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Four LGC Partners Named To *Super Lawyers Magazine*

LGC is pleased to announce that four of its partners, [Tom Lincoln](#), [Ted Cercos](#), [Chris Schmitthenner](#), and [Katie Brach](#) were all included in the 2017 list of top San Diego lawyers in *Super Lawyers Magazine*.

Super Lawyers selects the top lawyers throughout the country in 70 different practice areas using the *Super Lawyers* multi-step process. First, attorneys are nominated for recognition, typically by other attorneys in their geographical area who have seen the nominees in action. The attorney-led research staff at *Super Lawyers* also identifies and nominates attorneys based on awards and recognitions received.

All nominees then go through a vetting process by *Super Lawyers* staff, who use 12 indicators of peer recognition and professional achievement, including awards, honors, verdicts, and experience. Nominees are also evaluated and rated by other attorneys in their particular practice areas.

After the nomination and review process is completed, nominees are grouped by firm size. Nominees with the highest point totals from each category are selected for inclusion in *Super Lawyers*. Only 5% of lawyers in any given state are selected.

Tom Lincoln and Ted Cercos were both selected to the list of top civil litigation attorneys in San Diego. This is the eleventh straight year that Tom has been selected and third straight year Ted has been selected.

Chris Schmitthenner and Katie Brach, meanwhile, were selected by *Super Lawyers Magazine* to its list of Rising Stars. Both were selected in the category of civil litigation. This is the fifth consecutive year Chris has been selected, and second year Katie has been selected.

The annual Rising Stars list is a distinction given to the top 2.5% of lawyers under 40 years old. Honorees are selected through the same *Super Lawyers* selection process,

including peer nominations, evaluation, and peer review by a panel of lawyers within the honoree's practice area.

Tom, Ted, Chris, and Katie are all partners in LGC's San Diego office. Tom Lincoln handles a wide range of civil litigation and business matters and is a member of the prestigious American Board of Trial Advocates. Ted Cercos handles a variety of construction and personal injury cases, and works closely with long-term clients in developing quality assurance programs and refining risk-management practices.

Chris Schmitthenner's practice focuses mostly on personal injury, insurance coverage, and bad faith cases. He also represents contractors, engineers, and design professionals. Katie Brach represents developers and general contractors in complex construction, personal injury, and business disputes.

Congratulations to Tom, Ted, Chris, and Katie.

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LGC Obtains Defense Verdict At Trial

LGC partner [Loren Young](#) and associate [Thomas Maroney](#) obtained a defense verdict in a premises liability action where a plaintiff was seeking recovery of over \$12 million in damages.

The action involved an 80-year-old Plaintiff who rented a mobility scooter from the Defendant property owner to use on the property. While using the mobility scooter, Plaintiff struck a table in a restaurant on the property, tipped the scooter over, and fell to

the ground, breaking her femur.

Plaintiff was transported to a local hospital where she underwent surgery on her broken leg, but two days later had a stroke. Plaintiff claimed that the stroke was proximately caused by the fall and broken leg and surgery.

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LGC Obtains Complete Defense Ruling At Arbitration

[Caroline Reilly](#), an associate in LGC's Las Vegas office, recently obtained a complete defense ruling at arbitration in an automobile accident case.

The case concerned a minor motor vehicle accident without a police report or independent witnesses. The accident occurred at an intersection of a one-way street and a two-way street.

Both parties were traveling northbound on a one-way street with three lanes of traffic. Defendant was traveling in the far-left lane and Plaintiff was traveling in the middle lane when Plaintiff turned left in front of Defendant onto the two-way street.

The damage to Plaintiff's vehicle was at the driver's rear quarter panel and wheel. The damage to Defendant's vehicle was at the right front bumper.

Plaintiff originally claimed that she was rear-ended by Defendant. Plaintiff later testified that Defendant was traveling behind Plaintiff in the far-left lane and also

turned left onto the two-way street. Plaintiff testified that Defendant caused the accident when Defendant swerved right into Plaintiff's vehicle to avoid oncoming traffic.

In contrast, Defendant testified that he was traveling straight in the far-left lane when Plaintiff turned in front of his vehicle from the middle lane. Photographs taken at the scene demonstrated damage to both vehicles as well as skid marks and debris at Defendant's right front tire.

At non-binding arbitration, the parties contested the cause and location of the accident. Plaintiff argued that Defendant caused the accident by traveling too closely behind Plaintiff as they both turned left onto the two-way street.

Caroline, meanwhile, argued that the photographic evidence of the scene contradicted Plaintiff's claims and confirmed that Plaintiff's vehicle struck Defendant's vehicle from the right on the one-way street. As a result, Caroline

contended that Plaintiff was solely negligent for the accident.

Ultimately, the arbitrator agreed with Caroline and entered an award in favor of Defendant and against Plaintiff. The arbitrator concluded that Plaintiff was solely negligent in causing the accident when Plaintiff improperly turned left into Defendant's vehicle from the middle lane.

The arbitrator reasoned that the skid marks and debris field indicated that Defendant did not enter the two-way street and that the location of the damage appeared to contra-indicate a rear-end collision. Instead, the evidence indicated that Plaintiff was turning left and hit the front passenger corner of Defendant's car with her right rear quarter panel.

Congratulations to Caroline on her victory.

LGC To Participate In NFAR's 5K Race For Autism



LGC is proud to announce that, for the second straight year, its San Diego office will participate in [NFAR's Race for Autism](#).

The superhero-themed 5K race will take place Saturday, April 6, at San Diego's Balboa Park. The event will raise much-needed funds to support local autism programs, services, outreach efforts, parent support, and educational initiatives.

The event is put on by National Foundation for Autism Research ("NFAR"),

whose organizational mission is to assist in the development, expansion, and support of autism programs and services that improve the quality of life for children and young adults with autism.

Autism is one of the fast-growing conditions in the United States. Once considered rare, autism now affects as many as one in 59 children in the United States, meaning there are over 20,000 children with autism in San Diego.

Last year, LGC joined over 5,000 other families, educators, and autism professionals for the event. All of the funds raised from the event stay in San Diego to provide funding for early identification and education efforts, technical training in software testing for young adults, patent programs, and instructional workshops.

LGC strives to give back to its local community, both in charitable work and pro-bono legal representation.

LGC Obtains Defense Verdict At Trial

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Plaintiff argued that the property owner was liable because they failed to properly educate, train, and warn Plaintiff regarding the scooter's controls and its susceptibility to tipping over. Plaintiff also asserted the restaurant did not provide an "accessible route" in accordance with the Americans with Disabilities Act ("ADA"). Plaintiff alleged the restaurant's moveable furnishings, including tables and chairs, created a barrier that obstructed the ADA accessible route and subsequently made it difficult to drive the scooter while in the restaurant.

During the two-week trial, Plaintiff presented expert testimony by a neurologist and significant future medical damages through a life care planning expert, but eventually Plaintiff's counsel decided to seek damages for past and future pain and suffering only.

The tactic of presenting damages solely related to pain and suffering has been trending in Nevada for soft-tissue claims that do not have significant medical specials. However, this tactic has not been generally used in cases where medical specials are in excess of \$500,000, as was the case here.

Loren and Thomas presented expert testimony that the ADA requirements for an "accessible route" were satisfied by the property owner and that the addition of movable tables and chairs in the area made the area able to accommodate wheelchairs and mobility scooters.

The defense medical doctors presented a well-organized summary of Plaintiff's medical history of ischemic attacks, mini-strokes, and full strokes prior to the incident, which were ongoing at the time of the incident, and demonstrated that the current

conditions complained of by Plaintiff actually manifested during the months and years before the subject accident.

After two weeks of trial and one day of deliberation, the jury returned a defense verdict in favor of LGC's client. The jury agreed with the defense that the property owner provided an ADA-accessible route and that the route was not obstructed and did not play a role in the incident. Further, the jury found no causal connection between the fall and the stroke Plaintiff sustained in the hospital.

Loren is the managing partner of LGC's Las Vegas office, while Thomas is an associate in the office whose practice focuses on personal injury and premises liability claims.

Congratulations to Loren and Thomas on their victory.

LGC Welcomes Karissa Mack As Its Newest Partner

On January 11, 2019, LGC proudly welcomed [Karissa Mack](#) as its newest partner. Karissa is located in LGC's Las Vegas office.

An Oregon native, Karissa obtained her B.A. in Political Science from Oregon State University in 2008. She then attended Whittier Law School in Costa Mesa, California, with a concentration in Business Law and obtained a certificate in Intellectual Property. Karissa obtained her J.D. in 2011 and was admitted to the Nevada Bar the same year.

Karissa's practice focuses on defense litigation concerning personal injury, premise liability, auto accidents, contract law, and construction defect matters. She also advises clients on contract drafting, corporate formations, and employment matters.

Karissa is married to Albert Mack and has two young children, Greyson and Colton, as well as dogs Tank and Lily. Karissa also loves to volunteer her time with the Legal Aid "CAP" program, Junior League, Nevada Woman's Philanthropy, and other charities in town.

In addition, she serves as co-committee events chair for the Las Vegas Defense Lawyers. In her spare time, she loves to watch football and hockey, visit aquariums and other places with her family, watch movies, enjoy wine tastings, and new restaurants in town.

LGC now has 12 partners and 15 associates throughout its offices in Arizona, California, and Nevada.

Congratulations to Karissa.

LGC Participates In Candlelighters Superhero Race



LGC's Las Vegas Office recently participated in the Candlelighters Superhero 5K, put on by Candlelighters Childhood Cancer Foundation of Nevada.

The event helps generate funds for Candlelighters' programs that help raise awareness and help families affected by childhood cancer. The programs range from emotional support programs like art therapy and counseling to quality of life programs like parties and movie nights.

Some of the attorneys and staff members from LGC's Las Vegas office participated in the race, while others handed out Otter Pops and other refreshments to the race participants.

Candlelighters hosts various events throughout the area, in which LGC also participates. For more information about events and services, visit Candlelighters' [website](#).

New Case Confirms Subcontractors' Broad Duty To Defend

A new decision by the Court of Appeal in California imposes a broad duty on subcontractors to defend general contractors under indemnity provisions in subcontracts – a defense obligation that is now arguably on par with an insurance company's broad duty to defend.

In *Centext Homes v. R-Help Construction Company, Inc.*, a subcontractor was hired by a general contractor to install utility boxes in a subdivision. A plaintiff in an underlying lawsuit sued the general contractor for injuries arising out of a fall into a utility box. The general contractor tendered its defense and indemnity to the subcontractor, but the subcontractor did not defend the general contractor.

As a result, after settling the underlying lawsuit, the general contractor pursued the subcontractor based on the subcontractor's failure to defend the general contractor. The case was submitted to a jury, which found that the underlying plaintiff's injuries were not caused by the subcontractor's work. As a result, the trial court entered judgment in favor of the subcontractor.

On appeal, however, the Court reversed and remanded the case. The Court found that the underlying plaintiff's claim of falling into a utility box involved injuries arising out of the subcontractor's work. As a result, the general contractor was entitled as a matter of law to a defense under the indemnity provision, and it was an error to submit the question of the subcontractor's duty to defend to the jury.

Significantly, the subcontractor contended at trial that the utility box where the accident occurred was not within the subcontractor's scope of work. Nonetheless, the Court found that,

like an insurance company, the subcontractor had a duty to defend upon the mere potential for a "covered claim" (i.e. the mere potential that the claim arose out of the subcontractor's work). Moreover, once that potential for a covered claim arose, the subcontractor's duty could only be extinguished by showing that the claim was "not covered" (i.e. did not arise from the subcontractor's work), and even at that point the duty would be extinguished prospectively, not retroactively.

This case puts a substantial burden on subcontractors, essentially forcing them to act as insurers for general contractors, despite language in *Crawford v. Weather Shield Mfg., Inc.* that specifically notes that insurance policies and indemnity agreements "differ significantly." For more information about the case and its potential impact, contact [Chris Schmitthener](#) in LGC's San Diego office.

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