BRYCE DOWNEY & LENKOV LLC

# General Liability Update
September 2013


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## Bryce Downey & Lenkov is Growing!

Bryce Downey & Lenkov is pleased to welcome two new associate attorneys.

**Maital Savin** focuses her practice in civil litigation and workers' compensation defense. She has represented all types of employers, obtaining favorable results in numerous high-exposure claims and was recognized for successfully obtaining a "take nothing" arbitration decision in her client's favor.

**Kunal Ganti** concentrates practice in insurance defense and workers' compensation. He has successfully tried and argued cases before the Illinois Workers' Compensation Commission and has substantial experience practicing before the Illinois Circuit and Appellate Courts.

## Are Your Claim Notes Privileged?

It is important for all participants within the claims industry to understand when documents in a claim file and documents obtained and created during the course of litigation are subject to a privilege and excluded from production to other parties. As a general rule, there are three commonly recognized privileges: (1) The attorney-client privilege; (2) the insured-insurer privilege; and, (3) the work product doctrine.

This article outlines the three privileges in Illinois and discusses the recent decision in *Holland v. Schwan's Home Service, Inc.*, 2013 IL App (5th) 110560 (May 30, 2013), in which the court held that none of the privileges protected portions of an insurer's workers' compensation claim file that documented communications between the claim adjuster for the insurer and management personnel of the employer,

including references to the plaintiff's medical treatments, work restrictions, and physical condition.

***The Attorney-Client Privilege:***

Illinois Supreme Court Rule 201(b) provides that "privileged communications between an party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure." In *Rounds v. Jackson Park Hospital and Medical Center*, 319 Ill.App.3d 280, 285 (1st Dist. 2001), the court observed that "the attorney-client privilege exists for the purpose of encouraging and promoting the full and frank consultation between a client and his or her legal advisor by removing the fear of compelled disclosure of information."

Because the attorney-client privilege often serves to prevent disclosure of relevant and material evidentiary facts, and is therefore at odds with full disclosure and the ultimate ascertainment of the truth, it is viewed as an exception and narrowly construed. *Sterling Finance Management, L.P. v. UBS PaineWebber, Inc.*, 336 Ill.App.3d 442, 454-55 (1st Dist. 2002). To that end, the privilege will apply only to: (1) statements originating in confidence between a client and its attorney; (2) for the purpose of securing legal advice; and, (3) with the intent that the statement remain confidential. *Pietro v. Marriott Senior Living Services, Inc.*, 348 Ill.App. 3d 541, 551 (1st Dist. 2004). If any of these elements are missing, the privilege will not apply.

***The Insurer-Insured Privilege:***

The attorney-client privilege extends to communications between an insurer and insured where the insurer has a duty to defend. *People v. Ryan*, 30 Ill. 2d 456 (Ill. 1964). The attorney-client privilege extends to this relationship because, in a typical situation, the insured is not represented at the time of communicating with the insured. In addition, the insurer is also typically delegated the task of selecting an attorney in conducting the defense. Therefore, the insured should be able to assume that the communication is made for the purpose of transmitting it to an attorney to protect the insured.

The insurer-insured privilege covers statements that are made prior to the filing of a suit or retention of counsel if the communication is made with the possibility of the insured being made a defendant in a future suit. *Lower v. Rucker*, 217 Ill. App. 3d 1 (1st Dist. 1991). Illinois has extended the privilege to statements made by an insured to the insurer's claim adjuster where the insured could reasonably have presumed that the information would be given to an attorney for the protection of the insured's interests. *Rapps v. Keldermans*, 257 Ill. App. 3d 205, 212 (1st Dist. 1993).

In order to extend any insurer-insured privilege, the party desiring the exercise of the privilege must establish: (1) The identity of the insured; (2) the identity of the insurance carrier; (3) the duty to defend the lawsuit; and (4) that a communication was made between the insured and an agent of the insurer. *Pietro*, 348 Ill.App.3d at 552. As will be seen below, the privilege applies only when the dominant purpose of the communication is to have the information transmitted to an attorney to protect the insured's interests.

***Work Product Doctrine:***

Illinois Supreme Court Rule 201 provides in part: "Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney." Notes made

by an attorney regarding his impression or opinion regarding the credibility of a witness would fall within the work product doctrine. A summary or less than verbatim report of a witness interview is protected however, a recorded statement of a witness would not be protected under the doctrine.

***Holland v. Schwan's Home Service, Inc.:***

In *Holland*, the Illinois Fifth District Appellate Court analyzed the application of all three privileges to documents and notes contained within the insurer's workers' compensation claim file. In that case, Holland filed a retaliatory discharge claim against Schwan's claiming that he was fired for filing a workers' compensation claim. The trial court allowed all documented communications between the claims adjuster for the insurer and Schwan's. One key piece of evidence in the case was a notation in the insured's workers' compensation claim file to the effect that Holland "knows his head is on the chopping block" because he had been on light duty for 150 days and his doctor had issued a note with even more work restrictions. The notation did not indicate whether the sentiment was that of the defendant or that of the claim adjuster who made the notation.

The jury awarded him $4,260,400 in damages, including $3.6 Million in punitive damages. Schwann's appealed and argued that the evidence from the workers' compensation claim file was protected by the insurer-insured privilege and the work product doctrine. The court of appeals affirmed the trial court's evidentiary rulings.

The court held that the insurer-insured privilege did not apply to the communications because there was nothing in the file to support the conclusion that they were made for the dominant purpose of transmitting them to an attorney for the protection of the interests of the insured. The statements were not made for the purpose of obtaining legal advice. The communications merely documented Holland's medical treatments, work restrictions, and general condition. For this the court determined that "the purpose of the statements contained within the claim file was to help Schwan's and Hartford administer Holland's workers' compensation claim, rather than to enable Schwan's to obtain legal counsel." at * 38.

The court also rejected the application of the work product doctrine. There was nothing in the record that supported the contention that the claim file was generated in preparation for trial. Again, the court viewed the claim file as simply being to assist in the processing of the workers' compensation claim. It was not prepared by Schwan's in preparation for trial on Holland's retaliatory discharge claim and it did not contain the mental impressions of the attorney for Schwan's.

Certainly, the communications involved in *Holland* were not made for the purpose of getting legal advice and did not contain the theories, mental impressions, or litigation plans of the attorney for Schwan's. But *Holland* is a dangerous decision because the court seems to suggest that an assertion of privilege for a claim file is without merit when it is generated in a different litigation setting.

***Practice Tip:***

It is important to know all of the elements of the three main privileges. After *Holland*, it would appear equally important to carefully consider what notations are made in a claim file and whether the notation could be harmful in another setting.

In our next issue, we will analyze the three privileges under Indiana law and Federal Law.

## Illinois Appellate Court holds Defendant Entitled to Coverage for Premises Liability Suit under Plaintiff's Own Automobile Policy

In *Menard, Inc. v. Country Preferred Insurance Company*, 2013 IL App (3d) 120340, the Illinois Court of Appeals affirmed a trial court's determination that Menard's was an insured under Plaintiff's automobile policy and that her insurer, Country Preferred Insurance Company, owed a duty to defend Menard, Inc. in the underlying personal injury lawsuit.

Ruby Bohlen purchased bricks at a Menard's store located in Champaign County, Illinois. She then backed her personal vehicle up to the stack of bricks for a Menard's employee to load into her car. While the Menard's employee was loading her car, Bohlen's foot became tangled in debris/packing material near her vehicle causing her to fall and sustain multiple injuries. She alleged that Menard's caused the aisles, sidewalks, parking lots, entrances, and exits at the store to accumulate debris and packing material, and that Menard's failed to properly remove the materials or maintain the areas in a safe condition.

At the time of the incident, Bohlen had an automobile insurance policy through Country Preferred Insurance Company (Country Preferred). The policy covered bodily injury or property damages that are "caused by an accident resulting from the ownership, maintenance or use of an insured vehicle, *including loading and unloading*…" Menard's requested that Country Preferred defend and indemnify Menard's in the personal injury lawsuit. Country Preferred concluded that Menard's was not covered under the policy and refused the tender of defense.

Menard's brought a declaratory action alleging it was an "authorized user" of Bohlen's vehicle and was an insured under her policy with Country Preferred. Menard's argued that the underlying injuries were caused by the "use" of the vehicle to load the bricks. The trial court agreed and reasoned that, but for the use of the vehicle to load the bricks, the injury would not have occurred, and it was reasonably foreseeable that Bohlen might be injured while loading the vehicle.

The appellate court affirmed, finding Menard's was an authorized user of the vehicle. It held that the Country Preferred insurance policy defined "use" as including the loading or unloading of the insured vehicle. The underlying injury occurred during the process of loading the vehicle, and was causally connected with the act of loading.

***Practice Tip:***

It is always a good idea to think outside of the box and use creative arguments to find alternative coverage. Insurers and their counsel routinely examine cases for subrogation and third party liability potential, but it is also important to consider all possible sources of insurance coverage. In this case, Menard's was able to shift financial responsibility by finding coverage for a premises liability case in Plaintiff's own automotive policy.

## Bill to Raise Insurance Minimum for Motor Carriers to $4.4 Million Introduced in Congress

On July 18, 2013, Congressman Matt Cartwright of Pennsylvania introduced "SAFEHAUL" the "Safe and Fair Environment on Highways Achieved through

Underwriting Levels Act." (H.R.2730) This bill would raise the required insurance minimum for motor carriers from $750,000 to $4.4 million. The current insurance minimum of $750,000.00 was set by Congress in 1980.

According to Cartwright's office, the increase sought in the bill was to provide the equivalent of $750,000 in medical care when the last minimum was established.

However, according to a California Transportation News study, an increase in coverage from $750,000 to $2 million alone would result in premiums increasing $2,000-$3,000 annually.

The proponents of the bill cite a Trucking Alliance study conducted between 2005 and 2011 involving 8 motor carriers. In that study, 42% of the dollar settlements paid by trucking companies exceeded the minimum insurance requirement. Of course, opponents to the bill point out that less than 1% of all settlements during that same period exceeded the $750,000 minimum.

According to govtrack.us, the Democrat-sponsored bill has only a 7% chance of getting through the Republican-controlled House Transportation and Infrastructure Committee and only a 2% chance of getting through the Republican-controlled House and enacted.

## CMS to Resume Rulemaking on MSP and Future Medicals in General Liability Cases

HHS/CMS has announced that it will issue a Proposed Notice of Rulemaking (NPRM) in September 2013 with regard to Medicare Secondary Payer Requirements and future medicals in general liability cases. This is the next step after the Advanced Notice of Proposed Rulemaking (ANPRM) that was issued in June 2012. The planned NPRM means that CMS will be providing additional guidance to the liability industry regarding Medicare's interest in future medicals.

Once the NPRM is issued, CMS will collect comments for 60 days and then move on to the final rulemaking stage. Following the initial ANPRM, CMS invited comments on several different options applicable to liability and workers' compensation settlements. One option is to have the Medicare beneficiary pay all related future medicals until the settlement is exhausted and documented. Another option is for Medicare not to pursue future medicals in liability settlements that contained no-fault claim elements and the settlement was below a certain threshold. A third option would limit recovery to conditional payments if the beneficiary acquired a physician attestation that no future treatment was anticipated. Finally, CMS has proposed an option under which a formal MSA and CMS approval process would be put in place for liability cases similar to what is in place for workers' compensation settlements.

We will track the rulemaking efforts in future issues of the General Liability Update.

## Indiana Supreme Court Refuses to Impose Joint and Several Liability for Intentional Tort of Nonparty

In Estate of *Santelli v. Rahmatullah*, 49S04-1212-CT-667 (August 28, 2013), the Indiana Supreme Court, in a case of first impression, held that, under the Indiana Comparative Fault Act, a negligent defendant is not jointly and severally liable for the intentional tort of a nonparty.

In *Santelli*, the decedent was murdered while staying at a motel. The murderer, Joseph Pryor, was a former maintenance man for the motel. At trial, the evidence established that Prior had a felony record and was on probation while working at the motel. He was fired after working only two days, but his employer failed to retrieve or deactivate his passkey which could be used to open all rooms. In addition, security cameras were inadequate and not utilized and outside door locks were mostly inoperative.

The jury entered a gross verdict of $2,070,000, apportioning only 2% of the fault to the motel's owner/operator and 97% to the nonparty Pryor. The net result was a judgment of $41,400 against the owner operator. The trial court granted plaintiff's motion for a new trial, finding that the jury's verdict was against the manifest weight of the evidence. However, it refused to find that on retrial the jury should be instructed that the owner could be liable for Pryor's actions if those actions were reasonably foreseeable.

On appeal, the Indiana Supreme Court affirmed the trial court's decision to grant the new trial. The trial court's ruling was based on careful consideration of the evidence presented. The court also affirmed the trial court's determination that the jury would not be instructed that the owner could be liable for foreseeable intentional acts of Pryor.

According to the court, the Indiana Comparative Fault Act specifically allows a jury to attribute fault to a nonparty for intentional acts. Pryor's conduct was to be considered independent of the conduct of others. The court rejected plaintiff's contention that the owner should still be held jointly and severally liable for Pryor's acts because, under the circumstances, it was reasonably foreseeable that he would harm someone. Indiana eliminated joint and several liability as a trade-off for the removal of a plaintiff's contributory negligence as a bar to recovery. In turn, the Act does not provide for contribution among tortfeasors. As such, it would be unfair to hold the owner jointly and severally liable for the acts of Pryor but not allow the owner to pursue contribution.

On retrial, the jury could determine whether the owner's negligence in creating the opportunity for the crime was a "causative role" in Santelli's death along with Pryor's intentional conduct, but the owner would not have joint and several liability.

***Practice Tip:***

Indiana abandoned joint and several liability under the Comparative Fault Act and *Santelli* reaffirms that. But it is important to remember that a jury is allowed to attribute more fault to a negligent party than to an intentional tortfeasor. The proper role of the jury is to determine the "causative role" of the respective parties and nonparties.

## Indiana Supreme Court Upholds Cap and Allocation of Punitive Damages

Under I.C. §34-51-3-4, punitive damages in personal injury actions are limited to 3

times the amount of compensatory damages awarded or $50,000, whichever is greater. Further, I.C. 34-51-3-6 provides that a plaintiff to whom punitive damages are awarded is entitled to 25% of the punitive damages recovered and the state violent crime victims compensation fund gets the remaining 75%.

In *State v. Doe*, 987 N.E.2d 1066 (Ind. 2013), the Indiana Supreme Court held that these two provisions do not violate the right to trial by jury or the separation of powers provisions of the State Constitution. In Doe, plaintiff was awarded compensatory damages by a jury in a suit against a clergyman. The jury also awarded $150,000 in punitive damages. The trial court denied defendant's motion to reduce the punitive damages pursuant to the statutory cap, finding that the statute violated the state constitutional right to trial by jury.

On appeal, the Indiana Supreme Court held that statutory caps on compensatory damages in medical malpractice cases do not violate the right to trial by jury and there is nothing materially different about punitive damages that would require a different result.

The court also found that the 25/75% distribution did not violate the separation of powers between the legislature and the judicial. The legislature has the broad power to limit common law causes of action and remedies. In turn, the courts' function is to enforce those limits.

***Practice Tip:***

*Doe* reiterates the principle of Indiana law that legislation that limits or tailors a party's right to recover damages is presumptively constitutional. Counsel should always be aware of and be prepared to assert those statutory limits.

## Illinois Appellate Court Holds that Workers' Compensation Lien Does Not Include Pro Rata Share of Post-Judgment Interest

In *Williamson v. Asher*, 2013 IL App (1st) 122038 (June 24, 2013), the Illinois Appellate Court held that an employer's workers' compensation lien against an employee's third party recovery does not include a prorate share of the post-judgment interest paid on behalf of the third party. Following a bench trial in which the trial court entered a default judgment for $6.5 Million in favor for a widow of a truck driver killed in a collision, the defendant's insurer paid the estate $1,503,506.85, representing $1 Million in policy limits and $503,506.85 in interest. The widow submitted a petition to approve the distribution of the settlement proceeds under which the decedent's employer's workers' compensation lien of $283,549.80 would be reduced to $206,914.29 to account for 25% of the attorneys fees and a pro rata share of the costs of prosecuting the third party action.

The employer objected to the proposed distribution, arguing that its recoverable lien was $283,549.80 plus a pro rata share of the post-judgment interest minus 25% for attorneys fees and a pro rata share of the costs. The trial court rejected the employer's inclusion of interest in the calculation of its lien and ordered net payment of the lien in the amount of $206,914.29, and the employer appealed.

On appeal, the employer argued that both it and the estate had been prejudiced by the delay in the recovery of the judgment and that it would be unfair for the estate to recover 100% of the interest when the estate had received the workers' compensation benefits for over nine years. The employer maintained that it should been awarded 28% of the interest to avoid the estate receiving a "double recovery" off of the lien interest.

The court of appeals found the employer's argument unconvincing for several reasons. First, statutes must be interpreted to give effect to the legislature's intent. Here, §5(b) of the Workers' Compensation Act provides that an employer has a right to reimbursement of the amount of compensation paid by the employer, less 25% of the gross amount of the reimbursement to the employee's attorney and a pro rata share of the costs. 820 ILCS 305/5(b). Nothing in the statute confers the right to recover interest as part of the lien.

Also, because the right to reimbursement does not arise until the judgment is actually paid, there is no claim to interest that accrued after the judgment is entered but before it is paid.

***Practice Tip:***

The recoverable workers' compensation lien is limited to what is expressly stated in §5(b) of the Act, and insurers need to be realistic about the amount of the lien they hope to recover, even where, as in Williamson, the gross recovery of the employee against a third party includes an extraordinary amount of post-judgment interest or similar recovery.

## Illinois Appellate Court Affirms Summary Judgment in Favor of Pool Owner

Illinois courts have consistently held that bodies of water, including lakes and above-ground pools are open and obvious conditions as a matter of law. Recently, the Illinois Appellate Court went one step further and held that an above-ground pool was an open and obvious condition as a matter of law even when the bottom of the pool was not visible due to inadequate lighting.

In *Magana v. Garcia*, 2013 IL App (1st) 1121810-U (2013), the plaintiff filed suit against a homeowner for injuries he sustained when he dove headfirst into the homeowner's above ground pool, following a night of drinking. Plaintiff arrived at Defendant's backyard which housed an above-ground pool that was surrounded by a deck. To get to the pool, one would have to walk up stairs to the deck that was five feet off the ground. The yard was illuminated by only an alley light, although it was disputed whether a floodlight attached to the house was also lit. In any event, the plaintiff testified that because of the poor lighting, he could not see the bottom of the pool.

Despite not being able to see the bottom of pool, yet understanding that the bottom of the pool was at ground level, the plaintiff dove in headfirst and was severely injured. He sued defendant claiming that the defendant failed to properly illuminate the pool, failed to warn the plaintiff of the dangerous condition presented by the pool, and failed to make a reasonable inspection of the pool.

The defendant moved for summary judgment on the grounds that an above-ground pool was an open and obvious condition as a matter of law and the defendant, therefore, owed no duty of care to the plaintiff. The trial court agreed and the plaintiff appealed.

On appeal, the court noted that case law clearly establishes that bodies of water, including above-ground pools are open and obvious conditions and landowners have no duty of care with regard to the risk posed by water because persons are expected to appreciate and take care for their own safety near water. Here, however, was a little twist. The plaintiff sought to distinguish his case because he could not see the bottom of the pool.

The court of appeals rejected that distinction, holding that the danger of diving into an above-ground pool is not obvious because the bottom is visible. Diving into an above-ground pool is open and obvious because of the danger that the water is too shallow to dive into. Consequently, where, as here, a plaintiff knows how deep the pool is because he knows the bottom is at ground-level and because he knows how high he is standing above-ground, it does not matter whether the plaintiff could see the bottom of the pool or not.

The court also rejected the plaintiff's contention that the "distraction exception" to the open and obvious rule necessitated a finding of a duty. While the "distraction exception" will allow for the imposition of a duty where the landowner has reason to know that the invitee may be distracted or forget the hazard before him, that exception did not apply here. As the court observed, "the distraction exception applies when the owner of the premises can reasonably expect an invitee to be forgetful of or distracted from the existence of the condition, not distracted from perceiving the dangers involved with a known condition." This was not a case where the plaintiff inadvertently fell into the pool because he was distracted by other things. He knew of the pool's existence and intended to dive into it.

***Practice Tip:***

Illinois courts have given us a pretty expansive body of case law on the application of the open and obvious rule as well as the distraction exception. In every premises liability case, it is important to examine whether they apply. *Magana* reaffirms just how narrow the distraction exception really is: It is not a question of being unaware of the dangers of a condition, it is a question of being unaware of the condition's existence in the first place.

## New Illinois Statute Imposes Time Limits for Settlement Finalization

On August 26, 2013, Illinois Governor Quinn signed into law a new statute that requires parties to complete and exchange settlement documents, including releases and lien resolution documents within 30 days of reaching settlement.

Under 735 ILCS 5/2-2301, effective January 1, 2014, in any action for money damages based on personal injury, property damage, or wrongful death, the defendant is to give the plaintiff a release within 14 days of "written confirmation" of settlement. Where court approval of the settlement is required, the plaintiff is to provide the defendant with a copy of the court order approving settlement. The statute does not define "written confirmation" or set forth a time frame for the plaintiff to provide the

defendant with the court order approving settlement. The statute does not apply to governmental entities or class actions.

In most cases, there are third party liens and interests that need to be resolved as part of the settlement. The statute recognizes that there may be lien interests of attorneys, health care providers, Medicare, CMS, the Illinois Department of Healthcare and Family Services, and private health insurance companies. The statute provides that the plaintiff may protect these interests by giving the defendant: (1) a signed release of lien; (2) a letter from plaintiff's counsel agreeing to hold the full amount of the claimed lien in plaintiff's counsel's client fund account until the interest is resolved; (3) an offer that the defendant itself hold the full amount of the claimed lien until the interest is resolved; or, (4) documentation of any other method of resolution of the liens as the parties may agree. The same four options apply to Medicare reimbursement rights.

Once the plaintiff has complied with one or more of these options and has given the defendant a release signed by the plaintiff, defendant has 30 days to pay all sums required under the settlement agreement. If payment is not made, the statute states that the court shall enter judgment against the defendant for the amount of the settlement plus statutory interest (9%) from the date the plaintiff tendered all of the required documents to the defendant, and costs of enforcing the settlement.

It will be interesting to see how this statute is interpreted and enforced as parties address Medicare reimbursement issues, particularly where CMS has not issued conditional payment notices, let alone final payment notices, before settlement is reached.

***Practice Tip:***

The new statute makes expediency in exchanging settlement documents very important. Counsel should immediately note the timeframe for final resolution once a settlement is reached in order to avoid entry of judgment and the award of interest for late compliance.

## Recent Seminars

**Storrs Downey** presented "Employment Landmines in Workers' Compensation" on July 12, 2013 at the CLM 2013 Workers Compensation Conference in Chicago.

To request a copy of this presentation, contact our Marketing Coordinator, Jason Klika at jklika@bdlfirm.com.

## Recent Awards & Accolades

**Rich Lenkov:**
**2013 NIU Alumnus of the year**

The Alumni Council of the Northern Illinois University College of Law Alumni Association annually bestows its Alumnus/a of the Year Award to graduates who have made outstanding achievements in their career and for their dedication to the College of Law. The honor is given to the Alumnus for demonstrating service to their community or profession, outstanding professional accomplishments and consistent professional integrity.

## Alec J. Miller
## 2013 Telly Award Recipient

Alec Miller won 2013 Telly Award for his children's show, Butterscotch's Playground. The show stars Greg Page, the original, yellow Wiggle, from the children's phenomenon The Wiggles. Butterscotch's Playground is produced by Alec, Greg, and Vera Nackovic, another Chicago lawyer.

Alec is an entertainment lawyer with Bryce, Downey & Lenkov, LLC and a creator of branded children's entertainment.

- **"Bryce goes from paralegal to firm management."** Geoff Bryce was featured on the cover of the Chicago Daily Law Bulletin discussing his leadership and management style:

CHICAGOLAWBULLETIN.COM

TUESDAY, MAY 14, 2013

# Chicago Daily Law Bulletin

$1

Bryce goes from paralegal to firm management

TRIAL NOTEBOOK

Debt notices need to be timely, clear

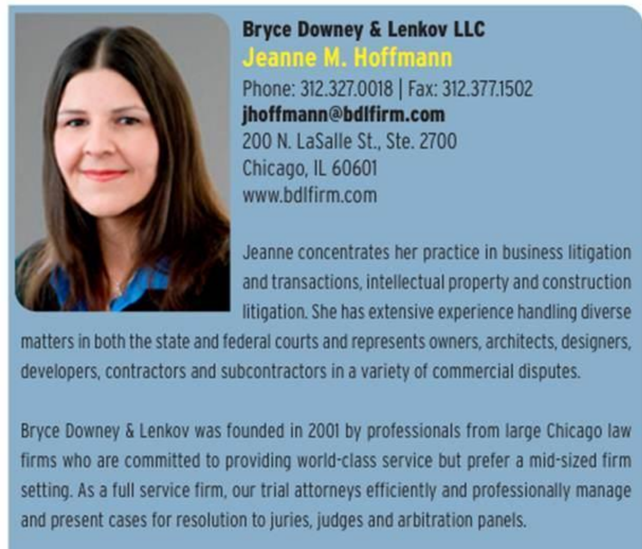
IN THE NEWS

## No coverage for Jesuits in abuse suits

Panel: Insurance companies have no duty to defend

To read the full article, [visit Bryce Downey & Lenkov on Facebook]() and be sure to "like" us to stay up-to-date on BDL news

- **Jeanne Hoffmann, Ioana Salajanu** and **Tina Paries** were featured in the annual **Women in Commercial Real Estate** magazine:



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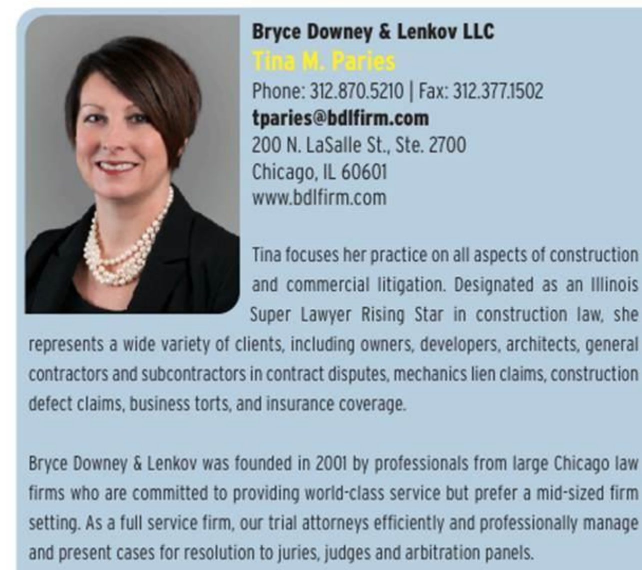
Jeanne concentrates her practice in business litigation and transactions, intellectual property and construction litigation. She has extensive experience handling diverse matters in both the state and federal courts and represents owners, architects, designers, developers, contractors and subcontractors in a variety of commercial disputes.

Bryce Downey & Lenkov was founded in 2001 by professionals from large Chicago law firms who are committed to providing world-class service but prefer a mid-sized firm setting. As a full service firm, our trial attorneys efficiently and professionally manage and present cases for resolution to juries, judges and arbitration panels.



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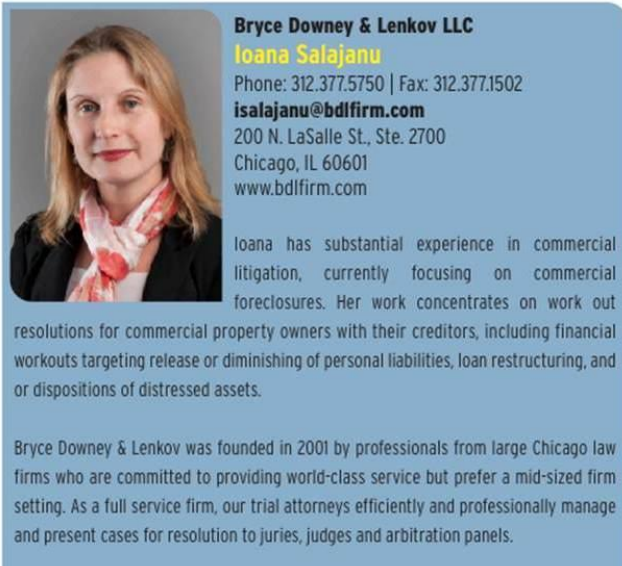
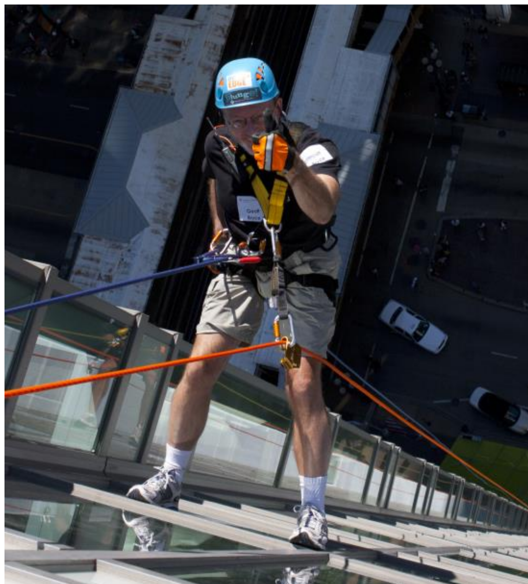
Tina focuses her practice on all aspects of construction and commercial litigation. Designated as an Illinois Super Lawyer Rising Star in construction law, she represents a wide variety of clients, including owners, developers, architects, general contractors and subcontractors in contract disputes, mechanics lien claims, construction defect claims, business torts, and insurance coverage.

Bryce Downey & Lenkov was founded in 2001 by professionals from large Chicago law firms who are committed to providing world-class service but prefer a mid-sized firm setting. As a full service firm, our trial attorneys efficiently and professionally manage and present cases for resolution to juries, judges and arbitration panels.




## Giving Back

**Geoff Bryce to jump off a building**



Every year the Respiratory Health Association of Metropolitan Chicago offers the "Skyline Plunge" to those who are daring (or crazy) enough to rappel down a 27 story building. On September 8, 2013, Geoff will be rappelling 27 stories to help raise awareness and funds for lung disease research, education and advocacy. Click here to support Geoff!

- **Race Judicata 2013 5k!** Every year, Bryce Downey & Lenkov employees participate in Race Judicata in support of Chicago Volunteer Legal Services Foundation. CVLS is the first and pre-eminent pro bono civil legal aid provider in Chicago.

- **6/21/13**—Rich Lenkov captained the parents' team in the 1st Annual Agassiz Elementary School Parent vs. Teachers Dodgeball Duel. While the parent's team was defeated 7-4, the event raised a significant amount of money for the public school and was enjoyed by all

- **6/2/13**—Bryce Downey & Lenkov proudly sponsored International Children's day. Visit us on Facebook for more info

## Contributors to the September 2013 General Liability Update

Bryce Downey and Lenkov attorneys who contributed to this update were Jeffrey Kehl, Richard Warner, Christopher Puckelwartz and Frank Rowland.

# *Free Seminars!*

*Our attorneys regularly provide free seminars on a wide range of general liability 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
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- REBEX
- RIMS Annual Conference

***Some of the topics we presented are:***

- *Curbing Litigation Expenses*
- *Expert Retention and Usage*
- *Possible Termination of Injured Worker: Employer's Rights and Obligations*
- *The Mediation Process*
- *Top Twenty Myths & Realities on Illinois/Indiana Premises Liability Laws*
- *Comparison of Illinois and Indiana Products and Liability Laws*
- *Illinois Premises Liability*

*If you would like us to come in for a free seminar, please email Storrs Downey at sdowney@bdlfirm.com. We can teach you a lot in as little as 60 minutes.*

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*The attorneys at Bryce Downey & Lenkov are committed to keeping you updated regarding the latest developments in workers' compensation law in Illinois and Indiana. If you would like more information on any of the topics discussed above, or have any questions regarding these issues, please contact Storrs Downey or Jeffrey Kehl at 312.377.1501 or any member of the general litigation team.* *© Copyright 2013 by Bryce Downey & Lenkov LLC, all rights reserved. Reproduction in any other publication or quotation is forbidden without express written permission of copyright owner.*


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