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LGC USD Alums Give Back



Top Row: USD Dean Kevin Cole, Monica Yoon, Adrienne Johns, Jason Specht, Randy Gustafson, Chris Schmitthenner, Katie McCurdy.

Bottom Row: Lisa Mersereau, Susan Minamizono, Jill Dickerson.

Not Pictured: Tom Lincoln, Teresa Beck, Nicholas Salerno, Charles Egan, and Chris Turtzo.

Lincoln, Gustafson & Cercos was recently applauded by the University of San Diego School of Law for its leadership in the Law Firm Challenge. LGC is home to 14 USD Law alumni and reached an over 80% alumni giving rate, good for 3rd place in the 2008-2009 competition. LGC was recognized for this achievement in the alumni newsletter and in a framed listing at the law school. In addition to its contributions to the Challenge, USD Law lauded LGC for its dedication to philanthropy and community service. LGC is proud to support the University of San Diego School of Law.

Repairing the Defect:

Standard Pacific Corp. v. Superior Court Shifts the Burden of SB 800 Compliance to the Homeowner



Jason Specht, Partner

In 2002, the California Legislature enacted "SB 800", which established a set of procedures that homeowners and builders are required to engage in prior to commencing formal construction defect litigation for any new home in which the purchase and sale contract was signed after January 1, 2003. In order to obtain the protections of the law, a builder is required to make certain disclosures to a homeowner about the law and record a notice of its intent to use the process in the property's chain of title. (The requirements imposed on a builder to trigger the law are contained in California Civil Code section 912.) These pre-litigation procedures established standards for the construction of essentially every construction component in a home — from roofs to concrete foundations and interior finish items to exterior landscaping — and require a homeowner to provide notice to the builder whenever a condition present in the home allegedly falls below one of the standards. In turn, upon receiving notice of a substandard condition, the builder has the opportunity to inspect the condition, and if it is determined it falls below the applicable standard, make a repair. The goal of the law is to provide a process where homeowners are more quickly able to obtain repairs of defective conditions in their homes and provide builders a more efficient and less costly process to resolve construction defect claims. Despite the law's best intentions, a funny thing happened on the way to the courthouse, as many homeowner plaintiffs ignored the pre-litigation procedures and proceeded directly to formal litigation. If a homeowner chooses to file suit for construction defects instead of attempting to resolve the claims through SB 800, a builder can move to stay the proceedings pending completion of the SB 800 process by demonstrating to the court that SB 800 applies to the claims. *(continued on page 3)*

Social Networking Sites Can Be an Ethical Minefield for Attorneys and Their Clients



The popularity of social networking sites, such as Facebook, Twitter, LinkedIn, and MySpace has created a potential ethical minefield for attorneys using such sites for litigation. A recent Philadelphia ethics opinion advised that using a third party to contact a witness through one of these social networking sites is a violation of professional rules of conduct.

The ethics committee stated that the attorney's attempt to 'friend' the witness through a third party to obtain information used to impeach the witness "omit[ted] a highly material fact," namely the attorney's relationship with the third party. The opinion went on to note that "[d]eception is deception, regardless of the victim's wariness in her interactions on the Internet and susceptibility to being deceived."

The opinion highlights how the use of social networking sites can be a powerful discovery tool, but also the danger in using deceptive or covert methods to gain access to party or witness information. Michele Hangle, co-chair of the ABA's Ethics and Professionalism Committee says the same ethical rules apply whether online or off: "You shouldn't be deceptive or misrepresent your motives as an attorney to gain access to information to use in the context of litigation." Thus, lawyers should avoid using third parties to contact witnesses or parties without expressly disclosing their identity and the purpose of their communication.

On the other hand, according to LGC Partner Teresa Beck, it is amazing what information litigants will post online which can be damaging to their case, including statements about physical and mental conditions, photographs, and even admissions regarding liability issues. As a consequence, lawyers should be extremely cautious and always err on the side of disclosure when using social networking sites to communicate with represented parties and/or witnesses. However, online information posted by a litigant on a social networking site is fair game which can be used effectively in litigation. Contact Partner Teresa Beck for more information.



Associate Spotlight: **Darcie Frounfelter**

Darcie Frounfelter, originally from San Diego, has been with LGC since March of 2007. Darcie graduated from the University of San Diego School of Law where she was involved in many community volunteer programs and participated in various Mock Trial tournaments. Before attending USD, Darcie attended the University of California at Santa Barbara where she graduated with a degree in Law and Society, and a minor in Exercise Health and Science.

Darcie's varied practice includes construction defect litigation, personal injury defense, corporate compliance and transactional law, estate planning, and landlord-tenant disputes. Darcie spends most of her free time training for triathlons in the summer and marathons in the winter. She was on the women's soccer team during her time at UCSB and still enjoys playing indoor soccer around San Diego. Darcie is especially well known for recently competing in and completing the Boston Marathon.

What's New with the CDCMA?

One of the goals of the Construction Defect Claim Managers Association (CDCMA) has been realized through the institution and implementation of a new inter-company dispute resolution process through Arbitration Forums (AF). The CDCMA has been working with AF for the past couple of years to enhance the Special Arbitration forum to include construction defect disputes. These enhancements are now available to the industry to help resolve inter-company disputes on issues such as time-on-risk and allocation issues. The first official session of Special Arbitration for construction defects will be held on December 11, in Anaheim, CA. Claim Professionals interested in becoming qualified construction defect arbitrators should go to Arbfile.org and complete the Special Arbitrator Profile Form to begin the process.

DRI Celebrates 50th Anniversary with its Annual Meeting in Chicago

On October 7th-11th, DRI, the voice of the civil defense bar, celebrated its 50th anniversary with its annual meeting in the Windy City. The four day event featured presentations from an esteemed array of individuals including world-renowned historian Doris Kearns Goodwin, former Secretary of Labor Elaine L. Chao, and five former U.S. Solicitors General. The event provided seminars on diversity, ethics, recent Supreme Court developments, and international business. Now in its 14th year, the annual meeting makes tremendous strides toward DRI's mission to enhance the skills, effectiveness, and professionalism of defense lawyers.



The new and improved LGC Website was designed by G2 Gaeta Graphics. G2 Gaeta Graphics specializes in creating innovative websites, logos, business cards, letterheads, and brochures, among many other services. In fact, G2 Gaeta Graphics designed LGC's new logo and firm brochure. LGC is proud of the great work that G2 Gaeta Graphics has done.

Contact Jennifer Gaeta at (805) 570-5055 or jen@g2gaetagraphics.com for more information.

Preparing for a Severe Flu Season

With a flu season which promises to cause both panic and sickness looming, it is imperative employers promote “human resource and leave policies that are flexible and follow public health guidance” says Kathleen Sebelius, U.S. Secretary of Health and Human Services. With the H1N1 virus being named the first official pandemic in 41 years and statistics showing the number of cases continually increasing rather than leveling off, employers must realize the key role they play in protecting employees’ health, as well as limiting the impact of influenza outbreaks in the community.

The CDC recommends a flexible pandemic plan which allows employers to remain informed and operational during a pandemic, while also minimizing the spread of sickness. Among the tips given are:

- **Allow Sick Persons to Stay Home and Send Sick Employees Home.** The best way to minimize the spread of influenza is to keep sick people away from well people. The CDC advises workers with influenza-like symptoms to not come to work until at least 24 hours after fever has resolved.

- **Be Prepared if Schools Dismiss Students or Child Care Programs Close.** In the event of a severe outbreak, schools and childcare programs may close and it is important to have a plan in place to accommodate parents affected by such closings while minimizing the effect on business functions.

- **Prepare for Increased Levels of Absenteeism.** An increase in the number of sick workers who stay home will obviously leave many businesses short-handed. Businesses can prepare for this by assessing essential functions and cross-training workers to perform those functions. Changes in business practices may also be required to maintain critical operations. Allowing more employees to work from home, for example, may be appropriate depending on the nature of the work.

- **Advise Traveling Employees of Potential Risks.** As the outbreaks of H1N1 have been localized in certain regions, employees traveling to those areas should be well versed in the precautions necessary to avoid infection, the symptoms and warning signs, and the steps to take in the event he or she becomes ill.

While vaccinations for H1N1 have been produced and approved for use, the first round of doses will likely be available only to school children. The importance of a flexible preparation and response plan is the best way to ensure we all are able to withstand a flu outbreak. For more information visit the CDC flu website at <http://www.cdc.gov/flu/> or contact LGC Associate Jill Dickerson.



LGC Associate Hits the High Notes with San Diego Master Chorale



Susan Minamizono, an associate in our California office, has been singing with the San Diego Master Chorale as an Alto since January 2009. The Chorale includes more than 125 singers performing more than 25 concerts in a year, actively participating in community events as well as making regular appearances with the San Diego Symphony. The Chorale also anticipates a European tour in 2011 to celebrate the Chorale’s 50th anniversary. In October, the Chorale will be performing at Sonrise Community Church in Santee and Foothills Methodist Church in La Mesa, raising money for public school choirs. The Chorale will also join the Symphony to perform Mozart’s Requiem in late October, as well as Beethoven’s Symphony No. 9 in December. For further details, visit www.sdmasterchorale.org.

(Repairing the Defect –continued from page 1)

A recent decision by California’s Fourth District Court of Appeals, however, places the burden on the homeowner to establish that SB 800’s procedures are inapplicable. In *Standard Pacific Corporation v. Superior Court* (2009) 176 Cal. App. 4th 828, the court held a homeowner cannot sidestep the requirements of SB 800 by merely claiming the builder did not comply with its requirements under the law. “[I]f a homeowner files suit without having followed the pre-litigation procedures, it is incumbent upon the homeowner to factually establish that he has been ‘released’ from this obligation due to the builder’s failure to comply with [California Civil Code] section 912.”

While the *Standard Pacific Corporation v. Superior Court* case will not likely guarantee homeowners always participate in the SB 800 process before filing suit for construction defects, it will aid builders in staying any premature construction defect litigation by forcing the homeowners to present evidence of why the procedures do not apply. Please contact LGC Partner Jay Specht with questions.



Baby News!

Congratulations to Monica Yoon and Jason Julius, associates in our California office, who are both expecting new additions to their families. Monica and husband Daniel are expecting their baby on December 2nd, while Jason and wife Carrie are expecting their baby girl on December 10th. Best wishes to the two first time parents!



Wedding News

Congratulations to Lucy McFarlin Knutson (formerly Lucy McFarlin), an associate in our California office, who recently married Kolter Knutson on August 22, 2009 in a beautiful ceremony in Maui. Congratulations to the happy couple!

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LGC Quarterly

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