

Firm News

Of Counsel Samuel Levine Appointed Vice Chair of the Construction Group of the ACREL

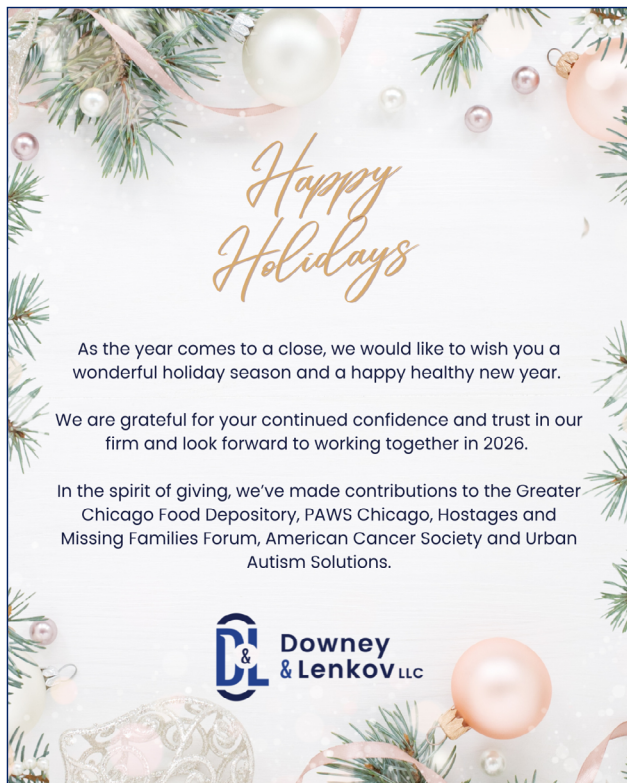


Of Counsel [Samuel Levine](#) has been appointed Vice Chair of the Construction Group of the American College of Real Estate Lawyers (ACREL).

ACREL is the preeminent association of commercial real estate lawyers. Membership is by nomination of ACREL Fellows and election by the membership.

Learn more about [American College of Real Estate Lawyers](#).

Season's Greetings



Welcome to the Team

Please welcome our new Illinois Associate Attorneys [Zoe Arthurson-McColl](#), [Jack J. Fritschler](#), [Nial Vender](#) and [Cassandra E. Halyko](#).



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.



Jack concentrates his practice in workers' compensation and general liability. Before transitioning to defense work, Jack gained valuable experience clerking for a prominent Chicago plaintiffs' personal injury firm, which provides unique insight into opposing strategies to advocate for his clients.



Nial concentrates his practice in workers' compensation and general liability. He is a dedicated attorney who is committed to representing employers, insurers and businesses in a wide range of litigation matters.



Cassandra concentrates her practice in workers' compensation and general liability. She is a dedicated attorney who is known for her strategic and detail-oriented approach. She works closely with employers, insurance carriers and third-party administrators to develop efficient and effective litigation strategies.

ISBA Webcast on The New Illinois Receivership Act



Of Counsel [Samuel Levine](#) will be moderating a webcast on the New Illinois Receivership Act, presented by the ISBA Construction Law Section, on 01/28/26 from 10:55 am to 12:05 pm.

Attendees will receive 1.0 hour MCLE credit.

Register here: [LIVE WEB - The New Illinois Receivership Act](#)



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BAR ASSOCIATION™**

2026 ASA Construction Expo & Safety Conference

Join Of Counsel [Margery Newman](#) at the 2026 ASA Construction Expo on 3/3/26, from 9 AM to 4 PM in Oakbrook Terrace, IL.

Stop by our booth #902 at the show to connect with us and talk all things construction!

Registration opens soon on the [ASA Chicago Website](#).

2-DAY CONFERENCE • 1-DAY TRADE SHOW • REGISTER NOW!

ASA CHICAGO

CONSTRUCTION EXPO 2026 & SAFETY CONFERENCE

CSC Construction Safety Council

CHICAGOCONSTRUCTIONEXPO.COM

CONFERENCE SCHEDULE
MON. MARCH 2, 2026 • TUES. MARCH 3, 2026

MARCH 3, 2026 @ 9 AM - 4 PM
BOOTH 902

100 Drury Ln. Oakbrook Terrace, IL 60181

Downey & Lenkov Holiday Party

We're serving up some holiday spirit! Our team had a blast celebrating the season at SPIN last week. Happy Holidays from all of us to you!



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.



September 2025 Construction Newsletter

In our [September 2025 newsletter](#), we covered firm news, Illinois Appellate Court Addresses Borrowing Employer Under Workers' Comp Act, Waiver of Consequential Damages in Construction Contracts, DOL on Independent Contractor Misclassification Enforcement and much more.

Downey & Lenkov LLC

Construction Law Newsletter
September 2025

Firm News

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.

Real Estate Law Update 2025

Join Of Counsel [Samuel Levine](#) and Associate [Lark Swenson](#) at the Real Estate Law Update 2025, presented by the ISBA Real Estate Law Section, on 10/29/25 from 10:30 to 11:15 a.m.

They will present "Recovering Attorneys' Fees in Real Estate Litigation," a review of statutes ranging from the Mechanics Lien Act to the Deceptive Business Practices Act and more, highlighting when and how attorneys' fees may be recovered.

Registration opens soon on the [ISBA website](#).

Construction Law: Transactional Considerations 2025 Edition

Of Counsel [Margery Newman](#) is a published author in the Illinois Institute of Continuing Legal Education (IICLE) publication, "Construction Law: Transactional Considerations 2025 Edition." This trusted resource has guided Illinois attorneys for over 50 years with user-friendly, comprehensive practice guidance.

You can purchase a copy of Construction Law [here](#).

MARGERY NEWMAN IS A PUBLISHED AUTHOR IN CONSTRUCTION LAW: TRANSACTIONAL CONSIDERATIONS 2025 EDITION

September 2025

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Legal Updates

DEI Is Dead. Long Live Economic Development Update

By: [Margery Newman](#)

In our May 2025 newsletter edition, the article [DEI Is Dead. Long Live Economic Development](#) was published, addressing affirmative action programs in the construction industry. As more information has become available, this article is being updated to address more specifically what steps Disadvantaged Business Enterprises (“DBE”) need to take to maintain their certification.

On October 3, 2025, an interim US Department of Transportation (USDOT) rule regarding the criteria for certification as a DBE went into effect. No longer will there be a “presumption” that an individual is socially and economically disadvantaged based on their race or sex. Now, current and future companies that are either certified DBEs or want to become certified DBEs will be required to show how they have been disadvantaged.

In Illinois, the following five sister agencies are part of a unified certification program (ILUCP) that provides a one-stop certification process of DBEs:

1. Illinois Department of Transportation (IDOT)
2. City of Chicago
3. Metra
4. Pace (RTA)

Firms may apply to any of these agencies for DBE certification, and once certified by one agency, that certification will be accepted by all the other agencies.

With the new USDOT interim rule in place, the ILUCP partners are conducting a re-certification process for all firms listed in the ILUCP DBE directory.

By November 24, 2025, all currently certified DBEs will have to submit an updated personal narrative (PN) and personal net worth statement (PNW) documenting how they are socially and economically disadvantaged. Failure to provide such information will result in the decertification of those DBEs who failed to meet the deadline.

Of particular importance to this new requirement is that the determination of disadvantage will not be based in whole or in part on the race or sex of the DBE owner(s). DBEs seeking to remain certified must now show specific examples of economic hardship, systemic barriers and denied opportunities to remain in the DBE program.

A good, but not all-inclusive, checklist of information required for the new personal narrative follows:

1. Early life and foundational barriers to growth in the construction industry. Under 49 CFR §26.67(a)(1)(i), early experiences, such as lack of access to financial,

educational, and/or professional opportunities, could establish social disability.

2. Business difficulties due to lack of access to capital and bonding are considered barriers that are applicable for DBE certification.
3. Industry challenges and retaliation by upstream owners or general contractors, such as refusal to consider bids or use a DBE on private work that has no goals.
4. Impact of barriers on company startup and growth.
5. Positive impact of the DBE program on the company to date.

Under the new rules, evidence of disadvantage as set forth above will be judged by a preponderance of the evidence standard. Additionally, the economic threshold to prove economic disadvantage cannot exceed a personal net worth of \$2,047,000.00. Therefore, a new PNW statement must also be submitted along with and attached to the PN.

There are still many unanswered questions regarding the implementation of this new program. For example, it is unclear how this new program will impact existing contracts. Further, the basis for reevaluation of certified DBEs is not fixed and there is no bright line for what criteria will be accepted. Ultimately, the updated PN must meet the three pillars of social and economic disadvantages by providing specific instances of:

1. Economic hardship
2. Systemic barriers
3. Denied opportunities

The New Illinois Receivership Act

By: [Samuel Levine](#)

On August 1, 2025, Governor Pritzker signed into law the new Illinois Receivership Act. (“Act”) It codifies outdated statutes and case law into a comprehensive statutory framework to maximize the value of the receivership estate. It clarifies and expands when and how receivers can be appointed, while also providing the tools they need to manage commercial assets, including commercial real estate, personal properties and businesses. The Act will affect the construction industry. Contractors and owners will need to know the process upon receiving notice of a receivership, when to file a claim, how to handle an executory contract and the impact of a receivership on pending and future litigation. The Act authorizes a court to appoint a receiver pre-judgment to protect a party with an interest in assets from waste, in an action by a secured party to foreclose or enforce its lien, an action where a receiver may be appointed by law or on equitable grounds and without notice to prevent irreparable harm.

The Act provides for the appointment of a receiver to protect rights in property before and after judgment, including during a period of redemption for commercial real estate. It is to protect property that “is subject to or is in danger of waste, loss, dissipation, or impairment.”

The Act is structured to serve like a mini bankruptcy statute. However, it is intended to provide a faster and less expensive method for the disposition of receivership property. The initial notice will be given by the receiver via first-class mail.

The notice needs to be reviewed carefully upon receipt because it outlines the parties' rights to the receivership property and steps to protect the recipient's rights. When the receivership involves real estate, a notice must be recorded with the Recorder of Deeds in the county where the property is located, including the name of the real estate owner, its legal description and a copy of the order appointing the receiver.

The notice must contain a claims bar date, which must be at least 60 days after the appointment of a receiver. The notice is sent via first-class mail or other commercially reasonable means and as otherwise directed by the Court. It is important to file the claim within the claims bar date in order to receive distribution from receivership's assets. There is no court-authorized form. However, the claim must contain the names and address of the claimant, the amount of the claim and the basis. Mechanics lien claimants with executory contracts should include unpaid amounts.

With Court approval, a receiver may assume or reject executory contracts. In the absence of an order accepting or rejecting an executory contract, such as an uncompleted construction contract, the contract is deemed rejected upon the termination of the receivership. Therefore, a contractor must notify the receiver of all uncompleted contracts to have it accept or reject such contracts.

It is important to notice that, like a bankruptcy, the order appointing a receiver operates as a stay of acts, actions or proceedings to enforce a lien against the receivership property. The lien secures a claim against the owner that arose before the entry of the order. However, a lien claimant is not barred from and must protect itself and perfect its lien by serving all required notices and recording its claim for lien.

Wisconsin Court rules that structural defects, which have been unchanged since installation, are barred by the statute of repose

By: [Ryan Danahey](#)

In *Larimore v. Midland*, 2025 Wisc., App. Lexis 761, the Wisconsin Court of Appeals, District 4, considered a case in which a Plaintiff slipped on ice at the rear of a commercial building. The facts established that Plaintiff fell due to ice that had collected underneath a downspout at the rear of the building. That downspout had been unchanged since it was installed during the construction of the building. Plaintiff alleged liability under a negligence theory, as well as under the Wisconsin Safe Place Statute. Liability under the Wisconsin Safe Place Statute is a higher standard of care and applies to "public buildings." Liability under the Safe Place Statute relates to a failure to repair, construct or maintain a public building to render it safe. The Safe Place Statute focuses on "unsafe conditions."

In a long and detailed opinion, the court considered whether the seven-year statute of repose in Wisconsin would bar liability if the downspout was considered a structural defect and determined that Wisconsin law required such a result. That is, under Wisconsin law, where a condition has been installed on a building from its inception, that condition causes an injury, and more than seven years have passed without the condition being changed or modified in any way, the statute of repose bars liability for that "structural defect." Crucial to the court's consideration was that the downspout in question had not been changed in any way since the time of its installation, when the building was originally constructed.

With respect to Plaintiff's negligence claim, the court determined that those allegations could proceed, although the condition itself was considered a structural defect. The court recognized that Plaintiff had alleged a failure to inspect and ameliorate the ice that had gathered below the downspout by either sanding or salting that area. The court held that the allegations of failure to inspect and ameliorate constituted a proper allegation of a failure to repair, construct or maintain under the Wisconsin Safe Place Statute.

Overall, the detailed analysis laid out by the court establishes the technical but important differences between allegations under a negligence claim, as well as those under the Wisconsin Safe Place Statute.

Illinois Appellate Court Offers a Broad Interpretation on Exclusive Remedy Provision of the Illinois Workers' Compensation Act in Co-Employee Assault Case

By: [Taylor Young](#)

In a recent decision, *Kordas v. Bob's All Bright Electric Inc.*, 2025 IL App (3d) 240482, the Illinois Appellate Court determined that a broad interpretation of the exclusive remedy provision was appropriate when analyzing a work-related accident and subsequent civil suit.

Plaintiff filed suit against his employer, claiming intentional misconduct and negligence after his coworker, Thomas Clarizio, struck him over the head with a shovel while having a psychotic episode. Plaintiff alleged that the company was owned and operated by Clarizio's father, and he knew or should have known that Clarizio had mental health issues, negligently hired and supervised Clarizio and intentionally concealed Clarizio's dangerous propensities.

Defendant moved for summary judgment, asserting that Plaintiff's claims were barred by the exclusive remedy provision of the Act. The circuit court granted Defendant's motion and Plaintiff appealed. The appellate court affirmed the circuit court's decision.

Plaintiff had worked with Clarizio for five years and was his direct supervisor. Over those five years, there was an instance where Clarizio was sent home for insubordination. Plaintiff indicated that they had several arguments over the years, but nothing

ever became heated. Plaintiff and Clarizio never had a physical altercation, nor did Plaintiff ever feel threatened by Clarizio. Plaintiff was aware that Clarizio had mental health issues and received mental health treatment twice prior to the incident in November 2020.

The owner of the business and father of Clarizio testified that he had no knowledge of his son's mental health issues, though he did note one instance where Clarizio was hospitalized for suspected drug use. The owner noted that Clarizio and Plaintiff worked together fine, but Plaintiff often had difficulties giving directions.

Clarizio testified that he and Plaintiff were installing an electrical panel. When Plaintiff kneeled down, Clarizio hit him over the head with a shovel. He admitted that he struck Plaintiff more than once and then ran away. Clarizio attributed his behavior to his January 2020 bipolar disorder diagnosis and his antipsychotic medication. Clarizio testified that he was hospitalized four times in 2020 for mental health treatment, most recently in October 2020, one month before the incident. Clarizio also claimed that his father knew about his involuntary commitment, bipolar diagnosis, medication and four hospitalizations.

The appellate court analyzed both the Workers' Compensation Act and copious case law in determining that the claim was barred by the exclusive remedy provision of the Act. The court cited *Collier v. Wagner Castings Co.*, 81 Ill. 2d 229, 237 (1980) for the proposition that to avoid the bar of the exclusive remedy provision, the employee must demonstrate that the injury (1) was not accidental, (2) did not arise from his or her employment, (3) was not received during the course of employment, or (4) was not compensable under the Act.

On the issue of accidental injury, Plaintiff argued that Defendant knew that Clarizio was violent and knowingly concealed his violent tendencies. The court disagreed and found that Plaintiff's action was barred because he did not allege that Defendant committed or expressly authorized Clarizio to commit an intentional tort against him. Carelessly and recklessly allowing an employee to work unsupervised on a job site with other employees, even though the employer knew or should have known of his dangerous propensities is not an intentional tort.

On the issue of an injury arising out of his employment, the court found that where a physical confrontation between two employees is purely personal in nature, the resulting injuries cannot be said to have arisen out of the employment. Plaintiff unsuccessfully argued that the dispute arose out of personal animosity and had nothing to do with Plaintiff's scope of employment. The court was not swayed and noted that it was clear from deposition testimony that Plaintiff and Clarizio did not have a personal relationship outside of work. Plaintiff and the owner testified that Clarizio had refused to complete tasks and that Plaintiff did not appreciate having to mentor employees. Clarizio testified that he did not target Plaintiff for personal reasons and Plaintiff did not provoke the attack. As a result, the court found that the Plaintiff's injury did arise out of his employment.

Finally, because Plaintiff's claim was otherwise compensable under the Act, the fourth exception did not apply.

While the court affirmed the circuit court's decision, we have defended cases where the trial courts have determined a

sufficient factual basis exists to preclude summary judgment based on the exclusive remedy doctrine. Kordas will prove to be a valuable precedent in getting such courts to take a more appropriate and expansive view of when the exclusive remedy doctrine should be applied.

Who We Are

Downey & Lenkov LLC is a full-service law firm with offices in Illinois, Indiana and Wisconsin. Our expertise spans across several practice areas, providing transactional, regulatory and business solutions for clients across the nation. The firm's continued growth is a result of an aggressive, results-oriented approach. Unlike larger law firms however, we do not face massive overhead and are able to charge more reasonable rates that both small and larger employers can more readily afford.

We evolve with our clients, representing Fortune 500 and small companies alike in all types of disputes. Downey & Lenkov is a team of experienced, proactive and conscientious attorneys that have been named Best Lawyers®, Leading Lawyers, Super Lawyers®, Rising Stars and AV Preeminent®.

Newsletter Contributors

[Margery Newman](#), [Samuel Levine](#), [Ryan Danahey](#) and [Taylor Young](#) contributed to this newsletter.

As always, the team at Downey & Lenkov is here to help. Whether you have questions, need guidance or are facing a complex challenge, our team is ready to assist.

View more information on our [Construction Law practice](#)

Our other practices include:

- [Appellate Law](#)
- [Business Law](#)
- [Condominium Law](#)
- [Entertainment Law](#)
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