotis v. Burr Ridge Park District*, 2014 IL App (2d) 121293 (January 22, 2014), the Illinois Court of Appeals for the Second District recently reiterated the longstanding principle that a party should be allowed to conduct discovery in order to respond to a Motion for Summary Judgment, and that in many instances, the responding party need not supply the court with an affidavit identifying the additional discovery needed.

In 2011, Plaintiff sued the Park District after sustaining injuries when a stepstool on which he was standing collapsed. On July 30, 2012, after the trial court dismissed Plaintiff's negligence claim, the Park District filed a motion for summary judgment on the wilful and wanton claim asserting that Plaintiff could not establish actual constructive notice of a defect, the spontaneous collapse of a stepstool without evidence of prior complaints or similar instances could not constitute wilful and wanton conduct, and the Park District had absolute immunity under the Tort Immunity Act because it was exercising discretion in using the stepstool.

Plaintiff filed a Motion for Discovery under Rule 191(b), stating that he needed time in which to complete discovery to respond to the motion. Specifically, Plaintiff indicated that the Park District had not answered outstanding written discovery and had not identified the "John Doe" employee who was actually using the stepstool at the time of the incident. The Park District objected claiming that a defendant may move for summary judgment any time. The Park District also asserted that Plaintiff needed to respond to the Motion for Summary Judgment or comply with Supreme Court Rule

191(b) identifying, by affidavit, what additional discovery needed to be obtained in order for Plaintiff to respond to the Motion.

On October 3, 2012, the court granted Plaintiff's Motion for Discovery and gave the Park District 30 days in which to respond to written discovery. The court also reset the matter to January 9, 2013, at which time a briefing schedule would be set. The order acknowledged the expectation that depositions would proceed in the interim.

Immediately after that, the Park District filed a motion asking the court to hold it in contempt so that it could immediately appeal the court's order, effectively obtaining review of the court's order permitting discovery.

On appeal of the contempt order, the Park District asserted that the issue was whether the court could direct full discovery before hearing a motion for summary judgment. The appellate court stated that whether a Plaintiff is required to comply with Rule 191(b), is dependent on the facts of the case and the content of the motion for summary judgment. The court said it was important to note the character of the motion for summary judgment. According to the court, there are two types of motions for summary judgment; those in which the movant seeks to disprove an element of the non-movant's claim through an affidavit or other evidence, and those in which the movant maintains that the non-movant cannot prove his case. Specific compliance with Rule 191(b) is not always required. Where a motion for summary judgment is brought by the party that does not have the burden of proof on an issue and asserts that the non-movant cannot prove its case, Rule 191(b) does not apply and the respondent is to be given a reasonable opportunity to conduct discovery before responding to the motion for summary judgment.

In the case before it, the appellate court noted that the Park District had not yet disclosed the identity of the "John Doe" employee. As such, they made it impossible for Plaintiff to strictly comply with Rule 191(b). In fact, the Park District could only properly establish its affirmative defense of lack of actual constructive notice by putting forth an affidavit of John Doe which they had not done. Had the Park District disclosed John Doe's identity and presented his affidavit or deposition testimony, then Plaintiff could have or would have been obligated to comply with Rule 191(b). According to the court, the Park District wanted to have Plaintiff comply with Rule 191(b) as if the defendants had participated in discovery without actually ever having participated in discovery at all.

In the end, the Park District appealed an October 3, 2012 discovery order with the hopes of expediting a ruling on its motion for summary judgment. Had the Park District complied with the discovery order, a briefing schedule would have been set on January 9, 2013. Instead, the case made its way into the appellate court where it remained for over one year. In the end, the appellate court ruled that Plaintiff was entitled to pursue discovery from the Park District before responding to the motion for summary judgment.

Thinking Point:

Jiotis underscores the importance of exercising both diligence and patience in proceeding with a motion for summary judgment. Illinois Courts will give Plaintiffs the opportunity to conduct reasonable discovery before responding to motions for summary judgment. *Jiotis* demonstrates that resisting such discovery efforts often causes delay and unnecessary expense.

Indiana Supreme Court Applies Fraudulent Concealment Statute to Wrongful Death Action

The Indiana Supreme Court recently held in *Alldredge v. Good Samaritan Home*, 2014 WL 2504551 (Ind. June 3, 2014), that the Indiana Fraudulent Concealment Statute may be applied to toll the Wrongful Death Act's two year filing period upon the necessary factual showing. Prior decisions extended the Fraudulent Concealment Statue to other filing periods, such as to claims under the Workers' Compensation Act, but this case marked the first time it was applied to the Wrongful Death Act.

Venita Hargis had a medical condition that made her prone to falling. In November of 2006, it was reported to Hargis' family that she suffered a fall causing a head injury and died from that injury while being transported to the hospital. Three years later, in November of 2009, a former employee of Good Samaritan informed one of Hargis' daughters that her head injury was not caused by a fall, but was the result of an attack from another resident.

In December of 2010, Plaintiffs opened an estate for Hargis in order to pursue a wrongful death action. However, the complaint was not filed until October of 2011, less than two years after the family was notified of the alleged cause of Hargis's death, but nearly five years after the injury was sustained.

At the summary judgment stage, Defendant argued that Plaintiffs failed to file the action within two years as required by the Indiana Wrongful Death Act. It also argued that there was no fraudulent concealment that would extend or toll the statute of limitations. The trial court agreed.

The Indiana Court of Appeals reversed. However, they found that the Fraudulent Concealment Statute did not apply, but rather common law fraud should apply. The Supreme Court granted transfer.

The issue before the Supreme Court was whether the Wrongful Death Act as a non-claim statute, and not a statute of limitations, could be tolled by the Fraudulent Concealment Statute. The Supreme Court held that if the legislature intended to create a time limitation that could not be tolled by fraud, it must do so expressly. Because there was no express exception within the Wrongful Death Act, the Fraudulent Concealment Statute applied to the Wrongful Death Act and Plaintiffs had two years from the date they discovered the tortious conduct to file their action.

Thinking Point:

This ruling of the Indiana Supreme Court effectively extends the Fraudulent Concealment Statute to all time limitations, both statutes of limitation and non-claim statutes when there is no specific language to the contrary. Defendants need to be mindful that the two year limitations period could run from the date of discovery rather than the date of death in wrongful death actions.

Upcoming Seminars

CLM
CLAIMS & LITIGATION MANAGEMENT ALLIANCE
ADVANCING ETHICS, COOPERATION AND EDUCATION

- On **8/14/14**, The CLM Greater Chicago Chapter will be holding a networking event. Stay tuned for more details

Recent Seminars

- On **6/18/14**, Rich Lenkov presented **"Navigating the Constantly Changing Legal World: A Legal Update"** at the Foodservice Industry Risk Management Association's Chicago conference.

- On **5/9/14,** Rich Lenkov presented **"How To Avoid Letting Small Details Become Big Problems In Your Premises Liability Case"** at the Claims & Litigation Management 2014 Retail, Restaurant & Hospitality Committee Mini-Conference in Dallas.

- On **5/2/14**, Geoff Bryce presented **"Learn To Navigate Through Complex Change Order Procedures And Prevent Costly Mistakes"** for Lorman Education Service in Chicago.

- On **4/10/14**, Rich Lenkov moderated the roundtable session entitled **"Restaurant Liability: from A-Z"** at the 2014 Claims & Litigation Management Annual Conference in Boca Raton.

- On **4/10/14,** Storrs Downey moderated the roundtable discussion, **"Non-Workers' Compensation Issues That Every Workers' Compensation Practitioner Needs To Know"** at the CLM Annual Conference in Boca Raton.

FREE Webinars

Bryce Downey & Lenkov hosts monthly webinars on pressing issues and hot topics. Here's what some of our attendees have to say about past webinars:

"Great webinar yesterday! Great case study examples and explanation of how they relate to our companies…"

"Thanks for making these so fun."

"…I actually just discussed your webinar in a meeting that our HR department had last week. We have several situations that your webinar really shined some light on so I wanted to also thank you for the opportunity to listen to the presentation. It was really helpful!"

Upcoming

- **7/17/14** – Rich Lenkov and Dr. Yousuf Sayeed will present **"Defending Pain Claims: A Medical & Legal Perspective."** Click Here for more info and to register

If you would like a copy of any of our prior webinars, please email Jason Klika at jklika@bdlfirm.com. Some recent webinars include:

- **Illinois vs. Indiana: 5 Key Issues & How Each State Deals With Them**
- **AMA Guidelines: A Legal And Medical Perspective**
- **Understanding NTSB Accident Investigations**
- **Risky Business: Drugs, Sexual Orientation And Guns In The Illinois Workplace**
- **Subrogation Basics for Workers' Compensation Professionals**

Bryce Downey & Lenkov is Growing

We are pleased to announce the addition of Jessica M. Rimkus to our Chicago office. Jessica focuses her practice on defending workers'

compensation claims and also handles general liability matters.

Giving Back

YMCA National Judicial Competition

Bryce Downey & Lenkov attorney Maital Savin has volunteered to be a trial rater for the YMCA National Judicial Competition on 7/31/14 – 8/1/14. The YMCA National Judicial Competition will bring some of the most talented, articulate and enthusiastic young leaders to Chicago for mock trial and appellate competitions. High school students from around the country will gain a deeper understanding for our legal system and their responsibility within that system.

Race Judicata 2014 5k!

Each year, Bryce Downey & Lenkov proudly sponsors Chicago Volunteer Legal Services' Race Judicata. CVLS is the first and pre-eminent pro bono civil legal aid provider in Chicago. In addition to our sponsorship, this year Bryce Downey & Lenkov will be underwriting the wine tent on 9/4/14.

BDL Attends the NRA Show 2014

On 5/20/14, Rich Lenkov and Jason Klika attended the 2014 National Restaurant Association Show. Given our representation of many clients in the food service industry, we keep apprised of new developments by attending events like this one. And as noted above, we love cheesecake.

Geoff Bryce Rolls to Raise Money for Cancer

On 4/26/14, Geoff Bryce and 8 other Windy City Skaters covered 10 miles in the Walk & Roll to raise funds for the American Cancer Society.

You can still support this great cause by donating to Geoff's fundraising page!

Around the Office

This summer, Bryce Downey & Lenkov is redecorating its Chicago office. Over the next few months, we'll share some of the new items that make our office unique.

Overlooking Tower 18

Next time you find yourself in our small conference room, see if you can notice the faint rumble of the Chicago "L" as it shuffles commuters around the loop. Take a quick glance out the west-facing window and you will see the busy intersection of Lake & Wells. Look closer and you will see the historic Tower 18. Established in 1897, the Tower 18 junction at Lake & Wells was billed as the busiest railroad junction in the world.

Our new photograph shows Tower 18 in 1919 and hangs juxtaposed with the junction as it is today. The photograph, reprinted with permission from the Chicago Tribune, is the first of many pieces we will be adding celebrating our Chicago heritage.

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

- **Top 5 Ways to Use an Employee's Actions to Defend their Workers' Compensation Claim**
- **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 March 2014 General Liability Update

Bryce Downey and Lenkov attorneys who contributed to this update were Storrs Downey, Jeffrey Kehl, Frank Rowland, Juan Anderson and Daniel Cooper.

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. *The content of this newsletter has been prepared by Bryce Downey & Lenkov LLC (the Firm) for informational purposes and does not constitute legal advice. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. You should not act upon this information without seeking advice from a lawyer licensed in your own state of country.*

Chicago:	Indiana:	**BRYCE DOWNEY & LENKOV LLC**	Memphis:	Atlanta:
200 N. LaSalle Street Suite 2700 Chicago, IL 60601 Tel: 312.377.1501 Fax: 312.377.1502	11065 S. Broadway Suite B Crown Point, IN 46307 Tel: 219.488.2590 Fax: 219.213.2259		1661 International Place Drive, Suite 400 Memphis, TN 38120 Tel: 901.753.5537 Fax: 901.737.6555	P.O. Box 800022 Roswell, GA 30075-0001 Tel: 770.642.9359 Fax: 678.352.0489