



## Ankin Law Office LLC

Protecting the Rights of Injured Workers

162 W Grand Ave  
Chicago, Illinois 60654, United States

Tel: 312-346-8780 or 800-442-6546

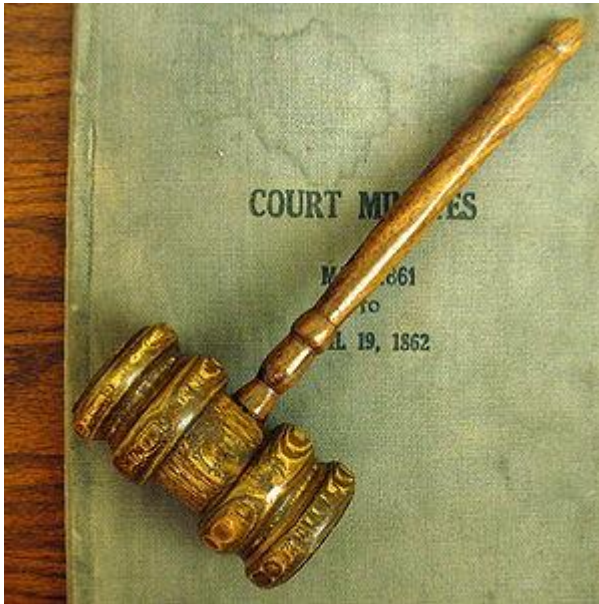
Fax: 312-346-8781

Email: [howard@ankinlaw.com](mailto:howard@ankinlaw.com)

Website: [www.ankinlaw.com](http://www.ankinlaw.com)

Blog: [www.thechicago-injury-lawyer.com](http://www.thechicago-injury-lawyer.com)

## Illinois Court Considers Application of the Dead-Man's Act to Deposition Testimony



In a recent case, one issue considered by Second District Appellate Court of Illinois in *Balma v. Henry*, No. 2-09-1301, was whether the Dead-Man's Act (the Act) can be used to prevent statements in discovery depositions from being admitted in summary judgment proceedings and/or at trial.

*Balma* involved a car accident which resulted in a [personal injury lawsuit](#). The plaintiffs alleged that the defendants' negligence—namely rear ending the plaintiffs' vehicle with their vehicle—caused their injuries. During the discovery phase of the proceeding, one of the defendants, Edward Henry, was deposed and then later died of causes unrelated to the accident.

The plaintiffs made a motion to preclude the statements of Henry, among others, by invoking the Act.

Before reaching its decision, the Court explained the purpose of the Act:

The Dead-Man's Act protects decedents' estates from fraudulent claims and equalizes the parties' positions in regard to giving testimony. *Gunn*, 216 Ill.2d at 609, 297 Ill.Dec. 414, 837 N.E.2d 865. The objective of the Dead-Man's Act is fairness. *Vazirzadeh v. Kaminski*, 157 Ill.App.3d 638, 645, 110 Ill.Dec. 65, 510 N.E.2d 1096 (1987). The Dead-Man's Act is intended to remove the temptation of a survivor to testify to matters that cannot be rebutted because of the death of the only other party to the conversation or witness to the event, but it is not intended to disadvantage the living. *Hoem v. Zia*, 159 Ill.2d 193, 201-02, 201 Ill.Dec. 47, 636 N.E.2d 479 (1994); *Morse v. Hardinger*, 34 Ill.App.3d 1020, 1026, 341 N.E.2d 172 (1976).

ANKIN LAW OFFICE LLC

[Chicago Workers Compensation](#) | [Chicago Personal Injury](#) | [Chicago Motor Vehicle Accidents](#)  
[Chicago Wrongful Death](#) | [Chicago Social Security Disability](#) | [Chicago Class Action Lawsuits](#)



## Ankin Law Office LLC

Protecting the Rights of Injured Workers

162 W Grand Ave  
Chicago, Illinois 60654, United States

Tel: 312-346-8780 or 800-442-6546

Fax: 312-346-8781

Email: [howard@ankinlaw.com](mailto:howard@ankinlaw.com)

Website: [www.ankinlaw.com](http://www.ankinlaw.com)

Blog: [www.thechicago-injury-lawyer.com](http://www.thechicago-injury-lawyer.com)

The Court analyzed the applicable law, explaining that statements made during discovery depositions were admissible in a summary judgment proceeding and were not precluded by the Dead-Man's Act:

It is proper to apply the Dead-Man's Act in the context of a summary judgment proceeding because, while a motion for summary judgment is not a modified trial procedure, it is an adjudication of a claim on the merits and is the procedural equivalent of a trial.

The Court then applied its decision to the specific procedural facts of the case and remanded the matter to the trial court for further proceedings.

Howard Ankin of Ankin Law Office LLC ([www.ankinlaw.com](http://www.ankinlaw.com)) handles [workers' compensation](#) and [personal injury cases](#). Mr. Ankin can be reached at (312) 346-8780 and [howard@ankinlaw.com](mailto:howard@ankinlaw.com).

By [admin](#)

October 26, 2010