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ISSUE 8

A QUARTERLY PUBLICATION

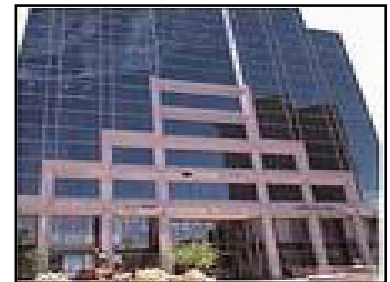
JANUARY 2009

LGC Arizona Updates



Attorney Update: Lincoln, Gustafson, and Cercos is proud to announce that Partner Karl E. Sorenson joins partners Randall D. Gustafson, Teresa M. Beck, and Mark T. Collinworth, and Associate, Gene E. Royce, as the firm's other attorneys admitted to practice in the State of Arizona. Congratulations to Karl! Additionally, Associate Ryan Swartz joins the firm as LGC's first local Arizona associate.

Location Update: The LGC Arizona office recently relocated to the Camelback Esplanade at 2415 E. Camelback Road, Suite 700, Pheonix, Arizona. The new office is located across the street from the Biltmore Fashion Park and the Ritz Carlton, Phoenix.



LGC's new Arizona office location.



Mark Collinworth,
Partner

Impacts of the Economy on Construction Defect Cases

A message from Partner Mark Collinworth

As we continue to read in the paper and see on the news the struggles that the current national economy is creating for individuals and businesses, we have been evaluating how the economy is going to impact construction defect claims in California, Nevada, and Arizona. Each of these states saw tremendous growth in construction, increase in home prices, and increases in the number of defect cases filed from approximately 1993 - 2006. However, since 2006, while construction has drastically slowed and home prices have dropped, we are not seeing discernable decreases in the number of construction defect claims being filed in these states. The following are just a few ways construction defect cases will be impacted by the current construction and housing markets.

Foreclosures:

With the number of home foreclosures on the rise, many homeowners may be joining lawsuits upon receipt of solicitation letters from Plaintiffs' attorneys as a last ditch effort to save their homes, not realizing these cases usually take one year or more to resolve. Accordingly, more and more homes involved in construction defect cases are falling into foreclosure. Since the measure of damages is generally the cost to repair or the diminution in value, whichever is less, foreclosure essentially strips a homeowner of the legal right to recovery. Because the cause of action is said to accrue once the defect is discovered (*Krusi v. S.J. Amoroso* (2000) 81 Cal.App.4th 995), the party taking title to the foreclosed property likely does not inherit the claims of the foreclosed Plaintiff. The foreclosed Plaintiff, having lost title to the property, cannot recover the cost of repair, because there are no means to make repairs, having sold the home. Since there is no value exchanged when the property is involuntarily transferred, there is no diminution in value. Accordingly, it is important throughout the pendency of these cases to periodically search for changes in ownership of each home within a lawsuit to make sure a contractor is not being asked to contribute settlement funds toward claims that have been legally extinguished by foreclosure.

(Continued on pg. 3.)



SAVE THE DATE: The Fourth Annual Martini Friday Happy Hour to support the MS Society will be held at LGC San Diego on Friday, March 6, 2009.



The New Genetic Information Nondiscrimination Act

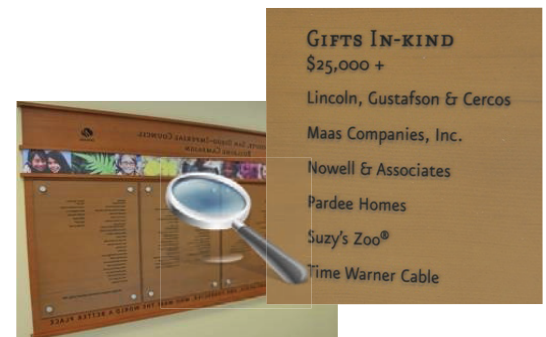


On May 21, 2008, President George Bush signed the Genetic Information Nondiscrimination Act (GINA). GINA bars genetic related discrimination in both the health insurance and employment settings and limits access to and disclosure of genetic information. GINA will become effective November 21, 2009. While there have been a number of limited cases of genetic discrimination and improper use of genetic information, these issues are likely to become common as more and more identifiable links between genetics and health are discovered. The driving force of GINA through Congress was an attempt by a railroad company to prove that an "on-the-job" injury was a pre-existing condition based on genetic testing.

GINA makes it unlawful for an employer, employment agency, and related entity to "fail or refuse to hire,....discharge...or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment" because of the employee's genetic information. GINA prohibits employers from requesting genetic information even in the rare case that it could arguably be job related. In preparation for GINA, employers may need to modify their requests for medical information relative to making accommodations under the American with Disabilities Act (ADA) and/or other job-related medical exams to exclude any potential request for genetic information. For example, employers currently can require medical evaluations of an applicant for job related purposes, however, employers will need to screen out any family history and genetic information which may possibly be in an employee's file. All employers should consider reviewing employment related policies and procedures to ensure GINA is complied with and protection of genetic information of employees is addressed.

LGC Supports Girl Scouts of San Diego

Lincoln, Gustafson, and Cercos was recently a contributor to the Girl Scouts of San Diego Imperial Council's Building Campaign with proceeds going to help construct a Multipurpose Room, Environmental Center, and Program Center Facilities on the Girl Scout campus in San Diego, California. LGC believes it is important to support an organization like the Girls Scouts of America whose mission is to build girls of courage, confidence, and character, who make the world a better place. Partner Teresa Beck serves on the Board of Directors of the San Diego-Imperial Girl Scouts Council.



Associate Spotlight: **Monica Yoon**



Monica Yoon,
Associate,
San Diego Office

Monica Yoon, originally from Rochester, Minnesota, has been with Lincoln, Gustafson & Cercos since September of 2005. Monica graduated cum laude from the University of San Diego School of Law in 2005. She served as a Judicial Extern to the Honorable Rudi M. Brewster of the United States District Court, Southern District of California, during her second year of law school. The following summer, she served as a Judicial Extern to the Honorable Barbara L. Major, also of the United States District Court, Southern District of California. Before attending USD School of Law, Monica graduated from San Diego State University with a Bachelor of Science in Biology.

Monica's practice focuses on civil litigation with an emphasis in high value business and personal injury claims involving premises liability, construction accidents, and products liability. In her free time, Monica loves to travel; she and her husband have had the opportunity to spend time in Australia, Ireland, South Korea, England, Japan, Mexico, the Caribbean, Germany and various cities across the United States. Monica also enjoys running and spending time with her family and friends.

You're already dealing with the economy.



Don't add compliance issues into the mix.

Now is the time to make sure you're in compliance with your annual corporate requirements, shareholder meetings, board of directors meetings, and corporate filings before it's too late. Contact attorney Jill Dickerson at 619-233-1150 or jdickerson@lgclawoffice.com today for a consultation.

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!



Top Ten Questions NOT to Ask in a Job Interview

Questions Regarding Financial Responsibilities

10. "Do you have children?"
9. "What are your child care arrangements?"
(You may ask: "These are the hours of work—are you available to work these hours?" and "Work may require overtime. Can you work such a schedule?" and "Do you have obligations that would hinder work-related travel?")

Questions Regarding Ethnicity

8. "Where were you born, and what is your native language?"
(You may ask: "Are you legally authorized to work in the United States?")

Questions Regarding Disability

7. "Do you have a disability?"
6. "Have you ever filed for workers' compensation?"
5. "Is there any health-related reason you may not be able to perform the job you are applying for?"

4. "How many days were you absent from work last year?"
(You may ask: "Can you perform the essential functions of the job you are applying for?")

Questions Regarding Financial Status

3. "Have you ever had your wages garnished?"
2. "Have you ever filed for bankruptcy?"
(You may not ask about the economic status of a prospective employee.)

Age Related Questions

1. And the number one question NOT to ask in an interview is: "What is your date of birth?"
(You may ask: "Do you meet the minimum age requirement for work?")

Interviews of prospective employees can be a minefield. Please contact us if you have questions in this area.

*Impacts of the Economy on Construction Defect Cases
(Continued from pg. 1.)*

Insurance Coverage/OCIPs:

The economy is not only hurting homeowners, it is hurting builders and subcontractors. Many contractors carry general liability insurance coverage with self-insured retentions ("SIRs"). Under an SIR, insurance coverage is not triggered until the insured has satisfied the full amount of the SIR. With more contractors being forced to close their doors due to the decrease in ongoing construction projects, many carriers become insulated since the insured is unable to satisfy the SIR. In California, this can have a significant impact on solvent builders/subcontractors who must now bear a greater share of settlements/judgments based upon joint and several liability. However, in Arizona, where joint and several liability does not exist, the burden typically falls on the developer and/or the Plaintiffs.

Many of the developers we represent have been using Owner Controlled Insurance Programs ("OCIPs") in place of traditional insurance. Under these OCIPs, the developer and all or most of the subcontractors are insured under a single policy covering designated projects/operations. Most OCIPs provide for varying deductibles to be paid by each insured. However, since deductibles are typically not assessed until the completion of a lawsuit, many OCIP carriers will find that there are insureds who have ceased operations and are unable to pay their deductible.

Construction defect cases will continue to evolve with the economic climate and we are committed to keeping you informed of any significant updates in the future.



SAVE THE DATE

**The 2nd Annual LGC Golf Tournament to Benefit Multiple Sclerosis
will be Thursday, April 30, 2009.**



Congratulations to LGC's Newest Attorneys

Susan Minamizono and Katie McCurdy, law clerks with LGC since 2007, passed the California Bar Exam in November 2008, and are now LGC's newest attorneys. Both Susan and Katie are May 2008 graduates of the University of San Diego School of Law. LGC Nevada and LGC Arizona have hired new attorneys. LGC is proud to announce that Ryan Swartz is Arizona's newest associate, while Harold Rosenthal has been added as an attorney in the Las Vegas office.

Baby News

Congratulations to San Diego legal secretary, Alma Ortiz, on the birth of her son, Sai Oliver. Sai was born on November 20th 2008 and weighed in at 6 pounds, 9 ounces!



Sai Oliver, 3 weeks old.

LGC Wedding and Engagement News



Congratulations to San Diego associate, Jason Julius, who wed Carrie Jennings in October 2008!

Congratulations also to San Diego paralegal, Cindy Anderson, who recently became engaged to Chris Ellis!

Best wishes to the happy couples!

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LGC Quarterly

LGC Quarterly

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