

California Enacts New ADA Legislation to Curb Frivolous Lawsuits, by Partner Tom Lincoln

California's New SB 1186: California's Governor Brown recently signed a bill (Senate Bill 1186) that changes the law relating to disabled persons' claims that they were denied reasonable access to businesses. Under Federal law (the American with Disabilities Act (ADA)) and California state law (the Unruh Civil Rights Act), businesses open to the public in California must provide reasonable access to persons with disabilities. The underlying concept is that businesses should ensure that those who are unfortunate enough to have some significant disability should have equal access to California businesses, which the rest of us tend to take for granted. Not a bad idea in and of itself.

Problems With the Old Law: The problem with the old law was that people just took advantage. Some disabled persons and lawyers would search out potential violators and then sue, never giving businesses a chance to fix the issue. One lawyer got so out of hand in San Diego, California that he was recently disbarred for making dozens of false claims in order to settle the claims quickly.

Features of the New Law: The new law tries to fix some of the abuses of the previous law by, among other things, requiring that a letter be sent to the business advising of the potential violation and giving the business an opportunity to fix the problem before any lawsuit can be filed. SB 1186 also prohibits pre-litigation "demands for money" by attorneys, puts into place new provisions to prevent "stacking" of multiple claims to increase statutory damages, reduces statutory damages, and provides litigation protection for defendants who correct violations. Interestingly, California has 40% of the nation's ADA lawsuits but only 12% of the country's disabled population. This may be because the prior law made it easy for unscrupulous persons and attorneys to abuse the system.

Lawyers and Frivolous ADA Litigation: It is bad enough that non-lawyers would abuse a law that had such good intentions, but for lawyers to take part in such abuse is deplorable. Lawyers are constantly being tested by the needs of clients versus ethical obligations. Clients are never well served, however, by lawyers who will mindlessly obey clients or just say "yes" because that's what the client wants to hear. At LGC, we believe clients are best served by careful and ethical lawyers who use good judgment to achieve the best results for their clients. LGC has many years of experience in litigating ADA-related cases, and we are committed to resolving such cases in the most cost-effective manner considering both short term costs and long term effects. SB 1186 provides new tools to defend against such suits. Please contact me with your questions. ♦

New Limits on Depositions in California

Background: Beginning January 1, 2013, depositions in California state court proceedings will be limited to 7 hours, with only specifically enumerated exceptions. On September 17, 2012, Governor Brown signed Assembly Bill No. 1875, which effectively amends the California Code of Civil Procedure (CCP) to be analogous with the 7 hour limit in Rule 30 of the Federal Rules of Civil Procedure (FRCP). AB 1875 was backed by the Consumer Attorneys of California (CAOC), which claimed that the new law would reduce litigation costs for both the prosecution and the defense. CAOC also claimed that the legislation was prompted by CAOC's members reporting an increase in lengthy depositions, in some cases characterizing the duration of the depositions as being abusive. California Defense Counsel, in opposition, lobbied for several key exceptions, described below. (Continued on Page 2.)



Tom Lincoln,
Founding Partner

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Associate Spotlight: Annalisa Grant

Annalisa Grant is an associate in LGC's Las Vegas office handling construction defect and personal injury cases. Originally from San Diego, Annalisa and her husband, Lee, also an attorney, relocated to Las Vegas in 2010. Annalisa holds a Bachelor's degree in History from the University of California, San Diego, a Master of Arts degree in French Studies from New York University, and a law degree from Thomas Jefferson School of Law. As an undergraduate, Annalisa spent a year studying at the University of Bordeaux III in Bordeaux,

France and also spent a summer semester studying international law at Zhejiang University in Hangzhou, China following her second year of law school. She is admitted to practice law in California, Nevada, and Minnesota. Outside of work, Annalisa's new favorite hobby is spending time with her 18 month old daughter, Elizabeth, who is looking forward to being a big sister when her little brother arrives at the end of November. Annalisa also enjoys hiking, travelling, baking, reading, and playing fantasy football. ♦

LGC Defeats Motion for Summary Adjudication in Mechanic's Lien Case

LGC Partner Chris Schmitthenner and Associate Jordan Nager successfully defeated a Motion for Summary Adjudication brought against LGC's client in a mechanic's lien case involving a failed construction project in Santa Clarita, California. LGC's client supplied cement to the project, but was never paid. LGC assisted the client in recording a mechanic's lien and then filing an action against the owner of the property to foreclose on the lien.

The owner of the property and the lender (who held a deed of trust on the property), initiated a non-judicial foreclosure sale and sold the property. The owner and lender then filed a Motion for Summary Adjudication against LGC's client's mechanic's lien claim, arguing the foreclosure sale eliminated the mechanic's lien because the mechanic's lien was subordinate to the deed of trust. (Continued, Page 3.)

New Limits on Depositions in California (Continued)

The New Rule: The new rule will be codified in new CCP section 2025.290. Some of the exceptions to the 7 hour limit are if the parties stipulate to allow a longer deposition, expert witness depositions, depositions in employment cases, cases designated as complex, and depositions of persons most knowledgeable.

Effect of New Rules: While most litigators will likely agree the 7 hour limit makes sense since most depositions can reasonably be expected to conclude in 7 hours or less, some litigators may believe it is unfair that the new limitation takes an important weapon out of the litigation tool box. One outcome may be a tendency to characterize claims as complex or as employment claims (or as qualifying for some other exception) in order to circumvent the 7 hour limit. The new limitation is very new, however, and the effect of the rule on litigation remains to be seen. Contact Partner Teresa Beck with questions. ♦

Protect yourself and your family tree! Plan for the future today! Contact us to assist you in preparing an estate plan tailored especially for you, to protect you during your lifetime, and your loved ones when they need it. Contact LGC Associate Darle Collhan at dcollhan@lgclawoffice.com.

LGC's Families Are Growing & Growing Up!



LGC California Billing Department employee Jim Laccone, and his wife, Michelle, are proud to report that their daughter, Amanda, was nominated for Homecoming Queen at Mar Vista High School in Imperial Beach, California. Jim was proud to escort his daughter to the homecoming game, and though she did not win the title of Queen, she charmed the crowd and her parents, and has always charmed all of us at LGC. Congratulations Jim, Michelle & Amanda!



Oh thank HEAVEN for Little Boys!

LGC Nevada Associate Dillon Coil and his wife, Becky Coil, are pleased to announce the birth of their son, James Dillon Coil. James was born on May 15, 2012. He never stops smiling and is adored by his two sisters, Ellie (age 6), and Leah (age 4).



It's a Girl!!!

LGC NV Associate Russell Collings reports that on August 19, 2012, his wife Erica gave birth to a daughter, Addie Collings. Addie is the little sister of three very proud older brothers, Braxton (10), Logan (6), and Cooper (4). Addie spent two and a half weeks in the Neo-Natal Intensive Care Unit, but is now a very happy and healthy baby girl. ♦

LGC California Welcomes Associate Rich Richey & Law Clerk Michelle Buxton



LGC is proud to announce that a new associate, Rich Reese, and a new law clerk awaiting bar results, Michelle Buxton, have joined the firm in LGC's California office. LGC proudly welcomes both Rich and Michelle.

Rich Reese graduated from the University of San Diego School of Law in 2010. During law school, he clerked for Hon. Socrates P. Manoukian in the Superior Court of California, County of Santa Clara. He also worked as a legal intern at the California Department of Corporations. Prior to attending law school, Rich obtained his undergraduate degree in Finance from San Diego State University. In his spare time, Rich enjoys traveling, exercising, and spending time with his friends and family. He is also an avid sports fan.



Michelle Buxton grew up in Torrance, California, and moved to San Diego for college. She attended San Diego State University and graduated with a B.A. in Political Science – the first person in her immediate family to receive an undergraduate degree.

This past spring, Michelle graduated from the University of San Diego School of Law (USD) in the top 15% of her class. She received the Outstanding Clinic Intern Award for her work at USD's Education and Disability Clinic. Michelle was also an active member of the Diversity Committee while at USD, and was awarded the first ever Maria Shih Brilliance Award for Diversity Awareness and Stupendous Service. ♦

New Indemnity Statutes Take Effect January 1, 2013 in California

Introduction: CA Senate Bill 474 (SB 474), signed by the governor on October 9, 2011, broadens the types of indemnity provisions in construction contracts that are unenforceable under California law. This new law is part of a growing national movement by subcontractors to secure legislative restrictions on the scope of indemnification obligations that can be imposed on subcontractors. Given the wide implications of this law and the need for lead time, these changes to California's "anti-indemnification" statute are not effective until January 1, 2013.

The Law In General: SB 474 essentially makes unenforceable "Type I" or "broad" form indemnity that extends to "active" negligence and outlaws terms which require subcontractors to indemnify against another's active negligence, whether on public or private contracts. Subject to certain exceptions, California's anti-indemnity statute has already for years made unenforceable true Type I indemnity in construction contracts by prohibiting a party from obtaining indemnity against its own sole negligence or willful misconduct or "for defects in design furnished" by such party. (Cal. Civ. Code § 2782(a).) The new law makes indemnity for active negligence also generally unenforceable.

Public Contracts: Under SB 474, a new subsection is added which prohibits a prime contractor on a public works project from requiring a subcontractor to provide indemnity against liability for the active negligence of the public agency.

Private Contracts: SB 474 extends the limitation on indemnification for active negligence to owners of private construction projects. For contracts entered into on or after January 1, 2013, a new provision is added making indemnity obligations on private contracts unenforceable if they purport to relieve the owner from its active negligence. (Cal. Civ. Code § 2782(c).)

Extends to Other Parties: The new law also adds a new section that applies to indemnity obligations by subcontractors in favor of general contractors, construction managers, or other subcontractors on public and private projects.

Effect of Limitation on Indemnity: For contracts entered into on or after January 1, 2013, indemnity obligations extending to the active negligence of the general contractor, construction manager, or subcontractor are void and unenforceable. (Cal. Civ. Code § 2782.05 (a).) This new section also prohibits terms that would require indemnity (including costs to defend) by subcontractors for claims that "do not arise out of the scope of work of the subcontractor pursuant to the construction contract." (*Id.*) This limitation is meant to address what subcontractors believed were overbroad indemnities which extended beyond the scope of the subcontractor's own work.

Exceptions: The exceptions, among other things, specify the new section protecting subcontractors does not apply to wrap insurance policies, indemnity agreements required by sureties, and contracts with design professionals.

The overall intent of SB 474 is to "ensure that every construction business in the state is responsible for losses that it, as a business, may cause." SB 474 applies to construction performed on property located in California even if the parties have attempted to opt out of these changes or have agreed to a non-California choice of law provision in their contract. These new provisions will require all parties involved in California construction contracts to carefully assess the terms of new contracts, and may heighten the need for broad insurance. Contact LGC Partner Teresa Beck with questions. ♦

LGC Defeats Motion for Summary Judgment (Continued from Page 2)

In opposing the Motion, LGC argued that work began at the project prior to recording of the deed of trust, and thus the deed of trust was not entitled to priority over the mechanic's lien under Civil Code section 3134 (even though the mechanic's lien was filed after the deed of trust). LGC also argued the owner and lender failed to follow statutory procedures to ensure payment to the contractors and material suppliers. Ultimately, the Court agreed with LGC, and denied the Motion.

Mechanic's lien statutes are complex, and failure to comply with their strict requirements can result in the loss of lien rights. LGC's attorneys have substantial experience guiding clients through the mechanic's lien process. If you have any questions about a mechanic's lien or similar issue, please contact Partner Chris Schmitthenner. ♦

Introducing Carlos Peña, LGC's Newest Paralegal



Carlos Peña is LGC's newest paralegal in LGC's San Diego office. Carlos grew up in Tijuana, Mexico. He started learning English when he was in 8th grade, and graduated from Castle Park High School in Chula Vista, California, in 2006. He then studied at the University of California, Riverside where he received degrees in Political Science and Spanish Literature. Carlos continued his studies at the University of San Diego where he obtained his Paralegal Certificate. He enjoys books, politics, and soccer. He plans to attend law school in the future. Welcome, Carlos! ♦

LGC Partner Teresa Beck's Article is Published in *DRI Today*

An article about billing authored by LGC Partner Teresa Beck was recently published in *DRI Today* as a feature article. The article is entitled "**The Billing Toolbox: How to Use All of the Right Tools to Create Bills Your Client Will Want to Pay (or at least not mind paying as much!)**." Follow this link to read the entire article, and be sure to contact Ms. Beck if you have additional ideas about how lawyers and law firms can do a better job of billing: <http://dritoday.org/feature.aspx?id=395>. ♦

DRI National Poll on the Civil Justice System Shows Interesting Results



Large numbers of Americans doubt that civil courts are fair, and a majority of Americans admit their biases could affect their decisions as jurors. These are some of the intriguing results of a new national poll on the civil justice system by DRI – The Voice of the Defense Bar. The poll is the first major research effort of DRI's new Center for Law & Public Policy which, in addition to conducting research, will provide expertise to courts and policy-makers, and conduct public education on important civil judicial issues.

The poll, conducted for DRI by Langer Research Associates of New York, consisted of a phone survey based on a national, random, scientific sample of adults. In terms of confidence in civil courts, only 9% indicated they were very confident the results in civil courts are "just and fair," while 16% expressed no confidence that results were fair. A stunning 83% said the side with the most money to spend on lawyers usually wins. This was true for all demographic groups: Democrats, Republicans, Independents, liberals, and conservatives.

More troubling is the fact that a majority of respondents freely admitted that, in certain situations, their personal biases could affect their decisions as jurors. For instance, 57-59% say they would be inclined as jurors to favor individuals in cases against an insurance, oil, or financial company. 52% said that if they had a bad consumer experience with a litigant, it could influence their decision as a juror.

In an interesting and counterintuitive response, the poll found 64% prefer jury trials to bench trials even though 48% feel juries make decisions based on personal opinion, not facts and law. 69% feel judges, however, base their decisions on facts and law.

In an encouraging response, 75% of Americans see jury service as a civic duty rather than a burden and of those that had served, 81% say the experience was a positive one. See links to the full report at <http://dri.org/news/PollHighlights>. ♦

Credits

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LGC Quarterly

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