



# Raising the Bar

The newsletter of the  
Young Lawyers Committee

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## Feature Articles

# Boost Your Visibility and Your Practice by Becoming a Legislative Liaison

By Matthew M. McCluer



Milton Berle, one of America's most famous and successful early television stars, once quipped: "If opportunity doesn't knock, build a door." Well, Young Lawyers, building doors (and waiting patiently for someone to come along and knock) is basically the entirety of what we do as burgeoning marketers and client developers.

As younger attorneys, there is a constant need to staying abreast of changes in the substantive legal areas in which we practice, since more senior attorneys often look to us for a quick and efficient analysis of an issue where often time is of the essence or the client wants to avoid a full-blown research memo. This can be a genuine challenge as we frequently operate at full capacity under multiple, sometimes overlapping deadlines, and many of us feel we lack the time to devote to extracurricular tasks that do not directly translate into billable hours. Frankly, my initial reaction to a request to join another committee or spearhead the planning for a seminar is often to apologetically decline or offer a cautious "maybe" before deciding whether I can carve out a slice of time in my schedule to devote to the task.

One of the tricks to maximizing efficiency as a young lawyer, while maintaining your participation in beneficial organizations like DRI, is to identify avenues for involvement that both directly correlate to your practice and promote your brand—the old "two birds with one stone" adage. If you have a diverse array of work and are looking to develop a niche, then utilizing opportunities for publication and public speaking will project to partners and potential clients that you are motivated and working towards becoming a subject matter expert in your chosen field. You should and likely will receive ardent support from your supervising attorneys, since your efforts could open doors to new case referrals and opportunities to market to business sectors not currently serviced by your firm.

With that in mind, the Young Lawyers Committee (YLC) offers a path to leverage your subject matter knowledge into valuable marketing opportunities through the Substantive Liaison Committee. The YLC appoints one young lawyer from each state and each of the 28 substantive law committees within DRI to contribute periodic updates on significant legislative developments in their designated

jurisdiction or field of law. Those updates are then peer-reviewed and published in *The Voice*, DRI's weekly newsletter that is distributed to thousands of practicing attorneys, in-house counsel and other interested readers.

The liaison reporting process is straightforward, easy to follow, and only takes a couple of hours once a month to complete. Additionally, by gaining exposure to the details of new and pending legislation that you may not otherwise have known, your knowledge and awareness of relevant legal issues in your state or practice area will increase exponentially. And, the tireless merchants of information that young lawyers are, we typically do not shy away from sharing our know-how with our contemporaries and clients. As a legislative liaison, you might find yourself confidently inserting a comment into the conversation at your next networking event about the latest cybersecurity initiative in Congress or the new proposal on paid family leave pending in your state or local legislature. It is those displays of initiative and understanding of issues affecting your clients that leave a lasting impression and lead to new business opportunities.

The Legislative Liaison Committee currently has a stable of contributors available to provide our monthly updates, but we are always looking for new faces, and there are inevitably spots to fill as our members move on to become involved in other functions of the YLC. A full listing of the substantive areas that our legislative liaisons report on regularly can be found on DRI's website at <https://www.dri.org/committees/committee-listing>. Also, our committee is currently exploring several new ideas to further streamline and improve the reporting process and expand our reach to potentially include cross-publication in other DRI newsletters and journals. More information on those initiatives will be provided as they develop.

Since we are new fresh off the annual YLC Seminar in Nashville, now is a great time to reevaluate your goals for involvement in DRI for the next year, and if you are interested in taking on a leadership role, to start thinking about how to take that next step. There is a bounty of options for involvement within the YLC steering committee and the various substantive law committees, with something available for nearly all levels of experience and desired time commitment. For those who are interested in adding

to your author credits and “building your door,” becoming a legislative liaison is a great and rewarding option. If you are interested in learning more about how to join our team and increase your marketing presence, please reach out to me (email below) and Danielle Luisi ([Danielle.Luisi@huschblackwell.com](mailto:Danielle.Luisi@huschblackwell.com)) and we will be happy to discuss the details of becoming a legislative liaison with you.

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*primarily involves representing employers and management in a range of labor and employment matters, including state and federal litigation, EEOC and NLRB administrative charges, DOL-Wage/Hour and OFCCP audits, and internal investigations. Matt also conducts training for managers and employees on various employment-related topics and offers strategic advice on compliance with federal and state employment laws and drafting of employment, separation, noncompetition/nonsolicitation, and confidentiality agreements, as well as company handbooks and workplace policies. Matt can be reached at [matthew.mccluer@bswllp.com](mailto:matthew.mccluer@bswllp.com).*

## Young Lawyer Liaisons: Your Gateway to the Substantive Law Committee

By Megan Peterson and Liam Felsen



We have the pleasure of serving as the 2018-2019 Co-Chairs of the Substantive Law Liaison subcommittee. DRI's substantive law committees (SLCs) each focus on a specific practice area, legal issue, or industry; our Young Lawyer liaisons serve as a bridge between the DRI Young Lawyer Committee and each individual SLC. The main task of the Substantive Law Subcommittee is to ensure that young lawyers are appointed as liaisons to the various SLCs.

In the past, both of us have held liaison positions within the SLCs, and we have found it to be very challenging, interesting, and rewarding. If you are not yet involved in an SLC, we encourage you to pick one and get engaged. One day you will “experience out” of Young Lawyers, and the natural progression is to join the SLC that best exemplifies your practice area. We have each found opportunities for marketing and referrals in our SLCs and wish the same professional growth for each of you. Below we share with you our experiences with our SLCs and in serving as a Young Lawyer liaison.

### Megan Peterson

Hi! Megan here. I have been practicing 8 years and have been a DRI member for 7 of those. My initial involvement actually began with the Retail & Hospitality committee, not Young Lawyers. I heard how fulfilling involvement in the Young Lawyers Committee can be and applied as a Liaison

to the Retail & Hospitality committee. I served as a liaison for several years and participated actively on the Retail & Hospitality steering committee, from seminar planning to publications.

Over the years, I have become better acquainted with my fellow steering committee members and have expanded my network exponentially. Additionally, it has been easier to obtain speaking and publication opportunities because of my active participation. Lastly, and most importantly, I have served as a voice for other young lawyers and advocated for programming specific to young lawyers. As new Young Lawyer liaisons have stepped into the role for the Retail & Hospitality committee, I have been able to transition into different leadership positions on the steering committee.

On a whole, I have been able to develop an incredible network of attorneys who share similar clients and practice areas to me and who serve as an important referral source as well as an outlet to evaluate case strategies, legal trends, expert witnesses and more. And it all started with serving as a young lawyer liaison.

### Liam Felsen

My turn, this is Liam. I have been a member of DRI all six years that I have been practicing law. I began taking a more active role by attending the 2015 Young Lawyers Seminar in Nashville. While there, I got to know the YL leadership and learned about the YL steering committee. I applied for and was appointed in 2015-16 as the Vice Chair of

the Publications Subcommittee, and in 2016–17 I became the Publications Co-Chair. In 2017–18, I became the Vice Chair of the Substantive Law Committee, which led to my current position.

In addition, I was also named the YL Vice Liaison to the DRI Commercial Litigation Committee, and then served as the Co-Liaison for another two years. As the YL Liaison, I gained access to the workings of the SLC steering committee, and eventually took over helping to organize and plan the Young Lawyer breakout sessions at the 2016, 2017, and 2018 Business Litigation Seminars (including a speaking role in 2017). This past year I turned over the reins to a new set of YL liaisons and have watched them grow, while I also continue to be a voice for young lawyers within the SLC.

This experience—and the connections I had made to the SLC leadership—led to my being named the Marketing Chair for the 2018 and 2019 seminars, which opened up even more access to the full SLC. This, in turn, has now led to a position as the Programming Vice Chair for the 2020 Business Litigation Seminar. My network continues to grow, I continue to make new friends, and together we continue to expand the roles that young lawyers can fill within the larger SLC.

\* \* \* \* \*

Our experiences are not unique. Many young lawyers who serve as liaisons grow in their opportunities for speaking, publications, and leadership positions within the SLC as a whole. Those opportunities, in turn, lead to new friends, business acquaintances, and potential referrals. To those who have not yet found a home with an SLC: we encourage you to contact the leadership of those SLCs that interest you, to see if there are any open steering committee positions or if volunteers are needed for any subcommittees or upcoming tasks. Chances are, you will be welcomed with

open arms and exposed to many opportunities to grow your network and learn more about your practice area. If you are interested in serving as a young lawyer liaison to a substantive law committee, contact us and we will be happy to point you in the right direction.

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*Liam E. Felsen is a Managing Associate with Frost Brown Todd LLC's Louisville office, focusing his practice on product liability defense, fire and explosion litigation, premises liability, personal injury, tort and insurance (including bad faith), business litigation, and drug and medical device. Liam has a depth of experience with insurance defense (personal injury, UIM/UM, bad faith, and unfair claims settlement practices), premises liability (including amusement parks, gas stations, restaurants, and other premises), and business litigation (including breach of contract, commercial landlord/tenant, construction, and franchisor/franchisee disputes). Liam is a trial lawyer with experience at all stages of litigation in both state and federal court, including pre-suit dispute resolution, arbitration, pretrial discovery, trial, and appeal. Liam can be reached at [lfelsen@fbtlaw.com](mailto:lfelsen@fbtlaw.com).*

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## Article of Note

# Plaintiffs' New Tactics for Saving Their Brand-Name Pharmaceutical State Law Design Defect Claims from Preemption, and Defendants' Best, Albeit Surprising, Response

By Sarah L. Scott



Starting in 2014, courts have increasingly found that post-FDA-approval state law design defect claims against brand-name pharmaceutical manufacturers were preempted by regulations under the Food, Drug, and Cosmetic Act (FDCA). See *Booker v. Johnson & Johnson*, 54 F. Supp. 3d 868 (N.D. Ohio 2014). The United States Court of Appeals for the Sixth Circuit was the first Court of Appeals to embrace this defense-friendly trend in *Yates v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.* There the Court found that the manufacturer of a brand-name contraceptive could not lower the dosage of the medication after FDA approval without violating FDCA regulations. 808 F.3d 281 (2015). Post-FDA approval design defect claims were “clearly preempted” because 21 C.F.R. §314.70(b) states that changes in chemical composition or dosage of an FDA-approved drug constitute “major changes,” which require approval from the FDA prior to the change being made. *Id.* at 298. The United States Court of Appeals for the First Circuit followed suit. *Gustavsen v. Alcon Laboratories, Inc.*, 903 F.3d 1 (2018); but see *Sikkelee v. Precision Airmotive Corp.*, 907 F.3d 701 (3d Cir. 2018, *petition for writ of cert pending*, 2019 WL 1058108 (2019), applying similar principles to an aviation case and finding no preemption).

District courts have thus become more comfortable ruling that post-FDA-approval design defect claims are preempted by the FDCA regulations. For example, the United States District Court for the Southern District of New York applied *Yates* when it dismissed the plaintiffs’ brand-name pharmaceutical design defect claims with prejudice, finding that FDA regulations preempt California state-law duties regarding the design of a safer alternative drug. *Utts v. Bristol-Myers Squibb Co.*, 226 F. Supp. 3d 166 (2016). The ruling was then used to knock out every post-FDA design defect claim in the Eliquis federal consolidated litigation of which *Utts* was a part.

This defense-friendly trend should not have surprised plaintiffs. The Supremacy Clause of the United States Constitution provides that federal law is supreme over state law; where state law conflicts with federal law, therefore,

federal law will preempt the conflicting state law. See, e.g., *Yates*, 808 F.3d at 293–94. Where it is impossible for a manufacturer to comply with both federal and state law, then, there is preemption. *Id.* *Yates* synthesized the three major Supreme Court rulings on preemption in *Wyeth v. Levine*, *PLIVA v. Mensing*, and *Mutual Pharmaceutical Company v. Bartlett* and ruled that the test for impossibility preemption is whether a manufacturer can independently act to fulfill both federal and state law requirements. *Id.* at 294–95, 296–97. If it cannot, then the state law claim is preempted. *Id.* And 21 C.F.R. §314.70(b), along with its biologics equivalent 21 C.F.R. §601.12(b), makes it such that a manufacturer cannot independently act to fulfill both federal and state law requirements for changes in a brand-name drug’s design, because any change to composition or dosage requires FDA approval before such changes are made—or, more realistically, a different New Drug Application.

With their post-FDA design defect claims facing more and more challenges, plaintiffs have turned to a seemingly fantastical variation to these design defect claims. They now increasingly claim that the manufacturer should have changed the composition or dosage of a brand-name pharmaceutical *before they asked for FDA approval*. See, e.g., *Young v. Bristol-Myers Squibb Co.*, 2017 WL (2017). In other words, plaintiffs are claiming that manufacturers should have developed a different drug than they did. Following this logic, the manufacturers either should have submitted a different Investigational New Drug Application (IND) so that they could fulfill the required clinical trials to obtain FDA approval, or they should have stopped their clinical trials before requesting FDA approval and scrapped the drug they did manufacture to pursue a different IND for a drug with a different composition or dosage—all of which happened years before FDA approval. The argument sounds much like the “stop selling” rationale rejected in *Bartlett*, where the Court found it incompatible with preemption case law to require a manufacturer to avoid a conflict with federal and state law by choosing not to make the drug at all. *Bartlett*, 570 U.S. 472, 474 (2013). But, with some noted exceptions, courts have allowed pre-FDA-ap-

proval state law design defect claims to go forward against brand-name pharmaceutical manufacturers. See, e.g., *Young v. Bristol-Myers Squibb Co.*, 2017 WL 706320 (N.D. Miss. 2017). Though *Yates* also ruled that FDA regulations preempted the plaintiff's pre-FDA-approval design defect claim, other courts have been more hesitant to so rule. See, e.g., *Young*; *In re Xarelto (Rivaroxaban) Products Liability Litigation*, 2017 WL 1395312 (E.D. La. 2017).

It is hard enough to explain to a court what a pre-FDA-approval claim entails; even more challenging is explaining how state law is preempted by a specific FDA regulation. 21 C.F.R. §314.70(b), along with its biologics equivalent, 21 C.F.R. §601.12(b), refers to changes made in the *post*-FDA approval process. See, e.g., *Sullivan v. Adventis, Inc.*, 2015 WL 487223, at \*6 (S.D.N.Y. 2015). Without a specific FDCA regulation to cite that might conflict with a state law design defect claim, there can be no preemption. While *Yates* presents a good argument for preemption, the worry is that courts might not see the preemption as clearly as they might for *post*-FDA-approval design defect claims.

*Yates* did find the pre-FDA-approval state law design defect claims preempted, arguing similarly to the Supreme Court in *Mensing* that the manufacturers could not have complied with a state law pre-approval duty “without ultimately seeking the FDA’s approval” before marketing the drug and before the plaintiff could have used the drug. *Id.* at 299–300. Since the manufacturers could not act unilaterally to make the design change that state law allegedly required, the Sixth Circuit found the pre-FDA-approval design defect claims preempted by the FDA regulations. *Id.* *Utts* argued analogously. And if a manufacturer finds itself defending against a brand-name pharmaceutical design defect claim in either the Sixth Circuit or the Second, it should make this argument. But at least some courts seem hesitant to rule that all design defect claim are preempted, absent a clear congressional statement to that point. See, e.g., *Guidry v. Janssen Pharmaceuticals, Inc.*, 206 F. Supp. 3d 1187, 1206 (E.D. La. 2016).

A stronger argument against pre-FDA-approval design defect claims might be that they are not claims at all. In its first, and arguably better, argument against the existence of a pre-FDA-approval design defect claim, the Sixth Circuit found such a claim “too attenuated.” 808 F.3d at 299. As in *Mensing*, where the Supreme Court found a series of counterfactuals regarding steps needed before the manufacturers could have made design changes to their generic drug “a Mouse Trap game,” the *Yates* court found the number of counterfactuals needed to assume the manufacturers might have made another drug, which

might have been approved and which the plaintiff might have taken, “several steps too far.” *Id.*

While many claims against pharmaceutical manufacturers entail some number of counterfactuals—such as, if the plaintiff had not taken the drug, the plaintiff would not have been injured—the number of counterfactuals required to make a pre-FDA-approval design defect claim seems far greater. Emphasizing the nature of pharmaceutical discoveries, as well as the long and involved testing and approval process previously discussed, would lend credence to this position. It is not just a matter of a manufacturer coming up with a different composition or dosage; it is also assuming it is feasible to manufacture, that the FDA will approve the IND necessary to transport the pharmaceutical across state lines so that trial sites can be established, that the alternative is, in fact, at least reasonably safe, that FDA will approve the alternative, etc. See, e.g., *Utts*, 226 F. Supp. 3d at 182. This *Utts* decision, notably, was not appealed to the Second Circuit, though a related decision revolving around failure to warn claims was ultimately upheld by the Court of Appeals. *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699 (2d Cir. 2019).

This is an interesting time for pharmaceutical preemption claims, especially given the Supreme Court decision remanding to the Third Circuit a failure to warn claim in *Merck Sharp & Dohme Corp. v. Albrecht*, 139 S. Ct. 1668 (2019), and the petition for writ of certiorari in *AVCO Corp. v. Sikkellee*, 2019 WL 1058108 (2019), where the Supreme Court just requested a brief from the Solicitor General in this case to find out the United States’ views on preemption in an aviation context, where the defendants unsuccessfully argued for preemption under *Levine-Mensing-Bartlett*. Given the high stakes involved in pharmaceutical litigation, favorable defense decisions using the strongest argument possible will help us vigorously defend our clients.

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## Leadership Note

# The Chair's Corner: FYI re DRI

By Baxter Drennon



When members of the [Young Lawyers Committee](#) think about DRI, we often think about it in terms of just the YLC. Because the YLC has so much going on, it is easy to forget that DRI has so many other great offerings. This month, I want to make you all aware of some other important work that DRI facilitates and other opportunities for involvement.

## Substantive Law Committees

Did you know that DRI has [28 other substantive law committees](#), ranging from Alternative Dispute Resolution to Workers' Compensation? Each of these committees actively works to provide practice-area-specific educational and networking opportunities for lawyers practicing within the committee's substantive area. Particularly for young lawyers who are experiencing out of the YLC, these substantive committees are a great place to continue involvement in DRI. If you are interested in becoming more involved in a substantive law committee, please contact Tiffany Roach Martin, Bryana Blessinger, Laura Guard, or Laura Emmett, who can help connect you with the leaders of those committees.

## Center for Law and Public Policy

Many members of DRI do not know that DRI has an advocacy arm called the [Center for Law and Public Policy](#). The Center through scholarship, expertise, education, and advocacy provides a voice for defense lawyers and our clients at the state and national levels on issues affecting the civil justice system. Through the work of the Center, DRI leaders have testified before Congress, state legislatures, and rules committees throughout the United States. Likewise, the Center regularly coordinates the filing of Amicus Briefs in courts around the country. To perform this work, the Center is made up of the following four committees: Amicus Committee; External Policy Alliance Committee; Issues and Advocacy Committee; and Legislation and Rules Committee. Within these committees, there are subcommittees addressing specific substantive legal issues like class action reform, climate change, and artificial intelligence. The Center is actively seeking young lawyers to participate in its work. If you are interested in helping shape policy and law on current and cutting-edge issues,

the Center is a great place to get involved. To get involved, contact [Steve Puiszis](#), the chair of the Center.

## National Foundation for Judicial Excellence

Finally, while technically separate from DRI, DRI helped create and operates the [National Foundation for Judicial Excellence](#). NFJE is a 501(c)(3) charity created in 2004. It joins bar associations, law schools, think tanks, and other organizations to strengthen and preserve the civil justice system. Its mission is to:

Address important legal policy issues affecting the law and civil justice system by providing meaningful support and education to the judiciary, by publishing scholarly works and by engaging in other efforts to continually enhance and ensure judicial excellence and fairness for all engaged in the judicial process.

To carry out its mission, NFJE hosts an annual judicial symposium and publishes scholarly works on the enhancement of the rule of law and administration of justice. Over the years, the judicial symposium has attracted hundreds of appellate judges from around the country. At the symposium, nationally distinguished legal experts and scholars provide education on the contemporary and complex legal issues judges face in the courtroom today. These tuition-free educational symposiums are recognized as a reliable source for balanced information. For the 2019 symposium, which will take place in Chicago in July, NFJE already has over 150 judges registered.

The NFJE is the only organization of its kind led by the defense bar. NFJE is funded entirely through charitable donations. Donations can be made here. For more information on getting involved with NFJE or to ask questions about it, contact Robert Shively, chair of [the board](#).

As you can read, like the YLC, the rest of DRI is busy doing important things to advance the practice of law. If you have not already done so, I hope you will find your place to become involved. If I can be of any help, please let me know.

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*Baxter D. Drennon is the chair of the DRI Young Lawyers Committee and a member of the Membership Committee.*

*Baxter is a partner at Wright, Lindsey & Jennings LLP in Little Rock, Arkansas, who focuses his practice on both product liability and transportation litigation. DRI Young Lawyers Member Spotlight*

## Member Spotlight

# Alexander Beeby

### How and why did you first get involved with DRI?

The chair of my department, now president of our firm, is a member of DRI and strongly encouraged me to join and attend the annual conference.

### What DRI committees (other than Young Lawyers) are you most interested in, and why?

I am still considering which committee fits my practice the best.

### What is your favorite part about being a lawyer?

I enjoy the challenge of diving into an esoteric issue of law and connecting it with practical reality.

### When you are not practicing law, what do you enjoy doing?

In those rare moments, I enjoy spending time with friends or family, including my three children who are teenagers and college-aged.

### What has been your biggest success in your legal career thus far?

I have been fortunate enough to have a couple of successful bankruptcy appeals under my belt and had a court agree with my arguments before finding another way to rule against us in another bankruptcy appeal. While not directly cited, except in a brief to the Court, I am pretty sure that the Supreme Court reviewed one of these appeals in reaching one of its concurring decisions. At the very least, the opinion suggested the same argument that I made and which I found in no other cases.

### What is most important piece of advice you have been given related to practicing law?

There is no “done,” there is only the deadline.

### What is the greatest concert you’ve ever been to?

While I have been to numerous concerts, the performance that comes to mind was a random ballet I attended while in Greenville, SC, on business. They performed to a live string quartet playing Steve Reich’s “Different Trains.” It was a powerful, moving performance.

### What is the greatest sporting event you’ve ever been to?

While it could be a fantasy of my memory, inflated to mythical proportions by time, I recall my high school’s football team breaking a multi-year (decade-long?) losing streak in our homecoming game against our primary rival.

### If someone is visiting your city, where is it essential that they go to eat?

The craft food, coffee, beer, etc. scene has exploded in the Twin Cities, and there are many great places to eat. I highly recommend the Surly brewpub. While their beer is among the best in the state, the food makes this brewpub an ideal destination for foodies.

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*Alexander Beeby is an associate in the business litigation department of Larkin Hoffman, in Minneapolis, Minnesota, with a focus on bankruptcy-related, employment and labor, and general business litigation. He is involved in a wide range of commercial litigation disputes. Mr. Beeby serves as Vice Chair of the Mitchell Hamline School of Law Alumni Board and as a member of the Augsburg University Alumni Board. Mr. Beeby graduated from Mitchell Hamline in 2016 and is licensed in Minnesota and Montana. In addition to DRI, Mr. Beeby is a member of multiple bar associations. Prior to the practice of law, Mr. Beeby worked as the founding manager of a food cooperative and in data and telephone network infrastructure.*



## Membership Minute

## Interview with Emily Motto

By Kate Van Namen



**1. What does your DRI membership mean to you? (or what are some of your favorite membership memories?)**

DRI has expanded my professional and personal life in ways I didn't anticipate.

Professionally, I am undoubtedly a better lawyer because of DRI. Through my seminar attendance and professional connections, I have been able to increase my skill set and learn from practitioners across the country. DRI has given me the opportunity to have mentors across the country and in many different practice areas. Personally, I have made so many lifelong friendships through DRI.

**2. Why is recruiting new members to the YL committee so important?**

I appreciate the opportunity to discuss my DRI experience with young lawyers who are not yet members. Our generation tends to want to understand the tangible value of joining a particular group before investing the time and effort. DRI is so worth the time and expense, and it's important we communicate that to potential members. It's an invaluable resource. Just as I have found value in the mentorship I have received; I hope to be able to mentor others.

**3. What tips do you have for getting new members to join? Biggest selling points from your perspective?**

All lawyers need CLE. All lawyers need to network and generate business. In my opinion, DRI provides the best forum to accomplish both of those.

**4. What will be/was your favorite part of the seminar?**

Outside of the programming, I love the dine-arounds. At this point in my YL career, at any given dine-around, chances are I will know some at the table but there will also

be new faces. It's a great opportunity to reconnect with old friends and meet new ones!

*Emily R. Motto is an attorney with Baylor Evnen and a member of the firm's Litigation Practice Group. Ms. Motto handles all files in general litigation. Her experience in the courtroom includes both bench trials and jury trials. In addition to Vice Chair of Seminar Planning for Young Lawyers, she also serves on the DRI Law in Transition Committee. Ms. Motto also serves on the Board of Directors for the Nebraska Defense Counsel Association and received the 2016 Rising Star Award from the Nebraska Defense Counsel Association. Emily is the 2019 Young Lawyer Seminar Program Chair.*



*Kate Van Namen is a member of the Butler Snow Litigation Department and Commercial Litigation Practice Group, practicing from the firm's Memphis office. She is licensed to practice law in Tennessee and Mississippi, and concentrates her practice in the areas of general and commercial civil litigation. Ms. Van Namen has experience counseling and representing clients in pharmaceutical and medical device litigation, product liability cases, intellectual property matters, breach of contract suits, construction litigation, breach of fiduciary duty actions, business tort claims including lender liability, unfair competition, theft of trade secrets and fraud, and other complex litigation.*

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# Lawyers and Insomnia: Natural Ways to Improve Sleep

By Tracy J. Frazier



According to the National Sleep Foundation, over half of all Americans adults suffer from some sort of insomnia several times a week. As with many professions with high rates of stress, insomnia is even more common

amongst lawyers than the general population. For some it may be periodic, triggered by a looming deadline, trial, or other big event. For others, it's a constant side effect of a high-stress job.

Either way, losing sleep can cause fatigue, irritability, reduced brain function, and can impair your ability to do your job. Whether your insomnia is a difficulty falling asleep ("sleep onset") or getting back to sleep in the middle of the night (sometimes referred to as "middle insomnia" or "mid-cycle awakening") or early morning wakening, there are some natural methods of combating insomnia that you can try.

## Avoid stimulants and alcohol.

This includes nicotine, coffee, tea, chocolate, etc. Anything with caffeine should be avoided for the six hours leading up to bedtime. While alcohol might help you relax and fall asleep initially, when it metabolizes it can disturb your sleep and cause you to wake. If you're experiencing regular insomnia, doctors recommend avoiding alcohol altogether.

## Keep your stress in check. Especially before bed and in the bedroom.

Try taking small breaks throughout the day to breathe. Mindfulness, meditation, breathwork—whatever you want to call it. If we can lessen the stress we build throughout the day we are more likely to be able to relax fully and sleep.

Then leave the stress outside of the bedroom. If possible, try to make your room a comfortable and soothing place with no screens and no work. If you can keep your phone in a different room, even better. Other recommendations are to use a sound machine, earplugs, fan, and control the climate in your room.

## Exercise and hydrate.

We all know regular exercise is key to good health. Exercise can be difficult to work into the day when you're at your busiest, however such as when up against a big deadline or trial and more likely to have insomnia. As such, if you can't make it to the gym or a class, try some stretching or light movement at intervals throughout the day. Even just taking the stairs instead of the elevator might help. Just try not to work out right before bedtime: if your pulse is still elevated when you try to fall asleep, this could contribute to the insomnia.

## Quiet your mind by counting sheep ... or anything really.

Counting sheep effectively quiets your inner-monologue and allows your brain to shut off. Stephen Sokole, founder of Journey Meditation, states "Counting sheep can help to calm the mind because it gives you a specific and neutral focus," he says, "which allows the busy, active mind to settle down." Kells McPhillips, *The Old Cliché of Counting Sheep to Fall Asleep Actually Works Really Well - Here's Why*, Well + Good (July 7, 2019), <https://www.wellandgood.com/good-advice/counting-sheep/>.

Other options are to jot down whatever is worrying you onto a piece of paper. Getting the thoughts out of your head and onto paper might allow you to relax.

If your insomnia is regular or you feel that lack of sleep is affecting your ability to function, see a doctor. People who miss out on sleep are at higher risk for various health conditions and serious accidents, which is much worse than just an unproductive day at work.

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