

## LGC Obtains Defense Ruling On All Claims At Arbitration

Associate [Karissa Mack](#), with the guidance of Partner [Loren Young](#), obtained a defense ruling in favor of her client following an arbitration in a claim involving alleged personal injuries sustained by three Plaintiffs from an alleged malfunction of a roller coaster in Las Vegas.

The accident occurred at a well-known hotel that operates the roller coaster. Plaintiffs were riding in two separate carts with Plaintiff #1 in a cart and Plaintiffs #2 and #3 in another cart. Plaintiff #1 alleged that during an inverted twist, the roller coaster violently slammed Plaintiff up against the seat due to a jerking motion that had not occurred any of the previous times Plaintiff rode the roller coaster.

Plaintiffs #2 and #3, meanwhile, alleged that at the very beginning of the ride, at the base of the initial lift, the cart jerked back and forth multiple times and then came to a complete stop. Thereafter, once the ride

began again, Plaintiffs #2 and #3 claimed that the cart was much slower, so much so that when the cart was upside down Plaintiffs feared getting stuck.

All three Plaintiffs claimed that the hotel failed to warn of the dangerous condition of jerking back and forth that occurred and that the hotel had not properly hired, trained, or supervised its employees who were operating the roller coaster when the malfunctions occurred. Plaintiffs requested awards in the amounts of \$15,000, \$25,000 and \$30,000, respectively.

LGC disputed liability and argued that (1) the hotel provided ample warnings related to the rides as is required under applicable Nevada statutes; (2) Plaintiffs failed to identify any dangerous or hazardous condition beyond the normal operation of the roller coaster; and (3) the hotel employees correctly followed all policies and procedures related to the operation of the roller coaster.

Pursuant to the surveillance footage from the roller coaster, it was evident that Plaintiff #1's cart began and completed the roller coaster ride without issue. When LGC asked Plaintiff to identify on the surveillance video where the alleged incident occurred and to point out the exact moment the unusual "jerking" motion that resulted in injury occurred, Plaintiff #1 was simply unable to do so, claiming that it was not visible on the video.

As to the cart holding Plaintiffs #2 and #3, the surveillance footage did show their cart getting to the initial lift and, before climbing the lift, experiencing a "skip" or a "skip the dog." The cart was then seen hooking onto the chain and proceeding up the ramp a short distance before being manually stopped by the ride operator.

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2 Partner [Ted Cercos](#) and of counsel [Monica Yoon](#) recently won a Motion for Summary Judgment on behalf of their client, a retail store, in a premises liability case.

3 The lawsuit arose after Plaintiff claimed she was injured after she fell while riding an escalator at the store. Plaintiff had been travelling on an upward escalator from the first to the second floor of the store. Her shopping cart was moving upward alongside the

escalator in the cart conveyor known as a "Vermaport."

Before Plaintiff and her cart reached the second floor, the Vermaport carrying her cart stopped, but the escalator continued carrying Plaintiff upward. When she reached the second floor, Plaintiff stepped off of the moving steps of the escalator.

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## Changes To The Lifetime Estate And Gift Tax Exemption

President Donald Trump signed tax legislation, ushering in several significant changes to the wealth transfer tax system that took effect on January 1, 2018.

Under the new law, the federal estate, gift, and generation-skipping transfer tax exemption amounts will increase to \$11,200,000 for individuals and \$22,400,000 for married couples (compared to \$5,490,000 and \$10,980,000, respectively, in 2017). These exemption amounts are scheduled to increase with inflation each year until 2025.

Then, on January 1, 2026, the exemption amounts are scheduled to revert to the 2017 levels, adjusted for inflation. The highest marginal federal estate and gift tax rates will remain at 40% and the GST tax rate will remain a flat 40%.

In addition to the increased exemption amounts discussed above, the amount each person may give annually to as many individuals as he or she desires without incurring a gift tax and without using any of the gift tax exemption amounts will increase to \$15,000 in 2018 (up from \$14,000 in 2017).

As a result, beginning in 2018, a married couple may make “annual exclusion gifts”

of up to a total of \$30,000 to an unlimited number of recipients without reducing their lifetime gift amount (currently \$22,400,000). Giving the annual allowable gifts to reduce your total estate value at the time of your death can be a good tax-planning tool in the face of an uncertain future as well.

With the onset of these new laws, now would be a good time to review your current estate plans. Many plans prepared when the lifetime exemptions were significantly lower included “formula type dispositions” (e.g. A-B-C, Marital, By-Pass, etc.) and may require immediate attention because they are no longer appropriate or otherwise have unintended consequences.

For example, in the past it was not uncommon for a decedent’s estate plan to include a “credit shelter disposition” to a “credit shelter trust” that included children as beneficiaries, with the balance of the estate passing to or in trust for a surviving spouse. Credit shelter dispositions were often defined by a formula expressed in terms of the maximum amount that could pass at death from the decedent’s estate free of federal estate tax.

With a significantly increased federal

estate tax exemption amount, such a disposition could result in unanticipated state-level estate tax or, if a spouse is not a named beneficiary of the credit shelter trust, in significantly reduced assets being available to a surviving spouse.

Formula dispositions tied to a decedent’s unused estate potentially could have similar results. There are also increased, and now likely unnecessary, administration requirements for the surviving spouse with these formula distributions that can easily be overlooked without the proper advice of counsel.

In order to avoid these additional unnecessary pitfalls and take advantage of the increasing exemption amounts, it is a good idea to have your estate plan reviewed by an attorney to identify some of these issues that could result in unintended consequences for you or your loved ones.

For more information about the implications of the new estate and gift tax exemptions, or any other estate planning issues, contact [Darcie Colihan](#) in LGC’s San Diego office.

## LGC Partner Obtains Million-Dollar Settlement



Teresa Beck

Although LGC is typically on the defense side in civil matters, LGC does regularly provide advice to highly compensated executives in a variety of circumstances, including contract termination.

Recently, an executive in a termination situation brought

LGC Partner [Teresa Beck](#) a proposed severance agreement to review. After reviewing the agreement and learning about the circumstances surrounding the proposed severance agreement, LGC determined the executive had claims for failure to accommodate a disability and associated

claims. Teresa, assisted by associate [Rich Reese](#), pursued those claims and were able to secure a \$1,000,000 settlement for the client without litigation.

For more information about employment issues related to executives, contact Teresa in LGC’s San Diego office.

## LGC Prevails On MSJ In Premises Liability Case

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Instead of stepping away from the escalator and waiting for the Vermaport to resume operation and release Plaintiff's cart at the top, Plaintiff reached over the moving handrail of the escalator and tried to pull her cart free from the stopped Vermaport. As she did so, Plaintiff's midsection made contact with the moving handrail of the escalator and she fell.

Plaintiff filed suit against the store, alleging negligence and seeking damages for injuries she claimed resulted from her fall.

LGC filed a Motion for Summary Judgment, arguing that Plaintiff could not show that the store breached any duty owed to Plaintiff or that the store caused the incident. LGC submitted evidence that the escalator and

Vermaport were properly functioning and did not constitute a dangerous condition. The Vermaport stopped during operation because someone or something triggered a safety sensor, not because of a malfunction. The expert declaration filed in support of LGC's Motion described the relevant aspects of the operation of the Vermaport and confirmed that the Vermaport will stop during operation if its safety sensors are triggered. The expert also opined that the escalator and Vermaport at issue comply with all applicable codes.

In opposing the motion, Plaintiff argued that the stopped Vermaport, combined with the moving escalator, constituted a dangerous condition and a breach of the store's duty of care. However, the Opposition provided no expert opinion or other authority to

refute LGC's undisputed facts concerning its client's compliance with applicable codes and the proper functioning of the Vermaport and escalator.

The Court agreed that LGC had carried its burden as the moving party to show that Plaintiff could not establish that the store breached any duty to Plaintiff. Further, Plaintiff had failed to submit any evidence to support the claims that the store breached its duty of care, such as a defect in the Vermaport or a violation of any codes. Accordingly, the Court granted LGC's Motion for Summary Judgment. Judgment will be entered in LGC's client's favor and LGC's client will be entitled to recover its costs.

Congratulations to Ted and Monica on their victory.

## LGC Participates In Candlelighters Charity Event

LGC is excited to announce that the firm will team up with [Candlelighters Childhood Cancer Foundation](#) in 2018 for various events.

Candlelighters is a local Las Vegas organization that provides emotional support, quality of life programs, and financial assistance for children and their families affected by childhood cancer. Candlelighters strives to alleviate the isolation many families feel at the time their child is diagnosed with cancer, offering care, encouragement, and understanding during that difficult time.

Recently, members of LGC helped with the Candlelighters torch relay race to celebrate its 40<sup>th</sup> anniversary in Las Vegas. The race started at the Welcome to Las Vegas sign and ended at The Container Park, where there was a celebration.

Family members who were helped by the organization held and exchanged torches during the race. LGC was able to meet families that Candlelighters has helped over the year and see first-hand the amazing kids who are fighting cancer.

The torch relay race is just the first of several Candlelighters events planned for 2018. In September, which is cancer awareness month, Candlelighters will host the Superhero 5k. The event, held at Mountains Edge Exploration Park, features food, a kids' zone, a raffle, and superheroes in full costume. LGC looks forward to continued support of Candlelighters.

For more information about Candlelighters and opportunities to help, please visit their [website](#) or contact Partner [Shannon Splaine](#) in LGC's Las Vegas office.

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Karissa Mack

LGC's lead witness, an engineer for the hotel with over 25 years of experience with recreational parks and roller coaster rides, testified that the "skip" is a part of the normal operation of not only the roller coaster at issue, but any roller coaster with a lift using a chain dog. If the cart does not hook on the chain when the cart gets to the base of the lift, the cart may experience a "skip" or a "skip the dog," which is a normal part of the operation of a roller coaster and not a dangerous condition.

LGC further obtained testimony regarding the hotel's protocols when a "skip" occurs. Specifically, the ride operators will stop the

ride to ensure that what happened was nothing more than a "skip." The video footage helped to show the procedures were followed.

Based on the facts and testimony, the arbitrator agreed with LGC and found in favor of LGC's clients on all claims and awarded no damages to Plaintiffs. As a result of the arbitrator's ruling, LGC was also able to obtain a voluntary dismissal with prejudice from another claimant who filed a lawsuit and claimed injuries stemming from a similar incident.

Congratulations to Karissa on her victory.

## California Supreme Court Rules SB 800 Is Exclusive Remedy

In the new case of *McMillin Albany, LLC v. Superior Court*, the California Supreme Court found that SB 800 is the "virtually exclusive remedy" for economic loss and property damage arising out of construction defects. In doing so, the Court rejected the Fourth Appellate District Court of Appeal's prior holding in *Liberty Mutual Ins. Co. v. Brookfield Crystal Cove, LLC*, which found that if the statute of limitations runs on an SB 800 claim, a common law remedy could still be available.

In *McMillin*, Plaintiffs alleged negligence, strict products liability, breaches of contract and warranty, and violations under SB 800 regarding construction defects at 37 single-family homes. Plaintiffs did not go through the mandatory pre-litigation procedures of SB 800, so Defendant *McMillin Albany* attempted to reach a stipulation to stay the litigation in order to complete the pre-litigation requirements. Plaintiffs refused, and instead withdrew their SB 800 claims, intending to pursue only common law claims. Defendant filed a motion to compel compliance with the pre-litigation procedures, which was denied by the trial court. The Court of Appeal reversed the trial court's ruling.

On appeal, the California Supreme Court evaluated the plain language of the statute and the legislative history to ultimately conclude that the pre-litigation procedures are required even if a plaintiff drops its SB 800 claim. In doing so, the Court concluded, "For economic losses, the Legislature intended to supersede *Aas* and provide a statutory basis for recovery . . . . And for property damage, the Legislature replaced the common law methods of recovery with the new statutory scheme. The Act, in effect, provides that construction defect claims not involving personal injury will be treated the same procedurally going forward whether or not the underlying defects gave rise to any property damage."

In using this language, the Court effectively concluded that the legislature intended for SB 800 to be the exclusive basis of recovery for construction defects that result in property damage or economic loss.

Notably, though, the only issue on appeal was whether or not Plaintiffs would be compelled to undergo pre-litigation procedures under SB 800. The Court did not definitively conclude whether Plaintiffs could, nonetheless, state a cause of action under common law theories, or if the only cause of action could be for violations of SB 800. As a result, that issue will likely continue to be litigated at the trial court level in construction defect cases until the appellate courts definitively answer the open question.

For more information about case and its impact, contact Partner [Christian Schmitthener](#) in LGC's San Diego office.

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