

Rebuttable Presumption Of Causation

By: Kristin Lechowicz
Income Member



The Appellate Court recently affirmed a Commission Decision that denied benefits to a firefighter under the Illinois Workers' Compensation Act for coronary artery disease. Petitioner was a firefighter for 28 years, claiming that the physical and emotional stress of the job contributed to his coronary artery disease.

Petitioner contended that the Commission failed to properly apply the rebuttable causation presumption contained in section 6(f) of the Act. The rebuttable

presumption created a prima facie causation case that certain diseases are presumed to arise out of and are causally related to work if a petitioner has been a firefighter for at least 5 years. The list of diseases includes coronary artery disease. The burden is then shifted to the respondent to introduce evidence to refute the presumption. Once evidence "contrary to the presumption" is introduced, the presumption ceases to operate, and causation is determined based on the evidence as if no presumption ever existed.

The court held that, to rebut the presumption, the employer need only "offer some evidence sufficient to support a finding that something other than the claimant's occupation as a firefighter caused his condition." A predisposition to developing coronary artery disease does not alone negate the presumption. Respondent had the burden of producing contrary evidence supporting that Petitioner's coronary artery disease was not causally related to his duties as a firefighter. Respondent satisfied this burden with the opinion of Dr. Samo stating that Petitioner's underlying coronary artery disease is not related to his work as a firefighter. Dr. Samo's opinion provided that the duties of a firefighter cannot cause coronary artery disease. With that contrary evidence, the presumption was extinguished, and the issue of causation was to be decided as if the presumption never existed.



When Petitioner failed to produce any evidence to support that the coronary artery disease was related to his firefighting duties, he failed to meet his causation burden. The Appellate Court found that the Arbitrator appropriately denied the case. *Faruzzi v. IWCC 2024 IL App (1st) 231869WC-U*

Practice Tip:

Although this presumption operates in the claimant's favor, it can be rebutted with medical evidence, underscoring the importance of IME opinions.

Dismissal of 2015 Claim Upheld by Appellate Court

By: Daniel Flores
Associate



In *Eugenia Bala v. IWCC, 2024 IL App (1st) 230464WC-U*, the Appellate Court affirmed the Commission Decision to deny Petitioner's Motion to Reinstate.

Petitioner filed an Application alleging a work injury on 6/25/15 while working for Covenant Care. Petitioner's case was dismissed several times. In 2017, Covenant filed a Motion to Dismiss. Petitioner failed to appear, and the case was dismissed. Petitioner then filed a Motion to Reinstate, which was granted.

In 2019, the case appeared on the status call and, because it was above the line, it was scheduled for hearing. Petitioner failed to appear, and the case was dismissed. She filed another Motion to Reinstate, which was granted.



Two months later, the case again appeared on the arbitrator's status call and was scheduled for hearing. Petitioner failed to appear, and the case was dismissed. Petitioner filed a Motion to Reinstate claiming that she did not receive notice of the hearing. The arbitrator denied Petitioner's motion and the Commission affirmed.

In arguing for reversal of the Commission Decision, Petitioner claimed that the denial of her motion violated her Due Process rights under the U.S. and Illinois Constitutions. The Appellate Court disagreed, finding that the Act specifies that, after a case has been on file for longer than three years, the parties must be present at each status call to obtain any continuances. Failure to appear subjects a claim to dismissal.

The Appellate Court further held that, based on the Act, the Commission must send written notice to the parties of the initial status call at arbitration. However, the Commission is not required to notify either party regarding subsequent status calls or trial settings. Once a case is above the line, it is the responsibility of the parties to be present at every status call.

Practice Tip:

Once a case is above the line, it is subject to immediate dismissal if Petitioner's counsel does not appear at subsequent status calls.

FIRM NEWS

New Indianapolis Office Location

Our Indianapolis office has moved! We have relocated to Parkwood Crossing at 450 East 96th Street, Suite 500 Indianapolis, IN 46240.

Our Indianapolis attorneys Jennifer Meyer, Kealia Hollingsworth and Matthew Hobson are always available to assist with your claims.



Downey & Lenkov sponsored Northern Illinois University College of Law's Golf Outing

Downey & Lenkov proudly sponsored NIU College of Law's 19th Annual Golf Outing at River Heights Golf Course in DeKalb. Proceeds from the outing will be used for scholarships and other related alumni programs.



Kirsten Kaiser Kus Completion Of CLM's Litigation Management Institute

Capital Member Kirsten Kaiser Kus earned the designation of Certified Litigation Management Professional (CLMP) for successfully completing CLM's Litigation Management Institute.



Kristin Lechowicz Successful Trial Result

Congratulations to Income Member Kristin Lechowicz on a successful trial result.

Kristin's defense strategy was centered on Petitioner's extensive pre-accident treatment and the unsubstantiated nature of her subjective complaints. During the trial, she presented strong medical opinions focusing on objective evidence and provided a thorough rationale against the causation claims.

The arbitrator agreed with Kristin's arguments, finding that Petitioner failed to prove her neurological, psychological, and ongoing orthopedic conditions were caused by the work accident. Moreover, the arbitrator credited our client with an overpayment of TTD benefits, which further reduced the minimal PPD award for the accepted sprains.



Downey & Lenkov at 78th Annual Workers' Compensation Educational Conference & 35th Safety & Health Conference

Capital Members Rich Lenkov and Kirsten Kaiser Kus, Income Member Tim Furman and Associate Abby Iliovici will present at WCI 2024 conference.

View the full program agenda [here](#).



Kirsten Kaiser Kus Recognized In The 2025 Edition Of The Best Lawyers In America

We are pleased to announce that Capital Member Kirsten Kaiser Kus has been recognized in the 2025 edition of The Best Lawyers in America® for Workers' Compensation Law - Employers

The Best Lawyers in America® recognizes individual lawyers with the highest overall feedback from their peers for a specific practice area and geographic region.

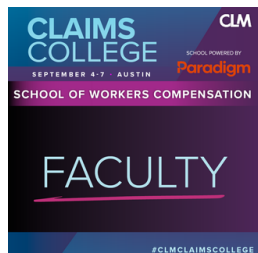


Best Lawyers®

Kirsten Kaiser Kus at CLM Claims College

Join Capital Member Kirsten Kaiser Kus at CLM Claims College from September 4-7, 2024 in Austin, TX where she will be teaching at the School of Workers Compensation. Attendees can earn their Certified Claims Professional (CCP) and Advanced Claims Professional (ACP) designations.

Kirsten has the opportunity to offer scholarships (registration fee only) to industry professionals, so if you are interested in attending Claims College, please contact her at: kkaiser@dl-firm.com.



Michael Milstein At ClaimsXchange Annual Conference

Capital Member Michael Milstein will co-present "Using Social Media to Verify, Value and Resolve Claims Prior to Litigation" at the 2024 ClaimsXchange Annual Conference on 10/17 in Hamburg, NJ.

Michael joins Natalie Koepke and Jim Martin to discuss the newest technologies to investigate, evaluate and resolve claims.

Register [here](#).



claimsXchange

Welcome Back to the Team

Downey & Lenkov welcomes back Illinois attorney Rachell Horbenko, as she previously worked for Downey & Lenkov before becoming a sole practitioner.



Rachell focuses her practice in workers' compensation and general liability. She is a dedicated attorney committed to defending her client's interests and developing successful legal strategies.

DL Webinars

Ask Us Anything

Michael Milstein and Daniel Flores will answer any of your Illinois Workers' Compensation questions.

8/27/2024

Michael Milstein & Daniel Flores



[REGISTER NOW!](#)

Watch Our Latest Webinar:

Indiana Forms: Taking A Claim From Start to Finish



[Click To View](#)

Recent Webinars

- 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!
- Bending, Flexing and Rotating: Defending Shoulder, Elbow, & Wrist Claims
- Eerie Lessons in Illinois Workers' Compensation
- Tomorrow is Here: AI's Impact on Claims
- Common Mistakes in Defense Strategy
- Illinois Worker's Compensation - Back to Basics

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

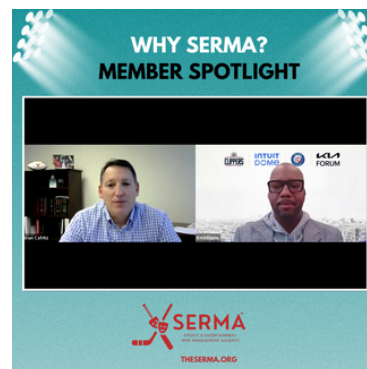
Sports & Entertainment Risk Management Alliance (SERMA®) is the first risk management association devoted entirely to the sports and entertainment industries. Our mission is to be the world's foremost resource for information and networking in the sports and entertainment risk industries. We strive to provide a respectful, transparent and inclusive dialogue where members can share ideas, best practices and strategies in managing risk and claims. Visit www.theserma.org for more information.



The SERMAPod



Member Spotlight Series



Inaugural Youth Sports Risk Summit

SERMA Webinars



SEPTEMBER 18-20, 2024 VIRGIN HOTEL, DALLAS, TEXAS

Join SERMA for its Inaugural Youth Sports Risk Summit in Dallas!

This educational and networking event will discuss current and pressing youth sports risk issues. The presenters are experienced and nationally recognized risk managers, insurers, youth sports attorneys, and industry experts.

For a full agenda and speaker list, please visit THESEMA.ORG

FEATURED EVENTS

SEPTEMBER 18TH | 4:00 PM - 8:00 PM

- Opening Reception & Happy Hour

SEPTEMBER 19TH | 8:00 AM - 4:45 PM

- Registration
- Educational Panels

6:30 PM - 8:30 PM

- Dinner - BBQ, Booze & Bonding
- Additional cost to attend \$75

SEPTEMBER 20TH | 7:30 AM - 11:45 AM

- Educational Panels
- Closing Comments

NETWORKING & COCKTAILS

BREAKFAST & LUNCH INCLUDED

BREAKFAST INCLUDED

WHERE:

- Virgin Hotel Dallas
- 1445 Turtle Creek Blvd, Dallas, TX 75207
- Limited Discounted Room Rate of \$289
- Call (469) 359-7003
- Group Code: 6482658
- Reservation Deadline: August 26, 2024

REGISTRATION COST:

Registration Type	Early Bird Registration (by 7/18)	Standard Registration (7/19 - 9/18)
SERMA Industry Members	\$150	\$200
SERMA Student Members	\$150	\$200
SERMA Attorney/Vendor Members	\$550	\$600
Non-SERMA Members	\$625	\$675

CE Credits Pending

THANK YOU TO OUR SPONSORS:

DigiStream

AG

MVP SPONSORS

VA

ALL-STAR SPONSOR

WELLS FARGO

ENISTA

GALLOWAY

PLAYERS HEALTH

MAGNA

CHARTWELL

MAYER

PLAYER SPONSORS

CONNECT WITH US

Follow Us on [Facebook](#), [LinkedIn](#), [X](#), [Instagram](#), [YouTube](#) and Subscribe to the [SERMAPod](#). Want to be a member? [Join us today!](#)

Legal Face-Off

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.



Zarna Garg, previous attorney, on advice to aspiring standup comedians.

“Don't worry about whether you think you're funny or not. That's not what makes a great stand up comic. Think about what are interesting things you can say on stage that make people think. They will find the funny in you. Trying to be funny is not going to make anybody funny. But you get up there and you say things that you think are ironic, are interesting, have a little sarcasm to them, and you just let it breathe.”

[Listen to the full episode here.](#)

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

CONNECT WITH US

Please Follow Us on [Facebook](#), [LinkedIn](#), [X](#), [Instagram](#) and Subscribe on [Apple Podcasts](#).

RECENT TOPICS

- Presidential Immunity
- Trump Trials
- Artificial Intelligence
- Wrongful Convictions
- SCOTUS

RECENT GUESTS

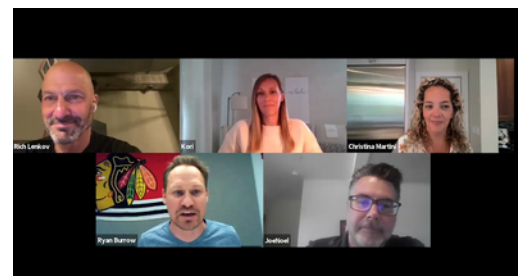
- Gabe Roth
- Amanda Vinicky
- Neama Rahmani
- Gloria Allred
- Andrew Willinger

[25th Amendment, Kamala Harris, standup comedian Zarna Garg, and much more](#)

[Wehle on presidential immunity, Laser on Bible teaching in Oklahoma schools, Drew on the NFL Sunday Ticket, Delfino on celebrity deepfakes, and much more](#)

[SCOTUS Decisions, Hunter Biden, Chicago's plan to handle the DNC and much more](#)

[Germain on Trump trial, Kolb on representing Michael Cohen, Romanucci on Highland Park mass shooting and wrongful convictions, Chamberlain on permanent punishments in Illinois, and much more](#)



Legal Face- Off's Legal Grab Bag