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## LGC Prevails In Trust Accounting Trial In Probate Court

Partner [Tom Lincoln](#) and Associate [Darcie Colihan](#) recently prevailed in a trial over a contested trust accounting in the San Diego County Superior Court, Probate Division. In doing so, LGC successfully defended against a beneficiary's objections to the proposed accounting, including claims of misappropriation of funds, hiding of trust assets, and improper funding of an A-B trust.

LGC's clients in the matter were a trustee and named successor trustee of the trust in question. Upon the death of one of the trust's settlors, the objecting beneficiary began to challenge the administration of the trust, particularly the funding of the A-B trusts as required by the trust declaration. The beneficiary filed a petition to remove the trustee and named successor trustee in Probate Court. LGC was retained to represent the trustees' interests, to assist in the administration of the trust, and defend the litigation brought by the objecting beneficiary.

In response to the objecting beneficiary's petition to remove the trustees, the Court ordered an accounting of the trust administration period in dispute. LGC arranged for the accounting of the trust, which was prepared and filed with the court. However, the objecting beneficiary subsequently filed an objection to the accounting and the Court set the contested matter for trial.

At trial, LGC presented evidence supporting the accuracy of the trust accounting, including testimony from both LGC's trust accounting expert and the current trustee. LGC was able to elicit testimony supporting the state of the assets at the date of death of the trustor and testimony to support the trustee's funding of the separate trusts. LGC was also able to admit into evidence a trust funding chart prepared by counsel, which the Court heavily relied on in reaching its statement of decision to explain the funding of the separate trusts.

Additionally, the objecting beneficiary accused the former trustees of hiding and misappropriating assets, and attempted to bring evidence of these collateral issues related to the trust management into the accounting trial. However, LGC successfully argued that such matters were outside the scope of the trial, which was limited to only the accounting of the trust for the period and the funding of a separate trust. Thus, any collateral matters the objecting beneficiary attempted to bring before the Court were excluded.

At the conclusion of the trial, the Court found that LGC's clients had successfully satisfied their burden of proof in demonstrating the trust assets were accounted for, the separate trusts were properly funded, and the accounting was true and correct.

Congratulations to Tom and Darcie on their successful trial result.

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## Overhauling Nevada's Construction Defect Laws

On February 24, 2015, Nevada Governor Brian Sandoval signed Assembly Bill 125 (AB 125) into law. In doing so, Governor Sandoval stated that he had "challenged the Legislature with passing meaningful construction defect reform [and the Legislature] met that challenge with the Homeowner Protections Act [AB 125], which discourages frivolous litigation and strengthens Nevada's rebounding housing market."

AB 125 brings significant changes for developers, general contractors, insurers, subcontractors, and homeowners. First and

foremost, it makes indemnification clauses requiring a subcontractor to indemnify the general contractor/developer for the contractor's negligence (whether active, passive, or intentional) void and unenforceable as against public policy. However, AB 125 specifically states that its anti-indemnity provision does not apply to indemnity and defense agreements that require a subcontractor to indemnify and defend the general contractor or the developer for claims based on the subcontractor's scope of work.

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## The Importance Of Estate Planning "Check-Ups"

Everyone reading this article should first make sure they have an estate plan. It might be a sensitive topic that many will steer away from, but having a properly prepared estate plan should be on everyone's to-do list. The right plan will ensure that your gifting intentions are accurately reflected and can also protect your loved ones from unnecessary time, expense, and heartache in administration of your estate.

Simply having an estate plan is not enough, though. Just like your annual health check-ups, you should put your estate plan through an annual check-up.

There are many reasons why your estate plan may need to be amended or updated. First and foremost, life happens! Have any of the following events occurred since you prepared your estate plan:

- Did you get married or divorced?
- Have you had or adopted children?

- Have you had grandchildren?
- Have you purchased new assets that should be identified in the trust?
- Have you purchased or sold real property?
- Have any of your named successor trustees or beneficiaries predeceased you?

All of these life events are reason to review your estate plan and ensure that your trust is properly funded and that your wishes are accurately reflected. If you have had children since your estate plan was originally prepared, you may want to think about updating your plan to include guardian designations and/or set up trusts with staggered or incentivized distributions for your children.

Additionally, there have been many significant changes in the laws in the past five years. The American Taxpayer Relief Act ("ATRA") made permanent

portability of the estate tax exemption between married couples for 2013 and future years.

You may have prepared an A-B or even an A-B-C trust system that, with the permanency of portability and the current estate tax exemption of \$5.34 million, may unnecessarily complicate and limit a surviving spouse's or trustor's ability to administer the trust estate. These changes in the tax laws are another reason to give your estate plan a check-up.

When LGC prepares estate plans, we calendar annual check-ins with our clients to review their plans and see if there are any changes or questions. We notify our clients of any changes to the laws that may affect their annual review as well.

If you have any questions about creating or updating your estate plan, please contact [Randy Gustafson](#) or [Darcie Colihan](#) in LGC's San Diego office.

## Christine Polito To Speak On CLM Panel



Christine Polito

LGC Associate [Christine Polito](#) will speak on a Claims Litigation Management (CLM) Panel aimed at "Making the Most of Millennial Attorneys." The program will provide insight on how millennials approach their profession and how firms and insurance companies can harness the unique skill set to their advantage.

Ms. Polito will specifically address the development of e-discovery – a cost-saving mechanism that converts all documents into an electronic

format. E-discovery is available for all cases to help insurance companies save money and streamline the discovery process.

Ms. Polito will also discuss how e-discovery requires attorneys to possess a requisite knowledge of technology. The state bar recently issued an opinion interpreting the relationship between the duty of competency and e-discovery. As part of the duty of competency, an attorney's knowledge of e-discovery must evolve with

technology. An attorney lacking the required competency for e-discovery can either: (1) acquire sufficient skill, (2) consult technological consultants, or (3) decline representation.

In other words, attorneys must keep up with discovery not only to be cost-effective, but to maintain the standard of care.

The event is scheduled for June 17 at 5:30 p.m. at Luce Loft. For more information or to register, click [here](#).

## Overhauling Nevada's Construction Defect Laws

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Second, the bill provides that a subcontractor's duty to defend a general contractor arises upon presentation of a notice containing a particular claim or causes of action from which it can be reasonably inferred that the damage or defect was attributable to the subcontractor's work. In cases where the subcontractor has general liability insurance coverage and the contractor/developer is named as an additional insured (AI) under the subcontractor's general liability policy, AB 125 requires the general contractor/developer to seek a defense from the subcontractor's general liability insurer before pursuing the subcontractor for its defense obligations.

Beyond the indemnity changes, the bill also imposes significant new limitations on plaintiffs' claims. For instance, AB 125 amends the existing definition of "constructional defect" to provide that a constructional defect is a defect that presents an unreasonable risk of injury to a person or property, or is not completed in a good and workmanlike manner and proximately causes physical damage to the residence or appurtenance. This is a narrower definition of a "constructional defect" than prior law.

Procedurally, AB 125 prohibits a

claimant from filing a notice of constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim. Only those claims that have been denied under a homeowner's warranty may be included in a claim for constructional defect.

In addition, AB 125 substantially limits the scope of actions brought by homeowner associations. Under the bill, homeowner associations are now prohibited from pursuing claims for anything other than construction defect claims pertaining to common elements of the project. This change is in response to recent Nevada Supreme Court decisions allowing homeowner associations to bring claims for alleged defects within the individual members' homes or units.

The bill also reduces the statute of limitations from 10 years to six years after substantial completion, and limits the period of tolling of the statute of limitation to one year unless the claimant demonstrates to the Court that good cause exists for an extension.

Finally, AB 125 eliminates the common constructional defect notice procedure (i.e. a notice given by one or

more homeowners for themselves and other 'similarly situated' homeowners in their community). It is now required that a notice of constructional defect: (1) state in specific detail each defect and correlating damage; (2) state the exact location of each defect and damage; and (3) include a statement signed by the owner of the residence verifying the existence of each defect.

In addition, with the adoption of AB 125, the homeowner **must** be present during the contractor's Chapter 40 inspection and must identify the exact location of each alleged construction defect specified in the notice. Furthermore, if the Chapter 40 Notice includes an expert opinion, the expert, or a representative of the expert, must also be present and must identify the exact location of each alleged construction defect he or she asserted.

These changes are a positive sign for defendants in construction defect litigation, particularly subcontractors who now have additional protections against plaintiffs' claims and developers' claims.

For more information about AB 125, please contact [Karissa Mack](#) in LGC's Las Vegas office.

## Partner Teresa Beck To Conduct CLM Webinar

LGC is pleased to announce that Partner [Teresa Beck](#) will be conducting a webinar on May 27, 2015, for the Claims Litigation Management Alliance (CLM) entitled *Reptile 101: What Claims Handlers Need to Know*. Joining Ms. Beck as speakers for the webinar are Randy Jouben, the Director of Risk Management for Five Guys Burgers, and Bob Wiese, Manager of Guest Claims at The Disneyland Resort.

Plaintiff attorneys are using the so-called "Reptile" strategy to increase claim values and verdicts at trial. Attendees of the webinar will learn the basics of the Reptile program, including identifying the signs and utilizing defense strategies.

For more information about the webinar, click [here](#), or e-mail Ms. Beck at [tbeck@lgclawoffice.com](mailto:tbeck@lgclawoffice.com).

Click [here](#) for more information about upcoming CLM webinars

## Tom Lincoln Named To Citizens' Review Board



Tom Lincoln

LGC is pleased to announce that [Tom Lincoln](#) has been appointed by San Diego Mayor Kevin Faulconer as a prospective member on the City's Citizens' Review Board for Police Practices. Tom will be provided extensive training in police policies and procedures, as well as oversight and analysis techniques in order to serve on the Board.

The Citizens Review Board was created to assure the public that complaints against San Diego police officers are investigated

thoroughly, completely, and fairly, and to recommend and advocate for policies that promote fair and humane policing of the city. The Board reviews and evaluates serious complaints brought by the public against police officers, reviews all officer-involved shootings and in-custody deaths, and reviews and evaluates the administration of discipline arising from sustained complaints.

Congratulations to Tom on his appointment.

## Court Of Appeal Clarifies "Reasonable Release" Under Right To Repair Act

In the recent case [Belasco v. Wells](#), the California Court of Appeal held that a release of all claims, known and unknown, in exchange for a cash payment bars a plaintiff from bringing a later suit for subsequently discovered latent defects on the property under the Right to Repair Act. The Court also held that a release for all claims, known and unknown, can be a "reasonable release" as required by the Right to Repair Act.

The case involved a newly constructed Manhattan Beach residence. Plaintiff Belasco, a patent attorney, purchased the residence in 2004 from defendant Wells, a general contractor and builder. Plaintiff filed a complaint in 2006 against Wells with the Contractors State License Board alleging construction defects. An arbitration began in 2006 between Belasco and Wells with both parties represented by counsel. Before an arbitration decision was reached, the parties settled their dispute with Wells paying \$25,000 and Belasco executing a release and a waiver of known and unknown claims.

In 2012, Belasco filed another suit against Wells and Well's surety company based on alleged defects in the roof that Belasco discovered in 2011. In addition to the claims for construction defects, Belasco alleged that Wells falsely represented that the roof had been completed by a licensed roofer, and that Wells intended to mislead Belasco who justifiably relied on the representations when he purchased the residence.

The trial court granted summary judgment for the defendants, and the Court of Appeal affirmed the trial court's ruling. In doing so, the Court held that Section 929 of the Right to Repair Act, which allows a builder to obtain a "reasonable release" in return for a cash payment and no repairs, does not prohibit a release for all known and unknown claims. The Court held that, contrary to Belasco's contentions, an unknown latent defect can be the subject of a "reasonable release" under Section 929.

The Court also noted that Belasco's release of all known and unknown claims was reasonable under Section 929. Belasco,

himself an attorney and also represented by counsel, understood and signed the 2006 settlement agreement. The agreement was explicit in its terms, including the waiver of all known and unknown claims. Public policy does not prohibit a waiver of known and unknown claims.

Finally, the Court held that although Section 932 of the Right to Repair Act provides that "subsequently discovered claims of unmet standards" can be brought against a builder at a later date, Belasco had released his right to bring any claim when he executed the settlement agreement in exchange for the cash payment. While Belasco argued that Section 932 should control because the alleged roof defects were subsequently discovered, the Court held that Section 932 must be read in conjunction with Section 929, which approves a reasonable release in exchange for a cash payment.

This case is significant because it clarifies that releases for all known or unknown claims given in exchange for a cash payment is enforceable under the Right to Repair Act, as has been the case in settling common law construction defect claims.

If you would like more information the case, please contact LGC Partner [Chris Schmitthener](#).

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