Murchison & Cumming, LLP
LAWYERS

IN BRIEF

Summer 2008

BRYAN M. WEISS PREVAILS IN COURT OF APPEAL IN PUBLISHED OPINION ON DUTY TO DEFEND ISSUE

Bryan M. Weiss, Chair of Murchison & Cumming's Insurance Coverage & Appeals section of the Insurance Law Practice Group, argued an important case before the California Court of Appeal involving the duty of an insurer to assume the defense of an additional insured under its policy. On May 18, 2008, the Court announced its decision in a published opinion, reaching a holding in favor of Murchison & Cumming's client that will have a significant impact on future additional insured tenders of defense indemnity.

Essex insured a drywall subcontractor that had entered into a subcontract agreement with the general contractor, Monticello's insured, on a construction project. The drywall subcontractor agreed to name the general contractor as an additional insured under its policy with Essex and an additional insured endorsement was issued. However, that endorsement provided that the general contractor would only be an insured under the Essex policy for liability being imposed because of the subcontractor's work. In addition, the endorsement provided that if there is "no coverage" for the named insured, and there is no duty to defend the additional insured.

For further information about Murchison & Cumming, LLP, please visit:

www.murchisonlaw.com

Or contact:

Arleen S. Milian, Director
Client Relations
amilian@murchisonlaw.com
(213) 630-1071

CONTENTS

The general contractor was named as a defendant in a construction defect lawsuit – the drywall subcontractor was not named as a defendant. Although the complaint alleged such things as problems with painting surfaces and cracks, it did not specifically allege any problems with the drywall work itself. In response to this complaint, the general contractor filed a cross-complaint against all subcontractors involved in the project, including the drywall subcontractor. The general contractor also sought a defense as an additional insured under the Essex policy. Essex refused to defend and Monticello defended and indemnified the general contractor through the conclusion of the case. It then sued equitable contribution and indemnity from Essex.

In that action, the trial court granted Essex's motion for summary judgment, holding that the complaint in the underlying action did not allege any "property damage" due to the drywall work of Essex's insured such that the general contractor qualified as an additional insured. The Court of Appeal affirmed, holding that the lack of any allegations in the complaint concerning "property damage" from drywall work failed to create a potential for coverage for the general contractor as an additional insured under the Essex policy. The court further held that that potential for coverage was not created by the general contractor's own cross-complaint against the subcontractor.

MEET THE ATTORNEY: BRYAN M. WEISS--NOT A USUAL SUSPECT

There are few who would consider a lawyer, particularly one specializing in insurance matters, to be a "free spirit". Musician, artist, writer—those are all callings that would seem a better fit for such an individual in comparison to the law. But, surprising as it seems, we have such an attorney at Murchison & Cumming. His name is Bryan Weiss, Partner and Co-Chair of the Insurance Law Practice Group (Insurance Coverage & Appeals).

For example, who answers " tie dye" when asked what is his favorite color? Bryan is a "Deadhead" who enjoys collecting music, memorabilia, merchandise, and photos related to his all time favorite band. He also likes to collect vintage watches and guitars, which he plays in his office to release stress. Although music is one of his inspirations, there is one greater—his family. Bryan's daily inspirations are his wife and four children. Being a father is his greatest accomplishment. Bryan is very involved with his sons' Boy Scout Troop, where he also mentors boys without fathers.

Bryan took the advice of his father, a physician, who convinced his son to take the Law School Admission Test "just in case". Bryan did well on the test and moved from the Washington D.C. area when he was accepted to Whittier Law School. His love for writing and being a "people person" is what inspired Bryan to go into Insurance Coverage. "I enjoy the art of research and analyzing puzzling and difficult legal questions, which are part of almost every coverage case", he explained. Bryan's father must have been a persuasive individual, considering the fact that two of his sons became lawyers; Bryan's brother, Eric Weiss is also a Partner at the Firm.

When asked to identify the four things he wishes to accomplish during his lifetime, Bryan answered, write a novel, argue a case before the United States Supreme Court, see a baseball game in every major league stadium and, yes, you guessed it, spend a summer driving a VW camper.

Loyal, trustworthy, and eclectic---three adjectives that describe this fine lawyer, who isn't necessarily what you would expect in so many ways.

GUY R. GRUPPIE ELECTED TO ELITE LAWYER ORGANIZATION

Senior Partner Guy R. Gruppie has been elected to membership in the American Board of Trial Advocates (ABOTA), Los Angeles Chapter. Membership requirements include trial ability/experience, personal character, and reputation among the bench and bar.

ABOTA membership is one of the nation's higest honors for trial lawyers. Gruppie joins fellow Murchison & Cumming Partners Friedrich W. Seitz, Michael B. Lawler, Michael D. McEvoy and William T. DelHagen as members.

Gruppie, 47, heads the General Liability Practice Group of Los Angeles-based Murchison & Cumming. He is national trial counsel for Fuji Film USA, and also regularly represents, among other clients, Mitsubishi Electric &

Electronics, USA Jons Marketplace, Mitsubishi Cement Corporation, R.J. Noble Company, and the Beverly Hills Hotel in tort and commercial matters. He is a graduate of the University of Southern California and Loyola Law School, where he won the American Jurisprudence Award in Trial Advocacy.

DAN L. LONGO SELECTED TO AUTHOR CHAPTER ON BEST PRACTICES IN HEALTH LAW

Dan Longo, chair of both Murchison & Cumming's Health Law Practice Group and Professional Liability Practice Group, has been selected as one of the authors for an upcoming book from Aspatore Books titled "Inside The Minds: Elder Law Health Care Client Strategies". Aspatore Books, a Thomson Company, is a leading publisher of business and legal books, journals and reports. The "Inside the Minds" series is critically acclaimed and provides readers with proven business strategies. Each chapter is comparable to a case study or essay and is a future-oriented look at where a particular industry is heading. Each author has been carefully chosen through an exhaustive selection process by the "Inside The Minds" editorial board to write a chapter for this book. The chapter being authored by Mr. Longo focuses on the litigation challenges facing the long term care industry as the baby boomer generation continues to age. The book will be available in all major bookstores in September, 2008.

M&C PARTNERS SERVE IN DRI LEADERSHIP POSITIONS

M&C Partners Jean Dalmore and Bryan Weiss have been named to leadership positions for DRI substantive law committees. Ms. Dalmore will serve as vice-chair of DRI's Construction Defect committee and Mr. Weiss is serving as Co-Editor of the Insurance Law Committee's Newsletter. Each is pleased to be serving the interests of the defense bar and would welcome the participation of M&C's clients on DRI's Construction Defect and Insurance Law Committees.

NEW PARTNERS NAMED

Murchison & Cumming, LLP is pleased to announce that effective July 1, 2008, the following attorneys have been named Associate Partners of the firm:

Robert Scherk (Left)

Lynn Feldner (Right)

Nancy Potter (Left)

Pamela Marantz (Right)

Todd Chamberlain (Left)

Carolyn Mathews (Right)

Scott Loeding (Left)

Matthew Printz (Right)

Each of these partners brings a breadth of experience to the cases they handle and each exemplifies M&C's commitment to client service.

MHARE O. MOURADIAN CHOSEN FOR 2008-09 BARRISTERS LEADERSHIP

Murchison & Cumming Associate, Mhare O. Mouradian was among seven Los Angeles County Bar Association Barristers nominated to join the Barristers Executive Committee for a two-year term.

Barristers are members who are either 36 years of age or less, or who have been in practice for 10 years or less. Committee membership is open to all Barristers, but the president appoints committee chairs, co-chairs, and vice chairs.

"I am honored to be elected to the Executive Committee of the Barristers Section of the LACBA which has been making a difference in the professional lives of lawyers, and in the lives of the people of Los Angeles County, for over 125 years," Mouradian said.

MEET THE ATTORNEY: ANASTASIA B. MAZZELLA

IB: *What was the deciding factor that made you want to become an attorney?*
Mazzella: There is no single deciding factor that made me want to become an attorney. I knew I wanted to get another degree--it came down to an MBA or a J.D. I worked for nine years before going back to law school. I ran an educational consulting firm, was a private tutor, and did business management consulting for non-profit organizations. I decided to go to law school because I felt there was nothing business school could teach me that I had not already learned in the real world. I decided to become an attorney after law school because I admire the way attorneys think. Being an attorney teaches you to analyze situations from every possible angle. This skill translates well into all areas of life and all other professions. Plus, I had already invested too much blood, sweat and tears in law school and passing the bar *not* to become an attorney.

IB: *Why did you choose your area of practice?*
Mazzella: I guess the better question is why did I choose Law and Motion. Law and Motion is like being in law school every day; we analyze statutes and case law on a daily basis in order to solve the problems presented to us. Plus, I have always been a strong writer and editor (I won numerous writing and journalism awards in high school and college, I won First Honors in Legal Research and Writing in law school, and I was Editor-in-Chief of Loyola Law Review, the largest law review on campus) so I felt my skill set was best suited for Law and Motion.

IB*: Organizations you volunteer or support?*
Mazzella: In the past, I have supported the following organizations on a fairly regular basis: Women's Clinic, Harriet Buhai Center for Family Law, Loyola Alumni Association, Susan B. Komen Breast Cancer Foundation and Los Angeles County Museum of Art.

M&C'S NEWEST ATTORNEY: DOUGLAS A. ROCHEN

Murchison & Cumming welcomes its newest Associate, Douglas A. Rochen. Rochen, a Detroit native who describes himself as being efficient, organized and charismatic, joined the M&C team on July 16, 2008. As an attorney, he hopes to protect those who cannot protect themselves, particularly companies targeted for meritless claims. Considering Rochen's past activities as a college football cheerleader for the University of Michigan, his clients can expect a spirited performance.

"M&C HOOPS" CAPTURES TITLE IN LAWYERS NON-PROFIT LEAGUE

In the spirit of the Olympics and the Redeem Team, the Murchison & Cumming Mens Basketball Team recently captured the Division B El Sereno Recreation title in the Landau Lawyers League. Led by Team Captain, Scott Hengesbach, and Mhare Mouradian, Murchison & Cumming beat Holland and Knight to win its first title since 2001. Other members of the M&C team include partner Eric Weiss and associate Jonathon Dennis.

MURCHISON & CUMMING "DEFEATS" CHUBB INSURANCE, IN CARLSBAD TRIATHLON REMATCH

Murchison & Cumming defeated Chubb Insurance in the Carlsbad Triathlon friendly relay rematch held July 13, 2008. The M & C team of Smith, Snyder and Loeding was almost 6 minutes faster than the year before when Team Chubb prevailed in the friendly competition. In 2008, M&C finished the 1k swim, 25k bike and 5k run in one hour and 40 minutes. The Chubb team was handicapped by the loss of key runner Robert Starr because of a conflict with his daughter's softball game and finished 3 minutes slower than the year before, in one hour and 46 minutes. The teams are poised for the "rubber match" to be held in 2009.

LEGAL NEWS

TORT TRENDS: CALIFORNIA, NEVADA IDENTIFIED AS CIVIL CASE TROUBLE SPOTS FOR CORPORATE DEFENDANTS

Despite a continuing national trend of decreasing numbers of case filings, civil litigation for corporate defendants continues to be a strain on resources in particular states, according to comprehensive reports issued by two leading tort reform groups.

Both California and Nevada have been singled out by the U.S. Chamber of Commerce's Institute for Legal Reform, and the American Tort Reform Association, as venues for tort and commercial litigation that generally favor plaintiffs due to a variety of factors that may have nothing to do with a the relative merit of a case.

The Chamber Institute of Legal Reform's 2008 poll of general counsel ranks California as No. 44 among the 50 states, with only West Virginia, Louisiana, Mississippi, Alabama, Illinois and Hawaiii being rated worse as venues for civil case defendants. This continues a poor trend for the Golden State, which was ranked No. 45 in last year and No. 44 in 2006 and continues to render large verdicts and uncertain judicial rulings in various areas, particularly Los Angeles, San Francisco, and Alameda county courthouses.

Nevada was ranked No. 40 in the same 2008 poll, dropping a stunning 12 spots in one year as media attention led by the Los Angeles Times focused on the close relationship between members of the trial bar there and judges.

In fact, the American Tort Reform Association, in its most recent assessment based on its own analysis, and interviews of litigator and litigants, ranked Clark County, Nevada (which includes Las Vegas) as the No. 5 "Judicial Hellhole" in America behind only long-time notorious pro-plaintiff venues such as South Florida, the Rio Grande Valley/Gulf Coast of Texas, Madison County, Illinois and West Virginia.

This was Clark County's first time on the list and the ATRA justified the assessment due to its contention that "The decks appear to be stacked in favor of local lawyers who reportedly 'pay to play' in the county's courts. Judges in Clark County have in recent years been accused of issuing favorable ruling in cases that may benefit friends, campaign contributors or even their own financial interests, according to the ATRA.

California remained on the most recent "Judicial Hellholes Watch List" in part because of continuing general complaints about the Los Angeles County Superior Court Central Civil West venue, known among the plaintiff's bar as "The Bank," perceived anti-buisness attitudes of jurors in Los Angeles and the San Francisco bay area, failure of the courts to rein in expenses of class action and multi-party complex tort cases, and Americans With Disabilities Act cases filed against smaller businesses. "The Bank" has been the site of some of the largest personal injury jury verdicts in U.S. litigation history including billion-dollar plus awards to plaintiffs against companies such as General Motors and Phillip Morris.

Plaintiff lawyers have been known to seek out the possibility of filing tort cases in either San Francisco or Alameda, should, for example, even one relatively minor defendant have business

in the area, even if/when the plaintiff or heir of plaintiffs never lived or worked in the area, due the reputation of jurors and some judges there for being unsympathetic to both big and small business.

CALIFORNIA SUPREME COURT'S CRAWFORD DECISION CHANGES THE FACE OF DEFENSE PAYMENTS AND POTENTIAL FOR EROSION OF POLICY LIMITS

California's Supreme Court recently threw the business community, and their insurers, a curve-ball. In particular, the court determined that the indemnity provisions of a contract obligated the indemnitor to begin paying the defense costs of the indemnitee at the outset of a lawsuit, prior to the time that it could be determined whether or not there would be liability on the indemnitee because of the negligence of the indemniter.

Assume that X (indemnitor) and Y (indemnitee)enter into a contract, for the lease of a building, for the sale of a product, to provide a service or for some other business purpose. X agrees to indemnify Y if Y is liable to a third party for damages, caused to some degree by the negligence of X. (Yes, each contract is unique and its terms are unique, so each contract needs to be reviewed and evaluated on its own merits.) A lawsuit is filed against Y, seeking damages because of injury. Y thinks that the injury is attributable to the negligence of X and that X should defend/indemnify Y for any damages that Y incurs in connection with the lawsuit. Y tenders its defense of the lawsuit to X.

X may or may not have insurance applicable to the loss. X may not also be sued in the lawsuit. Neither is pertinent to the analysis.

If the Crawford decision applies to the X /Y contract, then at this point, X will need to pay to defend Y in the lawsuit. If X is self-insured, then that expense will come out of X's corporate coffers. If X has insurance applicable to the loss, then X will turn to its insurer and ask that the insurer pay Y's legal fees.

At that point, X's insurer will need to look at the insurance contract entered into between X and the insurer, to determine what the policy says about coverage for liability that X has assumed under an "insured contract" (the X/Y contract may or may not be an "insured contract" as defined by the policy). If the X/Y contract is an "insured contract" within the meaning of the insurer's policy, and there are no other coverage defenses, then X's insurer will be obligated to indemnify X for the attorney fees/costs that X must pay to Y under the indemnity provision of the X/Y contract. (Stated another way, X's insurer will need to pay Y's defense fees/costs.)

Because these payments are paid under the policy's coverage provisions, they are indemnity payments made on behalf of X and they apply to reduce the policy's available liability limits. (i.e. If X has a $1 million policy limit and $200,000 in attorney fees/costs are paid out for Y's defense expense, then X now has only $800,000 liability limits remaining.) The same is true for settlement payments made on behalf of Y.

So what should X do when it gets the demand from Y? At the very least, X should:

1. Review the X/Y contract to see if there is an applicable indemnity provision (the services of an attorney may be needed);

2. Review its CGL policy (or other applicable policy) to see if it might have coverage for Y's claims;

3. Regardless of what X might think to be the answer to #2, tender the matter to all of X's insurance carrier(s) and cooperate with the insurer's investigation;

4. If X has no applicable insurance coverage, it will need to investigate the loss and secure pertinent information regarding the loss or lawsuit, eg. get copies of demands, pleadings, loss information, etc.;

5. Ultimately, respond to the tender. Whether X agrees to defend or not, in its response to Y, X needs to reserve its rights under the terms and conditions of the X/Y contract as to whether or not the contract is applicable to the loss and whether X has any obligations to Y under the contract.

6. Undertake to defend, or not, with or without your insurer.

What should X's insurer do when it gets the tender from X? At the very least, the insurer should:

1. Open a claim file and undertake to investigate the matter and evaluate it for coverage;

2. Evaluate the matter under both the "insured

contract" exception to exclusion b of the CG0001 form (or its counterpart) and the "supplementary payment" provisions of the policy;

3. If the X/Y contract is an "insured contract" and the policy is otherwise applicable to the loss, agree to indemnify X for what X owes to Y under the X/Y contract, with or without reservation of rights (again, depending on the coverage analysis), working out an appropriate payment arrangement. Payments of Y's expense fees/costs and any settlement funding will be paid as indemnity payments inside of the policy's limits.

4. If the X/Y contract is not an "insured contract", then there is likely no coverage for X for what X might owe to Y as indemnity and no obligation to indemnify X for Y's attorney fee payments. Again, however, each policy is unique and must be evaluated on its own merits and per its own terms and conditions.

5. Whether or not the X/Y contract is an "insured contract", if the loss otherwise falls within the scope of coverage available to X if X is directly sued in the matter, take a look at the policy's "supplementary payment" provisions to determine if those requirements for defending Y could be satisfied, so that the attorney defending X could also defend Y. "Supplementary payments" are generally outside of limits.

6. Make a decision, properly advise the insured and proceed to handle the matter accordingly.

7. If agreeing to defend, consider other insurers who may need to participate in the defense of Y, including Y's direct insurer, its "additional insured" insurers, and any other business entities that may have their own indemnity obligations for the claims at issue.

The end result?

• If X has insurance, it will likely ask its insurer step into the defense at the outset rather than at the end of the matter;

• If X has no insurance, it needs to consider how it plans to defend the matter.

• For X's primary insurers, you will be in essentially the same position as Y's AI carriers, but your limits will generally be depleted by your payments (whereas an AI carrier's payments would not deplete limits if defense is outside of limits). You will need to work out allocations with other responsible parties and you may find your policies exhausting earlier (so may need to give earlier notice to excess carriers and/or reinsurers).

• For X's excess insurers, you may find that the primary policy is exhausted earlier than it would have been had the primary insurer not had to indemnify X for Y's defense fees/costs. You need to keep a closer eye on monitoring losses and factor in the effect of payments of Y's defense fees/costs.

• For reinsurers – the payments for Y's attorney fees/costs will be indemnity on behalf of X and covered damages, with the impact of that turning on the terms of the applicable reinsurance treaties.

• If you are Y, you want a strong indemnity provisions without exceptions that might mean that X doesn't have to pay until after determination of negligence. You also want to have Additional Insured status under X's policy, so that defense fees/costs don't reduce limits available under X's policy to pay whatever judgment or settlement must be paid. If not an AI, then the net effect of X's policy for your purposes is that it is a burning limits policy, eaten up by payment of your attorney fees. This asset needs to be managed carefully during litigation and defense expense should not be allowed to eat up otherwise available policy limits that could be used to pay the claimant.

• If you are X, you will want to try to modify the wording of future contracts to avoid this situation in the future, or insure against it.

• Once a defense has been assumed, there are approaches that can be taken to ensure that the attorney fees paid are reasonable, that they are related to the work of the insured and other such things. The same kind of audits, motions and arguments that are often taken by insurers with respect to independent counsel (CA Civil Code section 2860) and "Buss rights" can be applied to what are now being called "Crawford fees".

For assistance with evaluating Crawford indemnity exposures, defending against Crawford claims, evaluating related insurance coverage issues and otherwise assisting with risk management issues, please contact Jean Lawler at 213-630-1019 or jlawler@murchisonlaw.com, who will match your needs to the M&C lawyer best situated to assist.

CASE REVIEWS

IDENTITY THEFT VICTIM SUCCESSFULLY DEFENDED IN PRO BONO CASE

Mr. Steve Raap was undergoing chemotherapy when he was sued for alleged money owed for a credit card he never obtained. Needless to say, he did not need the stress involved with fighting a battle against the collection action and he came to Murchison & Cumming Partner Jefferson Smith for Pro bono assistance After several letters, and establishing that the address used for the account was in Georgia, the lawsuit was dropped. At last report, Mr. Raap was cancer free and had returned to work as a postman in La Jolla.

Jefferson S. Smith, jsmith@murchisonlaw.com

LIABILITY WAIVER IS BASIS FOR VICTORIOUS SUMMARY JUDGMENT

STOUT V. MOTORCYCLE SAFETY FOUNDATION AND NELSON MOTORCYCLE TRAINING CENTER, INC.

A Los Angeles Superior Court judge recently granted defendants' Motion for Summary Judgment in a case which tested the legal sufficiency of a waiver executed by plaintiff Mary Stout before she took motorcycle riding classes at the Nelson Motorcycle Training Center in Palmdale. Senior Partner Guy R. Gruppie, Partner Gina Och and Associate Nanette G. Reed successfully represented defendants.

The court determined as a matter of law that the waiver signed by Ms. Stout completely barred the negligence lawsuit that she made against defendant for injuries that she sustained while riding a motorcycle during training as she agreed to assume all risks attendant with motorcycle riding in the event of any accidents including her single motorcycle accident.

Plaintiff alleged that the training course was negligently designed and that the design caused her accident.

Discovery established that defendants' negligence, if any, did not rise to the level of gross negligence and thus the Waiver and Indemnification Agreement signed by Ms. Stout expressly and voluntarily released defendants of liability.

Stout, a 51 year old court reporter, claimed to have sustained trauma to her left knee and was diagnosed with a contusion microfracture to her left medial femoral condyle. She claimed $2,000 in medical expenses, $33,000 in future medical expenses, and $77,000 in current and future lost earnings and sought an additional $200,000 for pain and suffering.

Although the court's ruling was consistent with California law and national appellate rulings regarding the validity of waivers in the context of sport and recreational activities, Ms. Stout has filed a Notice of Appeal.

Guy R. Gruppie, ggruppie@murchisonlaw.com
Gina E. Och, goch@murchisonlaw.com
Nanette G. Reed, nreed@murchisonlaw.com

COURT OF APPEAL AFFIRMS HOMEOWNERS ASSOCIATION BOARD RIGHTS IN PUBLISHED DECISION

E. MILES HARVEY V. THE LANDING HOMEOWNERS ASSOCIATION

Kenneth Moreno and Scott Loeding successfully defended a homeowners association in a case involving the HOA Board's decision to permit homeowners to utilize common area attic space for storage. After obtaining summary judgment at the Trial Court level, Murchison & Cumming prevailed on appeal in the published decision in Havery v. The Landing Homeowners Association (2008) 162 Cal.App.4th 809. Murchison & Cumming

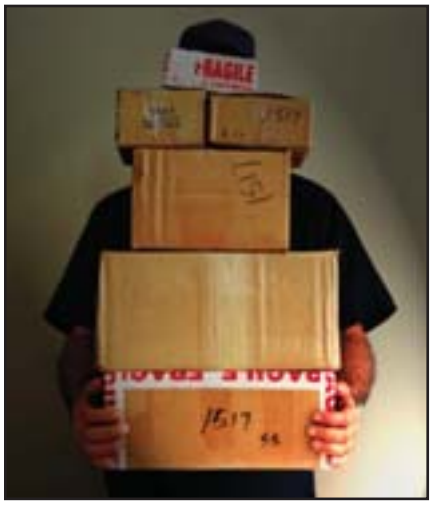
recovered over $170,000 in attorneys' fees and costs on behalf of the homeowners association and it's insurance carrier.

For many years, homeowners on the top floor of a condominium complex used adjacent vacant attic space to store Christmas decorations and the like. This attic space was designated as common area pursuant to the HOA plans.

After a controversy erupted concerning the top floor homeowners' use of the common area attic space, the HOA Board of Directors after an exhaustive investigation granted the top floor homeowners the limited right to use the common area attic space for storage pursuant to the terms of the CC&R's which provided that the Board had the right to allow an owner to exlusively us portions of the common area provided that such portions were nominal in area, adjacent to the owner's unit, and did not unreasonably interfere with the other owners' use and enjoyment.

Plaintiff, the former president of the HOA Board, filed a lawsuit against the homeowners asociation and individual homeowners for breach of fiduciary duty, trespass and numerous other causes of action, including a request for punitive damages and attorneys' fees. Murchison & Cumming filed a Motion for Summary

Judgment contending that the Board's decision to allow use of the common area attic space for storage purposes was entitled to judicial deference under the California Supreme Court's decision in Lamden v. La Jolla Shores Clubdominium HOA (1999) 21 Cal.4th 249. The Trial court agreed that the Board's decision was entitled to judicial deference and greanted the Motion for Summary Judgment. The trial court also determined that the homeowners association was entitled to the full amount of requested attorneys' fees and costs of approximately $130,000.



Unwilling to give up the fight over the use of vacant attic space, Plaintiff appealed to the Fourth District Court of Appeals in San Diego. On April 4, 2008 the Court of Appeals affirmed the judgment in favor of the homeowners association in a published decision declaring the granting the right to use the common area attic for storage was within the Board's authority; that the Board of Directors acted upon reasonable investigation, in good faith and with regard for the interests of the community; and that there was no conflict of interest by the Board in authorizing the use of the attic space.

Murchison & Cumming thereafter recovered an additional $30,000 in attorneys' fees and costs from the Plaintiff.

Kenneth H. Moreno, kmoreno@murchisonlaw.com
Scott J. Loeding, sloeding@murchisonlaw.com

CEMENT COMPANY VICTORIOUS IN MAJOR PERSONAL INJURY ACTION

SEGURA V. MITSUBISHI CEMENT

Mitsubishi Cement Corporation was successfully defended in a major personal injury action filed on behalf of a truck driver who was seriously injured in a tractor trailer accident by M&C Senior Partner Guy R. Gruppie, Partner Corine Zygelman and Associate Adrian J. Barrio.

Judge Joseph E. DiLoreto, of the South District of the Los Angeles Superior Court, granted Mitsubishi Cement's summary judgment motion, finding as a matter of law that Mitsubishi Cement did not cause or contribute to the incident which occurred after the driver had picked up a load of cement at a facility owned by the defendant. The driver lost control of the tractor trailer as it rounded a curve, leading to a crash where the driver suffered serious and alleged permanent injuries with substantial medical bills.

Mitsubishi Cement submitted undisputed evidence that its loading facility at the Port of Long Beach contained electronic and computerized scales that included fail-safe devices to prohibit any tractor trailer from leaving the facility in an over-loaded condition. Moreover, it was successfully argued by the moving party that the same driver had made other prior load deliveries from the Mitsubishi Cement facility with bills of lading issued each time confirming the gross load of the vehicle was under the 80,000-pound cut off. As such, the court was able to conclude that factors other than the conduct of Mitsubishi Cement were substantial factors in the

occurrence of the accident. At pending trial against other defendants, plaintiffs are expected to seek a total award exceeding seven figures.

Guy R. Gruppie, ggruppie@murchisonlaw.com
Corine Zygelman, czygelman@murchisonlaw.com
Adrian J. Barrio, abarrio@murchisonlaw.com

JUDGMENT GRANTED FOR DEFENSE IN LEGAL MALPRACTICE CASE

MILLER V. REIS

Plaintiff client (also plaintiff in underlying wrongful termination case) alleged that the defendant's attorney did not communicate a time limitation on a settlement proposal by the defendant in the underlying case. The attorney had e-mails to the plaintiff transmitting the proposed settlement agreement, and making reference to the time limitations set forth in the settlement document itself, and in the opposing counsel's e-mail transmittal correspondence.

On the day of the deadline, the defendant's attorney sent another e-mail to the plaintiff, again requesting that she sign the settlement document immediately, and again referencing the deadline that afternoon. Plaintiff e-mailed the attorney back, stating that she had been re-thinking the settlement, that she wanted to change some of the terms; and as to the time deadline, she said: "Make them wait".

The deadline came and went, and attorney continued to try to negotiate for the new terms requested by client, but opposing counsel declined. Thereafter, a Motion for Summary Judgment was granted, dismissing plaintiff's case.

Defendant's attorney filed a claim for legal fees due, and the plaintiff filied a separate claim for legal malpractice. Arbitrator granted defense award, in favor of defendant's attorney. Arbitrator also granted defendant attorney his costs and arbitration fees.

B. Casey Yim, cyim@murchisonlaw.com
Nancy N. Potter, npotter@murchisonlaw.com

RACQUETBALL CASE BOUNCED OUT OF COURT

NEVO V. LAKE ARROWHEAD RESORT

Plaintiff was injured while playing racquetball on a court at the Lake Arrowhead Resort. Plaintiff claimed that he slipped and fell on a slippery substance causing him to lose his balance and strike his head against the back wall of the court. As a result of the incident, plaintiff alleged brain damage, including a loss of memory. Plaintiff contended that the Resort negligently maintained the racquetball floor resulting in a dangerous condition unknown to plaintiff.

The Resort contended that plaintiff impliedly assumed the risk of injury while playing racquetball and, further, that there was no dangerous condition that caused plaintiff's fall and injuries. Rather, the evidence established that plaintiff merely tripped over his own feet.

On July 31, 2008, the Superior Court for the County of San Bernardino granted summary judgment in favor of defendants, finding that plaintiff assumed the risk of injury and that he could not establish the existence of a dangerous condition. Senior Partner Guy R. Gruppie and Partner Eric P. Weiss led the defense team's efforts.

Guy R. Gruppie, ggruppie@murchisonlaw.com
Eric P. Weiss, eweiss@murchisonlaw.com
Gina E. Och, goch@murchisonlaw.com
Jonathan S. Dennis, jdennis@murchisonlaw.com

M&C OFFERS AUDITING, MONITORING, MEDIATION/ARBITRATION, AND PRE-APPELLATE TRIAL RELATED SERVICES

With a reputation for realistically evaluating liability and damage exposure, achieving early settlements and being formidable trial lawyers, M&C's lawyers are uniquely situated to assist insurers and risk-managers in a variety of non-traditional defense counsel roles.

Mediation Counsel – M&C attorneys retained to monitor and/or negotiate settlement of matters being defended by other law firms, the intent being to keep trial counsel from being distracted by settlement discussions. With a trial attorney's background, specialized legal knowledge and well-honed negotiating skills, M&C lawyers are available to serve in this unique role, to assist in properly positioning your settlement negotiation strategy.

Mediator/Arbitrator Services – M&C lawyers include certified mediators, experienced attorneys who are masters at settling cases, a recipient of an LLM in Litigation and Alternative Dispute Resolution, and others, who stand at the ready to serve as mediators, arbitrators and/or facilitators for resolution of disputes.

Auditing Services – M&C attorneys assist insurers and reinsurers in conducting audits of claim files and providing evaluation regarding liability and damage exposure, as well as advice re coverage, defense and settlement strategy.

Monitoring Counsel – Experienced M&C attorneys are available to monitor litigation and trials, providing insurers with attorney-client privileged advice and assisting with defense, trial and/or settlement strategy.

Pre-Appellate Trial Related Services – M&C's appellate and law and motion specialists assist clients and their trial counsel in implementing law and motion strategy in the pre- and post-trial stages, working with trial counsel during trial to identify and prepare trial motions and objections needed to preserve appellate rights, and providing independent evaluations of appellate issues and the chances of prevailing on appeal.

For assistance with these or any other services offered by M&C, including formulation of special programs to serve your company's specific needs, please contact Jean Lawler at 213-630-1019 or jlawler@murchisonlaw.com.

SAVE THE DATE!

INSURANCE ROUNDTABLE

September 16, 2008
Coverage Issues in General Liability Cases

November 12, 2008
Construction Defect Claims

Join us for the last sessions of this year's 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

SEMINAR: WORKPLACE SEXUAL HARASSMENT PREVENTION TRAINING

Los Angeles: October 21, 2008
10:00 a.m. to 12:00 p.m.

Orange County: October 22, 2008
10:00 a.m. to 12:00 p.m.

Please contact Arleen S. Milian, Director of Client Relations at amilian@murchisonlaw.com, or (213) 623-7400, for further details and registration.

MURCHISON & CUMMING, LLP
OFFICE LOCATIONS

LOS ANGELES
801 S. Grand Ave., 9th Fl.
Los Angeles, CA 90017
(213) 623-7400
Managing Partner: Jean M. Lawler

ORANGE COUNTY
801 Park Tower
200 West Santa Ana Blvd.
Santa Ana, CA 92701
(714) 972-9977
Partner In Charge: Dan L. Longo

NORTHERN CALIFORNIA
2010 Crow Canyon Place, Suite 380
San Ramon, CA 94583
(925) 374-0944
Partner In Charge: Kasey C. Townsend

SAN DIEGO
750 B. St., Ste. 2550
San Diego, CA 92101
(619) 544-6838
Partner In Charge: Kenneth H. Moreno

NEVADA
6900 Westcliff Drive, Suite 600
Las Vegas, NV 89145
(702) 360-3956
Partner In Charge: Michael J. Nuñez

www.murchisonlaw.com

Murchison & Cumming, LLP
801 South Grand Avenue, 9th Floor
Los Angeles, California 90017