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## LGC Obtains Dismissal In Catastrophic Injury Case

Partner [Ted Cercos](#) and associate [Rich Reese](#) obtained a dismissal in a high-value catastrophic injury lawsuit after filing a motion for summary judgment. The lawsuit arose out of injuries sustained by the plaintiff while he participated in an obstacle race known as a “Spartan Race” on County of Monterey property. LGC represented the County of Monterey.

The plaintiff signed two waivers that released the County from liability with respect to the subject race. While participating in the race, the plaintiff dove head-first into a shallow pit of water at one of the obstacles. Unfortunately, he struck his head on the bottom of the pit, resulting in spinal cord injuries that caused quadriplegia.

Despite the fact that the County’s role in the event was limited to permitting the organizers to use County property, the plaintiff claimed the County was legally liable for the plaintiff’s injuries. The

plaintiff’s pre-litigation demand to the County was \$25,000,000.

LGC disputed liability and argued that the County was entitled to summary judgment because: (1) Plaintiff expressly waived liability as to the County, (2) the primary assumption of risk doctrine applied, and (3) the County was entitled to statutory immunity under the “hazardous recreational activity” doctrine.

Under California law, a written waiver legally waives liability for ordinary negligence, but not for *gross* negligence. LGC therefore had to establish that there was no evidence to support an argument that the County’s actions constituted gross negligence. Gross negligence refers to the lack of any care or an extreme departure from what a reasonably careful person would do in the same situation to prevent harm to others. After taking the plaintiff’s deposition and conducting significant additional discovery, LGC argued in its

motion for summary judgment that the County’s limited role in permitting the race to be held on the County property did not constitute gross negligence.

LGC also argued that the primary assumption of risk doctrine applied. The doctrine bars a plaintiff from recovery if he voluntarily participates in an activity or sport involving certain inherent risks. It has been interpreted to apply to traditional sporting events as well as other recreational activities such as bumper cars and haunted houses. LGC argued that the doctrine applied to the Spartan Race, barring any recovery from the County.

LGC further argued that Government Code §831.7 provided the County with immunity against the plaintiff’s claims. Pursuant to Government Code §831.7, a public entity is not liable to a person who participates in a hazardous recreational activity.

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## LGC Obtains Defense Verdict In Trial

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Partner [Loren Young](#) and associate [Kylee Gloeckner](#) of LGC’s Las Vegas office obtained a complete defense verdict in the case of *Richard Brown v. Spring Creek Association* (Case No. CV-C-15-407) following a four-day trial in Elko County, Nevada. The case involved claims of personal injuries allegedly sustained by Plaintiff Richard Brown when a table on the Spring Creek Association’s property flipped over.

On June 15, 2013, Plaintiff Richard Brown and his wife Elizabeth Brown were seated at a picnic table located at the Horse Palace at the Spring Creek Association Annual HOA barbeque and meeting. There were three or four people (including Plaintiff) seated on one side and one person on the other side of the picnic table.

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## Trust Administration: The Trustee's Legal Obligations

Once a trust is set up, whether revocable or irrevocable, the trustees/settlors/trustors should be aware of their duties as trustees. When a joint trust is set up, the co-settlors have immediate obligations to each other and the trust estate pursuant to the terms of the trust. The real trust administration, however, starts upon the death of either one or both settlors/trustors. Legal fiduciary duties are placed upon trustees and penalties are available for breach of said duties. This includes a surviving spouse/trustee in certain trusts where a portion of the trust estate is required to be put into an irrevocable trust upon the first spouse's death. It is important that a trustee be aware of their duties and prudently and timely act.

### Initial Notice Requirements

Once a revocable trust, or any portion thereof, becomes irrevocable (i.e. upon the death of one settlor or upon the death of both trustors depending on the structure of the trust), or whenever there is a change of trustee of an irrevocable trust, the Probate Code requires the trustee to send notice to all trust beneficiaries and heirs of the settlors. Such notice must be sent within 60 days of the death of a settlor and allows the recipient of the notice to request a copy of the trust. After receiving the mailed notice, the recipient has 120 days from the

date of mailing to file a trust contest. If no contest is filed within 120 days, then the notice recipient may forfeit their right to file a contest. But if no notice is mailed, the statute of limitations in which a trust contest could be filed is much greater. Many successor trustees handling trust administration without the advice of an attorney often skip this very important step.

### Initial Collection Of Trust Assets

If the trust holds any real property, there are specific steps that must be followed by a successor trustee. Specifically, an Affidavit of Death of Trustee must be recorded with the county recorder's office for each real property owned by the trust. This affidavit is recorded with a certified copy of the death certificate. When recorded, the affidavit effectively changes title of the property from the former trustee/settlor who has died and into the names of the new trustee. A Preliminary Change of Ownership must be recorded along with the affidavit in order to notify the assessor of the circumstances of the title transfer. Additionally, if a reassessment exemption applies the appropriate exemption claim form must be filed. There will be property tax consequences if the proper forms are not filed.

Once you have identified and dealt with the trust real property, a trustee will need to identify and collect all other trust assets (e.g. bank accounts, investment accounts, personal property, digital assets, etc.) and have title to those assets transferred into the trustee's name. The trustee will need to review the trust document and understand the nature of the required distribution of the trust assets and begin to work to collect the assets and prepare them for the required distribution. This may include liquidating some assets or distributing specific gifts of tangible personal property.

### Accountings To Beneficiaries

An initial accounting of the trust estate is also required by law to be provided to a beneficiary of the trust with respect to their interest. Further, an annual accounting detailing the trustee's actions and administration of the trust is thereafter required as well. There are provisions under which a waiver of the accounting is allowed. A trustee should prepare an initial account of all trust assets and provide it to each beneficiary.

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## LGC Partner Speaks At S.D. Startup Week



Jill Chilcoat

LGC Partner [Jill Chilcoat](#), along with associate [Patrick Klingborg](#), recently presented legal seminars at [San Diego Startup Week](#). San Diego Startup Week is an annual event featuring educational seminars and competitions for the region's entrepreneurs, venture capitalists, and other people

involved in the startup community.

Ms. Chilcoat and Mr. Klingborg presented a talk on the legal complexities surrounding the differences between independent contractors and employees. This distinction is a difficult one, and workers are often

misclassified as independent contractors and should instead be treated as employees. Worker misclassification is a significant liability risk.

For questions about legal issues facing startups, please contact Jill or Patrick in LGC's San Diego office.

## LGC Obtains Defense Verdict In Trial

(cont. from page 1)

When the one person on the opposite side got up and left, the table flipped over and Richard Brown was injured. His injuries included a compression fracture of the L1 vertebrae, a head injury, and facet mediated pain in all levels of the lumbar spine that allegedly required radio frequency ablations, bilaterally, at levels L2 through S1 for the remainder of Mr. Brown's life.

On June 15, 2015, Plaintiff filed an action against Defendants, the Spring Creek Association and the Elko County School District, in the Nevada District Court for the County of Elko.

Through the Complaint, Plaintiff alleged that the association owned the picnic table at issue and that the school district had designed and manufactured the table. Plaintiff claimed that there was a design and manufacturing defect in the table, and claimed that it was in an obviously defective and dangerous condition. He asserted claims of negligence and negligence per se against the association, as well as claims of defective design, negligence, and negligence per se against the school district.

The defense causation expert, Erik C. Johnson, P.E., performed inspections of the area and confirmed that the ground was a flat and hard surface, the table was heavy and stable, and the table was not in a dangerous condition for use. In addition, his investigation revealed no prior incidents with the tables.

Mr. Johnson's evaluation of the table design, however, led him to conclude that it had been defectively designed. This finding resulted in a settlement between the association and the manufacturer prior to trial.

The claims against the association proceeded to a jury trial before Judge Nancy Porter. Medical testimony included an expert opinion from Paton Whimple, D.O., regarding Mr. Brown's chronic conditions prior to the accident and conditions after the accident, including other falls sustained by him.

Prior to trial, LGC successfully argued for the exclusion of Plaintiff's expert disclosures and reports, including Plaintiff's expert retained to provide

opinions regarding medical damages. The Court also excluded any medical evidence regarding Mr. Brown's future medical damages.

At trial, LGC successfully argued that the picnic table was not in an unreasonably dangerous condition, that the incident was not foreseeable as there were no prior incidents, and, thus, liability could not be placed on Spring Creek Association.

The plaintiff asked the jury for over \$1,000,000 for pain and suffering related to alleged permanent injuries. On May 5, after less than one hour of deliberations, the jury reached a defense verdict finding in favor of the association and against Plaintiff.

Plaintiffs were represented by Sean Claggett of the Claggett Law Firm in Las Vegas, and Barbara Gallagher of Kidwell and Gallagher in Elko, Nevada.

Congratulations to Loren and Kylee on their victory.

## Trust Administration: The Trustee's Legal Obligations

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If a waiver is not obtained, accountings are required and a trustee can be liable for penalties if the accountings are not timely provided. To satisfy this legal requirement, a trustee must keep detailed accounting records of the trust.

### Assets Not In The Trust

During the process of collecting trust assets, the trustee may find there are assets owned by the decedent that were not properly funded or transferred into the trust. These assets are not part of the trust estate and are in fact part of the

decedent's probate estate. These assets will have to be administered through the probate process (as directed by the decedent's will, if any) and not within the trust administration.

The trust administration process is often complicated and confusing and can seem overwhelming at times. Experienced attorneys can help guide you through the process. For more information, contact [Darcie Colihan](#) in LGC's San Diego office.

## LGC Obtains Dismissal In Catastrophic Injury Case

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Rich Reese

The Code defines hazardous recreational activity as “a recreational activity conducted on property of a public entity that creates a substantial, as distinguished from a minor, trivial, or insignificant, risk of injury to a participant or a spectator.” Additionally, under Government Code §831.7(b)(2), “diving into water from other than a diving board or diving platform” specifically qualifies as a hazardous recreational activity. There are limited exceptions to the hazardous recreational activity rule, but LGC argued that those exceptions did not apply.

Shortly after LGC filed the motion for summary judgment, the plaintiff’s attorneys agreed to dismiss the County. The County

therefore did not have to pay any money to resolve the claim.

This case highlights the importance of understanding the defenses available to public and private entities with respect to organizing and permitting recreational events. When used properly, a written waiver can be a critical tool for limiting liability. Statutory and common law defenses may also provide legal protection under certain circumstances.

For additional information about the case and strategies for defending catastrophic injury cases, contact [Rich Reese](#) at LGC’s San Diego office.

## Fee Claim Issues In Nevada Construction Defect Cases

In 2015, the Nevada Supreme Court held in *Logan v. Abe* that an entity may sue for recovery of fees and costs even if the fees and costs were paid by a third party (e.g. an insurance carrier). The Court found “a party can incur an expense even if a third party pays the expense on the party’s behalf, as long as the party would otherwise be legally obligated to pay the expense.” The Nevada Supreme Court also noted that a party incurs an expense at the time the expense is paid or the party “becomes legally obligated to pay it.”

This ruling has had a significant impact on construction defect cases, though the scope continues to be litigated. In construction defect cases, the attorneys are often hired by insurance companies to defend the case. The parties do not typically pay for their own attorneys. Regardless of who is paying for the defense, third-party complaints regularly include allegations of breach of contract that seek recovery of fees and costs, based on the authority of *Logan*. This claim may be under express language or equitable relief.

A new trend in construction defect cases in Nevada concerns the defending carriers and Additional Insured (“AI”) carriers and what releases will be offered. If a subcontractor is being asked to pay a “premium” to settle a case because defense fees and costs are very high, it would seem that the subcontractor should be provided a complete release, meaning a release from the developer, its carriers and AI carriers, for the defense fees and costs being pursued. If those are not included, it seems such actions are contrary to *Logan*. If the party incurs the expense, even if paid by someone else, then isn’t that party also obligated to release others for that same claim asserted in the case? Moreover, what fees and costs is the developer releasing if they have no such rights?

At recent mediations, an issue has arisen that the developer and its carriers will release a subcontractor, but not the rights of the AI carriers paying the defense bills against the subcontractors. That means a client will pay a premium for monies not owed and can be sued a second time.

In order to ensure protection for subcontractors and create finality, settlement agreements must include a release on behalf of both the developer and AI carriers. Of course, there may be instances where, given the circumstances of the settlement, a subcontractor may wish to buy its peace solely from the developer and take the risk of a future action by the AI carrier(s). However, these situations need to be thoroughly evaluated with the client.

For more information, contact Partner [Shannon Splaine](#) in LGC’s Las Vegas office.

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