



## The Practice Of Law Is Still A Profession



*Thomas J. Lincoln  
Partner*

The practice of law has evolved, and continues to evolve. What started as one of the three great professions, along with medicine and the clergy, is now threatened to become something much less. In the past, to be a lawyer was to be someone who answered to a “higher calling”, someone devoted to lifelong learning, someone who would help anytime, day or night, and someone whose integrity and good reputation was preserved at all costs. Lawyers today have many forces pulling them away from these attributes. Notwithstanding such forces, all lawyers need to work hard, individually and collectively, to preserve one of the truly great professions.

Lawyers today are faced with many difficult challenges that challenge their ability to act as professionals. It is rare for a new lawyer to “hang a shingle” and start a practice. Most find themselves joining a law firm. One of the pressures a young lawyer in a firm may feel is to bill enough hours. Billing as a single goal can detract from the quality of one’s work. Pressure to bill hours is a disincentive for lawyers to help other lawyers because one cannot bill for helping others. That pressure can also make it difficult for lawyers to join and participate in professional organizations. Being a part of these organizations is important not only because of the positive work of such organizations but also because they help build the reputation of the individual lawyer, and enable lawyers to establish contacts which are vital to a successful practice. Thus, while billing is an integral part of the practice of law, it should not be the solitary goal. As lawyers, our most important objective must always be to do our best work for our clients, as “professionals”. *Continued on p. 3*

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## CDCMA Announces Successes in First Year of Special Arbitrations of Inter-Company Coverage Disputes

In October 2009, LGC reported that the Construction Defect Claim Managers Association (“CDCMA”) had realized one of its goals with the creation and implementation of a new inter-company dispute resolution process through Arbitration Forums (“AF”). It has now been almost a year since AF’s Special Arbitration program was enhanced to include construction defect related coverage disputes. Below is some data from this past year, as well as some general information about the process, and LGC Associate Jill Dickerson’s suggestions for those going through the process for the first time.

### The Numbers

Since its inception, 23 cases have been arbitrated through the Special Arbitration program and another 7 cases have been planned for the final quarter of 2010. Several other cases had been filed, but were withdrawn because they were resolved between the parties. Numerous insurers have agreed to submit to the program, including One Beacon, Chartis, Zurich, and Travelers.

### Process

The Special Arbitration process is very different from the more familiar American Arbitration Association arbitration specified in most standard construction contracts. The Special Arbitration process is designed to provide quick, efficient submission on critical issues without discovery or prolonged hearings. Each party must provide all arguments in written submissions, and if relying on case law, must provide a copy of the case with their written submission. The arbitrator(s) can only use the written documentation provided in reaching a decision, and may only clarify issues through verbal communication. Additionally, objections to AF jurisdiction are affirmative defenses. Two weeks before the arbitration, the parties should go online and confirm AF received their documentation. A hearing will be scheduled which both the parties and their representatives may attend, but the extent to which the parties are involved in the process is very limited. Typically, the parties may only respond to the arbitrator’s questions at the hearing, but should be prepared to give an oral presentation of the issues and respond to issues raised by the opposing party.

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## Associate Spotlight: **Keren Gesund**



*Keren Gesund*

Keren Gesund, originally from Las Vegas, Nevada has been with LGC Nevada since 2008. She graduated from the University of California, Davis School of Law. Before attending law school, Keren attended the University of Nevada, Las Vegas, graduating with a degree in Psychology. Keren's practice focuses primarily on Construction Defect and Personal Injury/Product litigation.

Keren recently helped win a Motion for Summary Judgment in a personal injury action in Nevada. She successfully argued that the plaintiff could not meet her burden of proof where the plaintiff failed to designate an expert to investigate the cause of an alleged malfunction of a hairdryer.

In her free time, Keren enjoys spending time with her family, yoga, reading, and traveling.

### Get To Know LGC's Billing Department (Part 1)

An essential part of LGC is the Billing Department. LGC's Billing Department is located in the San Diego office and handles all of LGC's accounting matters. These include generating invoices, managing accounts receivable and accounts payable, ensuring compliance with our clients' billing guidelines, collections, preparing budgets, and preparing account reconciliations. The Billing Department is staffed by five outstanding people, including Kathleen Lutke, Jim Laccone, Leticia Diaz Deleon, Mark Liebling, and Marcia Smith. This quarter, LGC Quarterly features Kathleen Lutke and Jim Laccone.



*From left to right:  
Mark Liebling, Leticia Diaz Deleon, Marcia Smith,  
Kathleen Lutke, Jim Laccone,*

#### **Kathleen Lutke**

Kathleen has been with LGC for 19 years. Kathleen was born and raised in Ireland. She studied business in college in Ireland, and she worked in both Dublin and London before coming to the U.S. in 1990, after which she met her husband. She enjoys

travelling, walking, cycling, swimming, yoga, and riding on the back of her husband's motorcycle.

#### **Jim Laccone**

Jim is a San Diego native and has been with LGC for 15 years. Jim graduated from San Diego State University with a B.S. in Business Administration with emphasis in Accounting. He and his wife of 23 years, Michelle, have three daughters, one granddaughter, a dog, three cats and a turtle. Jim is also a guardian to a teenage girl whose mom is stationed in Bahrain with the Navy. In his spare time, Jim enjoys coaching girls fast pitch softball with the Imperial Beach Girls Softball League where he also serves as the League's treasurer. Additionally, Jim enjoys working in his yard, maintaining his house, and spending time with his wife and children.

Look for Part 2 of this article in LGC Quarterly's January 2011 issue, featuring the rest of LGC's billing department!

#### **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!*

### ***Clarendon Am. Ins. Co. v. Starnet Ins. Co. SB800 Claims Are Covered***

The California Court of Appeal for the Fourth District recently held in *Clarendon American Ins. Co. v. Starnet Ins. Co.*, 2010 Cal. App. LEXIS 1224, that claims brought under SB 800, also known as the Calderon Act (California Civil Code §§ 1375 *et seq.*), are covered under standard Commercial General Liability ("CGL") policies.

In *Clarendon*, the developer of a residential development, Centex, was served with a notice of commencement of legal proceedings pursuant to SB 800 for alleged construction defects. Both Starnet Insurance Company ("Starnet") and Clarendon America Insurance Company ("Clarendon") had issued insurance policies which named Centex as an additional insured. Centex filed a complaint against Clarendon for defense fees and costs incurred in defending the defect claims under SB 800. In turn, Clarendon filed a cross-complaint against Starnet, among other insurers, seeking indemnity, declaratory relief, and contribution.

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### **The Uncertainty of Medical Marijuana Laws and The Effect on Employers**

Although medical marijuana ("MM") is not a new issue, there are new issues regarding MM laws and the effect on employers. Currently, MM is legal in both CA and NV, and Proposition 19 on CA's November ballot is seeking to completely legalize and regulate marijuana. In addition, although marijuana continues to be illegal in AZ, there is a proposed initiative on AZ's November ballot seeking to legalize MM. Thus, MM laws may impact employers in all three states, and employers should examine the MM laws for guidance.

States may vary on whether they require employers to permit MM use. Some states, including California (Cal. Health & Saf. Code § 11362.785), provide that an employer is not required to permit MM use in the workplace, whereas other states do not have statutes directly addressing this issue.

Additionally, while there may be issues about whether the Americans with Disabilities Act ("ADA") requires employers to accommodate MM use, courts have generally held employers do not need to accommodate MM use under the ADA. For example, the Montana Supreme Court held that an employer is not required to make ADA accommodations where a state statute permits employers to refuse MM use in the workplace. (*Johnson v. Columbia Falls Aluminum Co., LLC* (2009) 2009 MT 108n.) Similarly, other courts have held that the federal Controlled Substances Act preempts state laws authorizing MM use, and thus employers are not required to permit MM use under the ADA. (See *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.* (2010) 348 Ore. 159; *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal. 4th 920.)

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### **Engagement News!!**

Associate Darcie Frounfelner (LGC California) was recently engaged to Jerry Colihan. Jerry proposed to Darcie while the couple was on vacation in Seattle, Washington on August 29, 2010. Although a date has not yet been set, the happy couple plans to get married in San Diego, CA. Congratulations to Jerry and Darcie on their engagement!!



## The Practice Of Law Is Still A Profession, continued from p. 1

A lawyer's best work is achieved by being honest and fair, exercising sound judgment, and acting with dignity and civility at all times. Doing these things should be all that a law firm and a client can hope for. Doing these things is also what makes a lawyer successful. This is professionalism in its truest form.

Thus, while there are many other factors tugging at lawyers and pulling them away from being true professionals, all lawyers are obligated to resist such factors and preserve the dignity and integrity of the profession. At LGC, these are the principles we strive to adhere to. Our lawyers consider themselves professionals, who are devoted to helping clients, night or day, who are committed to lifelong learning, and whose professionalism is held in the highest regard. We hope you notice this in the way we approach our clients, opposing counsel, witnesses, colleagues and all others we come into contact with.

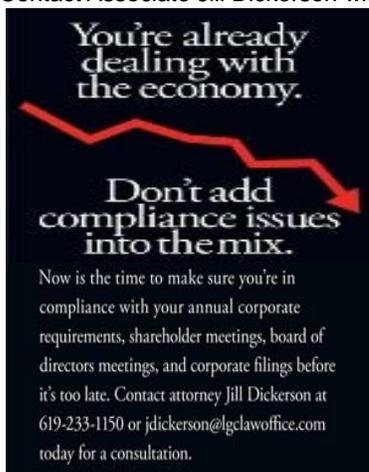
## CDCMA Successes, continued from p. 1

### **Some Suggestions for Handling Special Arbitrations**

In order to ensure Special Arbitration functions as designed, we suggest the following:

- Be sure the entire case is supported by document submission in advance of the arbitration hearing because intercompany arbitration is based entirely on the written submissions and documentary evidence provided by the parties.
- Consider whether a three-person panel (if available) would be advantageous to your case.
- Be detailed and thorough in drafting the contentions sheet because claims and defenses not set forth may be waived.
- Be sure to include witness statements and any documentary evidence necessary to support the claims and defenses set forth in the contentions sheet.
- Parties may be permitted to have witnesses attend the arbitration hearing, but only so that the arbitrators may ask questions of the witnesses. Anyone the parties want to attend the arbitration hearing, including witnesses or experts, must be specifically listed as a member representative on the first page of the arbitration application.
- AF will set a deadline for the parties' submissions of contentions and evidence prior to the arbitration hearing. Make sure all contentions and evidence are forwarded in time *to be delivered* to AF by the deadline.
- Parties should make sure they are thoroughly familiar with the arbitration rules, definitions, and agreements to ensure all procedural requirements are met. Failure to follow procedural requirements may seriously impact the case and/or result in a waiver of claims or defenses. Any questions regarding uncertainties should be directed to the Member Service Department well in advance of the deadline for submission of contentions and evidence.
- Finally, in order to reduce costs of the process, the right to appeal the decision of the arbitrator(s) is limited. Make sure the parties are aware of limitations which may be applicable to the case.

Contact Associate Jill Dickerson with questions.



**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](mailto:jdickerson@lgclawoffice.com) today for a consultation.



**Congratulations!**

Associate Lisa Mersereau (LGC California) was recently appointed to serve as a Board Member on the San Diego County Committee For Persons With Disabilities, by Chairwoman Pam Slater-Price. The Committee monitors and evaluates local commercial and residential buildings to ensure ADA compliance. Way to go, Lisa!

## Clarendon Am. Ins. Co., continued from p. 2

Starnet argued there was no duty to defend Centex because SB 800 claims did not constitute a "suit" as used in the CGL policy. Specifically, Starnet's CGL policy defined "suit" as "a civil proceeding in which damages because of 'bodily injury,' 'property damage' or 'personal and advertising injury' to which this insurance applies are alleged."

The Court of Appeal held claims under SB 800 are "suits" as defined in the standard CGL policy, and thus Starnet had a duty to defend the insured in the SB 800 process. The Court of Appeal interpreted the policy as a standard contract, and as a contract, the policy language would govern if it was clear and specific. Accordingly, the Court of Appeal interpreted the term "civil proceeding" as "broader than an action or law suit initiated by a complaint filed in the court." (*Clarendon* at 14) Further, the court found that the SB 800 process was a "civil proceeding" because it was a statutory proceeding required as part of the litigation process "precisely because of the application and legal effect described in the Calderon Act." (*Id.* at 20) As a result, most SB 800 claims are likely covered under standard CGL policies.

Contact any LGC partner with questions.

## Medical Marijuana, continued from p. 2

Employers may also argue that under the ADA, accommodations which create an unreasonable risk of harm or a threat to safety are not required. Thus permitting MM use is arguably not required because the use of MM at work could create a dangerous work environment. (*Baked But Not Fired? Medical Marijuana Laws Create Uncertainty For Your Policies* (Cal. Emp. Law Letter, Brentwood, TN, Sept. 20, 2010, at 11.) Because these laws are constantly developing, employers should periodically review their policies and ensure provisions addressing MM use are addressed as needed.

Contact Partner Teresa Beck with questions.



### **BABY NEWS**

LGC is happy to announce the arrival of the newest member of the LGC family, Vivienne Eliana Munoz. Vivienne was born on August 7, 2010 to Erica Munoz of LGC California. Both mother and

daughter are doing well. Congratulations to both Erica and her husband Victor!



**Congratulations to Nick Salerno and Chris Turtzo**

Partner Nick Salerno and Associate Chris Turtzo of LGC Nevada recently passed the Florida State Bar Exam, clearing the way for a new LGC Florida office!

Congratulations Nick and Chris!!

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Coming Soon!!