

California LGC Arizona Nevada QUARTERLY

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Congratulations to Tom Lincoln for Election to ABOTA!

LGC's Partners are very proud to announce the election of Thomas Lincoln to the America Board of Trial Advocates (ABOTA). This prestigious honor has been bestowed upon Mr. Lincoln in recognition of his skill, trial experience, integrity and professionalism in his advocacy on behalf of clients throughout his successful career. The San Diego ABOTA Chapter currently has approximately 150 members, and it is a true achievement to be selected from over 12,000 attorneys and judges in the county. Congratulations to Tom!

2007 MS Walk Another Success!

For the seventh year in a row, LGC employees, friends, and families participated in the San Diego MS Walk on April 29th at the Embarcadero on San Diego Bay's waterfront. Thanks the support, energy, and hard work of everyone involved, LGC had a team of more than 10 members and raised more than \$53,000. This brings the total raised by LGC over the past seven years to more than \$300,000. Now in its 19th year, funds raised from the MS Walk give increasing hope to those affected by MS through research, education, advocacy, and patient services.

Everyone at LGC would like to thank all of our clients, colleagues, vendors, and friends who have generously donated to this great cause over the years. This year, special thanks go out to LGC's team organizers: Sharon Coughlin, Vonlyn Audette, Debbie Mitchell, and Mark Collinsworth.

Preserving Evidence for Potential Litigation

A message from Randy Gustafson

In light of recent court decisions, it is increasingly important to take affirmative steps to preserve evidence for potential litigation. The duty to preserve evidence, which includes records of all mediums (paper, electronic, tape), as well as physical products and components, applies whenever litigation can be reasonably anticipated and thus can exist long before any lawsuit is filed. A failure to preserve evidence, even if inadvertent, can result in serious evidentiary sanctions, which can include adverse presumptions or the striking of an Answer. In anticipation of litigation, businesses should advise their employees to identify and retain records of all forms. In the age of electronic discovery, it is especially important to include direction to retain electronic files such as emails. The directions you give your employees should supersede all other company retention policies. Individuals who are not employed by the company, such as contractors or vendors, may possess evidence and should also be notified of the importance of retaining records.

The increasing willingness of courts to impose severe sanctions for even inadvertent pre-litigation destruction of evidence has encouraged counsel representing plaintiffs to vigorously pursue company records and seek testimony on what the company did, if anything, to preserve evidence. If any item of any potential evidence is missing, a motion to strike the Answer or to impose an adverse inference is filed and argued. If, for example, a company deleted emails related to multiple accounts or clients as part of a general document retention policy and those deleted emails potentially related to a dispute or claim that was not yet litigated, the company would face the difficult task of convincing the court there was nothing unique or relevant in the deleted emails such that no sanctions should be imposed. For all of these reasons it is critical for companies to take steps to preserve evidence whenever a potential claim arises.

Please see the link on our online newsletter at www.lgclawoffice.com for a sample "Litigation Hold" letter that can be distributed to your employees when litigation is anticipated.

Save the Date:

**20th Anniversary
party for Lincoln,
Gustafson &
Cercos!**

September 7, 2007



Randy Gustafson
Founding Partner

**SB 800 Affects Purchase Agreements
Entered on or after January 1, 2003 for New Residential Units**

In California, LGC expects to begin seeing lawsuits in which Senate Bill 800 (“SB 800”) will play a part. SB 800 applies to new residential purchase agreements entered on or after January 1, 2003. Codified at CA Civil Code § 895 et seq., SB 800 allows homeowners to file a legal action to seek recovery of damages arising out of, or related to defects in, residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction. Among other things, the bill provides a mandatory pre-litigation procedure under which builders and developers are entitled to repair defects before homeowners may resort to legal action.

The pre-litigation procedure starts with the homeowner providing written notice of the defect. The builder must acknowledge receipt of the notice, inspect the property, and make a written offer to repair (if desired) by statutorily-set time periods. Failure by the builder, developer, general contractor, contractor or original seller to adhere to any of the statutorily-mandated steps allows the homeowner to immediately file a lawsuit.

Of particular interest to subcontractors, the statutes of repose under SB 800 are as follows:

- Five years from close of escrow for paint and stain applications. (Civ. Code § 896 (g) (10)).
- Four years after close of escrow for electrical, plumbing and sewer systems (§ 896 (e) & (f)); cracks or vertical displacement of exterior pathways, driveways, hardscape, sidewalls, sidewalks and patios (§ 896 (g) (1)); unreasonable corrosion of steel fences (§ 896 (g) (9)).
- Two years from close of escrow for survival of landscape systems (§ 896 (g) (12)); dryer ducts (§ 896 (g) (14)); and untreated wood posts in contact with soil (§ 896 (g) (8)).
- One year after original occupancy of the adjacent unit for inter-unit noise transmission in attached structures (§ 896 (g) (6)).
- One year after close of escrow for irrigation systems and drainage (§ 896 (g) (7)).

Please contact our attorneys for further information regarding this law, and compliance or litigation tactics related to SB 800.

**LGC Assists Charity in
Property Donation Transaction**

Partner Randy Gustafson and associate attorney Jill Dickerson, were recently recognized for their extraordinary dedication and efforts in assisting a non-profit charity with a large property donation transaction, including helping the charity negotiate terms of both the donation and sale of the property, for purposes of ensuring protection to the charity with respect to title issues and indemnity claims.

The charity, Noah Homes, exists to provide homes that will offer security for adults with intellectual and other developmental disabilities and to maximize their independence by encouraging self-determination within an environment that fosters dignity, respect and personal growth. Noah Homes offers a continuum of residential and social support services in an environment that fosters lifelong learning, self-sufficiency and dynamic community. Lincoln, Gustafson & Cercos is proud to provide legal support to non-profit businesses and charities in our local community.

Engagement News...

Congratulations to Tony Gaeta and his fiance, Jen!

LGC Associate Anthony Gaeta recently became engaged to Jennifer Renick, a graphic designer who is responsible for creating the LGC newsletter logo. The couple will be married in May 2008. Tony has been with LGC since 2005 and concentrates in business and construction defect litigation.

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your bottom
line.**

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**The highest quality
representation based
on your bottom line,
not ours. Representing
individuals and
businesses since 1987.**

We Appreciate Your Referrals

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!

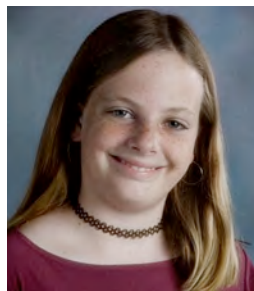
Welcome 2007 Summer Law Clerks!

LGC welcomes our newest summer law clerks, Katie McCurdy and Susan Minamizono.

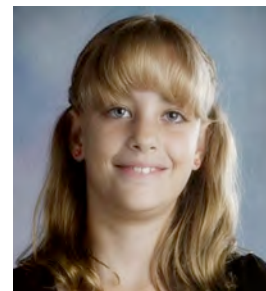
Katie McCurdy is a third-year law student at the University of San Diego (USD) and a member of the National Mock Trial Team. Katie's work experience includes clerking with the Family Law Facilitator's Office of the Superior Court and USD's Mental Health Clinic. She is a native San Diegan who attended George Washington University in Washington D.C., where she received a Bachelor's degree in Criminal Justice with a concentration in Geoscience. Katie enjoys scuba diving, running and traveling.

Susan Minamizono is a fourth-year evening law student at USD, where she is currently serving as the Lead Articles Editor for the San Diego International Law Journal. She has clerked at the U.S. Attorney's Office, Civil Division, and the Dept. of Homeland Security, Citizenship & Immigration Services. Susan earned her Bachelor's degree from the University of California, San Diego in Political Science with concentrations in Japanese Studies and Biology. She enjoys hiking, running, singing, and classical piano, and hopes to improve her golf game this summer.

LGC Kids Corner



Amanda Laccone



Megan Laccone

Jim Laccone, who has been with LGC for over 12 years as our Billing Coordinator, is proud to announce the following:

Amanda Laccone, 11 years old, is graduating from 6th grade and has been chosen to receive Oneonta Elementary School's "Most Distinguished Scholar" (School Valedictorian) award for the school year 2006-2007. Amanda is also GATE certified (Gifted and Talented Education Program) and was elected to the Student Council for a record third year. Her class has chosen her as class spokesperson at this year's graduation.

Megan Laccone has been chosen to lead the Oneonta Elementary Crossing Guards as their Lieutenant for the entire 2007-2008 school year, a task currently handled by five students. She has been elected to the Student Council the last two years and looks forward to serving a third and final year in 6th grade.

Associate Spotlight **Lisa M. Mersereau**



Lisa Mersereau is a Senior Associate with LGC, and has been with the firm since early 2001. Ms. Mersereau's practice focuses on the defense of developers, contractors, subcontractors and real estate agents and brokers. An active member of the San Diego Association of Realtors® (SDAR), Ms. Mersereau teaches a monthly SDAR Risk Management Class to real estate agents and brokers.

Ms. Mersereau was born in a suburb of Chicago, and grew up in central Illinois. In 1989, she left the corn fields for the beach, and moved to San Diego. Ms. Mersereau earned her Bachelor of Science degree from San Diego State University (SDSU), and went on to achieve a Masters of Business Administration from SDSU. Ms. Mersereau then graduated from the University of San Diego (USD) School of Law, where she competed in moot court and was a Contracts Instructor for the USD Academic Support Program. Ms. Mersereau has been admitted to practice law in the State of California since December 1999, and is also admitted in the United States District Court for the Southern District of California.

Ms. Mersereau enjoys spending time with her family, including husband, Beau, and twin toddlers, Will and Jake. Inspired by her son, Will, who has Down syndrome, Ms. Mersereau is the Founder and President of DS Action, a non-profit corporation comprised of parents, physicians, health care providers, and business professionals working with Rady Children's Hospital to establish a Down Syndrome Center in San Diego.

Congratulations to Jason Julius & Amy Rose!

Jason Julius passed the California Bar exam this past February and is now LGC's newest attorney.

Amy Rose, an LGC associate since 2003, recently passed the Nevada Bar exam and is now licensed to practice law in both California and Nevada.

Credits:

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Susan Minamizono,
Summer Associate

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