

## *The Impact of California Court Closures on California Litigation, by Partner Teresa Beck*



Teresa Beck,  
Partner

California courts have been decimated by four years of cuts that have reduced the judicial branch budget by about 30 percent, or \$475 million. In addition, California’s governor recently revealed to court leaders that he is considering appropriating local trial court reserves one year earlier than expected, which court leaders say would translate into an *additional* \$200 million cut. California voters recently approved the passage of Proposition 30 (increasing sales and income taxes on high wage earners), which is expected to raise \$6 billion a year for the state’s general fund but California’s fiscal deficit remains. As a result, California’s judicial branch is anxiously waiting to find out what Governor Jerry Brown’s proposed spending plan for 2013-14 will be. Substantial changes have already taken place across the California court system. Some examples are as follows:

**Los Angeles Superior Court:** In Los Angeles, ten courthouses are scheduled to be closed this year, in Huntington Park, Whittier, Pomona, North Malibu, West Los Angeles, Beverly Hills, San Pedro, Beacon Street, Catalina, and the Kenyon Juvenile Justice Center. Further, effective January 1, 2013, there will no longer be court-provided court reporters for civil matters. Parties will have to arrange for court reporters for all civil law and motion and all civil trials. All personal injury (PI) cases (including wrongful death and medical malpractice) will be filed only in downtown Los Angeles, and will be assigned to one of two Master Calendar (MC) courtrooms. Each MC Judge is expected to have as many as **8,000 cases** at any one time.

Parties will receive trial and final status conference dates at the filing window when the Complaint is first filed. The court will no longer monitor service of Summons & Complaints, and the Court will be seeking a Court Rule change to eliminate case management conferences in PI cases. There will be no more OSCs re: dismissal, default, or service, nor will there be any post-mediation status conferences. The Judge Pro Tem and all court-run ADR programs will be discontinued. Substantial reductions in courtrooms and staff will also occur.

**San Bernardino Superior Court:** With over \$22 million less in state funding this year, the San Bernardino Superior Court has implemented a series of cost reduction measures intended to close an operating shortfall by the end of this fiscal year. The first phase of these operational changes was announced in July of 2012; those actions included the closure of the Chino Courthouse, effective January 1, 2013, reductions of court clerk’s office hours countywide, reductions of administrative staff, as well as other related actions. Three experienced assigned judges are being released this month. Even with those and other related changes, the court is still projecting a deficit next year that could exceed \$13 million next year. The Court recently announced the second phase of measures intended to address this financial challenge.

Effective May 6, 2013, the following changes will take place: The Barstow, Needles, and Big Bear courthouses will close completely. Court reporters will no longer be assigned to specific departments but will be assigned from a pool as needed. The court will continue to provide court reporters for civil law and motion and trials, if sufficient resources are available.

The closure of the Barstow, Needles, and Big Bear courthouses will mean that people living in a large swathe of San Bernardino County will no longer have a courthouse within a reasonable (Continued on Page 3.)

### Table of Contents

- The Impact of California Court Closures on California Litigation..... 1
- LGC Partners Tom Lincoln, Randy Gustafson, Ted Cercos, and Teresa Beck Named as Top Rated Lawyers..... 2
- Associate Spotlight: Jordan Nager ..... 2
- LGC Partner Obtains Dismissal of Public Entity Suit..... 2
- LGC Senior Associate Gene Royce Named Top Rated Lawyer..... 2
- Wedding Bells Are Ringing!..... 2
- New Appellate Case Increases Potential Liability for Design Professionals..... 2
- Partner Teresa Beck to Speak at CLM Annual Conference in San Antonio..... 3
- LGC Nevada Successes..... 3
- Save the Date! LGC’s Annual West Coast Casualty Conference Happy Hour Is May 16, 2013! ..... 3
- NV Case of Jaynes v. American Safety Indemnity Company Holds Ongoing Ops Are Completed Ops for Coverage Purposes ..... 3
- California Court Closures (Continued from Page 1)..... 3



**LGC Partners Tom Lincoln , Randy Gustafson,  
Ted Cercos, and Teresa Beck  
Named as Top Rated Lawyers**



LGC is honored to announce that several LGC partners have been recognized by Law.com/ALM as 2013 Southern California Top Rated Lawyers in several areas of the law. In the area of Business and Commercial Law, LGC Partners Tom Lincoln and Randy Gustafson were named Top Rated Lawyers. In the area of Civil Law, LGC Partners Randy Gustafson, Ted Cercos, and Teresa Beck were named Top Rated Lawyers.

In the area of Construction Law, LGC Partners Ted Cercos and Teresa Beck were named Top Rated Lawyers. In the field of Insurance Law, LGC Partner Randy Gustafson was named a Top Rated Lawyer.

Finally, in the area of Labor & Employment Law, LGC Partner Teresa Beck was named a Top Rated Lawyer.

The list of Top Rated lawyers was created by Lexis-Nexis Martindale Hubbell, the company that sets the standard for peer review ratings. For more information, contact LGC Partner Teresa Beck. ♦

**Associate Spotlight: Jordan Nager**



Jordan Nager is an associate at LGC San Diego handling construction defect, personal injury, and products liability cases. A San Diego native, Jordan left the sunny shores of San Diego to receive a Bachelor's degree in Political Science and History from the University of Notre Dame. Jordan then returned to San Diego to obtain his law degree from the University of San Diego, where he was a member of the San Diego Law Review. Jordan recently settled a complex mechanic's lien case on a failed Los Angeles County development which left his clients unpaid for the materials they provided. After years of litigation, and defeating multiple motions for summary judgment, Jordan was able to settle the matter on the eve of trial for nearly the complete lien amount. Jordan is an avid snowboarder, amateur chef, and an average photographer. He's often found enjoying a beautiful San Diego day at the beach or at the park with his dog, Penny. ♦

**LGC CA Partner Obtains Dismissal  
of Public Entity Suit**

Christian Schmitthenner, a partner in LGC's California office, recently prevailed in defending a public California airport against a suit brought by a traveler who fell and broke her hand. The Plaintiff claimed her fall was caused by a dangerous condition on public property. LGC vigorously defended the claim by invoking statutory immunity defenses including the trivial defect doctrine (CA Gov. Code § 830.2), and lack of notice (CA Gov. Code § 835.2). By aggressively invoking all available defenses, LGC was able to convince the Plaintiff to ultimately dismiss her case for a waiver of costs. Several of LGC's partners have significant experience representing municipal entities. If you have any questions about public entity law, please contact Christian Schmitthenner. ♦

**LGC Senior Associate Gene Royce Named  
Top Rated Lawyer**

Along with several LGC Partners who received Top Rated Lawyer recognitions, LGC is proud to announce that Senior Associate Gene Royce also received Top Rated Lawyer recognition. Mr. Royce received the recognition in the areas of Civil Law, General Practice and Insurance Law.

Congrats to Gene! ♦

**Wedding Bells Are Ringing! LGC Partner Tom  
Lincoln Welcomes a Daughter-in-Law!**



LGC Partner Tom Lincoln's eldest son, John Lincoln, is engaged to marry Nicole Delaney on August 16, 2013 in San Diego. The couple got engaged on November 20, 2012. John works in Internet Marketing and Nicole is a teacher. The couple will continue to make San Diego their home. ♦



**NEW APPELLATE CASE INCREASES POTENTIAL  
LIABILITY FOR DESIGN PROFESSIONALS**

**The Case:** In December of 2012, the California Court of Appeal issued a decision in the case of *Beacon Residential Community Association ("HOA") v. Skidmore, Owens & Merrill, LLP* which could significantly impact future claims against design professionals. The case involved allegations of design and construction deficiencies at a large condo project in San Francisco. Most notably, the HOA alleged that a poor design created solar heat gain, which rendered the units uninhabitable.

**The Facts:** The architect and other design professionals filed demurrers, which were granted on grounds the HOA was not in privity of contract with the design professionals, and thus the design professionals owed no duty to the HOA. The Court of Appeal reversed, holding that both under common law and SB 800, lack of privity does not bar the claims.

**The Ruling:** The Court explained that a common law duty can be owed by design professionals to homeowners and homeowners associations without privity of contract based on balancing several factors, including (1) whether the transaction was intended to benefit the homeowner/HOA, (2) the foreseeability of the harm, and (3) the moral blame attached to the design professional's conduct. The Court distinguished the case from the prior case of *Weseloh Family Ltd. Partnership v. K.L. Wessell Construction Co., Inc.* where the Court refused to permit a negligence claim against a retaining wall designer due to lack of privity. In addition, with regard to SB 800, the Court held that Civil Code section 896 expressly permits claims against design professionals regardless of privity.

**Effect:** This case could greatly increase future liability of design professionals in construction defect cases. Typically, design professionals are hired by the developer for a project, not the HOA, so design professionals have often been able to escape liability in past cases based on lack of privity under *Weseloh*. Under this new holding, though, HOAs will now have far greater leeway to sue design professionals in construction defect cases, and it is likely design professionals will now be named as direct defendants more often in these cases.

If you have any questions about the case, feel to contact Christian Schmitthenner, a Partner in our San Diego office. ♦



**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 Darcie Collihan at dcollihan@lgclawoffice.com.**

## Partner Teresa Beck to Speak at Claims & Litigation Management Alliance Annual Conference in San Antonio, TX

LGC is honored that Partner Teresa Beck will be speaking at the Claims & Litigation Management Alliance's (CLM) Annual Conference on Thursday, April 11, 2013, which will be held in San Antonio, Texas.

CLM is an inclusive, collaborative organization that promotes and furthers the highest standards of claims and litigation management and brings together the thought leaders in both industries. CLM's Members and Fellows include risk and litigation managers, insurance and claims professionals, corporate counsel, outside counsel and third party vendors. The CLM sponsors educational programs, provides resources and fosters communication among all in the industry.

Ms. Beck will be speaking on a panel with Barry Dillard, Manager of Guest Claims for Walt Disney World Resort; Jill Dulich, Senior Director for Marriott International, Inc.; and Cindy Poortinga, Claims Manager, Western Region, ABM Industries. The panel topic is "Who Won & Who Lost & WHY? Jury Verdicts from 2012: What We Did Right & What We Can Learn From Recent Verdicts," and will address 2012 verdicts in the retail, restaurant, and hospitality industries from across the country.

Please let Teresa know if you will be seeing her in San Antonio! ♦

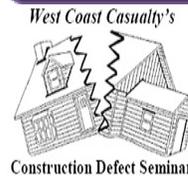
## LGC Nevada Reports Some Sweet Successes!

**LGC Nevada Wins Arbitration in Auto Accident Case:** LGC Nevada received a defense verdict and an award of fees and costs at Arbitration in a case involving a head-on collision in Douglas County, Nevada, located just south of Reno near Lake Tahoe. At Arbitration, LGC represented the Defendants, an employer and the driver of the vehicle who was snowplowing a private drive and shoulder area next to Highway 50. Traveling 45 mph on the highway in a snow storm, Plaintiff veered onto the shoulder striking Defendant's truck and snowplow head-on and claimed significant injuries. The arbitrator sustained Defendants' objections at the hearing to exclude the traffic accident report and police officer's conclusions submitted by Plaintiff. Based on the evidence presented by the defense, and cross-examination of Plaintiff, the arbitrator found Plaintiff's testimony lacked credibility, and ruled Plaintiff was at fault for the accident, resulting in a defense verdict. Congratulations to LGC Partner Loren Young who handled the matter.

**LGC Nevada Prevails on Motion for Summary Judgment in Personal Injury Case:** LGC Nevada represented a Las Vegas demolition contractor in a personal injury action where an employee of a moving company hired by the Treasure Island hotel was injured during a remodel project when a large piece of broken glass cut through the employee's leg. Plaintiff's damages likely exceeded \$750,000, including wage loss and nerve repair surgery. Because the injury occurred on the job, Plaintiff filed and received Worker's Compensation benefits.

LGC filed a motion for summary judgment based on the Nevada Industrial Insurance Act (NIIA) arguing that plaintiff, his employer, and the defendant were working in the same employ for the owner, Treasure Island, on the same project and, thus, the employer should be immune from the lawsuit pursuant to the Exclusive Remedy Rule in the NIIA. Plaintiff argued the companies had been hired by separate entities under the Treasure Island umbrella to perform separate jobs at the remodel project which excluded the case from the Exclusive Remedy Rule. Following extensive motion work and argument, the Court agreed with the defense and LGC's client prevailed on the summary judgment motion. Congrats to LGC Partner Loren Young, and LGC Associate Annalisa Grant! ♦

## SAVE THE DATE: LGC's WEST COAST CASUALTY CONFERENCE HAPPY HOUR IS May 16, 2013!



Be sure to save the date for LGC's annual happy hour at the West Coast Casualty Construction Defect Conference. The conference is May 15, 16, and 17, 2013, and LGC's Annual Happy Hour, as always, is not to be missed! Look for details in the next edition of LGC Quarterly! ♦

## NV Case of *Jaynes v. American Safety Indemnity Company* Holds Ongoing Operations Constitutes Completed Operations for Coverage Purposes

A very recent NV case, *Jaynes v. American Safety Indemnity Company*, has the potential to change the landscape of coverage in construction defect cases. In a NV Federal District Court decision, the NV held that coverage for "ongoing operations" applies to damage to work performed by an insured party caused by its ongoing operations after completion. LGC will be assessing this case over the next few months and will report on it in full in our next newsletter (April 2013). In the meantime, however, there is new support for the argument that ongoing operations limitations do not preclude coverage for completed operations. ♦

## California Court Closures (Continued)

(Continued from Page 1)

distance from their homes, leaving many facing hardships to get to court, given very limited public transportation and distances that can exceed three hours in driving time, each way. San Bernardino is one of the most under-resourced courts in the state, and has been outspoken at the state level regarding the impact of cuts upon the state's poorest courts and their communities.

**San Diego Superior Court:** In San Diego, four consecutive years of budget cuts and even larger cuts in 2013 and following years has resulted in a significant reduction of services. San Diego is closing 7 out of 22 Independent Calendar Departments county-wide, and the Civil Business offices in East (El Cajon) and South (Chula Vista) Counties are being closed. San Diego is also losing 150 employees with the remaining employees subject to a 24-day furlough spread over 18 months. Also, San Diego no longer provides court reporters for civil matters and probate matters. San Diego is also eliminating tracking hearings and OSC hearings. Counsel will have more responsibility to manage and move cases forward.

**Overall Effect on Trials:** The biggest question we have as litigators is how these cut backs and closures affect the availability of courts to hear discovery and pretrial dispositive motions, and the availability of the courts to try cases in a timely fashion. The significant cuts in Los Angeles and San Bernardino are certain to result in delays in having motions heard and in delays to get cases to trial. In San Diego, however, the San Diego County bar reports that although the reduction in services in a reality, the Court's capacity to try civil cases remains unchanged, and cases ready to go to trial, will go to trial in a timely fashion. Even in San Diego, however, discovery and dispositive motions may be delayed.

In all of these venues, parties are encouraged to cooperate and resolve minor disputes in order to keep cases moving forward in a timely manner. Very likely, interest in alternate dispute resolution will increase for both the Plaintiff and the Defense bar, and lawyers with the skill to satisfactorily negotiate resolution of discovery and other trial related issues without court assistance (like those at LGC!) will be in high demand. ♦

## Credits

Editor: Teresa Beck, Partner

# LGC Quarterly

## Partners

Thomas J. Lincoln\*+  
Randall D. Gustafson\*+◇  
Theodore R. Cercos\*+  
Teresa M. Beck\*◇  
Nicholas B. Salerno +\*  
Charles K. Egan\*  
Loren S. Young+  
Shannon G. Splaine+  
Jill S. Dickerson\*  
Christian W. Schmitthenner\*

## Associates

Paul H. James\*  
Monica J. Yoon\*  
Darcie A. F. Colihan\*  
Gene E. Royce\*◇  
James M. Barrington+  
Susan S. Minamizono\*  
Katie C. McCurdy\*  
Ryan S. Peterson +  
Dana C. Nicholas\*  
Annalisa N. Grant+\*  
Jordan T. Nager\*

Russell D. Collings+  
Dillon G. Coil +  
Brandon L. Lewis +  
Karissa K. Mack+  
Jennifer A. Zaharris\*  
Srilata R. Shah +  
Virginia T. Tomova+  
James E. Cavanaugh +\*  
Richard J. Reese\*  
Jennifer A. Delcarmen+  
Joshua M. Hood+  
Michelle L. Buxton \*

[www.lgclawoffice.com](http://www.lgclawoffice.com)

\* California ◇Arizona +Nevada

THE LAW OFFICES OF

LINCOLN | GUSTAFSON & CERCOS  
LLP.

### California Office

225 Broadway, Suite 2000  
San Diego, CA 92101  
(619) 233-1150

### Nevada Office

3960 Howard Hughes Parkway  
Suite 200  
Las Vegas, NV 89169  
(702) 257-1997

### Arizona Office

2415 East Camelback Rd, Suite 700  
Phoenix, AZ 85016  
(602) 606-5735