IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02710-NYW

THE GILBERT LAW GROUP, A PROFESSIONAL CORPORATION, a Colorado professional corporation,

Plaintiff,

v.

THE GILBERT LAW FIRM, LLC, a Colorado limited liability company; and CHRISTOPHER K. GILBERT, an individual,

Defendants.

AMENDED COMPLAINT AND JURY DEMAND

Plaintiff The Gilbert Law Group, A Professional Corporation (herein "The Gilbert Law Group" or "Plaintiff"), by its attorneys, Sherman & Howard L.L.C., alleges as follows for its Amended Complaint against Defendants The Gilbert Law Firm, LLC and Christopher K. Gilbert (collectively "Defendants"):

I. <u>PARTIES, JURISDICTION AND VENUE</u>

1. Plaintiff is a Colorado professional corporation with its principal place of business at 5400 Ward Road, Building IV, Suite 200, Arvada, Colorado 80002.

 Defendant The Gilbert Law Firm, LLC ("The Gilbert Law Firm") is a Colorado limited liability company with its principal place of business at 8725 East Kettle Place, Centennial, Colorado 80112.

3. Defendant Christopher K. Gilbert is a resident of the state of Colorado.

4. At all times herein mentioned, and upon information and belief, Defendant Christopher K. Gilbert was a representative, owner, servant, or employee of The Gilbert Law Firm, and/or materially aided, abetted, or encouraged the conduct described herein, and in doing the things hereinafter alleged, was acting within the course and scope of his authority as owner, agent, representative, servant, or employee and with the permission and consent of The Gilbert Law Firm.

5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a). All other claims in this action arise from the same transaction or occurrence, such that this Court has supplemental jurisdiction under 28 U.S.C. § 1367(a).

6. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b).

II. <u>GENERAL ALLEGATIONS</u>

A. Brief Overview and History of The Gilbert Law Group

7. In 1981, James Gilbert formed James L. Gilbert & Associates, P.C., a law firm in the Denver metropolitan area. The firm changed names three times: once in 1998 to Gilbert, Frank, Ollanik & Komyatte, P.C.; once in 2008 to Gilbert, Ollanik & Komyatte; and a final time in 2011 to its current name, The Gilbert Law Group, a Professional Corporation. For over 30 years, The Gilbert Law Group has specialized in civil litigation, representing plaintiffs in a wide variety of civil disputes. The Gilbert Law Group, while based in the Denver area, represents clients in matters throughout the United States.

8. The Gilbert Law Group has marketed itself through the use of its name throughout the United States, including in Colorado, including through the use of the following logos:

b.

a.

THE GILBERT LAW GROUP

9. The Gilbert Law Group has acquired a recognizable reputation as a leader in Colorado and the rest of the United States in providing superior legal services to clients involved in disputes dealing with general civil litigation, including but not limited to personal injuries and tort litigation. As such, using the name "Gilbert Law" in the legal community is synonymous with the Gilbert Law Group and its reputation, especially in this relatively specific legal market.

B. Defendants' Formation of The Gilbert Law Firm in 2015

10. In June 2015, Defendant Christopher Gilbert contacted James Gilbert, owner of the Gilbert Law Group, and informed James Gilbert of his intention to form The Gilbert Law Firm in Denver, Colorado. James Gilbert informed Christopher K. Gilbert that the name was insufficiently distinct from the well-established name of the Gilbert Law Group. As a result, James Gilbert requested that Christopher K. Gilbert choose a revised name to distinguish the firms.

11. James Gilbert suggested a number of names that would be sufficiently distinct to distinguish the firms and avoid consumer, client, and potential client confusion, including "The Law Offices of Christopher K. Gilbert."

12. Without suggesting any alternatives other than the confusing "Gilbert Law Firm", Christopher Gilbert rejected the proposed alternatives.

13. On June 29, 2015, Christopher K. Gilbert formed the Gilbert Law Firm and filed articles of organization with the Colorado Secretary of State. On that same date, Christopher K. Gilbert registered the trade name "Christopher K. Gilbert, Attorney at Law" with the Colorado Secretary of State.

C. <u>Early Entity Confusion</u>

14. Although the Gilbert Law Firm has been formed (and has been marketing itself with that name) for only approximately five months, instances of confusion between the entities have already occurred.

15. On or about November 10, 2015 a court reporter contacted the Gilbert Law Group seeking its business address so the court reporter could find the office for a scheduled deposition. There was no such deposition scheduled at Plaintiff's offices that day and the court reporter was, in fact, trying to contact the Gilbert Law Firm for the deposition. She mistook The Gilbert Law Group for that firm due to the similarity of names.

16. In at least two other instances, individuals and/or businesses have contacted The Gilbert Law Group requesting to speak with "Chris Gilbert." Those individuals and/or businesses were, in fact, trying to contact Christopher Gilbert and/or the Gilbert Law Firm but mistook The Gilbert Law Group for that firm due to the similarity of names.

17. Separately, because Defendants chose such a confusingly similar name, when Christopher Gilbert added Gilbert Law Firm to his LinkedIN profile page, LinkedIN

automatically populated the logo (displayed in Paragraph 8(b) above) as well as the website link, for the Gilbert Law Group and attributed it to Christopher Gilbert's newly formed firm.

18. Such confusion is likely to continue and, due to the confusingly similar names and practice areas of the two firms, will likely result in potential clients retaining or trying to retain the wrong attorneys.

D. <u>Plaintiff's Further Attempts to Compromise</u>

19. On November 4, 2015, through counsel, James Gilbert sent Defendants a cease and desist letter explaining their continuing use of The Gilbert Law Group's trademark was unlawful. That letter is attached hereto and incorporated herein as **Exhibit 1**.

20. Attached to that letter was a screenshot of Christopher K. Gilbert's LinkedIN profile with references to Defendants' use of Plaintiff's logo (displayed in Paragraph 8(b) above) and a link to Plaintiff's website.

21. Through counsel, James Gilbert thereafter suggested another set of names for Defendants to use that would be sufficiently distinct to distinguish the firms and avoid consumer, client, and potential client confusion, including:

- a. Law Offices of Christopher K. Gilbert;
- b. Christopher K. Gilbert Law Firm;
- c. Christopher K. Gilbert Law Offices;
- d. Law Offices of Chris Gilbert;
- e. Chris Gilbert Law Firm; and
- f. Chris Gilbert Law Offices.

22. As before, Defendants rejected all of the suggested names and provided no alternative to the confusingly similar name The Gilbert Law Firm.

III. <u>CLAIMS FOR RELIEF</u>

FIRST CLAIM FOR RELIEF (Federal Trademark Infringement — Against The Gilbert Law Firm)

23. Plaintiff incorporates by reference each of its allegations herein.

24. Plaintiff has established enforceable and protectable trademarks in its name and logos. Consumers would associate the name of The Gilbert Law Group with that firm and not with any other company providing similar legal services in the Colorado market.

25. The Gilbert Law Firm has never had any right or authority to use Plaintiff's mark or logos in connection with establishing a similar law practice in the Colorado market.

26. The Gilbert Law Firm has violated 15 U.S.C. § 1114 by infringing the trademarks of The Gilbert Law Group in interstate commerce through various acts, including by establishing and marketing a law firm with a confusingly similar and nearly identical name. The Gilbert Law Firm's use of Plaintiff's trademarks and logos is without permission and its use of the name Gilbert Law Firm is likely to cause confusion, to cause mistake, and to deceive.

27. As exhibited by, among other things, its repeated refusal to adjust the firm name in any manner, The Gilbert Law Firm's acts of infringement have been committed with the intent to cause confusion, mistake, to deceive, and to take the business of Plaintiff.

28. As a result of The Gilbert Law Firm's willful and intentional infringement of the Gilbert Law Group's marks, Plaintiff is entitled to recover: (1) The Gilbert Law Firm's profits;
(2) Plaintiff's actual damages, and (3) Plaintiff's attorneys' fees and costs incurred herein, which relief Plaintiff requests.

<u>SECOND CLAIM FOR RELIEF</u> (Contributory Trademark Infringement — Against Christopher K. Gilbert)

29. Plaintiff incorporates by reference each of its allegations herein.

30. As alleged above, the Gilbert Law Firm willfully and intentionally infringed the trademarks of Plaintiff.

31. At all relevant times prior to forming The Gilbert Law Firm, Christopher K. Gilbert was aware that only the Gilbert Law Group was authorized to use its trademark in connection with the specific legal practice area in the Colorado market.

32. At all relevant times, Christopher K. Gilbert had the authority and ability to prevent The Gilbert Law Firm from using Plaintiff's name and trademark.

33. At all relevant times, Christopher K. Gilbert had actual knowledge that he and The Gilbert Law Firm were unlawfully using Plaintiff's name and trademark in connection with the specific legal practice area in the Colorado market. However, despite this knowledge, Christopher K. Gilbert failed to make reasonable efforts to stop The Gilbert Law Firm's infringement of those trademarks.

34. Additionally, Christopher K. Gilbert knowingly facilitated the infringement of Plaintiff's name and trademark by continuing to operate and market his firm under the name The Gilbert Law Firm.

35. As a result of Christopher K. Gilbert's intentional efforts to assist and facilitate infringement of Plaintiff's name and trademark, Christopher K. Gilbert is jointly and severally liable for the damages caused by The Gilbert Law Firm's infringement of Plaintiff's name and trademark, in an amount to be established at trial.

<u>THIRD CLAIM FOR RELIEF</u> (Unfair Competition – against All Defendants)

36. Plaintiff incorporates by reference each of its allegations herein.

37. Defendants' actions described above are likely to deceive the public and therefore constitute unfair competition in violation of the common law of the State of Colorado.

38. Defendants' acts have been willful and deliberate.

39. Defendants' aforementioned actions and activities have been committed willfully

with the intent to damage The Gilbert Law Group and divert business from The Gilbert Law

Group, and have caused and will continue to cause damage to The Gilbert Law Group.

<u>FOURTH CLAIM FOR RELIEF</u> (Deceptive Business Practices C.R.S. § 6-1-105 — Against All Defendants)

40. Plaintiff incorporates by reference each of its allegations herein.

41. Defendants promote and advertise their legal services using a name that is deceptively similar to that of the Plaintiff.

42. Defendants have no right and are not authorized to use The Gilbert Law Firm name in connection with advertising their legal services in the same market as The Gilbert Law Group.

43. Defendants' use of The Gilbert Law Firm name to market and advertise their legal services in the same market as The Gilbert Law Group is misleading and/or false.

44. Defendants' use of The Gilbert Law Firm name to advertise and market their legal services in the same market as The Gilbert Law Group has been willful and deliberate.

45. Defendants' conduct constitutes deceptive business practices in violation of C.R.S. § 6-1-105.

46. Defendants' aforementioned actions and activities have been committed willfully with the intent to damage Plaintiff and divert business from Plaintiff, and have caused and will continue to cause damage to Plaintiff until such time as Defendants are permanently enjoined by this Court.

IV. <u>DEMAND FOR RELIEF</u>

WHEREFORE, Plaintiff demands the following relief:

A. On its First Claim for Relief, judgment against The Gilbert Law Firm for trademark infringement and an award of damages to Plaintiff in an amount to be proven at trial;

B. On its Second Claim for Relief, judgment against Christopher K. Gilbert for contributory trademark infringement and an award of damages to Plaintiff in an amount to be proven at trial;

C. On its Third Claim for Relief, judgment against all Defendants for their acts of unfair competition and an award of damages to Plaintiff in an amount to be proven at trial;

D. On its Fourth Claim for Relief, judgment against all Defendants for their deceptive business practices in violation of C.R.S. § 6-1-105, and an award of damages, including but not limited to treble damages, to Plaintiff in an amount to be proven at trial;

E. Entry of a permanent injunction precluding all Defendants, and their officers, directors, agents, representatives, brokers, broker associates, servants, employees, and those acting in concert with them, from:

i. Using or infringing any of The Gilbert Law Group trademarks;

ii. Engaging in any false and/or misleading advertising that misrepresents theDefendants' affiliation with The Gilbert Law Group; and

iii. Engaging in any acts of unfair competition against The Gilbert Law Group.

F. As to all Claims for Relief, for attorney's fees and costs, expert witness fees,

pre-judgment and post-judgment interest (including, but not limited to, moratory interest) as

allowed by law, and for such further relief as the Court deems just and proper.

V. JURY DEMAND

Plaintiff demands a jury trial on all claims triable to a jury.

DATED: December 16, 2015

Respectfully submitted,

SHERMAN & HOWARD L.L.C.

<u>s/ James G. Sawtelle</u> James G. Sawtelle Adrian J. Leonard IV 633 17th Street, Suite 3000 Denver, Colorado 80202 Telephone: (303) 297-2900 Facsimile: (303) 298-0940 E-mail: jsawtelle@shermanhoward.com E-mail: aleonard@shermanhoward.com

ATTORNEYS FOR PLAINTIFF

Plaintiffs' Address: 5400 Ward Road Building IV, Suite 200 Arvada, Colorado 80002

EXHIBIT 1

SHERMAN&HOWARD

201 East Washington Street, Suite 800, Phoenix, Arizona 85004-2327 Telephone: 602.240.3000 Fax: 602.240.6600 www.shermanhoward.com

Michelle M. Morris Sherman & Howard L.L.C. Direct Dial Number: 602.240.3026 E-mail: mmorris@shermanhoward.com

November 4, 2015

VIA EMAIL AND CERTIFIED MAIL RETURN RECEIPT REQUESTED (cgilbert@gilbert-law.com) (7010 1870 0001 3752 2233)

Christopher K. Gilbert The Gilbert Law Firm, LLC 8725 E. Kettle Place Centennial, CO 80112

Re: Trademark Infringement

Dear Mr. Gilbert,

This firm represents The Gilbert Law Group, P.C. As you know, The Gilbert Law Group is a law firm located in Arvada, Colorado and its principal is Jim Gilbert, a trial attorney well known in Colorado and throughout the country. The Gilbert Law Group is both a company name and a brand identifier of Mr. Jim Gilbert's legal services. You contacted Mr. Jim Gilbert in June regarding your desire to use "The Gilbert Law Firm" for your new firm name in Colorado and asked whether he had concerns about confusion if you used that name. Mr. Gilbert promptly responded to you that your use of that name would be a problem. Nevertheless, less than a week later, you registered the business name The Gilbert Law Firm, LLC and are using that name to promote your firm. Your use of a nearly identical name for legal services was clearly not authorized by my client.

We have also recently learned that you are using my client's firm logo as part of your LinkedIn page (*see* Exhibit A). In addition, your firm name on your LinkedIn page hyperlinks to my client's LinkedIn page. Your unauthorized use of a nearly identical name and my client's logo is in bad faith, is a blatant attempt to trade on my client's considerable goodwill, and is an infringement of The Gilbert Law Group's trademark rights. The hyperlink on your LinkedIn page to my client's page exacerbates the confusion.

Accordingly, we demand that you immediately (1) cease using my client's logo, (2) cease using "The Gilbert Law Firm" in connection with the provision and/or promotion of your legal

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Christopher K. Gilbert November 4, 2015 Page 2

services, (3) change your name to one that that is not confusingly similar to my client's mark, (4) remove any hyperlinks from your social media and any other web pages to my client's web pages, and (5) provide your written assurance that you will not in the future use any name for your legal services that is confusingly similar to The Gilbert Law Group.

While we would prefer to resolve this amicably, we will take whatever steps are necessary to protect our client's intellectual property rights and this letter in no way constitutes a waiver of or a limitation on our client's rights to pursue all available legal and equitable remedies, all of which are expressly reserved. We expect to hear from you regarding this matter as soon as possible, but in no event later than November 10, 2015.

incerely.

Michelle M. Morris

MMM/can Enclosure cc (w/enclosure):

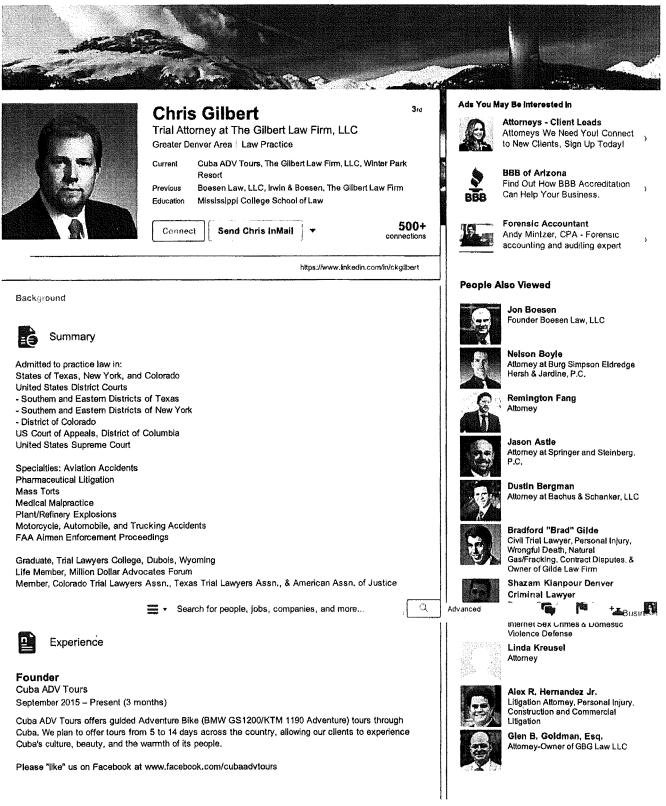
Jim Gilbert (jgilbert@thegilbertlawgroup.com)

EXHIBIT A

Chris Gilbert LinkedIn Page

Chris Gilbert | Linkedin

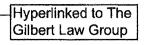
Arizona Attorney Needed - We have an immediate opening for an Arizona Attorney, Join now. | Read More »



Chris Gilbert LinkedIn



Trial Attorney



September 2015 - Present (3 months) | Greater Denver Area

I primarily represent people who are injured by the negligence of others or their dangerous products. My focus includes products liability, car/trucking/motorcycle accidents, pharmaceutical injury, aviation (including helicopter tour/EMS) accidents, and premises liability. I have extensive trial experience and frequently serve as local counsel for other lawyers located in other states.

I also represent parties in aviation-related commercial disputes and FAA-licensed airmen, mechanics, certificate holders, and aircraft owners in FAA civil enforcement actions.

Please "like" us on Facebook at https://www.facebook.com/thegilbertlawfirm

Ski Instructor

Winter Park Resort November 2014 – Present (1 year 1 month) | Winter Park, CO

PSIA Certified Alpine Ski Instructor at Winter Park's Ski + Ride School, Private and Group Lessons available for kids and adults - come see mel http://www.winterparkresort.com/plan-yourtrip/lessons.aspx

Attorney

Boesen Law, LLC

January 2014 - September 2015 (1 year 9 months) | Greater Denver Area

I primarily represent people who are injured by the negligence of others or their dangerous products. My focus includes products liability, car/trucking/motorcycle accidents, pharmaceutical injury, aviation (including helicopter tour/EMS) accidents, and premises liability.

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mechanics.

I also represent parties in aviation certificate holders, and alrcraft ow

Attorney

Irwin & Boesen

September 2012 - December 2013 (1 year 4 months) | Greater Denver Area

Attorney

The Gilbert Law Firm January 2003 - January 2010 (7 years 1 month)

Attorney in Houston, Texas law firm, focused primarily on representing individuals who have been injured as a result of dangerous pharmaceuticals.



Volunteer Experience & Causes

Pro Bono Attorney

Houston Volunteer Lawyers September 2002 -- December 2007 (5 years 4 months) | Social Services

Provided pro bono family law services to impoverished women and children.



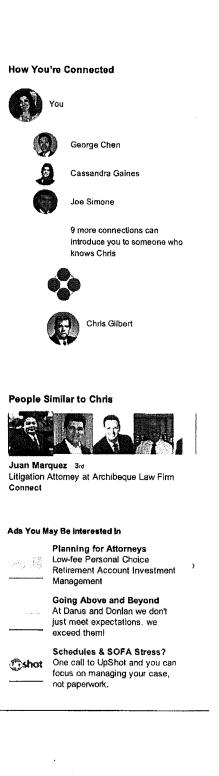
Organizations

State Bar of Texas Board of Directors June 2011 – June 2014

Colorado Trial Lawyers Association Member

Texas Trial Lawyers Association Member

https://www.linkedin.com/in/ckgilbert



Chris Gilbert | Linkedin

American Association of Justice Member

Million Dollar Advocates Forum Life Member

Professional Ski Instructors of America - Rocky Mountain Division (PSIA-RM) Alpine Level 1 Certified Ski Instructor

Aircraft Owners and Pilots Association (AOPA) Legal Services Panel Attorney: Member

Houston Trial Lawyers Association Board of Directors September 2009 - September 2011



Independent Coursework

· Trial Lawyer's College (TLC)

- Trial Advocacy College of Texas (TACT)
- NITA Trial Skills Course



Top Skills

99+

99+ 99+

99 -

96

66 65

61 Torts

99+ Product Liability **Civil Litigation**

Litigation

Class Actions

Personal Injury

Depositions

Courts

Trials 94

Wrongful Death

Chris also knows about ...

53 Dispute Resolution 92 Commercial Litigation **5**3 Trial Practice Personal Injury... 37 Automobile Accidents 37 Legal Writing 36 Accident 51 21 **Business Litigation** 30 25 24 Jury Triats Mediation Toxic Tort 19 Alternative Dispute... 16 Breach Of Contract 20 Bad Faith 18 Insurance Law See 11+

Education

Chris Gilbert | Linkedin

Mississippi College School of Law J.D. 1995 – 1998

Southeastern Louisiana University B.A., Political Science 1992 – 1995

Activities and Societies: Kappa Sigma

Louisiana State University

1990 - 1994

St. Stanislaus College

1983 - 1988

Additional Info

Interests

ð

Aviation: I am a commercially licensed airplane and seaplane pilot with instrument and multi-engine ratings,

Honors & Awards

Additional Honors & Awards

Reported Cases: Lockwood v. ConAgra Foods, Inc., 597 F.Supp.2d 1028, (N.D.Cal., 2009).

Recommendations

Given (7)



Mike Taylor Attorney/Certified Mediator

L Ive worked with Mike many times, both in his law practice and as e-discovery counsel. One thing I really appreciate about Mike is his broad litigation experience, as it allows him to see the big picture and know what matters in any given case. He provides great service and his up-front, open communications style results in efficient, value-driven, and effective solutions... **more**

August 29, 2011. Chris was with another company when working with Mike at Civil Litigation Practice



Drew Coats Shareholder

66 IVe had the pleasure of working with Drew on several matters. He is bright, thorough, rational, and logical. He delivers great service to his clients and I often refer aviation matters that are beyond my experience to him. I strongly recommend Drew to anyone who needs a sensible, honest, capable lawyer to handle commercial litigation or aviation matters,

August 27, 2011, Chris was with another company when working with Drew at Coats & Evans, PC

Chris Gilbert | Linkedin



Daniel D. Horowitz, III Partne

66 Daniel is a solid lawyer who achieves excellent results for his clients. HIs professionalism and tact with lawyers on all sides, as well as members of the judiciary, serve him and his clients well. His devotion to the profession is remarkable, as he uses his free time to serve on numerous professional boards and committees. It has been a pleasure to work with Daniel and L., more

August 25, 2011, Chris was with another company when working with Daniel D. at Abraham, Watkins, Nichols, Sorrels, Agosto & Friend



Will Falcon Owner

1 Ive known Will for nearly three decades. In fact, he was my inspiration for also joining the Marine Corps when I did in 1990. I recognized his level of commitment, his willingness to go above and beyond, his attention to detail, and his diligence and tenacity in accomplishing the mission in front of him. I firmly believe Will has maintained those qualities and... more

April 22, 2010, Chris worked with Will at STAT Intl



Derick Hembd Marine

11 Derick and I served together in the Marine Corps in the early 1990's and have remained friends since that time. I have always admired Derick's sense of integrity, his diligence in any task, and his honesty. The qualities he developed as a Marine remain engrained in him today and in my judgment, directly contribute to his work ethic and resulting professional success that ... more

October 4, 2009. Chris worked with Derick at United States Marine Corps

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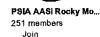
Aviation Law Network

2,389 members



6,647 members

CHARTER LEASE M AIRCRAFT CHARTE ...



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Brain Injury Litigation...

6,854 members

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Mass Tort Nexus

9.039 members

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Influencers



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Bill Gates Co-chair, Bill & ... Follow



Deepak Chopra MD (... Founder, Chopra... Follow



Arlanna Huffington President and... Follow

Chris Gilbert | Linkedin

11/3/2015



Barack Obama President of the ... Follow

News





Healthcare 3,081,279 followers Follow

Companies



Trial Lawyer's College Legal Services Follow



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HarrisMartin Publishing

Southeastern Louisia...

Baton Rouge, Louisiana

Legal Services

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