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## Upcoming MS Fundraising Events: Please Join Us!

We have some fun events lined up in our fundraising efforts for the San Diego MS Society. On **Friday, April 18th**, LGC will be hosting a **Tequila Happy Hour** starting at 4:30 pm at our San Diego office. Take a photo with "Paco" the donkey while enjoying good food and drinks. For more information, contact Courtney Duncan at [cduncan@lgclawoffice.com](mailto:cduncan@lgclawoffice.com).

LGC will be participating in the annual **Multiple Sclerosis (MS) Walk** on **Saturday, April 26, 2008**, at the NTC Park in San Diego. Anyone interested in joining our team may do so by visiting [www.mswalk.com](http://www.mswalk.com) and registering under Team Lincoln Gustafson & Cercos. Please contact Vonlyn Audette at [vaudette@lgclawoffice.com](mailto:vaudette@lgclawoffice.com) or (619) 233-1150 if you have any questions.

On **Sunday, May 4th**, LGC, along with Debbie Ayers, a former LGC employee and an inductee to the San Diego Bowling Hall of Fame, will be hosting the **4th Annual Bowling for Multiple Sclerosis** at Parkway Bowl in El Cajon from 12pm-3pm. A \$20 donation for adults and \$15 for children is requested. A raffle, games and a silent auction will be held at the event, and refreshments will be provided. Please contact Debbie Mitchell at [dmitchell@lgclawoffice.com](mailto:dmitchell@lgclawoffice.com) for further details.

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## Nevada Construction Defect Litigation Still on the Rise

A message from Nicholas Salerno



Nicholas Salerno,  
Managing Partner,  
Las Vegas Office

As the managing partner of the Lincoln Gustafson and Cercos Las Vegas office, I have seen many changes over the past 10 years. Housing prices have soared fueled by a rapidly growing population. Construction defect litigation has matched the housing growth with many California based firms establishing Nevada offices. Residential construction has slowed recently, but construction defect litigation marches on. I have spoken to numerous insurance and governmental groups about the ever increasing expense of construction defect litigation and there is a consensus that Chapter 40 (a law enacted by the Nevada legislature to govern disputes between homeowners and contractors) has not achieved its asserted goal of keeping disputes out of litigation. Despite the best efforts of the construction and insurance industry, it remains difficult to resolve cases without protracted and expensive litigation. Judicial interpretations of Chapter 40 often increase contractor exposure rather than decrease it such that the risks and expense of lengthy litigation are borne primarily by the contractors.

At LG&C, we face the challenges of construction defect litigation head-on. We begin by exploring early resolution, by offering repairs where appropriate, and by seriously participating in pre-litigation mediation. Where the matter moves to litigation, we perform an early cost benefit analysis to formulate an appropriate defense strategy and then assemble the appropriate team of experienced professionals and aggressively defend the allegations while keeping our clients apprised of the risks and rewards of each step so that in the end, our clients can obtain the best result possible. We look forward to our continuing relationships as well as forging new ones.

### MS Fundraising, Continued from Page 1

On **Friday, May 23rd**, LGC will be holding its **First Annual MS Golf Tournament** at Sycuan Resort Singing Hills Golf Course in El Cajon. The shotgun start will be at 2:00 pm and a dinner and raffle will take place following the tournament. The pricing is \$100 per individual player or \$400 for a foursome. Please contact Vonlyn Audette at [vaudette@lgclawoffice.com](mailto:vaudette@lgclawoffice.com) or (619) 243-1150 if you have any questions.

We hope to see you at one of these events!

### Court Finds in Favor of LGC's Client in Motion to Compel Arbitration

On January 25, 2008, Paul James, an associate in our San Diego office, and Teresa Beck, Partner, won a motion to compel arbitration in a sexual harassment case. This means an arbitrator, not a jury, will adjudicate the matter, which typically diminishes a plaintiff's expectations.

### Labor Board Victory

On March 4, 2008, Adrienne Johns, another associate in San Diego, obtained a defense award in a Labor Board matter in which LGC represented the employer against claims of overtime, failure to allow meal breaks, and other related issues.

### Employment Law Updates

On January 28, 2008, an expansion of the Family and Medical Leave Act (FMLA) became law. Employers with 50 or more employees are now required to provide 12 weeks of leave due to a "qualifying exigency" arising out of active military duty, or notice of an impending call or order to active duty, of an employee's spouse, parent, or child. Employers must also provide up to 26 weeks in a 12-month period to an employee who is the spouse, parent, child, or next of kin of an injured service member. This measure reflects a growing trend to extend leave benefits to military personnel and their families.

On January 29, 2008, the U.S. House of Representatives Education and Labor Committee held a hearing on the ADA Restoration Act, a bill that would expand the definition of "disability" under the Americans with Disabilities Act (ADA). The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." The new bill would redefine "disability" as simply "a mental or physical impairment" and may require employers to accommodate people with various minor or temporary impairments. Although California employers already operate under a very liberal system allowing for a very broad definition of disability, such action by Congress signals similar changes may be on the horizon across the country. LGC will keep you informed regarding new developments pertaining to this bill.

### Associate Spotlight **Amy E. Rose**



A San Diego native, Amy Rose pursued her undergraduate degree at the University of Washington. She later returned to San Diego and has been with LGC since 2002, first as a Law Clerk while studying at the University of San Diego School of Law and subsequently as an associate. Amy is licensed to practice law in both California and Nevada. Amy works in all types of civil matters. Recently, she won a defense award in a subrogation case relating to an alleged improper installation of a reverse osmosis system.

Amy is currently serving as the Chair of the Board of Directors of the Travelers Aid Society of San Diego, a non-profit organization that provides access to critical services and transportation costs to indigent individuals and families. (You can find out more about Travelers Aid Society at [www.travelersaidsandiego.org](http://www.travelersaidsandiego.org).) She enjoys competing in triathlons and is currently training with Darcie Frounfelter, another associate in the San Diego office, for the Big Sur Marathon this month.

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*We would like to thank our many clients who continue to refer colleagues, friends, and family to our offices for legal services. We take pride in knowing that you have confidence in our ability to provide legal representation. THANK YOU!*

## A Goal Not a Burden: The Art of Negotiating Ethically

By Thomas J. Lincoln  
Founding Partner, San Diego

*(The following are excerpts of an article published in the 4th quarter 2007 issue of Verdict Magazine.)*

For a lawyer, the art of effective negotiating is one of the most important services that can be offered to a client. It is an attribute, however, that clients often do not appreciate or even seek out in a lawyer; choosing, instead, someone who is “fearless and fearsome; ready for battle”. This popular misconception of the need for a warrior lawyer is based in part on the misconception that most cases go to trial. The fact is that very few cases go to trial, not because of some dispositive motion but, rather, because they are resolved.

Some may argue that the warrior lawyer persona actually enhances the potential for resolution but there is at least as strong an argument that these characteristics can, at a minimum, prolong litigation and, perhaps, even exacerbate the dispute, resulting in a more costly litigation, longer litigation, and even a trial.

There seems to be an emerging trend to separate lawyers into negotiators and trial attorneys. This trend toward specialization is similar to the starter, middle relief and closer in baseball. It may be based upon the concern that the so called trial attorney may be conflicted in some way and inclined to negotiate out of a trial because of some mistake or fear. Or it may be somewhat of a tactic to impress on the other side the readiness of the trial team. Or it may simply be that the two skills are difficult to find in one person. Regardless, those that do possess both skills, and there are many, have the advantage of bringing the full picture to the negotiating table and thereby giving the client professional judgment based upon the subtleties presented in each situation. However, the more this specialization takes place, the less frequently these attributes will be combined in one person.

Focus on  
Community:

**BizSanDiego**  
CONVERSATION THAT MATTERS



Pictured from right to left: John Lincoln, Associate Editor and Webmaster for BizSanDiego; Jill Dickerson, LGC Associate; Holly Dixon, Marketing Manager for CBIZ, Inc.

Jill Dickerson, an associate in our San Diego office, attended the BizExchange Speaker Series hosted by BizSanDiego Magazine in January of 2008. BizSanDiego Magazine facilitates communication between growing and established companies around San Diego County to create a stronger, more powerful business community. By bringing San Diego's business leaders and professionals together to share their respective insights, ideas and best practices, BizSanDiego promotes beneficial communication between all San Diego businesses which strengthens the business community as a whole.

### *Engagement News*

Congratulations to Chris Turtzo, an associate in our Las Vegas office. He and Marlys McGrew recently became engaged.

Jason Julius, an associate in our San Diego office, recently proposed to Carrie Jennings (to Jason's relief, Carrie said yes.)

*Best wishes for the happy couples!*

### **LGC Baby News!**

Chris and Candace Schmitthenner announce the birth of their son Sam, who was born on February 21, 2008, weighing 10 pounds, 4 ounces and measuring over 21 inches. Chris (aka “Schmitt”) is an associate in our San Diego office.

Dalilia and Adon Baza are proud parents to their new baby girl, Salma. Salma was born on March 12th, weighing 7 pounds, 9 ounces and measuring 19 inches long. Dalilia is a file clerk in our San Diego office.

**CONGRATULATIONS TO THE NEW PARENTS!**

### **Credits:**

**Editor:**  
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**Susan Minamizono;**  
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