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LGC PARTNER TOM LINCOLN AND ASSOCIATE MONICA YOON PREVAIL IN MULTI-MILLION DOLLAR BINDING ARBITRATION

LGC Success. LGC is proud to announce that Partner Tom Lincoln and Associate Monica Yoon (from LGC's California office) recently celebrated a significant victory in a binding arbitration matter involving a variety of issues relating to insurance coverage, sporting/recreational activities, express release agreements/waivers of liability, significant injury and disputed liability. The underlying facts involved a group of young people who caravanned to Ocotillo Wells (a popular location for recreational vehicle use in the desert, east of San Diego, California) for a day of all terrain vehicle (ATV) riding. All of the participants signed waivers releasing the ATV rental company from liability and accepting the risks associated with the sport of ATV riding.

The Underlying Facts: A Day at the Desert Goes Awry. At the time of the accident, LGC's client was driving a two-seater ATV with a young woman (who ultimately became the Plaintiff in this case) as his passenger. The Plaintiff claimed LGC's client was driving the ATV recklessly, zigzagging back and forth at 40-50 mph, and that she asked him to slow down and he did not. At one point, LGC's client allegedly pulled out of a stop and admittedly tried to spin out as he accelerated. The ATV tipped over, landing on its right side, and on top of Plaintiff's hand as she clung to the roll bar. Half of Plaintiff's dominant hand was completely severed and she was airlifted to the emergency room. She ultimately underwent multiple surgeries which included skin grafts from her thighs to the side of her hand. She had been studying to become a jewelry maker and designer and claimed she could no longer pursue that dream because of the physical limitations of her right hand. Her past medical expenses exceeded $65,000 and she was prescribed a $20,000 prosthetic which would require replacement every few years.

Obstacles With Insurance. LGC's client is a citizen of Italy who had a substantial general liability policy. The insurance carrier initially agreed to defend and retained LGC to do so. The carrier then withdrew from the defense when it determined there was no coverage for the accident because of a motor vehicle exclusion, and LGC's client retained LGC directly. In theory, the source and amount of defense funds should not affect the way a case is handled. In reality, however, it can. Here, the client was a young man with limited funds. There was no longer insurance coverage available. This meant that every expense associated with defending the case would be borne by LGC's client personally. LGC's client would also be responsible for any verdict or judgment entered against him, which could be in the millions of dollars.

The Lack of Other Defendants. While the circumstances of this accident may suggest multiple defendants would have been involved in the case (not just the driver/LGC's client, but also the ATV rental company and the ATV manufacturer/retailer/etc. for product defects), the realities of the case (i.e., the significant expense of pursuing the ATV manufacturer, distributor, etc. and the ability of the rental company to insulate themselves from liability through an effective release) was that LGC's uninsured client was the only defendant.

Innovative Lawyering. The parties ultimately agreed to limited discovery and an abbreviated, binding arbitration. LGC argued in the arbitration that LGC's client was not legally responsible for Plaintiff's injuries based on the complete defense of "primary assumption of the risk". In California, this doctrine prohibits co-participants in sporting activities from suing each other for injuries sustained during the activity, unless the injury was caused intentionally or the conduct

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Tom Lincoln, Partner & Monica Yoon, Associate

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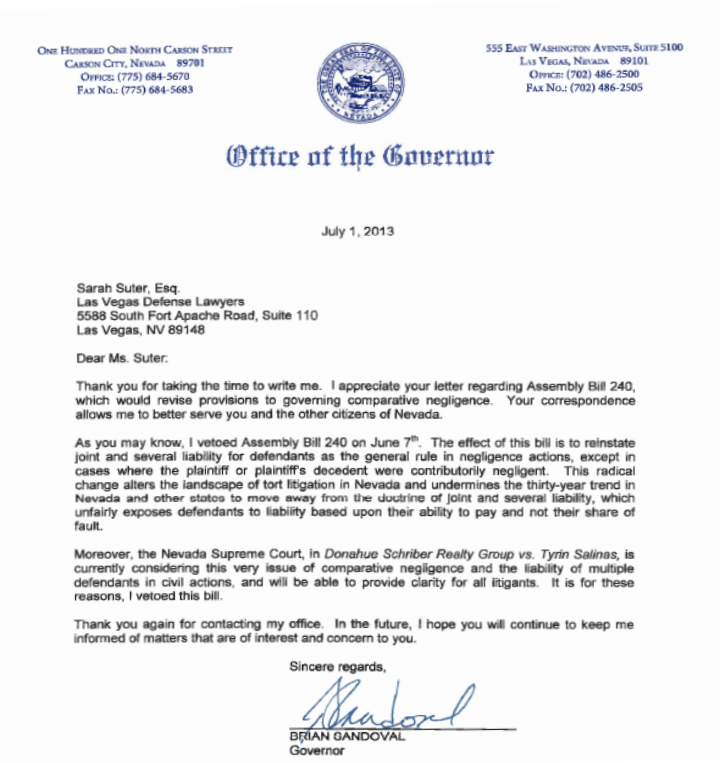
LGC and Las Vegas Defense Lawyers Help Veto Nevada Law Which Would Have Reinstated Joint & Several Liability in NV

LGC Partner Loren Young, who serves as President of Las Vegas Defense Lawyers, a group founded by LGC Partner Tom Lincoln, recently led an effort to encourage Nevada's governor, Brian Sandoval, to veto a bill which would change Nevada law on joint and several liability.

The bill, Assembly Bill 240, would have brought joint and several liability back to Nevada tort claims after a thirty year trend away from such liability, which in the Governor's words, "unfairly exposes defendants to liability on the basis of their ability to pay and not their share of fault." LGC is honored to have had a part in defeating this legislation. See the Governor's letter below.◆



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Office of the Governor

July 1, 2013

Sarah Suter, Esq.
Las Vegas Defense Lawyers
5588 South Fort Apache Road, Suite 110
Las Vegas, NV 89148

Dear Ms. Suter:

Thank you for taking the time to write me. I appreciate your letter regarding Assembly Bill 240, which would revise provisions to governing comparative negligence. Your correspondence allows me to better serve you and the other citizens of Nevada.

As you may know, I vetoed Assembly Bill 240 on June 7th. The effect of this bill is to reinstate joint and several liability for defendants as the general rule in negligence actions, except in cases where the plaintiff or plaintiff's decedent were contributorily negligent. This radical change alters the landscape of tort litigation in Nevada and undermines the thirty-year trend in Nevada and other states to move away from the doctrine of joint and several liability, which unfairly exposes defendants to liability based upon their ability to pay and not their share of fault.

Moreover, the Nevada Supreme Court, in *Donahue Schriber Realty Group vs. Tyrin Salinas*, is currently considering this very issue of comparative negligence and the liability of multiple defendants in civil actions, and will be able to provide clarity for all litigants. It is for these reasons, I vetoed this bill.

Thank you again for contacting my office. In the future, I hope you will continue to keep me informed of matters that are of interest and concern to you.

Sincere regards,

BRIAN SANDOVAL
Governor

Associate Spotlight: Karissa Mack

Karissa Mack is an associate in LGC's Las Vegas office handling personal injury, product , contract, and construction defect cases. Originally from Grants Pass, Oregon, Karissa received her Bachelor's Degree in Political Science from Oregon State University in 2008. She then received her law degree with a concentration in business and an intellectual property certificate from Whittier Law School in 2011.

Prior to joining LGC, Karissa clerked at an entertainment litigation firm in Los Angeles where she helped with high profile copyright infringement cases. When not at the office, Karissa enjoys spending time with her husband, going to the movies, and chairing committees of the Junior League of Las Vegas, which has been the driving force behind several initiatives and institutions that have made and continue to make the Las Vegas community a healthier, more vital place to live.◆

Amounts Billed By Medical Treatment Providers Inadmissible to Support Medical Expense and Noneconomic Damage Claims

In *Howell v. Hamilton Meats & Provision, Inc.* (2011) 52 Cal. 4th 541, the California Supreme Court held that an injured plaintiff whose medical expenses are paid by private insurance can recover no more than the amount the medical provider accepted as full payment from the insurer. The *Howell* court concluded the amount the treatment provider accepts as full payment for services is a better measure of the value of medical treatment than the total amount billed.

In a recent decision, *Corenbaum v. Lampkin* (2013) 215 Cal. App. 4th 1308, the Second District Court of Appeal relied on *Howell* to conclude that where a provider accepts payment from an insurer for less than the total amount billed for treatment, evidence of the total amount billed was **inadmissible** at trial to prove past and future medical expenses claimed or noneconomic (ie. emotional distress) damages. Based on the long standing rule that medical expenses must be both incurred and reasonable to be recoverable, the *Corenbaum* court found evidence of the total amount billed for medical care was not a reliable indicator of the value of medical care provided and was therefore not relevant.

The *Corenbaum* decision provides defendants in personal injury cases with additional safeguards against unreasonable and unpredictable medical expense and noneconomic damage claims. Although *Corenbaum* does not expressly address the admissibility of the total amount billed to uninsured Plaintiffs, the *Corenbaum* decision supports a growing body of authorities which recognize that the total amounts billed by medical providers do not provide an accurate measure of reasonableness of amounts incurred. Contact LGC Senior Associate Paul James with questions. ◆

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(Continued from Page 1.) was so reckless as to be totally outside the range of ordinary activity involved in the sport. Plaintiff argued LGC's client's alleged conduct (zigzagging, driving fast, refusing to slow down upon request, etc.) was reckless, and that alleged marijuana and alcohol consumption (which involved other participants also) increased the risks involved over and above those normally associated with ATV riding.

The Outcome: Plaintiff requested over $4 Million at arbitration. Ultimately, the arbitrator agreed LGC's client was not legally responsible for Plaintiff's injury based on the complete defense of primary assumption of the risk (i.e., Plaintiff assumed the risks involved in the sport, LGC's client's conduct was within the range of ordinary activity involved in off-roading, and there was no evidence of impairment at the time of the accident that may have increased the risks involved).

Why It's Important. This result serves as a reminder of the importance of working closely with clients (and carriers, where applicable) throughout the entire litigation process. LGC's client was funding his own defense which required carefully strategizing on issues related to discovery, the timing of presenting legal arguments, the use of experts, and more. As a result, LGC was able to proceed in a scaled back manner since the client understood and agreed with the strategy. Many of the insurance carriers with whom we work require proposed litigation plans and budgets which are really a means of facilitating such communications and ensuring that the client, carrier and attorney are all on the same page. Substantive and frequent communication with clients is an important part of an attorneys' professional responsibility and navigating through cases should be a joint endeavor, no matter who the client is or who is paying the bills. This victory serves as a reminder that communication and teamwork between attorneys and clients is not only necessary, but also effective and rewarding. Contact Tom Lincoln or Monica Yoon for more information.◆

LGC California Welcomes Summer Associates

LGC welcomes Summer Associates Emily Little and Chris Foster as part of LGC's long-standing Summer Associate program.

Emily Little is a 3rd year law student at the University of San Diego, where she is currently Comments Editor for the San Diego Law Review. Emily grew up in Northern California as the oldest of ten children, and moved to San Diego to earn a Bachelor's degree in Political Science at San Diego State University. Emily's prior work experience includes serving as an extern for Honorable Judge Whelan in the United States District Court, Southern District of California, interning with the California Innocence Project, and clerking for in-house counsel at a national utility management company.

Chris Foster was born and raised in San Diego before attending Skidmore College in upstate New York where he majored in Business and Spanish Literature. Chris is now entering his fourth and final year as a JD/MBA student at the University of San Diego where he competes nationally on USD's Appellate Moot Court Executive Board and will serve as a Student Comment Editor for the International Law Journal. In his free time, Chris enjoys running on the beach, playing intramural sports, and cheering on the Chargers. ◆

Rear End Accidents Are Not Always Easy Money for Plaintiffs

LGC Partners Teresa Beck and Jill Dickerson recently achieved great settlement results for several clients involved in rear-end auto accidents. Although liability against defendants in such cases is often adverse, thoughtful and thorough defense strategies against questionable damage claims can produce surprisingly positive outcomes for clients.

Overview: Rear-end accidents are a common occurrence and the rear driver is nearly always at fault. Such cases often involve very low speeds, and opportunistic claims by plaintiffs who have no real injuries, but instead construct damages premised on the assumption that liability will be certain. Thoughtful strategies often reveal evidence showing these claims are shams and tend to dramatically reduce the settlement value of such suits.

Consider Surveillance: In one very low impact rear-end collision case, Plaintiff's MRI showed classic degenerative minor disc bulges found in most adult males. Plaintiff claimed the disc bulges resulted, however, from the collision, and claimed a need for future spinal fusion surgery. LGC hired an investigator to capture Plaintiff on film to confirm whether Plaintiff's physical condition was as claimed. Plaintiff was captured on film biking, running, bodysurfing, doing somersaults in the waves, carrying heavy bags, and, we kid you not, tightrope walking between two palm trees. Needless to say, the value of the case plummeted.

Consider Biomechanical Analysis: In another case, LGC's client rear-ended a City garbage truck driven by Plaintiff. Plaintiff claimed he hit his knee on the truck's steering column, causing two tears to the knee cartilage, which were observed on MRI films. The tears were of a kind typically caused by degenerative changes over a period of years and were inconsistent with a knee-impact injury. Nonetheless, Plaintiff underwent knee surgery, with significant time off work for recovery, and his employer, the City, paid all of Plaintiff's medical expenses and wages during time off without any investigation.

Given the size of the garbage truck, LGC suspected the impact caused little if any force to Plaintiff and retained a biomechanical expert whose inspection and analysis of the truck revealed the truck weighed seven times the weight of LGC's client's vehicle and the impact would only have created, at most, a one to two mile per hour change in velocity to Plaintiff's body during the accident, which is essentially the same type of speed and movement (Continued, next column.)

Our Families Grow . . .

LGC NV Associate Annalisa Grant and her husband, Lee Grant, are proud to announce the birth of their son, Christopher Lee, born November 24, 2012, weighing 9 pounds, 14 ounces! Christopher is a very happy baby, and smiles and laughs all the time. He loves green beans, crawls everywhere, and his big sister, Elizabeth (two years old), is by far his favorite person. Congratulations Annalisa and Lee! ◆

LGC Partner Jill Dickerson Successfully Resolves Multi-Million Dollar Claim With Summary Judgment Tactics

LCG Partner Jill Dickerson recently represented a client in a multi-million dollar suit arising from a large property damage loss. LGC was able to resolve the case for a fraction of the potential exposure due to a favorable tentative ruling on a motion for summary judgment ("MSJ") written by Ms. Dickerson.

Facts: Plaintiffs asserted a sole cause of action for negligence against LGC's client, which required Plaintiffs to prove LGC's client breached a duty which foreseeably caused harm to Plaintiffs. Despite concerns that factual issues could require the case to be tried, LGC ultimately decided to file an MSJ to be heard one month before trial. The MSJ argued the client owed no duty and, even if a duty was owed, the alleged breach of the duty did not cause Plaintiffs' damages. The day before the hearing, the judge issued a tentative ruling granting the MSJ and finding Plaintiffs failed to raise a triable issue of fact. At hearing on the motion, the judge took the motion under submission. While the motion was under submission, LGC was able to negotiate a nominal settlement for a mere fraction of the estimated potential exposure.

Strategy Tip: Clients often decline to file motions for summary judgment in cases with significant damages and/or complicated facts because these motions tend to be expensive and difficult to win. Such motions should not be ruled out so easily. Even if a motion seems a likely loser, effective written advocacy may result in an unexpected win, or at least a favorable tentative ruling, which can posture the case for a dramatically reduced settlement. Contact LGC Partner Jill Dickerson for more information. ◆

Rear End Accidents, Continued from Adjacent Column

(Continued) experienced during normal everyday activities (like slow walking). In addition, LGC's biomechanical expert had a surrogate attend the inspection who was the same height as Plaintiff. Photos and measurements using the surrogate showed Plaintiff could not have impacted his knee as described. Plaintiff's inability to present any credible evidence in response to LGC's biomechanical expert's analysis resulted in an easy low-value settlement at mediation.
Contact Partners Teresa Beck or Jill Dickerson with questions. ◆

Partner Teresa Beck's Article About Mediation Is Published by the ABA

Partner Teresa Beck is a member of the American Bar Association, and is active in the ABA's Litigation Section. The ABA 's Litigation Section recently published a series of articles about mediation, including Ms. Beck's article, entitled **Mediators Take Sides: Do's and Don'ts from Top Mediators.** The article discusses the top five do's and don'ts of successful mediation, and also addresses what litigators can learn from mediators. Follow this link to read the entire article: http://apps.americanbar.org/litigation/committees/womanadvocate/articles/winter2013-0313-mediators-take-sides.html . ◆

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LGC Quarterly

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