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First Annual LGC Golf Tournament



LGC is proud to announce that the First Annual Lincoln, Gustafson & Cercos Golf Tournament to Benefit MS, co-chaired by Karl Sorenson and Vonlyn Audette, was held on May 23, 2008, at Sycuan Singing Hills Golf Course. The tournament raised over \$6,300 for the MS Society. The winning foursome of Charlie Smith, Lance Audette, Charlie Smith III and Tim Petretta were eight under par in the scramble format event.

Karl Sorenson said of the tournament, "I am very pleased with the great turnout and the generosity of all the participants. It was the first time either Vonlyn or I had organized a golf tournament, and it was very gratifying to see how many people showed up to support this great cause. I would particularly like to thank major sponsors The Brady Company, Lombard Consulting and Home 2 Office." Vonlyn Audette added "We expect to raise in excess of \$10,000 at next year's tournament!"

Details for the Second Annual event will be posted soon. We hope you will join us!

**It's Confidential, Right?
The Confidentiality Gap in California Mediation & Mandatory Settlement
Conferences**

A message from Chuck Egan



Chuck Egan,
Partner,
San Diego Office

Mediation is a familiar part of the landscape in virtually every area of the law. Courts, parties and attorneys rely on mediation as a cost effective process that provides an opportunity to resolve claims and avoid the time and expense of taking a case to trial. Mediation is, by definition, a voluntary process where the parties mutually reach an acceptable compromise with the help of a neutral third party.

California has taken the step of statutorily protecting all communications, verbal and written, made for the purpose of mediation. This protection precludes the use of discovery to obtain mediation protected material and renders the material inadmissible as a matter of law. Even the mediator is prohibited from disclosing to the court any assessment of the mediation. The only thing that may be disclosed by the mediator is whether or not a settlement was reached.

In contrast, California courts may compel the participation of parties in a Mandatory Settlement Conference ("MSC"). A judge has the authority under the California Rules of Court to appoint a settlement referee to preside over a compulsory MSC which all parties, counsel and "persons with full authority to settle the case" must personally attend.

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MS Fundraising News

The **Tequila Happy Hour** on April 18, 2008 raised over \$2,000 for MS.

The **4th Annual Bowling Tournament** on May 4, 2008, raised over \$2,500 for MS research.

Thanks to those that contributed to our Multiple Sclerosis fundraising efforts this year. Together we raised in excess of \$48,000 towards MS research. With this year's total we will have raised more than \$375,000 over the last eight years!

Engagement News

Congratulations to Amy Rose, an associate in our San Diego office. She and Jason Martel recently became engaged.

Best wishes for the happy couple!

LGC Defense Verdict in Construction Defect Case in Nevada!!

LGC is proud to announce that Partner Tom Lincoln won a defense verdict in a construction defect case in Las Vegas, Nevada. Tom represented two subcontractors in the case. After a 36 day jury trial, the jury unanimously decided in favor of the defense. The case was the first chapter 40¹ case tried in Las Vegas in which repairs were performed by the developer prior to the litigation. The 39 homeowners were not satisfied with the developer's repairs and wanted more. The developer and the subcontractors declined to conduct further repairs, and the case went to trial.

The jury found that there were no defects remaining except minor plumbing problems. Tom and his clients were very happy to avoid the over \$1 million of damages requested by the homeowners.

¹ Chapter 40 is Nevada's construction defect statute which governs rights and remedies between homeowners and builders, and which provides builders an opportunity to repair before litigation may ensue.

Associate Spotlight: Chris Schmitthener



Chris Schmitthener,
Associate,
San Diego Office

A San Diego native, Chris Schmitthener, affectionately known as "Schmitt" around the office, has been with LGC since 2003 when he began as a law clerk while attending the University of San Diego School of Law. In 2004, Chris was welcomed as an associate. Before attending USD, Chris attended California Lutheran University, where he majored in Communications, with an emphasis in Journalism. Chris's practice focuses on civil litigation, including defending construction defect lawsuits. Chris has also acted as coverage counsel for insurance carriers and developers, and assists developers and general contractors in redrafting subcontracts and sale contracts.

Chris is proud to report that recently, in a copyright infringement suit filed against a prominent diet company and its CEO, Chris successfully moved to dismiss the claims against the CEO for lack of personal jurisdiction and prevailed on a motion as to the remaining defendants to transfer venue from the Central District of California to the District of New Jersey. As a result of the ruling, the suit was subsequently dismissed for a waiver of costs.

In his free time, Chris enjoys spending time with his new baby boy, Sam, who is now three months old.

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It's Confidential Right?

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While the MSC can be a powerful means of compelling face to face negotiations between reluctant litigants, it comes with a significant drawback - the loss of confidentiality.

The California Evidence Code specifically excludes MSCs from the definition of "mediation", the effect of which is to wipe out any confidentiality that would have been provided by statute. As a consequence, all communications prepared for use in MSCs are discoverable and potentially admissible at trial.

Over the years, both parties and courts have relied on the use of MSCs to compel the appearance of litigants, and it has not been unusual for these MSCs to be handled by private mediators who presided over confidential mediation sessions in the same case. This presents obvious problems for clients and attorneys trying to preserve the confidentiality of mediation. Both clients and counsel have to be mindful of this confidentiality gap in California.

Multiple Sclerosis Walk
Thank you to all of the employees, family members and friends who participated in the annual Multiple Sclerosis (MS) Walk on Saturday, April 26, 2008, at the Naval Training Center Park in San Diego!



TEAM LGC



Graduation News

Congratulations to Sara Laccone, daughter of Jim Laccone, from our San Diego office. Sara recently graduated from Cal State Northridge with a Bachelor of Arts degree in Art. Also, congratulations to Megan Laccone, 11, who graduated from 6th grade in June.

Congratulations to Madison Beck, 11, daughter of Partner, Teresa Beck, who graduated from 6th grade in June, and her brother, Ryan Beck, 14, who graduated from 8th grade.



LGC Associates Run Marathon

Congrats to Darcie Frounfelter Who Qualified for the Boston Marathon!

Darcie Frounfelter and Amy Rose, associates in the San Diego office, ran the Big Sur Marathon in Monterey on April 27, 2008. The 26.2 mile course starts in Big Sur and goes to Carmel along the scenic Highway One. The course is beautiful, but hilly.

Amy finished in 4 hours and 12 minutes and was 53rd in her division. Darcie finished the Big Sur Marathon in 3 hours and 37 minutes, which qualifies her to run the Boston Marathon. She plans to compete next April. Darcie was 10th in her division.

CONGRATULATIONS and GOOD LUCK!!



**Legal Reminder:
New California Cell Phone Law**

Effective July 1, 2008, all California drivers are prohibited from using a handheld wireless telephone while operating a motor vehicle. Motorists over the age of 18 may use a "hands-free device" but motorists under the age of 18 may not use a wireless telephone or "hands-free device" when operating a motor vehicle at all. Violators may be cited. The penalty will be \$20 for first time offenders and \$50 for all subsequent convictions.

Credits:

**Editor:
Teresa Beck
Partner**

**Assistants:
Joe Villasenor
Lucy McFarlin
Dana Nicholas
Law Clerks**

LGC Quarterly

Partners

Thomas J. Lincoln
Randall D. Gustafson
Theodore R. Cercos
Teresa M. Beck
Nicholas B. Salerno
Charles K. Egan
Mark T. Collinsworth
Karl E. Sorenson
Loren S. Young
Shannon Rooney

www.lgclawoffice.com

Associates

Lisa M. Mersereau
Jason A. Specht
Jill S. Dickerson
Amy E. Rose
Christian W. Schmittthener
Paul H. James
Monica J. Yoon
Anthony P. Gaeta
Robert L. Thompson
Christopher A. Turtzo
Darcie A. Frounteliter
Priscilla L. O'Briant
Aithyni K. Rucker
Jason J. Julius
Gene E. Royce
James M. Barrington
Patrick F. Lavery
Adrienne E. Johns
Steven L. Foremaster
Valissa J. Turner
Beth A. Werner
Rock K. Jung
Nicholas L. Hamilton