



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter February 2015



THE TOP 5 LIST

Top 5 Ways To Fight Malingering Medical Treatment

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov
Workers' Compensation Department

1/ IME

Be aggressive in retaining solid experts who can question ongoing treatment. Obviously, you only want to retain one when the cost is worth the return.

2/ Utilization Review

Utilization Review is a very effective tool, yet often overlooked, in questioning prospective medical care.

3/Nurse Case Management

An aggressive nurse case manager can do wonders in moving treatment forward. Make sure that your NCM has good communication and follow up skills, as they will quarterback the medical treatment and be your "eyes" and "ears" in the process.

4/Question The Treaters

Don't be afraid to question the prescribed medical care. While you should obviously only do so under the auspices of your state's law regarding communicating with treating physicians, you should question a doctor who is recommending unlimited or questionable medical treatment.

5/Terminate Benefits

If Petitioner is malingering or putting roadblocks in his/her care, consider terminating benefits. While you need to do so carefully, it is a worthwhile step if you have clear evidence of malingering. For more on cutting benefits when a claimant refuses treatment, see page 3.

As always, we would like to hear your thoughts. Email me at rlenkov@bdlfirm.com and we'll publish your comments in our next newsletter.

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Are Measles Compensable?

By: [Rich Lenkov](#)



The recent measles outbreak raises the question of whether employees can successfully claim the condition as work related. The answer is probably no. To be compensable, measles has to pass the test of any illness or infectious disease: that it arose out of and in the course of employment.

The claimant must show that work exposed him or her to the risk of measles to a degree greater than that faced by the general public. If the claimant is an emergency room physician, or a Disneyland employee, they probably have a compensable claim. However exposure from an office coworker likely doesn't meet the burden.

CLM Greater Chicago Chapter Event

What Are They Thinking? Secrets Revealed From Industry Professionals



On 1/22/15, the CLM Greater Chicago Chapter held an educational and networking event. The educational sessions covered alternative dispute resolution, jury selection and litigation management. This was followed by networking and a performance from local Chicago Magician, [Justin Purcell](#). Attendees took home customized CLM playing cards with sponsor logos. We would like to thank our sponsors for making this event possible!

Legal Face-Off On WGN



Legal Face-Off is a fast paced, high energy legal podcast airing every other Friday on WGN PLUS. Each week, **Jason Whiteside** (an exceptional Chicago plaintiff's attorney) and **Rich Lenkov** provide a legal point/counterpoint perspective on the hottest issues in sports, Hollywood, politics and current events. Of course, with a couple of jabs here and there.

Our most recent episode was released on 2/2 and you can listen to it here: <http://wgnplus.com/category/legal-face-off/>

Please like us on [Facebook](#) and follow us on [Twitter](#). Email legalfaceoff@gmail.com to interact with the show. Send us your questions and we will answer them on air—nothing is off limits.

New! Subscribe to Legal Face-Off in Apple Podcasts.



Bryce Downey & Lenkov Sponsors Sundance Event

[Monday on Main Street](#) is an exclusive filmmaker social event that takes place every year in Park City, UT during the Sundance Film Festival. This event offers talented experts a chance to enjoy themselves in an upbeat, upscale setting in the heart of the fest. This year, attendees dined and networked at Butcher's Chophouse. This is Bryce Downey & Lenkov's second year sponsoring.



Upcoming Seminars



- On **2/5/15**, **Rich Lenkov**, **Sherri Johnson**, Senior Director of Corporate Claims, Interstate Hotels & Resorts, and **Cameron Shirley**, Director of Global Claims and Litigation Management, Starwood Hotels & Resorts, will present "General Liability and Workers' Compensation Issues Unique to the Hotel Industry" at the CLM 2015 Retail, Restaurant & Hospitality Committee Conference in Orlando, FL. For more info, [Click Here](#)
- On **2/13/15**, **Rich Lenkov** and **Maital Savin** will present "Employment Law for Workers' Compensation Professionals" in Danville, IL for [CEU Institute](#)
- On **3/25/15**, **Rich Lenkov**, **Erik Barber**, Claims Manager, Argo Insurance, **Sean Downing**, Director of Litigation, CVS Caremark and **Natalie Troilo**, Claims Manager, Dick's Sporting Goods, will present "What the Movies Can Teach You About Defending Workers' Compensation Claims" at The CLM 2015 Annual Conference in Palm Desert. For more info, [Click Here](#)
- On **5/8/15**, **Rich Lenkov** and **Eric Spalsbury**, Director, Risk Management, Stanley Steemer International, Inc. – [Click Here](#) to read Eric's interview with BDL in our October newsletter – will present "Negotiation Skills That Every Worker's Compensation Professional Needs To Know" at the CLM 2015 Insurance Fraud & Workers' Compensation Conference in Boston. For more info, [Click Here](#)
- On **6/2/15**, **Rich Lenkov** will present "Trial & Appellate Procedures" at the Advanced Workers' Compensation conference in Naperville. Stay tuned for more details
- On **6/9/15**, **Rich Lenkov** will present "Workers' Compensation Fraud: What You Can Do About It" at the SEAK 35th Annual National Workers' Compensation and Occupational Medicine Conference in Chicago. For more info, [Click Here](#)

Recent Accomplishments

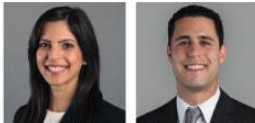
We are excited to announce that several of our attorneys have been recognized for being industry leaders and going above and beyond client expectations.

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Geoffrey A. Bryce Storrs W. Downey Richard W. Lenkov Terrence E. Kiwala Terrence J. Madden

emerging lawyersSM *on a fast track to the topSM*



Maital B. Savin Michael C. Milstein

Super Lawyers

2015



Richard W. Lenkov

Super Lawyers

2015



Maital B. Savin



Michael C. Milstein

- Leading Lawyers recognizes 5% of all lawyers licensed to practice law in Illinois
- Emerging Lawyers recognizes the top 2% of lawyers of exceptional character and experience under the age of 40 OR practicing law for 10 years or less in Illinois
- The Super Lawyers designation is given to no more than 5% of lawyers in Illinois
- Rising Stars is an exclusive list, recognizing no more than 2.5% of lawyers in Illinois

Can You Cut Benefits When A Claimant Refuses Treatment?

By: [Maital Savin](#)



In *Oberlander v. Univ. of Chicago*, 03 IL. W.C. 61334 (Indus.Comm'n 2014), Petitioner developed CRPS from a work accident. Her treating physician prescribed opioid medications and Petitioner eventually developed opioid dependence. Respondent's IME recommended that Petitioner start a regimen to gradually reduce her use of opioids. Petitioner refused to do so and Respondent declined to issue benefits as a result. Petitioner claimed PTD benefits and sought penalties and fees based on Respondent's failure to pay such benefits.

Section 19(d) of the Act provides that "the Commission may, in its discretion, reduce or suspend the compensation of any injured employee" who "shall refuse to submit to such medical, surgical or hospital treatment as is reasonably essential to promote his recovery." Respondent relied on Section 19(d) in declining to pay benefits, maintaining that the regimen was "reasonably essential to promote [Petitioner's] recovery" under Section 19(d) of the Act. Petitioner maintained that Section 19(d) did not apply because there was no clear evidence indicating that de-escalation would benefit Petitioner and the evidence suggested that Petitioner would have "serious problems" if she followed the IME's recommendations.

The arbitrator concluded that Petitioner did not violate Section 19(d) by adhering to the recommendations of her treating physician as Respondent's IME testified that it is "speculative" whether de-escalation could provide Petitioner any benefit. The Commission affirmed the arbitrator's decision awarding benefits and penalties to Petitioner.

Practice Tip:

If a claimant refuses to comply with treatment that is reasonably essential to promote recovery, you can terminate benefits. However, be sure that the recommended treatment would benefit Petitioner's recovery to avoid exposure for penalties and fees.

Simultaneous Permanency & Wage Differential Awards

By: [Jeanmarie Calcagno](#)



In *Vill. of Deerfield v. Illinois Workers' Comp. Comm'n*, 2014 Ill. App. 2d 131202WC (2014), the Appellate Court affirmed the Commission's decision, awarding permanency and wage differential benefits to Petitioner in cases that both involved man as a whole injuries, which

were tried together.

Petitioner filed three Applications For Adjustment Of Claim. The first Application was for a 2/28/05 shoulder injury, the second Application was for an 8/9/05 cervical and lumbar spine injury and the third Application was for a 1/1/06 left shoulder, left trapezius and neck injury. The arbitrator awarded 25% loss of use of the left arm and 15% loss of use of the right arm for the first accident, and Section 8(d) (1) wage differential benefits for the second claim. The arbitrator found no causal connection for the third claim.

On review, the Commission converted the specific losses to a man as a whole award, and otherwise affirmed and adopted the arbitrator's decision. The Circuit Court affirmed the Commission's decision. Respondent appealed, arguing that the Commission erred in issuing awards for both wage differential and man as a whole benefits for the same injury and that Petitioner was only entitled to a single award for his condition.

The Appellate Court affirmed the Circuit Court's decision in favor of Petitioner, determining that he sustained injuries in the first accident to his left shoulder and right shoulder, and to his neck and lumbar spine in the second accident. The Court noted that the Commission award for the permanent disability was for his physical impairment and not for any impairment of earning capacity. The Court noted that the wage differential was appropriate because the disability from the second accident caused an impairment of earning capacity. The Court distinguished this case from prior case law involving separate and distinct injuries to the same body part. The Court disregarded the

Practice Tip:

In evaluating your claims for trial, take a hard look at the nature of the injuries. All man as a whole injuries are not the same. Also, be prepared to address possible future arguments attempting to further distinguish between man as a whole injuries, such as differentiation between lumbar, cervical and thoracic injuries.

Respondent's argument that under *Will County Forest Preserve District*, the shoulder injury qualified as a man as a whole, holding that "injuries to different body parts of the person-as-a-whole are not injuries to the same body part."

Note: The Appellate Court's opinion has not been released for publication in the permanent law report and is subject to revision or withdrawal.

Geoff Bryce Featured In Leading Lawyers

"Growing A Firm With Aggressiveness And Friendliness"

Geoff Bryce

Growing a Firm With Aggressiveness and Friendliness
by Dustin J. Seibert

Opening a new business can be a delicate undertaking under the best of circumstances. When opening his firm, Geoffrey A. Bryce didn't have the benefit of great circumstances.

Bryce was in Green Bay, Wis., trying a construction case for one of his clients when the firm, now known as Bryce Downey & Lenkov LLC, opened March 1, 2001. He received the message from hundreds of miles away that a mouse accidentally clipped the head of a sprinkler in the new 312 W. Randolph Street location, resulting in a flooded office before its doors ever opened.

Two months later, the bursting of the dot-com bubble resulted in the firm repeatedly gaining and losing Internet service providers. At one point, it had to leech off the DSL connection of one of the tenants to which it leased.

Despite the rough start, Bryce and



company seized the course. "We broke even at the end of that year," he says. "I figured, if we didn't lose any money after all this crap, we're going to be OK. And we've always made money ever since."

Bryce's own career-spanning aggressive approach to marketing, along with his infectious generous personality, has led to the firm's consistent growth. It's happened even in an economy that's not especially kind to the legal industry in general, especially practices that emphasize construction transactional work.

Raised in Northwest Ohio, Bryce was raised in the small village of Mansfield, Ohio, which he describes as a "great place to be from." Bryce is the first of two sons to Jack and Beverly, who together owned and operated a newspaper and printing company.

He attended the University of Toledo, where during his junior year he met his would-be wife Sharon, a South Side Chicago native. They got engaged, and he moved to Chicago in 1972 with only \$100 in his pocket.

Bryce couldn't find a job that would pay

his marketing degree to use, so he worked the second shift at Central Steel & Wire, cutting and packaging steel products. He did that for less than two years before taking a job at the now defunct manufacturing supply company Boiler Supply.

His tenure didn't last very long at Boiler, either. He found the work mundane and not worthy of a career.

Bryce found an ad in the newspaper seeking a docket clerk for Hackbert, Rootes, Fries, Fulgur & Pous. He arranged him because he was trying to figure out his next career step, and he'd already had law school on his short list.

"I figured I'd try it and see where it goes," he says. "I was out of college for a little over two years already, and I figured I had to do something involving law before going to law school."

Before law school, he went to DePaul University and obtained his master's degree in education. Though it seemed his mathematical skills, the coursework helped him realize he didn't have a future as an accountant.

"It was completely boring," he says. "The little creativity that exists with that

(Continued on page 64)

Leading Lawyers®

"Moving to Chicago in 1972 with only \$100 in his pocket, [Geoff Bryce](#) soon started his legal career as a docket clerk. Today, Geoff is the managing partner of Bryce Downey & Lenkov LLC and remains dedicated to serving his clients and community."

[Click here to read the full profile on Geoff Bryce in Leading Lawyers Magazine, January 2015](#)

Documentary By Rich Lenkov Featured in Chicago Daily Law Bulletin

'85: The Untold Story Of The Greatest Team In Pro Football History



Rich Lenkov was recently interviewed by the Chicago Daily Law Bulletin regarding his involvement in the upcoming documentary on the 1985 Chicago Bears titled "'85: The Untold Story of the Greatest Team in Pro Football History.'" Here is an excerpt from the article:

"...Because of that, Wilson said, despite 29 years of accolades, headlines, books, commercials, reunions, interviews and general mythologizing, "There really hasn't been anything done on a high level to celebrate this team — I mean, citywide. It's overdue."

A trio of Chicago lawyers feel the same way. Richard W. Lenkov, Scott G. Prestin and Joseph G. Klest are joining Wilson to produce "'85: The Untold Story of the Greatest Team in Pro Football History," a film they are billing as the first feature-length documentary about the iconic team."

[Click here or visit the Chicago Daily Law Bulletin to read the full article "Trio of lawyers producing documentary on 1985 Bears team."](#)

Meet The Team

Jessica Rimkus

Associate, Bryce Downey & Lenkov



I grew up in the southwest suburbs of Chicago in a big family, with six younger siblings.

I earned my B.A. at the University of Illinois, Champaign-Urbana and majored in English. After undergrad, I attended the John Marshall Law School in Chicago. During law school, I gained experience in civil litigation as a law clerk at a local insurance defense firm.

I joined the BDL team in June 2014. My practice focuses on workers' compensation and general liability. Outside of work, I enjoy attending Chicago sports games, checking out local restaurants and concert venues and spending time with friends and family. I live in the West Loop neighborhood in Chicago.



Hanging out with my family this past Christmas.



My boyfriend and I cheering on the Blackhawks.

Meet Our Clients

Carol Hall

Business Operations Manager, Berglund Construction



What are your responsibilities? I oversee our hiring practices, ensure compliance with statutory workplace requirements and manage our legal claims, both workers' compensation and general liability. In summary, I manage the risk of the company, especially as it relates to human resource issues.

Where are you originally from and where are you currently based? I grew up in Plymouth, Indiana and currently reside in northwest Indiana, splitting my time between our offices in Indiana and Illinois.

What is the biggest challenge facing your workers' compensation program? Early indications are that the aging work force will foster an increased number of costly cumulative injuries. As a construction contractor, we get workers from the union hall with no idea of their condition or past experiences. Twenty years in the trades causes significant wear and tear on the body and if we are the employer of record when this is discovered, we often end up paying the entire expense of the cumulative effects.

What is your biggest pet peeve about Illinois workers' compensation? The assignment of employer liability greatly increases the cost of workers' comp issues in Illinois. On average, a workers' compensation claim in Illinois costs us 3 to 5 times more than a similar claim in Indiana due to judicial rulings.

What do you do for fun when you're away from work? Whenever possible, I love to be outdoors, running, biking and golfing. When schedules allow, I love to explore new places with my husband and spend time with our three grown daughters.

Free Webinars

Bryce Downey & Lenkov hosts monthly webinars on pressing issues and hot topics

Here is what attendees had to say about our January webinar: AMA Ratings

"Great Speaker. Easy to follow."

"The details about what goes into the rating process was clear and easy to understand."

"I liked the knowledge of both presenters and thought the information presented was valid, updated and beneficial to adjusters, both in WC and PAL."

"It was very informative and the material was very entertaining. I enjoyed the polls and the encouragement to participate."



Upcoming

2/24/15 – [Click Here to Register](#)

Strategies and Tactics for Defending Indiana Workers' Compensation Claims

Justin Nestor & Kirsten Kaiser Kus

Recent

AMA Rating With Dr. Leon Benson

Defending Pain Claims: A Medical & Legal Perspective
[Using Surveillance In Your Workers' Compensation Claim](#)

Exploiting The Internet In Your Pre-Suit Investigation

[10 Tricky Employment Termination Questions Answered](#)

If you would like a copy of any of our prior webinars, please email Marketing Coordinator Jason Klika at jklika@bdlfirm.com.

Giving Back

Kirsten Kaiser Kus Volunteering At Merrillville High School's Mock Trial Competition



On **2/14/15**, **Kirsten Kaiser** will be returning to her alma mater, Merrillville High School, to help judge the student mock trial competition. Teams of high school students will open, presenting witnesses and evidence, making objections based on federal rules of evidence and closing.

Hustle Up The Hancock



Team BDL is gearing up to Hustle! On **2/22/15**, we will join more than 4,000 people climbing to the top of John Hancock Center to raise funds for lung disease research, advocacy and education. Last year we had a team of 25 climbers and raised \$6,000! For more info about this event or to donate, [Click Here](#).

Chicago Polar Plunge Benefitting Special Olympics Chicago



On **3/1/15**, Team BDL will plunge into frigid Lake Michigan to raise funds and awareness for the Special Olympics Chicago. This will be our third year braving frigid temperatures to do the Polar Plunge at North Avenue beach. Special Olympics is the world's largest program for sports training and athletic competition for children and adults with intellectual disabilities. Last year we had 7 Polar Plungers and raised over \$3,000 for the Chicago Special Olympics. [Click Here](#) to donate.

We would like your help choosing our team name! Please email your suggestions to Jason Klika at jklika@bdlfirm.com. The person who suggests the winning team name will receive a BDL Bubba cup.

Other Newsletters

Bryce Downey & Lenkov regularly issues several practice area newsletters. If you would like a copy of any of the below articles from other BDL newsletters, please email our Marketing Coordinator Jason Klika at jklika@bdlfirm.com.

Labor & Employment Law

- Ready for Illinois' New Pregnancy Accommodation Law?
- First EEOC Transgender Suit
- Get Smart About Your Smart Phone Policy

General Liability

- Indiana Supreme Court Takes a Swing at the Baseball Rule
- Illinois Court of Appeals Holds Tort Immunity Act Does Not Protect Municipality From Liability for Forcing Pedestrian to Walk in Roadway

Illinois Rates At A Glance

EFFECTIVE DATES	MAXIMUM TTD	MINIMUM PTD & DEATH	STATE AVERAGE WEEKLY WAGE
7/15/04 to 1/14/05	1,034.56	387.96	775.92
1/15/05 to 7/14/05	1,051.99	394.50	788.99
7/15/05 to 1/14/06	1,078.31	404.37	808.73
1/15/06 to 7/14/06	1,096.27	411.10	822.20
7/15/06 to 1/14/07	1,120.87	420.33	840.65
1/15/07 to 7/14/07	1,148.51	430.69	861.38
7/15/07 to 1/14/08	1,164.37	436.64	873.28
1/15/08 to 7/14/08	1,178.48	441.93	883.86
7/15/08 to 1/14/09	1,216.75	456.28	912.56
1/15/09 to 7/14/09	1,231.41	461.78	923.56
7/15/09 to 7/14/10	1,243.00	466.13	932.25
1/15/10 to 7/14/10	1,243.00	466.13	922.45
7/15/10 to 1/14/11	1,243.00	466.13	925.08
1/15/11 to 7/14/11	1,243.00	466.13	930.39
7/15/11 to 1/14/12	1,261.41	473.03	946.06
1/15/12 to 7/14/12	1,288.96	483.36	966.72
7/15/12 to 1/14/13	1,295.47	485.80	971.60
1/15/13 to 7/14/13	1,320.03	495.01	990.02
7/15/13 to 1/14/14	1,331.20	499.20	998.40
1/15/14 to 7/14/14	1,336.91	501.34	1,002.68
7/15/14 to 1/14/15	1,341.07	502.90	1,005.80
1/15/15 to 7/14/15	1,361.79	510.67	1,021.34

EFFECTIVE DATES	MAXIMUM PPD
7/1/04 to 6/30/05	567.87
7/1/05 to 6/30/06	591.77
7/1/06 to 6/30/07	619.97
7/1/07 to 6/30/08	636.15
7/1/09 to 6/30/10	664.72
7/1/10 to 6/30/11	669.64
7/1/11 to 6/30/12	695.78
7/1/12 to 6/30/13	712.55
7/1/13 to 6/30/14	721.66
7/1/14 to 6/30/15	735.37

MINIMUM	SINGLE	MARRIED	1 DEP.	2 DEP.	3 DEP.	4+ DEP.	
TTD & PPD 7/15/08-7/14/09	206.67	*	237.67	268.67	299.67	310	*number if children and/or spouse = number of dependents
TTD & PPD 7/15/09-7/14/10	213.33	*	245.33	277.33	309.33	320	
TTD & PPD 7/15/14-1/14/15	220	*	253	286	319	330	

PERMANENT PARTIAL DISABILITY BENEFITS SCHEDULE OF BODY PARTS

For injuries occurring	Before 7/20/2005	7/20/2005 - 11/15/2005	11/16/2005 - 1/31/2006	2/1/2006 - 6/27/2011	On or after 6/28/2011
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (index) finger	40	43	40	43	43
Second (middle) finger	35	38	35	38	38
Third (ring) finger	25	27	25	27	27
Fourth (little) finger	20	22	20	22	22
Great toe	35	38	35	38	38
Each other toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal tunnel due to repetitive trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation above elbow	250	270	250	270	270
Amputation at shoulder joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation above knee	225	242	225	242	242
Amputation at hip joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation of eye	160	173	160	173	173
Hearing loss of one ear (under WC Act)	50	54	50	54	54
Hearing loss of both ears (under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162
The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.					

Free Seminars!

Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to a few people or dozens, to companies of all sizes and large national organizations. Among the national conferences at which we've presented:

- Claims and Litigation Management Alliance Annual Conference
- CLM 2014 Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- 2014 National Workers' Compensation & Disability Conference
- RIMS Annual Conference

Some of the topics we presented are:

- Turning The Tables: Using An Employee's Own Actions As A Defense To Their Workers' Compensation Claim
- Closing The Nightmare Case
- Workers' Compensation 101
- Mandatory CMS Reporting Requirements: What You Need To Know
- Managing & Closing WC Claims In A Cost-Effective Manner
- Top 10 Ways To Reduce Legal Expenses NOW
- The Mediation Process
- Balancing Aggressive Pursuit Of Lien Recovery With Associated Litigation Expenses
- Dealing With Difficult Claimants
- Health-Related Leave: Workers' Compensation, ADA and FMLA
- Illinois State Overview
- Traveling Employees In Illinois Workers' Compensation

If you would like us to come in for a free seminar, [Click Here Now](#) or email Rich Lenkov at rlenkov@bdlfirm.com
We can teach you a lot in as little as 60 minutes

Bryce Downey & Lenkov is a firm of experienced business counselors and accomplished trial lawyers who deliver service, success and satisfaction. We exceed clients' expectations while providing the highest caliber of service in a wide range of practice areas. With offices in Chicago, Crown Point, IN, Memphis and Atlanta and attorneys licensed in multiple states, Bryce Downey & Lenkov is able to serve its clients' needs with a regional concentration while maintaining a national practice. Our practice areas include:

- Business Litigation
- Business Transactions & Counseling
- Corporate/LLC/Partnership Organization and Governance
- Construction
- Employment and Labor Counseling & Litigation
- Entertainment Law
- Insurance Coverage
- Insurance Litigation
- Intellectual Property
- Medical Malpractice
- Professional Liability
- Real Estate
- Transportation
- Workers' Compensation

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