

Legal Updates

Jennifer Meyer Secures a Zero Award



Congratulations to Income Member [Jennifer Meyer](#) for proving Plaintiff was not entitled to Indiana worker's compensation benefits. A Single Hearing Member held that Plaintiff "shall take nothing by way of his Application for Adjustment of Claim" and none of the three provider fees were entitled to recovery under the Indiana Worker's Compensation Act by way of their Applications for Adjustment of Claim for Provider Fee totaling over \$250,000.

Plaintiff, a resident of Tennessee, was employed as a Field Operations Electrician and traveled performing electrical work as part of his job. On 5/17/21, he finished installing a new computer server at a restaurant in Indianapolis, IN. The alleged incident occurred when he was leaning over the counter, working on his cell phone. When he rose, he began to collapse and fell backward. He landed on the floor behind him, striking his head when he fell. Plaintiff laid on the floor motionless, was attended to by employees of the restaurant, 911 was called, CPR was administered and the EMS crew took over care. He was transferred to the hospital, where he was admitted for cardiac arrest, cardiogenic shock, acute respiratory failure, acute systolic heart failure and acute encephalopathy post-cardiac arrest and due to significant oxygen deprivation.

It was determined that there was no expert medical evidence establishing a causal connection between the heart attack and the employment. Considering the totality of the facts and circumstances, Plaintiff failed to meet his burden of proving by a preponderance of the credible evidence that his injury arose out of his employment with Defendant.

Practice Tip:

In Indiana, it's Plaintiff's burden to prove by a preponderance of the evidence that their injury arose out of employment. It isn't always necessary to expend additional costs for Defendant to obtain expert opinion or depose Plaintiff.

Underpaid at The Silver Buckle

By: [Taylor Young](#)
Associate



Is Petitioner unable to return to his usual and customary line of employment? Has Petitioner's earning capacity been affected? These are two pivotal questions that the court dealt with in *Kransky v. IWCC*, 2025 Ill. App (1st) 232483WC-U.

Petitioner was injured and did not return to his employment because his permanent restrictions could not be accommodated. His average weekly wage of \$660.35, equating to an hourly rate of \$16.50.

Petitioner began vocational rehabilitation with his own counselor and Respondent later chose another counselor to evaluate him. Both counselors agreed that he could earn between \$15.00-\$20.00 per hour.

The job search began and eventually, Petitioner took a job working for The Silver Buckle at \$9.00/hour. Both vocational counselors agreed that he was underemployed and could be making more money in another job. Petitioner refused to continue the job search and remained underemployed at The Silver Buckle.

The case proceeded to trial on permanency and his benefits, given his unwillingness to find a higher paying job. The arbitrator awarded 90 3/7 weeks of TTD benefits from 12/15/10-9/10/12 and 109 weeks of maintenance from 9/11/12-10/14/14.

The arbitrator terminated Petitioner's maintenance benefits on 10/14/14, finding that Petitioner failed to cooperate in good faith with vocational rehabilitation, failed to make a good faith job search and was not credible when he testified to having conducted over 1,000 job searches. The arbitrator awarded 200 weeks of PPD benefits and found that Petitioner was not entitled to wage differential benefits.

Petitioner appealed. The Commission modified the arbitrator's award on maintenance. The Commission found that Petitioner's job search was in good faith, awarding 242 6/7 weeks of maintenance benefits. The Commission affirmed all other aspects of the Arbitration Decision.

Both parties appealed to the Cook County Circuit Court which set aside the Commission's decision and reinstated the arbitrator's maintenance award, confirming the Commission's decision in all other aspects.

Petitioner appealed. The Appellate Court held that the Circuit Court erred when it set aside the Commission's decision awarding 242 6/7 weeks of maintenance. However, the more important part of this ruling is whether Petitioner was entitled to wage differential benefits.

The Appellate Court found that the evidence was sufficient to sustain the Commission's findings that Petitioner did not sustain a loss in earning capacity and therefore failed to prove his entitlement to wage differential benefits under 8(d)(1) of the Act. Petitioner's argument for wage differential benefits relied exclusively on his \$9.00 per hour wage at The Silver Buckle, \$7.50 less than his pre-injury wage.

The Appellate Court held that a petitioner cannot establish his earning capacity based on post-injury wages for a job significantly below his earning capacity in the competitive labor market.

Practice Tip:

The burden to prove a loss of earning capacity is on Petitioner. Simply because he took a job that paid him significantly less does not prove entitlement to a wage differential.

Concurrent PTD and PPD Awards

By: [Logan E. March](#)
Associate



In *The American Coal Company v. The Illinois Workers' Compensation Commission*, 2024 IL App (5th) 230815 WC, the Appellate Court addressed a concurrent permanent total disability (PTD) and permanent partial disability (PPD) award. Petitioner injured both eyes as well as his hip, spine and abdomen. PTD awards, which are generally greater than PPD awards, are considered complete compensation for all injuries from a single accident. However, the arbitrator permitted recovery of PTD for the loss of the eyes and PPD for the other injuries. The employer appealed, arguing that an award of PTD precluded an additional award of non-scheduled PPD, but the Commission unanimously upheld the Arbitration Decision, and the Circuit Court affirmed.

The employer appealed on a statutory interpretation theory, arguing that the language of the statute demonstrated an intent to preclude concurrent PTD and PPD awards. Section 8(e)(18) of the Act awards benefits for the permanent total loss of specific named body parts including, in this case, both eyes. Benefits under this section are not set for a number of weeks but are provided for life. Section 8(d)(2) of the Act awards PPD benefits for a certain number of weeks based on the body part. Respondent argued that because Petitioner received a PTD award, he was precluded from also receiving a PPD award.

Section 8(e)(18) of the Act does not include language allowing for both award types and the employer argued that because the legislature could easily have done so, the exclusion was intentional. They also argued that the legislature enacted Section 8(d)(2) in an attempt to limit additional compensation under 8(e)(18) to scheduled body parts only.

The Appellate Court relied on *Freeman United and Beelman Trucking*, where the Supreme Court of Illinois held that the section did not exclude other cases allowed for under section 8(e). The Court read the words "permanent" and "total" to represent a stated legislative determination that the specific injuries would be compensated at a fixed figure and not as a literal "total" disability. Therefore, a PTD award was not written as total compensation for all injuries associated with a specific accident and did not exclude benefits for the partial disability of a different body part.

Therefore, the proper analysis is to first look at the permanent total disability, in this case, the loss of both eyes and grant the required award under section 8(e)(18). The court then looks for other injuries that may entitle Petitioner to additional recovery for the partial loss of use of a body part.

This petitioner-friendly decision increases an employer's potential liability in permanent and total disability cases by allowing petitioners to recover both PTD and PPD awards.

Practice Tip:

In cases involving multiple injuries, a PTD award for a non-scheduled part does not bar a separate PPD award for other scheduled body parts. Respondents should carefully assess whether additional injuries, especially to different, non-scheduled body parts, may qualify for separate PPD compensation alongside a PTD award.

Firm News

Welcome to the Team

Please welcome our new Illinois Associate Attorney [Zoe Arthurson-McColl](#).



Zoe concentrates her practice in workers' compensation and general liability. She is a dedicated attorney who is committed to defending her clients' interests and has achieved favorable results through effective courtroom advocacy and strategic negotiation.

Downey & Lenkov Attorneys Recognized as Best Lawyers®

We are pleased to announce that four Downey & Lenkov attorneys have been recognized in the 2026 edition of The Best Lawyers in America®.

- Capital Members [Kirsten Kaiser Kus](#) and [Michael Milstein](#) received this accolade for **Workers' Compensation Law – Employers**.
- Of Counsel [Werner Sabo](#) received this accolade for **Construction Law and Litigation**.
- Income Member [Timothy Furman](#) has been selected for the **2026 Best Lawyers: Ones to Watch in America list for Workers' Compensation – Employers**.

The Best Lawyers in America® honors individual attorneys who receive the highest overall feedback from their peers in specific practice areas and geographic regions.



KIRSTEN KAISER KUS, MICHAEL MILSTEIN AND WERNER SABO ARE RECOGNIZED IN THE 2026 EDITION OF THE "BEST LAWYERS IN AMERICA®."

TIMOTHY FURMAN IS NAMED IN THE 2026 "BEST LAWYERS: ONES TO WATCH® IN AMERICA."



Kirsten Kaiser KusMichael MilsteinWerner SaboTimothy Furman

Best Lawyers®

WCI 2025 Conference

Capital Members [Rich Lenkov](#) and [Kirsten Kaiser Kus](#), Income Member [Tim Furman](#) and Associate [Abby Iliovici](#) participated in the 79th Annual Workers' Compensation Educational Conference & 36th Safety & Health Conference in Orlando, FL.

Rich and Kirsten served as panelists on the General Session: "The Good, the Bad, and the Ugly" alongside 15 other attorneys from across the country. The session featured an in-depth discussion on the challenges of handling multiple states with a focus on "Good Outcomes in Bad Company."

They also joined Tim and Abby in the breakout session "Only the Good Claims Close Early." As part of the state panel, they shared insights on handling claims and strategies for achieving closure.



Indiana ASBO Human Resources Seminar

Capital Member [Kirsten Kaiser Kus](#) will be a panelist at the Indiana ASBO Human Resources Seminar on 11/7/25 in Plainfield, IN. She'll join MJ Insurance Client Executive Adam Adler and Valparaiso Community Schools HR Coordinator Nicole Biehn for the session "Proactive Strategies in Workers' Compensation: Preventing Claims and Litigation."

The panel will discuss the claims process, common causes of litigation and the employer's role in preventing disputes. Key topics include effective injury reporting protocols, fostering a safety-first workplace culture, maintaining proper documentation and implementing return-to-work programs. Attendees will also gain insights into communication, compliance and employee engagement strategies that can help organizations reduce claims and avoid costly litigation.

Register by October 24 [here](#).



CLM Women's Summit 2025



Capital Member [Kirsten Kaiser Kus](#) will be co-presenting at the CLM Women's Summit in Chicago on 12/3/25 at 3:00 pm CT.

Kirsten will be joining Butler Weihmuller Katz Craig LLP Managing Partner Denise Anderson and Kubicki Draper Shareholder Michelle Krone on the topic of risk taking. This panel will explore whether women lose out on money, power and opportunities by being risk averse and how to flip the script to turn risk into reward.

Register [here](#).



2025 IWCI Annual Seminar



Income Member [Jennifer Meyer](#) participated in the 2025 Indiana Workers' Compensation Institute (IWCI) Annual Seminar, where she shared her insights as a panelist in "Navigating Workers' Comp: A 360° Perspective."



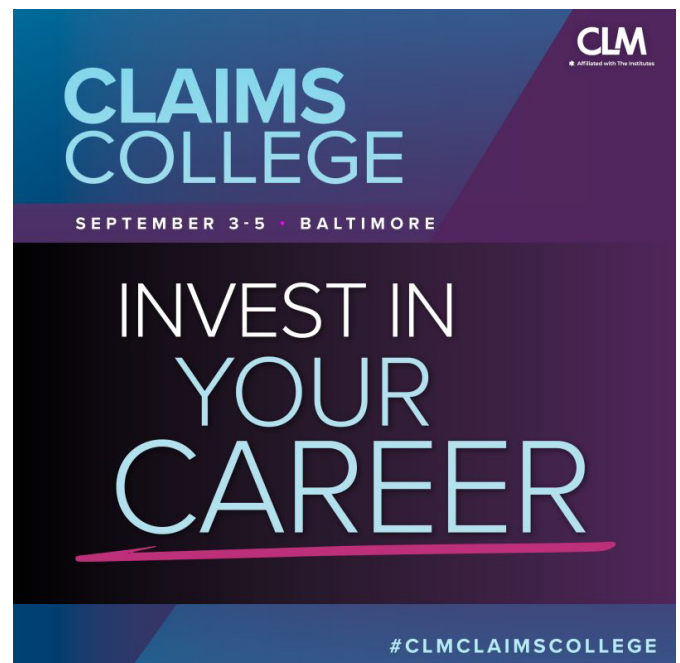
CLM Claims College in Baltimore

Capital Member [Kirsten Kaiser Kus](#) taught at the School of Workers' Compensation at CLM Claims College in Baltimore, MD. Attendees earned Certified Claims Professional (CCP) and Advanced Claims Professional (ACP) designations.

Kirsten's faculty course details:

- **Level 1 School of Workers' Compensation** – Introductory Worker's Compensation Fraud
- **Level 3 School of Workers' Compensation** – We're Going to Trial and Trial & Jury Deliberation

Should you have any questions on any of your Indiana claims, please do not hesitate to contact Kirsten at Kkaiser@dl-firm.com for assistance.



NWIIWA Influential Woman of the Year in Law

Congratulations to Capital Member [Kirsten Kaiser Kus](#)! She was recognized as Influential Woman of the Year in Law at the Northwest Indiana Influential Women Association Annual Awards Banquet.

This honor highlights her leadership and contributions alongside more than 1,000 community leaders celebrating the bright future of women in business and law.



Nomination to Deconstructing Comp's Changemaker® Award



We are excited to announce that Capital Member [Kirsten Kaiser Kus](#) has been nominated for the 2025 Work Comp Changemaker® Award by Deconstructing Comp. This esteemed award recognizes visionary leaders who are advancing our industry, breaking down barriers, driving significant progress and inspiring transformative change in the field of workers' compensation.



2025 ClaimsXchange Annual Conference



Capital Member [Michael Milstein](#) co-presented "Empathy as a Claims Model: Humanizing Workers' Compensation" at the 2025 ClaimsXchange Annual Conference in Philadelphia.

Michael was joined by Helmsman Management Services Directors of Complex Workers' Compensation Claims Jason Hackling and Anthony Gentile and Ascot Insurance Group Vice President of Workers' Compensation Claims Becky Hillhouse. Together they explored how placing empathy at the center of the claims process can lead to better outcomes for injured workers, insurers and employers alike.



Alliance of Women in Workers' Compensation Event

Downey & Lenkov was proud to co-sponsor the Alliance of Women in Workers' Compensation Illinois Chapter's event featuring bestselling author and entrepreneur [Jess Ekstrom](#). Jess shared insights on staying motivated by reconnecting with purpose, sparking creativity and sustaining energy over the long term.

DOWNEY & LENKOV IS PROUD TO SPONSOR

Purpose Driven Thinking: How to Stay Motivated When We're Never Done

JOIN THE AWWC ILLINOIS CHAPTER FOR AN
ENERGIZING AFTERNOON WITH BESTSELLING
AUTHOR & ENTREPRENEUR JESS EKSTROM

SEPT. 17, 2025 1:30 - 3:30 PM CST	THE OLD POST OFFICE 433 W VAN BUREN ST. CHICAGO, IL 60607
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 **Alliance of Women**
IN WORKERS' COMPENSATION

 **Downey & Lenkov** LLC

IWCI Worker's Comp Webinar

Income Member [Jennifer Meyer](#) presented on IWCI webinar, "Not All Cases Go to Hearing: Let's Talk Settlements and Mediation with Attorneys and a Board-Certified Mediator."

Attendees received 1.0 Indiana CLE credit for attending this webinar.

WORKER'S COMP WEBINAR

**NOT ALL CASES GO TO HEARING:
LET'S TALK SETTLEMENTS AND
MEDIATION WITH ATTORNEYS
AND A BOARD-CERTIFIED
MEDIATOR**

10.9.2025

Jennifer Meyer

Downey & Lenkov LLC

IWCI
ACADEMY OF LEARNING
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Deconstructing Comp Podcast

Capital Member [Kirsten Kaiser Kus](#) returned to the Deconstructing Comp podcast with Yvonne and Rafael to share her insights into the complexities of the workers' compensation ecosystem.

With experience on both the plaintiff and defense sides, Kirsten explores the unique challenges faced by each stakeholder and emphasizes the critical importance of clear, coordinated communication in achieving effective outcomes.

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



DL Webinars

Recent Webinars

- Navigating New Trends & Risks in Work Comp Cases
- Workers' Comp Unplugged
- Indiana Forms: Taking A Claim From Start to Finish
- Mastering Litigation Challenges: Strategies for Addressing Re-litigation, Frequent Flyers & Subsequent Injuries
- What Holiday Movies Can Teach You About Handling Claims

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

Upcoming Webinar:

Tricks & Treats for Illinois Settlement Strategies

WORKERS' COMP WEBINAR

**TRICKS & TREATS
FOR ILLINOIS SETTLEMENT
STRATEGIES**

10.30.25

Kristin Lechowicz

Natalie Christian

Downey & Lenkov LLC

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Watch Our Latest Webinar:

Top Red Flags in Illinois Workers' Comp

**TOP RED FLAGS IN
ILLINOIS
WORKERS' COMP**

8/26/25

Daniel Flores
Rachell Horbenko

Downey & Lenkov LLC

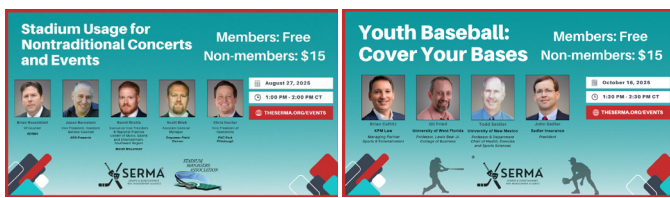
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Sports & Entertainment Risk Management Alliance (SERMA) is the first risk management association devoted entirely to the sports and entertainment industries. Our mission is to be the world's foremost resource for information and networking in the sports 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



SERMA Webinars



SERMANAR IV: THE SPORTS & ENTERTAINMENT RISK CONFERENCE



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Lunch with 5 Mystery Risk Managers

We had a great day of networking at our SOLD-OUT 2nd Annual Lunch with (At Least) 5 Mystery Risk Managers event in Chicago, IL.



SERMAPod and Happy Hour in Indianapolis

SERMA Founder/CEO Rich Lenkov hosted an in-person taping of the SERMAPod at the iconic Indianapolis Motor Speedway during the Brickyard 400 practice, tackling the evolving world of racing industry risk with leaders at the heart of motor sports and insurance:

- Indianapolis Motor Speedway Chief Diversity Officer & Senior Corporate Counsel Jimmie McMillian
- Davies North America Senior Vice President, Field Services George Burgee
- SERMA Advisory Board Member and Players Health Head of MGA & VP of Underwriting Jayson DeMarco

After the taping, SERMA hosted a happy hour on the water at Rick's Cafe Boatyard.



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.



– Leon Rodriguez on the Trump administration's H-1B visas

Leon Rodriguez
Former Federal Prosecutor
and Seyfarth Partner

"The gold card isn't exactly a visa, though it's come to be called that way. There are two kinds of [permanent] visas; one is called the Extraordinary Ability Visa and the other one is the Exceptional Ability Visa. Extraordinary being you're at the absolute top of whatever your field is, and exceptional means you're close to the top. And there's a series of factors—whether you've been published, have you been covered by the media, do you make a lot of money—that are considered in order to judge whether you belong in one of these two categories. What the administration has done is basically created a new factor [gold card]. The factor is if you're basically willing to pay a million dollars into the U.S. Treasury, that in and of itself will be deemed as evidence, not necessarily conclusive, of somebody being of extraordinary or exceptional ability."

[Listen to the full episode here](#)

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Recent

Please Follow Us on [Facebook](#), [LinkedIn](#), [Twitter](#), [Instagram](#) and [Subscribe on Apple Podcasts](#). Send us your questions and we will answer them on air — **nothing is off-limits**.

Topics

- Chatbot Suicide Lawsuits
- Charlie Kirk
- Bill Belichick
- Travis-Taylor Pre-nup
- Caribbean Boat Strike
- Kelley Drye's Data Breach Cyberattack

Recent Guests

- Erwin Chemerinsky
 - UC Berkeley Law Dean
- Elie Honig
 - CNN Senior Legal Analyst and former New Jersey federal prosecutor
- Brian Hopkins
 - Chicago 2nd Ward Alderman
- Deborah Witzburg
 - City of Chicago Inspector General
- The Honorable Esther Salas
 - U.S District Court Judge for the District of New Jersey

[Chatbot suicide lawsuits, H-1B visas, Attorney Well-Being Report and much more](#)

[Chemerinsky on Newsom's ICE ban, Ross on Charlie Kirk, Galland on the Supreme Court and Donald Trump, Choslovsky on Lincoln Park High School settlement, and much more](#)

[Caribbean boat strike, Elie Honig, Belichick's trademarks, Travis-Taylor prenup and much more](#)

[Chicago news, law firm data breach, reclassifying marijuana and much more](#)



Legal Face-Off's Legal Grab Bag

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