

The RIDGE Review

R&A
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Attorneys at Law



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Letter from the Editor

By James M. Ridge, Editor

Summer has not slowed the course of "Reform" in the workers' compensation arena. On June 28, 2011, Governor Quinn signed the Workers' Compensation Reform Bill enacting the changes to the Act that we outlined in our last issue. The law became effective the day it was signed but certain provisions take effect on other, later dates. For more specific information please refer to our website or contact our office to speak with one of our workers' compensation attorneys.

In this issue we will discuss the escalating number of repetitive trauma cases filed by correctional officers at the Menard Correctional Center. Politicians and big business accused these men and women of fraud and made Menard Correctional Center their poster child for reform of the Workers' Compensation Act. We take a closer look at the State of Illinois' investigation into these cases and workers' compensation proceedings that followed. What we discovered may surprise you.

We will also discuss medical malpractice cases. We are at our most vulnerable state when we place our lives or the lives of loved ones in the hands of doctors, nurses, and hospitals. Because of this, the law allows us to recover damages when someone is injured due to the negligence of a medical care provider.

Finally, in the September issue, we will introduce you to Karin K. Connelly, our senior associate attorney, update you about recent cases, the personal comfort doctrine, community issues and other important legislation.

Remember, if you have a topic or issue that you would like us to address, email: info@ridgeassoc.com and we will be happy to try to discuss it in a future issue. Also, be sure to log on to our website so you can receive the Ridge Review and our monthly updates via email. You can also follow us on Twitter and like us on Facebook.

INSIDE THIS ISSUE – SEPTEMBER 2011

Letter from the Editor	1
A Closer Look: Menard Correctional Center	1
Menard Correctional Center – Continued	2
In the Community with R&A	3
You Should Know	3
Attorney Spotlight	4
Medical Malpractice	4
Recent Success	5
Events Calendar	5

A Closer Look: Menard Correctional Center

The recent changes in the Illinois Workers' Compensation Act are at least in part the result of a smear campaign against the people who are injured while at work in Illinois. Politicians, backed by big business, claimed that the system is "broken and corrupt" – filled with people making fraudulent claims for benefits not related to their work. They frequently cite carpal tunnel injuries claimed by correctional officers at Menard Correctional Center as an example of why the system needed "reform."

A close examination of the facts shows that rather than being an example of a workers' compensation system in crisis, the Menard Correctional Center cases are in fact an example of a system designed to fairly compensate injured workers and create incentives for employers to provide a safer workplace for all workers.

This article takes a closer look at some of the points that were not reported in the media coverage of the Menard cases.

History of Menard Correctional Center

Menard Correctional Center, formerly known as Southern Illinois Penitentiary, is located in the town of Chester in Randolph County, Illinois. It is a state prison housing maximum-security and high medium-security adult males. The average daily population as of 2007 is 3,410. It is Illinois' largest maximum-security prison.

Menard Correctional Center opened in March 1878, and is the second oldest prison in Illinois. It was last updated in 1931. There are no automatic locking mechanisms on the cell doors. Most of the prison cells require very old Folger Adams Keys (pictured on page 2) to unlock, open, and lock the cell doors.

State of Illinois' Investigation

As a result of an escalating number of repetitive trauma claims made by the prison's correctional officers, the State of Illinois thoroughly investigated the job duties and physical requirements for the position, including compiling written job duties, video demonstrations and hiring an expert, Dr. Anthony Sudekum of the Missouri Hand Center, to offer an opinion about the relationship between the job duties and the repetitive trauma injuries.

The Workers' Compensation Commission records show that not only did Dr. Sudekum review the written descriptions and video demonstrations, he traveled to the prison to view the correctional officers perform their jobs.

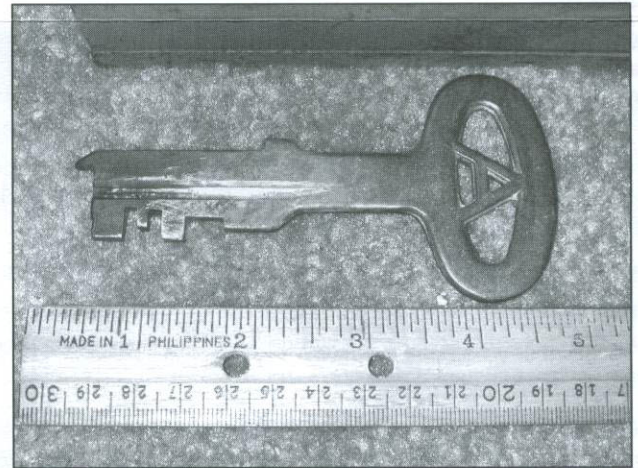
(Continued on page 2)

Menard Correctional Center – Results of Dr. Sudekum's Evaluation

- "Bar rapping" is a major requirement of a correctional officer at Menard. Officers listen to the sound of the bars to ensure that they are solid and that the inmates have not tampered with the cell doors. Dr. Sudekum watched an officer hold a bar with his right hand and strike the bars approximately 60 times to demonstrate bar rapping on one cell. Officers must perform bar rapping at the beginning of each shift on the gallery of prison cells they are assigned. Each gallery has 55 cells. This means that an officer strikes or raps 3,300 bars a day.
- The investigation also revealed that officers were required to frequently unlock and open doors to cells and various areas requiring the use of Folger Adams keys. The State of Illinois' videographer asked an officer to demonstrate the unlocking of one of these doors in slow motion. The officer tried to do so and the lock stuck. He had to turn the key multiple times to get it to unlock and explained that the locks were difficult to operate in slow motion. The videographer intentionally stopped the video when a lock jammed and the officer struggled with both hands to open a cell door.
- The State of Illinois' expert, Dr. Sudekum, testified by deposition that the duties of the correctional officers were causing symptoms and physiological changes that would constitute a work-related injury. Dr. Sudekum explained that he toured the Menard Correctional Center and found it to be very old. He opined that correctional officers at Menard performed tasks that were more strenuous than at other modern-day facilities. Dr. Sudekum also admitted that he was aware that the State of Illinois stopped recording when an officer showed difficulty opening a cell door. Ultimately, he concluded that the vibration caused by bar rapping and the stress of unlocking and opening cells was most significant in aggravating the carpal and cubital tunnel syndromes in the correctional officers at Menard.

Illinois Workers' Compensation Proceedings

Although the evidence supported that the above working conditions caused and/or aggravated carpal and cubital tunnel syndrome in 60 correctional officers at Menard, the State of Illinois refused to pay benefits under the Act and the correctional officers filed cases before the Illinois Workers' Compensation Commission. Under the Act, cases are to be heard where the injury occurred. Therefore, each case was assigned to Arbitrator Nalefski in Williamson County. Arbitrator Nalefski reviewed the facts of each case including the job descriptions, video, and testimony of Dr. Sudekum. As a result, these cases were found to be compensable and the State of Illinois was ordered to pay benefits to each officer.



Menard Correctional Center – Conclusion

There is no doubt that a large number of correctional officers at Menard were injured while performing their repetitive job duties. What is unfortunate about these cases is that even after the above facts have been revealed, the State has made no attempt to update the prison facilities and continues to expose workers to ongoing risk of injury. Instead, politicians, backed by big business, blamed the workers and called their honesty and integrity into question. They picked out the facts that they liked and based their call for reform of the Illinois Workers Compensation Act on half-truths.

Politicians and big business may accuse workers who file claims when they are injured of fraud, and the State of Illinois may spend our tax dollars fighting legitimate claims instead of providing workers with a safe workplace, however, let's look at the real statistics on fraud. The Illinois Department of Insurance – Workers' Compensation Fraud Unit released the following facts. In 2009, there were 23 allegations of fraud against an employee/claimant. Of these investigations, only 52% were actually referred for prosecution, of which just 8% were convicted of fraud. **On the other hand, of the allegations of employer fraud, 80% were referred for prosecution and 40% were convicted.** This begs the question: what is it that needs to be reformed?

In the Community with R&A

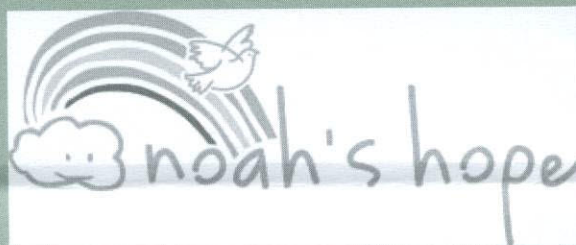
Autism is a devastating neurological and biological disorder that typically affects children between the ages of 18 months to five years of age. It affects a child's ability to communicate, socially interact, and engage in developmentally appropriate behaviors. Autism currently affects 1 in every 91 children. Autism Spectrum Disorders are reported to occur in all racial, ethnic, and socioeconomic groups. The affect on a family can be devastating. Recent studies have estimated that the lifetime cost to care for an individual with an ASD is \$3.2 million.



The above statistics are shockingly real. The search for a cure and the need for autism awareness have never been more prevalent than now. Ridge & Associates has taken an active role in the fight against this often-misunderstood disorder. On July 28th, along with Teamsters Joint Council 25, R&A sponsored and took part in the Tenth Annual "In Search of a Cure" golf outing in Orland Park, Illinois.

Over the last ten years this event has raised \$3 million to contribute to find a cure for autism. Monies raised at this year's outing will benefit Easter Seals Disability Services. For more information or to make a donation to the foundation please contact Ms. Roberta Lester at (630) 887-4100.

R&A was also a sponsor and took part in the Downers Grove Police & Firefighter's Charity Golf Outing. Proceeds raised benefit Turning Point Outpatient Mental Health Services and Noah's Hope, an organization dedicated in the fight against Batten's disease, another early childhood disorder. For more information or to make a donation please contact Mr. Michael Collins at (708) 906-8545.



You Should Know...

Does your employer offer an area for you to take breaks or eat lunch? Is this area designated for employees to use as opposed to the general public? If you are injured while on your break, or walking to and from a break area, you may be covered under the personal comfort doctrine. The personal comfort doctrine is a legal principle that states that the course of employment is not interrupted by certain acts relating to the employee's personal comfort, such as short breaks for eating, drinking, using the restroom, smoking, seeking relief from discomfort and the like.

In Becker v. K-Mart Corp., the employee went out for a cigarette break in an area that was primarily used by K-Mart's employees to take breaks. When walking back into the store after her break, she tripped over a pallet next to the break area. The Arbitrator held that the accident was compensable. In making his determination, the Arbitrator pointed out that the area was "delineated" for K-Mart employees to use for breaks and that it was provided by K-Mart for the personal comfort of its employees.

In Eagle Discount Supermarket v. Industrial Commission, the employee was hurt during a lunch break. The Illinois Supreme Court stated, "since eating is deemed to be an act of personal comfort, the personal comfort doctrine has been applied to cases involving lunchtime injuries. Under the personal comfort doctrine, the course of employment is not considered broken by certain acts relating to the comfort of the employee." The Court held that the fact that the employee voluntarily remained on the premises and was not paid for the lunch break would not defeat this award. This line of cases finds other actions at work to be "personal comfort" acts, such as, getting fresh air, seeking relief from the heat, returning from a restroom, and using a shower in an employee locker room.

If you or someone you know was injured in a similar circumstance, it is important that they contact a workers' compensation attorney.

Attorney Spotlight: Karin K. Connelly

Karin has worked at James M. Ridge & Associates, P.C. since 1992, after receiving her law degree from DePaul University, School of Law and her undergraduate degree in Political Science from the University of Illinois at Urbana-Champaign.

Concentrating in workers' compensation litigation, Karin has handled claims for injured workers at numerous Workers' Compensation Commission venues throughout Illinois. She has extensive experience pursuing appeals before the Illinois Workers' Compensation Commission, in the county Circuit Courts throughout the state and has successfully argued a number of appeals before the Illinois Appellate Court.

As a part of Karin's practice, she lectures and provides training opportunities to labor groups and other trade associations on topics related to Workers' Compensation Law.

Karin has been involved in the drafting and passage of legislation that allows police officers and firefighters who have been injured on the job to receive benefits under the Workers' Compensation Act.

Karin is a member of the Illinois Workers' Compensation Lawyers Association, the Illinois Bar Association, and the Illinois Trial Lawyers Association.

In addition to her law practice, Karin is a volunteer and former member of the Board of Directors and a past president of BEDS PLUS Care, Inc., a not-for-profit organization providing shelter and other services to homeless individuals in Western Cook County.

"When a man tells you that he got rich through hard work, ask him: 'Whose?'"

--Don Marquis (1878 - 1937)

Medical Malpractice

Frequently, our firm is asked to evaluate cases for medical malpractice. Medical malpractice is a broad area of the law that boils down to a person being injured by the negligent acts or omissions of a health care provider. A health care provider is a physician, dentist, nurse, therapist, or facility (i.e., clinic or hospital) that treats patients.

In order to prove a medical malpractice case, you have to prove that the health care provider deviated from the standard of care normally applied by a similar health care provider. In other words, if your obstetrician chooses to delay delivery of your baby and as a result the baby suffers from a debilitating, lifelong injury, then the standard of care is based upon what other obstetricians would have done under similar circumstances. Moreover, you must prove that as a result of this deviation from the standard of care, you or your loved one suffered damages.

To file a medical malpractice claim, the complaint or initial filing with the Court must have an affidavit from an expert witness. This affidavit must (1) be made by someone that has practiced or taught in that same medical field within the last six years, (2) be made by an expert qualified by experience or competence, and (3) contain a written report stating that, after review of the medical records and other evidence, there is a reasonable and meritorious cause of action.

The statute of limitations on filing a medical malpractice claim is two years from the date that a reasonable person knew or should have known about the injury. However, there is also a statute of repose which states that a claim cannot be filed more than four years after the alleged act or omission occurred. In the case of a minor, the statute of limitations is extended to eight years, not to exceed the minor's 22nd birthday.

Fortunately, under Illinois law there are no caps on damages. And, caps on non-economic damages were held to be unconstitutional by the Illinois Supreme Court. However, injured parties are not allowed to seek punitive damages under a medical malpractice cause of action in Illinois.

We often see and hear about potential medical malpractice cases. Whether it's a negligent act like leaving a sponge or instrument in a patient during surgery, putting the wrong kind of implant in a patient, or operating on the wrong body part, to a negligent omission like failing to order a diagnostic test and waiting too long to operate and/or see a patient, we have the knowledge and experience to evaluate your potential medical malpractice claim. Please, give us a call so that we can assist you.

We will be available for consultations at the following times and locations:

September			
13	IAM Lodge 49	VFW Post 2255, 10537 S. Ridgeland , Chicago Ridge, IL	7:00 p.m.
14	IAM Lodge 1557	Holiday Inn, 495 Airport Road, Elgin, IL	6:00 p.m.
18	IAM Lodge 851	23157 S. Thomas Dillon Drive, Channahon, IL	10:00 a.m.
19	Teamsters Local 627	7101 N. Allen Road, Peoria, IL	9:00 – 12:00 pm
19	Galesburg Labor Temple	2243 Grand Avenue, Galesburg, IL	3:00 – 5:00 p.m.
October			
5	IAM Local 126	1529 S. Harlem Avenue, Berwyn, IL	8:00 – 9:00 p.m.
6	Teamsters Local 179 Hall	1000 N.E. Frontage Road, Joliet, IL	1:30 – 4:00 p.m.
11	IAM Local 49	VFW Post 2255, 10537 S. Ridgeland , Chicago Ridge, IL	7:00 p.m.
13	Teamsters Local 371	7909 42 nd Street, Rock Island, IL	8:30 – 11:30 a.m.
17	Teamsters Local 627	7101 N. Allen Road, Peoria, IL	10:30 – 12:00 p.m.
17	Galesburg Labor Temple	2243 Grand Avenue, Galesburg, IL	3:00 – 5:00 p.m.
19	IBEW Local 176	1012 N. 5 th Avenue, Kankakee, IL	1:00 – 3:30 p.m.
November			
2	IAM Local 48	50 W. Oakton Street, Des Plaines, IL	7:00 – 8:00 p.m.
3	Teamsters Local 179 Hall	1000 N.E. Frontage Road, Joliet, IL	1:30 – 4:00 p.m.
7	IAM Lodge 2125	Hampton Inn & Suites , 1400 Milwaukee Avenue, Lincolnshire, IL	7:00 p.m.
8	Laborers' Local 231	2503 Broadway, Pekin, IL	7:00 p.m.
8	IAM Local 49	VFW Post 2255, 10537 S. Ridgeland , Chicago Ridge, IL	7:00 p.m.
9	Trooper Lodge 41 – Dist. 2/15/Chicago	Diplomat West, 681 W. North Avenue, Elmhurst, IL	Members Only
9	IAM Lodge 1557	Holiday Inn, 495 Airport Road, Elgin, IL	6:00 p.m.
20	IAM Local 851	23157 S. Thomas Dillon Drive, Channahon, IL	10:00 a.m.
21	Teamsters Local 627	7101 N. Allen Road, Peoria, IL	10:30 – 12:00 p.m.
21	Galesburg Labor Temple	2243 Grand Avenue, Galesburg, IL	3:00 – 5:00 p.m.
December			
1	Teamsters Local 179 Hall	1000 N.E. Frontage Road, Joliet, IL	1:30 – 4:00 p.m.
7	IAM Local 48	50 W. Oakton Street, Des Plaines, IL	7:00 – 8:00 p.m.
8	Teamsters Local 371	7909 42 nd Street, Rock Island, IL	8:30 – 11:30 a.m.
14	IBEW Local 176	1012 N. 5 th Avenue, Kankakee, IL	1:00 – 3:30 p.m.
19	Teamsters Local 627	7101 N. Allen Road, Peoria, IL	10:30 – 12:00 p.m.

Our Attorneys

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 Andrew T. Bell

**Also Licensed in Ireland*

Of Counsel

James P. Hoffman
 Thomas J. Flanagan
 Terrence M. Rubino
 Thomas E. Schooley
 Ernest J. Maurizi

Office Manager
 Karen A. DeWitt

Recent Cases

Attorney **Doug Petrovic** recently settled a case for \$500,000.00 against Ford Motor Company involving a slip and fall accident. Our client was employed by a company who transported vehicles to Ford's different field-site plants. While walking in one of Ford's parking lots, he slipped and fell on the poorly maintained grounds. Due to severe injuries, his physician recommended multiple level fusions of his cervical and lumbar spine. After proceedings in Federal Court, a negotiated settlement was reached on behalf of the injured driver. This settlement came after Attorney **James M. Ridge** had already secured workers' compensation benefits of approximately \$450,000.00.

Illinois workers' compensation benefits can be more favorable to an injured worker than benefits allowed in other states. Attorney **Karin K. Connelly** recently settled a claim on behalf of a worker whose case could be filed in both Illinois and Indiana. Although the claimant was originally paid under Indiana's law, Karin was able to prove that Illinois benefits were applicable. This nearly doubled the amount of temporary total disability benefits due to the worker for his lost time. She also established that he was entitled to 47.5% loss of use of his leg, approximately 5 times the value of his case in Indiana. Karin also secured open medical rights for future treatment related to his injured knee. Even with the recent changes to the Illinois Workers' Compensation Act, workers who can prove Illinois jurisdiction for their industrial injury may be afforded more benefits than our neighboring states.

In an effort to be more environmentally friendly, we'd like to send you this newsletter and other updates by e-mail. Please send your e-mail address to info@ridgeassoc.com