

# Murchison & Cumming

# M&C IN BRIEF

# Fall 2007

# CONTENTS

FEATURES New Partner In Charge At Las Vegas	
Office	
Southern California Super Lawyers 2	
Rising Stars 2	
Spotlight On: German Internship	
Program	
Highlighting M&C's Northern CaliforniaOffice	
ARTICLES	
M&C Case Reviews4-6	
ANNOUNCEMENTS7	
SERVICES &	
AFFILIATIONS8	
CONTACTS9	
CALENDAR	
March, 2008	
<b>Year In Review Seminar</b> <i>Exact Date TBA</i>	
April 8, 2008	
M&C Insurance Roundtable Bad Faith & Claims Handling	
June 10, 2008	
<b>M&amp;C Insurance Roundtable</b> <i>The Art of Settlement Negotiations &amp;</i> <i>Dispute Resolution</i>	
September 16, 2008	
M&C Insurance Roundtable Coverage Issues in General Liability Cases	
November 12, 2008	
<b>M&amp;C Insurance Roundtable</b> Construction Defect Claims	
For more information please contact: Sharifah	
Williams, Marketing Coordinator at (213) 630-	
1017 or swilliams@murchisonlaw.com.	
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# MICHAEL J. NUÑEZ TAKES THE HELM AS PARTNER IN CHARGE OF LAS VEGAS OFFICE

Friedrich W. Seitz, Managing Partner, is pleased to announce that Michael J. Nuñez has been elevated to Partner, and has assumed the duties of Partner In Charge of the firm's Las Vegas office.

Mr. Nuñez, who joined the firm as an Associate on November 15, 1999, was sworn in as a member of the Nevada State Bar on November 2, 2007 and assumed his responsibilities at the Las Vegas office on November 5, 2007. Mr. Nuñez has extensive experience in all phases of litigation, mediation, arbitration involving product liability, professional liability, employment, construction defect and general liability. He has tried cases to verdict and has significant experience in handling appeals.

In addition to Mr. Nuñez, Associate Jeremiah Pendleton is resident to our Las Vegas office. Mr. Pendleton concentrates his practice in the areas of construction law and general liability litigation. He has handled multimillion dollar construction defect cases concerning various issues, including structural defects, moisture intrusion and expansive soils.

Since the opening of our Las Vegas office on June of 2000, this office has seen its share of interesting cases reflecting the development of the law and growth of the legal community in Las Vegas. In one unique case, which went to trial in 2007, three bouncers and a bartender, along with the management of the world-famous Cheetah's Lounge topless bar, were sued by two unruly and unhappy customers who claimed they were roughed-up, injured and had their rights violated when they were forcibly ejected from the club around 5 AM. After a two-week trial, the jury absolved the management and the bartender from all liability, but held the bouncers liable for only very modest damages.

For questions regarding M&C's Las Vegas office and its services, please contact Michael J. Nuñez at (702) 920-2300 or by e-mail at mnunez@murchisonlaw.com.

# **FEATURES**

**IN BRIEF** 

# THREE NAMED SOUTHERN CALIFORNIA SUPER LAWYERS®

M&C is proud to announce that Friedrich W. Seitz, Michael B. Lawler and Jean M. Lawler have been named Southern California Super Lawyers® for 2007. Produced by Los Angeles Magazine, the list of Super Lawyers® is based on surveys of more than 65,000 lawyers across Los Angeles and Orange County and honors the top 5% of licensed attorneys in Southern California.



**Friedrich W. Seitz** is Managing Partner and Chair of the firm's Product Liability, Business Litigation and International Law Practice Groups. A prominent trial attorney and litigator in both domestic and international matters, Mr. Seitz has served as Chair of the Product Liability Section of the Federation of Defense and Corporate Counsel.

**Michael B. Lawler** is a Senior Partner and Chairs the firm's Employment and Health Law Practice Groups. Mr. Lawler is a Past President of the Association of Southern California Defense Counsel and has successfully tried over one hundred jury trials in the federal and state courts. Mr. Lawler was the partner responsible for establishing M&C's Northern California office.





**Jean M. Lawler** is a Senior Partner and Chairs both the Business Transactions and Insurance Law Practice Groups. Ms. Lawler is a Past President of the Federation of Defense Corporate Counsel (2004-2005) and was awarded the 2006 Service Award by the Defense Research Institute for her years of leadership and service for that organization.

# TWO NAMED RISING STARS®

M&C is pleased to announce that Michelle A. Hancock and Robert H. Panman have been named Rising Stars® for 2007. Produced by Los Angeles Magazine, also producers of Super Lawyers®, Rising Stars® are attorneys 40 years or under, or who have been practicing 10 years or less. Approximately 2.5% of the lawyer-nominated attorneys in the state are named to the Rising Stars list.



**Michelle A. Hancock** is a Senior Associate in the firm's Orange County office and a member of the Health Law, Products Liability and General Liability Practice Groups. Her emphasis is on Elder Law, specifically long term care issues, providing counsel and defense to skilled nursing facilities, assisted living facilities and home care providers for the elderly and developmentally disabled adults. Ms. Hancock has had success both inside and outside of the courtroom, in representing her clients and bringing them outstanding results.

**Robert H. Panman** is a Senior Associate in firm's Los Angeles office, and a member of the General Liability and Construction Law Practice Groups. He has successfully litigated cases in a diverse range of practice areas including Wrongful Termination and Discrimination, Personal Injury, Real Estate, and Construction Defect. This is the second year in a row Mr. Panman has been chosen as a Rising Star®.



# **FEATURES**

## **SPOTLIGHT ON: GERMAN INTERNSHIP PROGRAM**

On July 2, 2007, two German legal trainees (Rechtsreferendare) walked into an American law firm for the first time. Maren Junggeburth and Johannes Teichmann, who are each working through their last few months of practical training required to gain their license to practice law in Germany, are Murchison & Cumming's most recent legal trainees from that country. They are the most current interns utilizing the firm's German internship program.

The program, founded by Managing Partner Friedrich Seitz, began about 15 years ago when Seitz learned that German legal trainees have the option to take a portion of their practical training in foreign countries.

Murchison & Cumming is one of few Los Angeles law firms offering a program of its scope to German legal trainees, which may explain the success of the firm's internship in terms of the number of participants throughout its history. "Overall, we have had somewhere between 50 to 75 interns who are now attorneys in private firms, governmental agencies and on the staff of German corporations," said Seitz.

If one wants to practice law in Germany, one has to take and pass two bar exams and complete a mandatory two-year legal internship program, Program Director Daniel Robyn, who is both a California and German lawyer himself, explained. Upon passing the first bar exam, a German law student obtains the equivalent of a "J.D." degree. Then, the student needs to complete the mandatory two-year legal internship program during which the intern will gain experience in all major fields of legal practice because the intern will clerk for a Judge, work as a Deputy District Attorney, work in a government agency and for a private law firm.

The practical experience required during the two-year traineeship concludes with a chance for the intern to choose an internship in their preferred legal setting during their last few months of training. Although the vast majority of students do not intend to practice outside of Germany, many choose to train in an international setting for the concluding portion of their traineeship, he added. After that, the intern will have to take the second bar exam to obtain his/her license to practice law in Germany.

The experience looks great on the student's resume. "It shows the potential employer that they go beyond what is required of them," Robyn said.

Teichmann stressed the need for students interested in international law to have experience in foreign countries. Language, in particular, bespoke the necessity for Teichmann to take an internship in an English-speaking country. According to Teichmann, about 75% of the work done in German international law firms is written in English, and employers make a point of looking for English language skills while reviewing a candidate's CV.

Teichmann, who hasn't spoken English in over ten years, is able to practice the language during his internship. "I only see or hear the language on MTV or on the television [in Germany]," he explained in regard to his lack of opportunity to practice the language.

For Junggeburth, the international experience has also been a good one, even when dealing with the differences between the legal systems in her home country and the U.S. Junggeburth described her numerous discoveries about the differences in everything from the presence of depositions to the very appearance of the courtroom.

"You get to learn a lot of new things because [the legal systems] are so different," Junggeburth stated.

German internship participants, like Junggeburth, have the opportunity to accompany lawyers and observe their diurnal processes. They are able to familiarize themselves with the American legal system by attending depositions, mediations, arbitrations and trials.

Usually, the interns come into Murchison and Cumming knowing very little about the U.S. legal system, said Robyn.

Though both Junggeburth and Teichmann plan to begin their legal careers in Germany, they also intend to join firms practicing international law.

M&C's newest interns plan to take a tour of California before heading back home. They will doubtlessly experience the sights and sounds most tourists encounter, but when they do find themselves back in Germany, beginning their work as attorneys, they will have returned with a priceless souvenir: international experience in law.

# M&C CASE REVIEW

# HIGHLIGHTING M&C'S NORTHERN CALIFORNIA OFFICE

Kasey Townsend, Partner in Charge of M&C's Northern California office, is pleased to report that the office has found its permanent home in the East Bay, re-locating this past year to San Ramon, a location that provides clients and attorneys with easy access to the courthouses in the 14 counties in and around the Bay Area.

In addition to handling matters in the greater San Francisco Bay Area, the attorneys of M&C's Northern California office regularly represent clients in matters venued in California's Central Valley (Redding, Sacramento, Stockton and Modesto areas) and the greater Lake Tahoe area. Given the diversity of Northern California, our attorneys can be meeting with clients in The City one day and be out on a site inspection on a ranch or at a suburban subdivision the next day, transitioning easily between the differences in the demands of representing clients in urban, suburban and rural areas.

One of our favorite stories comes from a matter in which we recently obtained a very favorable settlement. There, a bull had escaped from a rodeo, entered onto private property and allegedly knocked down a person in her own front yard. The husband, who pursued his own loss of consortium claim, was overheard saying at the scene, "Don't worry about my wife, what about my vineyard?"

Under the guidance of Ms. Townsend, who relocated from the firm's San Diego office in 2003, the attorneys in our Northern California office pride themselves on providing clients with the highest level of quality work and superior client service, qualities upon which Murchison & Cumming's reputation has been built over the years.

Each attorney in our Northern California office is an experienced trial lawyer with a broadly-based practice. Given their depth of experience, the attorneys in our Northern California office defend individuals, businesses and insurers in all types of civil litigation, including matters falling within the scope of the following practice areas: general liability, product liability, employment law, business disputes, elder abuse/nursing home care, construction law (both defect and personal injury), environmental law and Homeowner Association disputes.

Please feel free to contact Ms. Townsend at anytime if we can assist you or your insureds with claims, losses or lawsuits venued in Northern California, or if you have any questions about the nuances of the courts or juries in any particular jurisdiction. Ms. Townsend can be contacted at (925) 365-3170 or ktownsend@murchisonlaw.com.



# **\$6.2 MILLION ACQUISITION SUCCESS**



M&C recently represented a German company involved in the steel business in acquiring a California construction company specializing in geotechnical and post-tensioning work. The acquisition was structured as a stock purchase and was primarily handled by Daniel K. Robyn, both a California and German attorney.

The firm advised its client during intense negotiations with the seller, conducted the legal due diligence, coordinated the financial due diligence, and took the lead in preparing the purchase and closing documents. After challenging negotiations between buyer and seller and their respective counsel regarding the parties' obligations under the purchase contract, both parties agreed on mutually acceptable terms so that the transaction successfully closed in July. The client is now looking forward to expanding its business operations on the West Coast.

Jean M. Lawler and Daniel K. Robyn Los Angeles, CA Murchison & Cumming, LLP

# IN BRIEF

# Volume 7, Issue 1, Page 5

# **M&C CASE REVIEW**



## PLAINTIFF DISMISSES REALTY MANAGEMENT COMPANY

Jaxston Kyle vs. Sasha King; Pinnacle Realty Management Company



Plaintiff and defendant, Sasha King, were both tenants at a "pet friendly" complex managed by Pinnacle Realty. Defendant King was also employed by Pinnacle Realty, and received benefits related to her tenancy at the complex. King's Akita allegedly bit plaintiff on her hand, and shook her by the sleeve for a prolonged period. Plaintiff claimed that she required medical treatment for neck and back injuries and exacerbated pre-existing Multiple Sclerosis.

Plaintiff initially filed suit solely against King, but later retained counsel who amended the Complaint to name Pinnacle Realty as a defendant when she learned that King did not have renters insurance. Plaintiff alleged the managers were negligent in not following their own pet policies regarding the weight limitations for dogs, and for not requiring King to obtain renters insurance due to her employment with Pinnacle. On behalf of Pinnacle Realty, we argued that, pursuant to California Supreme Court and Court of Appeals authority, there can be no liability for a property owner or manager unless there is previous actual knowledge of the dog's vicious propensities. There was no evidence that King's dog had ever bitten anyone else.

Plaintiff settled with King shortly before trial, but rejected Pinnacle's initial settlement offer and the decreased amount offered after the Settlement Conference. Before trial, we advised plaintiff's counsel that he had two days to accept our final offer of a waiver of costs in exchange for a Dismissal, that no money would be paid on behalf of Pinnacle, and that if Pinnacle was not dismissed, after we prevailed at trial, we would pursue our costs and plaintiff's settlement obtained from King would be exhausted. One day after making this demand, plaintiff's counsel agreed to the offer.

Scott J. Loeding and Robert M. Scherk San Diego, CA



# FEAR FACTOR STUNTMAN SEES CASE TUMBLE OUT OF COURT



Featherlite a. Neithercut

A prominent motion picture stunt coordinator who suffered possibly disabling injuries while wrapping up work on an episode of NBC's "Fear Factor" had his personal injury lawsuit thrown out of Los Angeles Superior Court last week.

The court granted the Motion for Summary Judgment of defendant Featherlite, Inc., the manufacturer of a custom trailer which Douglas Neithercut, age 58, was working near. Neithercut, the stunt coordinator for the television series, suffered multiple fractures and possible internal injuries when the lift gate of the trailer collapsed on him. Neithercut and his wife sued the defendant on negligence and strict product liability theories. In its Motion for Summary Judgment, Featherlite argued that the trailer had been modified before Neithercut's accident and that the modification not only prevented plaintiffs from recovering under California product liability law, but that the modification was the legal cause of the accident.

Neithercut, a veteran of many motion picture and television series, was expected to make a significant loss of earnings claim at trial, on top of claims for substantial medical expenses and a significant general damages claim. Plaintiffs, represented by Browne Greene and Geoffrey S. Wells of Santa Monica's Greene, Broillet and Wheeler, are expected to appeal the court's ruling.

Guy R. Gruppie , Michael Nunez and Rhett Francisco Los Angeles, CA

## IN BRIEF

Volume 7, Issue 1, Page 6

# **M&C CASE REVIEW**



# PUBLISHED OPINION ON BYSTANDER CLAIM FOR EMOTIONAL DISTRESS DAMAGES

Ra v. Superior Court

Edmund G. Farrell, Senior Partner in Charge of the Law & Appellate section of the firm, was successful in defeating a Petition for Writ of Mandate following the granting of a motion for summary adjudication. The opinion was ordered published by the Court of Appeals and can be found at *Ra v. Superior Court* (2007) 154 Cal.App.4th 142, 64 Cal.Rptr.3d 539.

In this case a store patron and his wife filed a complaint against the store alleging causes of action for negligent infliction of emotional distress to a bystander as to wife, with a related claim by patron for loss of consortium; and negligent infliction of emotional distress as to wife as a direct victim in the zone of danger, also with a loss of consortium claim by patron, after patron was struck in the head by a store sign while shopping in store with wife. The trial court granted summary adjudication in favor of the store as to the wife's claims. The Court of Appeals, in denying a Petition for Writ of Mandate, held that the wife of the store patron was not a percipient witness to and did not have contemporaneous awareness of patron's injuries, as required to establish a bystander claim for negligent infliction of emotional distress claim, through non-visual sensory perception, someone who hears an accident but does not then know it is causing injury to a relative does not have a viable bystander claim for negligent infliction of emotional distress, even if the missing knowledge is acquired moments later. The plaintiffs have filed a Petition for Review in the California Supreme Court.

Edmund G. Farrell, III Los Angeles, CA



# COURT OF APPEALS RULES IN FAVOR OF DEFENDANT REGARDING HOA FEES



Bear Creek Master Association adv. Edwards

M&C has been defending the Bear Creek Master Association and The Avalon Management Group for its assessment and collection of HOA fees, contending that since there were no buildings on their condominium units they did not owe any fees. The Court of Appeals has repeatedly ruled in the Defendants' favor.

Most recently, our Motion for Summary Judgment on behalf of The Avalon Management Group ("Avalon") was granted. Subsequently, we filed a Motion for An Award Fixing Attorneys Fees on behalf of Avalon. Avalon's Motion was granted, awarding Avalon attorneys fees and costs of over \$50,000.00.

Having previously collected over \$66,000.00 in attorneys fees from the opposing litigants, this latest ruling from the Court brings the total to over \$116,000.00 awarded on behalf of our clients after our continued success in the case.

Dan L. Longo, and Michelle A. Hancock Orange County, CA

# IN BRIEF

# Volume 7, Issue 1, Page 7

# ANNOUNCEMENTS



# M&C NAMED NATIONAL PRODUCT LIABILITY AND BENZENE COUNSEL FOR FUJIFILM USA



M&C Senior Partner Guy R. Gruppie and Senior Associate Eric P. Weiss have been named National Product Liability and Benzene Litigation Counsel for Fujifilm USA. Based in Valhalla, N.Y., FujiFilm, Ltd. is the parent company of Fujifilm USA and is the world's largest manufacturer of film and printing materials. Gruppie and Weiss, who are members of Murchison & Cumming's Products Liability Practice Group, will continue to represent Fuji in all California matters and in products cases filed in several other states/jurisdictions.

M&C first began representing Fuji in 2001 and has obtained a number of favorable case outcomes for Fuji. One of the cases, *Morris v. Agfa Corporation* (2006) 144 Cal. App.4th 1452, resulted in a published opinion where the claims against Fuji where dismissed on the doctrine of *forum non conveniens*. Senior Partner Edmund G. Farrell led the representation of Fuji, and all defendants, on appeal.

# ATTORNEY NAMED NATIONAL MOLD SCIENCE COUNSEL FOR FARMERS INSURANCE



Scott L. Hengesbach was recently named National Mold Science Counsel for Farmers Insurance. As National Counsel, Mr. Hengesbach is in charge of coordinating scientific issues arising in personal injury cases emerging out of alleged exposure to mold. This involves both oversight of local counsel and hands-on handling of mold claims, such as taking expert depositions and preparing pretrial motions regarding scientific evidence.

Mr. Hengesbach is the Partner in Charge of the firm's Toxic Tort & Environmental Law Practice Group and an experienced trial attorney, taking more than 15 cases to verdict. He was also named Southern California Super Lawyer by Los Angeles Magazine in 2006. Eric P. Weiss, who will be working on the team with Mr. Hengesbach, is a Senior Associate specializing in toxic tort and product liability litigation. In addition to serving as National Mold Counsel, Mr. Weiss, together with Guy R. Gruppie, also serves as National Benzene Defense Counsel for Fujifilm USA and its related entities. Both are resident in the firm's Los Angeles office.

For mold-related questions and issues, please contact Mr. Hengesbach at (213) 630-1088 or shengesbach@murchisonlaw.com.

# CHINA ELEVATOR MAGAZINE TO PUBLISH ATTORNEY PRESENTATION

The text of Guy R. Gruppie's, "Anatomy of an Elevator Lawsuit," that was the basis for his speech presented to the Elevator Industry Group of Los Angeles, will be translated and appear in the fall edition of China Elevator Magazine, published in Hong Kong and Beijing.

## **RECENT AND UPCOMING SPEAKING ENGAGEMENTS**

#### May 2007

"Product Safety Regulation in the U.S. & Europe – Challenges for Global Manufacturers," Friedrich W. Seitz, Joint International Conference, London

May 2007

"Anatomy Of An Elevator Accident Lawsuit/Trial," Guy R. Gruppie, Elevator Industry Group, Los Angeles

#### July 2007

"Sports Injuries and Venue Accidents," Guy R. Gruppie, FDCC Annual Meeting, Idaho

#### September 2007

"A Hypothetical ESI Request With Focus On Practical Tips And Strategies," Friedrich W. Seitz, Panelist, International Association Of Defense and Corporate Counsel, Munich, Germany

#### September 2007

"Legal Careers," Daniel G. Pezold, Whittier Law School, Los Angeles

#### February 2008

"Global Warming: How Hot Will It Get? Potential Claims and Related Coverage Issues," Jean M. Lawler, FDCC Winter Meeting, Bahamas

#### April 2008

"Experts: Retaining The Right One In Casualty Cases," Jean M. Lawler, PLRB/LIRB 2008 Claims Conference, Boston

#### April 2008

"Issues In Insurance Law," Bryan M. Weiss, US-LAW Spring Client Conference, Miami Murchison & Cumming, LLP

## IN BRIEF

Volume 7, Issue 1, Page 8

# **SERVICES & AFFILIATIONS**

# M&C PROVIDES MEDIATION SERVICES FOR INSURERS

Jean M. Lawler, Chair of the firm's Insurance Law practice group, has become a Certified Mediator, completing Pepperdine University's Program on Mediating the Litigated Matter. Recognizing that insurer v. insurer disputes are often best resolved outside of the court system, Ms. Lawler is available to assist the insurance industry in resolving insurer v. insurer disputes and lawsuits through mediation.

*Please contact Ms. Lawler at 213-630-1019 or jlawler*(*a*) *murchisonlaw.com if you have any questions or interest in M&C's mediation services.* 

# **INSURANCE ROUNDTABLE**

April 8, 2008 Bad Faith & Claims

Bad Faith & Claims Handling

June 10, 2008 The Art of Settlement Negotiations & Dispute Resolution September 16, 2008 Coverage Issues in General Liability Cases

November 12, 2008 Construction Defect Claims

Join us for another year of this lively and informative series, presented by these leaders in Insurance Law:



Jean M. Lawler, Sr. Partner and Chair, Bad Faith & Insurance Litigation section of the Insurance Law Practice Group Contact: (213) 630-1019 or jlawler@murchisonlaw.com



Bryan M. Weiss, Partner and Chair, Insurance Coverage & Appeals section of the Insurance Law Practice Group Contact: (213) 630-1087 or bweiss@murchisonlaw.com

Time: Noon - 1:30 PM. Lunch will be served. Location: Murchison & Cumming, LLP 801 South Grand Avenue, 9th Floor Los Angeles, CA 90017

Register now at www.murchisonlaw.com.

# AFFILIATIONS

M&C is AV rated by Martindale-Hubbell and listed in Best's Recommended Insurance Attorneys and The Insurance Bar. M&C attorneys are active in, and members of, numerous associations, including:

American Bar Association American Board of Trial Advocates (ABOTA) ABOTA Inns of Court Association of Defense Trial Attorneys (ADTA) Association of Southern California Defense Counsel Business Clubs of America, Los Angeles Defense Research Institute (DRI) Deutsch Amerikanischer Juristenvereinigung Federal Bar Association Federation of Defense & Corporate Counsel (FDCC) International Association of Defense Counsel (IADC) Lawyers for Civil Justice Loss Executives Association Product Liability Advisory Council (PLAC) Professionals in Human Resource Association Professional Liability and Underwriting Society (PLUS) Property Loss Research Bureau (PLRB) **USLAW** Network

# M&C PROVIDES CA EMPLOYERS WITH SEXUAL HARRASSMENT TRAINING

Government Code section 12950.1 requires California employers with 50 or more employees to provide at least two hours of training and education regarding sexual harassment to all supervisors employed as of July 1, 2005. New hires and individuals promoted to a supervisory position must be trained within six months of assuming their position. Follow-up training is required once every two years.

The Employment Law group at Murchison & Cumming offers an interactive sexual harassment training seminar for California employers that fulfills this requirement and provides:

Information regarding the statutory provisions prohibiting sexual harassment and discrimination in the workplace;

Practical guidance concerning the prevention and correction of sexual harassment and discrimination, and;

Effective examples aimed at instructing supervisors in the prevention of harassment, discrimination and retaliation.

To schedule a training seminar, or for more information regarding employment practices, please contact Pamela J. Marantz at (213) 630-1070 or at pmarantz@ murchisonlaw.com.

# Murchison & Cumming, LLP

# IN BRIEF

# Volume 7, Issue 1, Page 9

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#### PUBLICATIONS AND SEMINARS

#### **Daily Appellate Reports**

A daily e-mail publication, providing California state and federal appellate court decisions direct to your desktop on a daily basis.

#### Deskbook of California Law

A compilation of California law meant to serve as a convenient reference book on details of California law and procedures, updated annually.

#### M&C: In Brief

Firm newsletter, published every two months, consisting of various announcements, articles on topics of interest to our clients and reports of successfully defended cases.

#### Seminars

Throughout the year, seminars are presented by the firm's practice groups, focusing on cutting edge issues in the law. These are provided to our clients at no charge. Specialized seminars for clients may be scheduled at any time.

If you do not currently receive any of the above-mentioned publications, or notices of seminars, but would like to, please let us know by contacting In Brief Editor, Sharifah Williams, at (213) 630-1017 or by e-mail at swilliams@murchisonlaw.com.

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