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in brief

SUMMER 2011

CONTENTS

Edmund Farrell Certified as Appellate Specialist

M&C Appellate Law Practice Group Chair Edmund G. Farrell, III is one of few on a short list of California attorneys who may claim the title, Certified Specialist in Appellate Law. After participating in an extensive process, including a comprehensive exam, Mr. Farrell was certified in appellate law by the State Bar of California Board of Legal Specialization.

"It is easy to say you are an appellate attorney, but you cannot say you are a specialist until you have proven it," Mr. Farrell said of his recent accomplishment.

Along with the written exam, the certification process involved demonstrating a high level of experience in the specialty field, fulfilling ongoing education requirements and favorable evaluation by other attorneys and judges familiar with his work.

With nearly three decades of appellate experience and over 75 published decisions, Mr. Farrell was ready to face the rigorous system and, through it, learned more about his strengths as an appellate attorney.

"After a while, certain facts come as second nature to you, and you can call them up when you need to," he said.

Outside of information recalled for exams, years of experience have taught him practical lessons about the appellate process. He explained that half the battle in the Court of Appeal is knowing what the rules are; the other half is understanding that it is a pragmatic court and it is an appellate attorney's job to get the result by working with system.

Many of Mr. Farrell's lessons were learned at M&C, where he has been carving his niche for the last 24 years, handling appellate matters originating in-house and from outside counsel.

Mr. Farrell sees numerous benefits to an in-house appellate practice. Among those benefits is the availability of a familiar colleague who can "appeal-proof" cases, spotting potential weaknesses that may send

either side of the case to the appellate courts, and who can provide honest case assessment.

On outside counsel seeking appellate support without the reassurance of familiarity, he said, “I try to make them understand that I am on their team, and I am either there to get the result they wanted the first time they went to court, or I am there to protect the ruling they already won.”

Above all, Mr. Farrell’s goal as an appellate attorney, and in receiving certification, is to add value to client services in ways that both challenge and speak to him. One such approach involves giving his cases an advantage by inciting the court’s interest in his arguments.

“I really like to tell a story when I write my briefs. I have friends who work at the court and I know what a grind it is for them to read thousands of briefs. In order to get their attention, you need to give them a reason to sit there for a couple of hours to get to the end of your case.”

Thinking outside of the box and facing challenges that reinvigorate his practice are the components that have maintained Mr. Farrell’s enthusiasm for appellate work.

“Even after 27 years in practice, I still get great pleasure out of my work. I’m not burned out on it, which is one of the reasons I took the test. I can do this stuff in my sleep but, every so often, you need someone to tell you that you are not just blowing smoke.”

Mhare Mouradian Named to 2011 Rising Stars List

Mhare O. Mouradian was named to the 2011 Southern California Rising Stars® list for the second consecutive year.

Mr. Mouradian, who focuses his practice in the areas of complex civil litigation and business litigation, ranks two high-profile defense verdicts among his major accomplishments. He serves as a Barristers Executive Committee member and a board director for the Los Angeles County Bar Foundation. Mr. Mouradian was also selected as a “Top Attorney” for civil litigation by *Pasadena Magazine*.

The annual listing, which recognizes outstanding attorneys who are either under 40 years of age or in practice less than 10 years, is published in *Los Angeles Magazine* and *Southern California Super Lawyers - Rising Stars Edition*. No more than 2.5 percent of attorneys in a state are selected to the list.

Valarie Jonas Selected for Membership in International Maritime Association

Valarie H. Jonas was selected for membership in the Women’s International Shipping and Trading Association (WISTA), an organization for women in management positions involved in maritime transportation business and related trades worldwide.

Ms. Jonas currently represents a variety of clients in marine claims and international matters and looks forward to contributing her services to the global maritime industry through her participation in the organization. WISTA includes over 29 national associations including branches in the United Kingdom, Germany and France. Membership is exclusively offered to highly qualified professionals from shipyard representatives and charterers to brokers and agents.

Ms. Jonas’ background in marine shipment claims includes a specialization in fine art and specie matters; she recently served as a 2011 International Fine Art and Specie Insurance Conference participant. A co-chair of M&C’s Insurance Law practice group, she represents domestic and international insurers in first and third party insurance coverage, bad faith and complex commercial litigation matters. Ms. Jonas is AV-rated by Martindale-Hubbell.

Tim Agajanian Elected to Membership in ADTA

M&C is pleased to announce that partner Tim M. Agajanian has been elected to membership in the Association of Defense Trial Attorneys (ADTA), a national professional association for attorneys who defend civil litigation. Membership in the ADTA is limited and is by nomination only. An experienced trial lawyer, Mr. Agajanian looks forward to using the myriad resources provided by membership in the association to benefit the firm’s clients facing litigation outside of California.

As co-chair of the firm’s Business Litigation practice group and chair of its Toxic Tort & Environmental Law practice group, Mr. Agajanian’s experience includes litigation involving commercial disputes, construction defect, tort and insurance issues for clients in industries such as petroleum, oil and gas, waste management, insurance, security and construction. He also represents municipalities in contract matters and government affairs, and regularly advises businesses regarding corporate transactions.

Jean Dalmore Co-Authors Article Published by DRI

The Defense Research Institute (DRI) has selected M&C partner Jean A. Dalmore's co-authored work, "Moving from the Minors to the Majors: Catastrophic Failures," for publication in the August 2011 issue of its quarterly magazine, *For The Defense*.

Focusing on the causes of catastrophic construction failures, the article discusses legal issues that need to be addressed during the various stages of litigation, including a discussion of related insurance coverage issues. The work was originally co-authored by Ms. Dalmore, Robert M. Zaralban of forensic analysis company Sea Limited and David H. Kochman of Harris Beach PLLC for DRI's fall 2010 Construction Law Seminar.

Ms. Dalmore serves as co-chair of the firm's Construction Law practice group. She also serves as chair of the Special Litigation Group of DRI's Construction Law Committee and is a frequent speaker and author of articles on topics related to Construction Defect claims and litigation.

Guy Gruppie Serves as USC Program Alumni Host

Guy R. Gruppie served as an alumni host at the University of Southern California (USC) Annenberg School for Communications & Journalism's fourth annual Food for Thought program held at the school's Davidson Conference Center. Mr. Gruppie, who earned undergraduate degrees in journalism and political science at USC, was one of several distinguished journalism, communications and business alumni to participate in the dinner event, along with current Annenberg students interested in communications-related careers, including law.

"I was very honored to be asked to participate and to represent Murchison & Cumming among such an accomplished group of USC graduates," said Mr. Gruppie, who co-chairs the firm's Emerging Risks & Specialty Tort practice group. "Attending USC was one of the great times of my life, it has played an integral role for me as a student and person in having careers both in journalism and law. I was happy to share my very positive experience and how I feel about being a member of what we call the 'Trojan Family.'"

Mr. Gruppie worked as a reporter and editor at the *Los Angeles Times*, primarily in the sports department, before attending law school. He discussed both his pre-law and law experiences, including how a Media Law class at USC encouraged him to consider law as a career, with a group of more than 75 current USC communications and journalism students. Other alumni hosts for the event included Gordon Tokumatsu, a reporter with NBC in Los Angeles, Arash Markazi of ESPN, and *USA Today* Editor Michelle Kessler. Prior program hosts have included local news anchors Kent Shocknek and Frank Buckley, and Los Angeles Superior Court Judge Victor Wright.

A Non-Resident Witness Cannot be Compelled to California for Deposition

Gina E. Och

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On July 28, 2011, the appellate court issued an opinion of great interest to foreign and out-of-state parties and witnesses. In a unanimous decision in *Toyota Motor Corp. v. Superior Court (Stewart)*, 2011 DAR 11254, Second District, the court held that a trial court cannot order a non-resident to appear at a California deposition. The court further added—similarly, a trial court cannot order a party to produce for a California deposition a non-resident witness (e.g., an employee, officer or director of a corporation). Accordingly, under Code of Civil Procedure § 1989, a California trial court has no authority to compel non-resident witnesses to come to California to attend depositions.

In *Toyota Motor Corp.*, the Toyota defendants sought a writ of mandate directing the trial court to vacate its order granting a motion to compel Toyota to produce five of its employees, who are Japanese residents, for deposition in California. In granting the petition and mandating a different order, the appellate court rejected the argument that, under Code of Civil Procedure § 2025.260, the trial court had authority to compel said witnesses to travel to California for deposition. While § 2025.260 allows a trial court to permit a deposition of a party or officer, director, managing agent, or employee of a party at a place "that is more distant than that permitted under Section 2025.250 [75 miles from the deponent's resident or within the county where the action is pending and within 150 miles of the deponent's residence]," § 2025.260 does not provide for those depositions to be held at a place more distant than that permitted by § 1989. In other words, § 2025.260 permits depositions more than 75 (or 150) miles from a deponent's residence, but § 1989 restricts a deponent from being required

to attend a California deposition if the deponent is not a California resident.

The court came to its conclusion by interpreting the plain language of Code of Civil Procedure § 1989, as well as discussing the legislative history of Code of Civil Procedure §§ 1989 and 2025.260. Furthermore, the court rejected the analysis and contrary conclusion reached in *Glass v. Superior Court*, 204 Cal.App.3d 1048 (1988).

Presiding Justice Klein wrote a separate concurring opinion to express her opinion that this statutory scheme is inadequate in light of the current globalization; thus, she urged the Legislature to address this issue promptly. Justice Klein noted that many foreign countries have different discovery rules that place a further hindrance and expense on the fact-finding process.

Ultimately, this decision is a win for out-of-state witnesses. However, as noted by Presiding Justice Klein, the current statutory scheme potentially places California litigants and even California businesses at a disadvantage because while many foreign corporations freely do business here, they are not necessarily subject to the same extensive discovery.

In a Victory for Business Interests, the U.S. Supreme Court Finds in Favor of Class Arbitration Waivers

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For those of you who attended M&C's 2010 Year in Review, and heard California Courts of Appeal Justice Paul Turner's discussion about the questionable vitality of California's rule against class action arbitration clauses in consumer contracts—the United States Supreme Court decision is finally here.

The United States Supreme Court handed business interests a major victory by finding in favor of class arbitration waivers. In a close 5-4 decision in *AT&T Mobility LLC v. Concepcion*, ___ U.S. ___ (Apr. 27, 2011), No. 09-893, the majority concluded that the Federal Arbitration Act (FAA) pre-empts state contract law principles in determining the enforceability of a class arbitration waiver, i.e., an arbitration agreement that expressly precludes arbitration on behalf of a class. Specifically, the Supreme Court found that the FAA pre-empts the rule set forth in the California opinion, *Discover Bank v. Superior Court*, 36 Cal.4th 148 (2005). In *Discover Bank*, the California Supreme Court held that class action waivers in consumer arbitration agreements were

unconscionable if the agreement is in an adhesion contract, disputes between the parties are likely to involve small amounts of damages, and the party with inferior bargaining power alleges a deliberate scheme to defraud.

In fact, prior opinions issued by many state courts have found class arbitration waivers unconscionable and have allowed class actions despite the existence of an express agreement in consumer contracts barring them. One such opinion was recently issued in Nevada last month. In *Picardi v. District Court*, ___ P.3d ___, 2011 WL 1205284 (Nev. Mar. 31, 2011), the Nevada Supreme Court struck down a no-class-action arbitration clause as unconscionable under Nevada law.

In any case, Justice Scalia's majority opinion goes beyond the question originally presented for review, which was whether the FAA pre-empts state law "when [class action] procedures are not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims." The majority's opinion appears to further hold that the FAA pre-empts state law (and possibly even removes "unconscionability" as a basis for invalidating an arbitration clause if not based on state public policy) when the lack of a class action mechanism as a practical matter leaves plaintiffs with no remedy at all.

Justice Thomas's concurring opinion perhaps gives a small ray of hope to consumer interests seeking to pursue class action litigation even where a class arbitration waiver exists. Justice Thomas noted that the decision does not necessarily

preclude an argument that no agreement existed in the first instance, such as where the agreement is found to have been entered into as a result of coercion or fraud. Nevertheless, he concluded that unconscionability based purely on public policy would never be a basis to invalidate an arbitration agreement under § 2 of the FAA, since it would not impact the formation of the arbitration agreement. See Slip Op. at 4, n.* (Thomas, J., concurring).

Ultimately, this decision removes what was perceived to be an insurmountable obstacle in the enforcement of millions of arbitration agreements that benefit customers and businesses alike, and confirms the liberal federal policy favoring arbitration.

CA Court of Appeal Re-affirms *Hanif* and *Nishihama*, which Limit Medical Special Damages to Amounts Actually Paid

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In the most recent appellate case, *Cabrera v. E. Rojas Properties, Inc.* (Second Dist., Case No. B216445), the Court of Appeal followed the holdings in *Hanif v. Housing Authority*, 200 Cal.App.3d 635 (1988) and *Nishihama v. City and County of San Francisco*, 93 Cal.App.4th 298 (2001).

The issue decided by the *Cabrera* court was whether the collateral source rule barred the reduction of a plaintiff's recovery of past medical expenses from the amount billed by her medical provider to the amount paid by her private medical insurer. The *Cabrera* court stated—"We follow current California law and hold that such reduction was appropriate notwithstanding the collateral source rule." Therefore, the appellate court reaffirmed that a plaintiff may not recover "phantom" damages, i.e., the "billed" amount of medical expenses that providers never actually pursued or collected as opposed to the actual amount paid.

Last year, the California Supreme Court granted review of, and thereby rendered unpublished and uncitable, several contrary decisions that greatly increased medical special damages to include phantom charges never paid or owed by anyone. See *Howell v.Hamilton Meats & Provisions, Inc.* (Case No. S179115), review granted 3/10/2010; *Yanez v. Soma Environmental Eng'g* (Case No. S184846), review granted 9/1/10; *King v. Willmett* (Case No. S186151), review granted 10/13/10.) The *Yanez* and *King* cases are on "hold" pending the decision in *Howell*. Of particular note, the author of the *King* decision is now-Chief Justice Cantil-Sakauye of the California Supreme Court, who may be a vote against the defense in *Howell*.

Since *Hanif* and *Nishihama* are still good and citable opinions, pending the Supreme Court's decision in *Howell*, the *Cabrera* court relied on these cases in reaching its conclusion: "[W]hen the evidence shows a sum certain to have been paid or incurred for past medical care and services, whether by the plaintiff or by an independent source, that sum certain is the most the plaintiff may recover for that care despite the fact that it may have been less than the prevailing market rate." See *Hanif*, supra, 200 Cal.App.3d at 641; *Nishihama*, supra, 93 Cal.App.4th at 306. Accordingly, *Cabrera* rejected the argument, which swayed the *Howell* and *King* courts, that payment of the phantom damages is required under the "collateral source" rule.

Until the Supreme Court rules on *Howell*, the *Cabrera-Hanif-Nishihama* cases are binding on trial courts, and other appellate courts are free to follow either the *Howell-King* approach or the *Cabrera-Hanif-Nishihama* approach.

CA Supreme Court Decides *Howell* – Recoverable Medical Specials Limited to Expenses Actually Paid

The California Supreme Court has limited a defendant's liability for damages for "medical specials" to the amounts actually paid for the medical services, not the billed amount.

"We hold . . . that an injured plaintiff whose medical expenses are paid through private insurance may recover as economic damages no more than the amounts paid by the plaintiff or his or her insurer for the medical services received or still owing at the time of trial."

The court rejected plaintiff's arguments that defendants are liable for the full "billed" amount, regardless of any discount the insurer may negotiate. "We hold no such recovery is allowed, for the simple reason that the injured plaintiff did not suffer any economic loss in that amount."

The court's ruling prevents plaintiffs from recovering in damages more than the actual harm incurred.

Results

Summary Judgment Granted in Million-Dollar Coverage Case

Todd A. Chamberlain won a significant Motion for Summary Judgment on behalf of Markel International in the Alameda Superior Court before Judge Richard Keller.

The case was brought by California Capital Insurance ("CCI") against Markel International, Citation Insurance and their mutual insured, Roosevelt Owyang and Lumianda, LLC. The insured owned a number of apartments in Oakland and was sued for negligent maintenance, premises liability, habitability and nuisance claims by more than 40 current and previous tenants.

CCI agreed to defend the insured under a reservation of rights. Markel denied coverage on a number of grounds and declined to participate in the defense and settlement of the insured because there was no coverage or potential for coverage under its policies. In particular, Markel denied coverage because of the absence of property damage or bodily injury during their policy periods and the insured's knowledge of the claims prior to inception of the Markel policies.

CCI settled the underlying case for $1.3 million, incurring more than $500,000 in defense costs, and later sued Citation, Markel and the insured for reimbursement and indemnity. Along with interest, CCI claimed it was more than $2 million out of pocket. CCI settled with the insured and Citation, and sought at least half of the balance of approximately $2 million from Markel. The carriers then filed cross-motions for summary judgment.

The court granted M&C's motion with a judgment in favor of Markel and denied CCI's motion.

Carolyn A. Mathews assisted with the moving and opposing papers, particularly on the Personal Injury Coverage B "wrongful invasion" portion of the argument which figured in the decision.

M&C Prevails in Breach of Contract Jury Trial

Michael D. McEvoy, Sr., Daniel G. Pezold and Maria A. Starn received a verdict in favor of their client, a subcontractor, in a breach of contract case. The client was also found not negligent on a cross-complaint brought by the defendant alleging construction defects.

The subcontractor filed suit against the defendant because he was owed over $90,000 on his contract for completed work. In the cross-complaint, the defendant alleged that the contract was not paid in full because cosmetic issues with the concrete delayed the defendant's store opening, resulting in lost earnings.

M&C's client prevailed after a four-week jury trial. The subcontractor was awarded $92,000, plus ten percent interest for the last two years of nonpayment, and was found zero percent at fault for the construction defects.

Defense Arbitration Award Confirmed after Superior Court Appeal in Legal Malpractice Case

B. Casey Yim obtained a defense arbitration award in favor of his attorney client, the respondent in a legal malpractice case. The arbitrator also entered a monetary award in favor of the attorney for costs, in accordance with the arbitration agreement, in the amount of $10,000. The award was appealed by the plaintiff to the Superior Court of Orange County. Mr. Yim, with assistance by Gregory A. Sargenti and Scott R. Jackman, secured a judgment affirming and confirming the favorable defense award by the superior court.

The case involved the plaintiff's failure to heed attorney advice and accept a defense settlement offer. The plaintiff claimed that the attorney did not advise her, and denied that he sent emails and called to communicate the settlement offer. The defense produced evidence showing emails sent to the plaintiff, communicating the settlement offer and deadline, along with the plaintiff's email responses. The defense also produced evidence of a one-hour telephone conversation between the attorney and the plaintiff on the settlement deadline date. The arbitration award was then reached in favor of the defendant.

The plaintiff appealed the decision, claiming fraud and alleging additional emails were never sent. The defense again impeached her testimony by producing evidence of emails with attachments signed by the plaintiff. The superior court entered judgment confirming the arbitration award, and awarding pre-judgment interest on the arbitration cost award.

Defense Verdict for Major Gas Station Client

Russell S. Wollman received a favorable verdict in a personal injury and premises liability case.

The plaintiff stopped at the defendant's Santa Ana, California gas station after hours and paid for gas at the night box. After pumping gas in her vehicle, she returned to the night box to collect change from the gas station attendant. The plaintiff claimed that the attendant refused to give her any change and then repeatedly slammed the plaintiff's fingers in the night box. The attendant denied the allegations, claiming that the plaintiff injured her hand while banging on the window and surrounding area near the cash drawer.

The plaintiff sustained deep lacerations and received medical attention at a local hospital emergency room, but now has permanently deformed fingers. After a four-day trial, the jury found the gas station owner not liable, the gas station attendant 20% liable and the plaintiff 80% liable. The jury awarded the plaintiff a total of about $2,750. Mr. Wollman successfully defended the case without the benefit of a trial witness, as the attendant was unavailable during the trial.

The defendant filed a motion to reduce the awarded damages further, but the matter was ultimately resolved favorably between the parties, with the plaintiff settling for $1,000.

German A. Marcucci assisted with law and motion work.

Summary Adjudication Granted in "Dog the Bounty Hunter" Legal Malpractice Action

B. Casey Yim and Scott R. Jackman, obtained summary adjudication on behalf of attorney clients in a $1.2 million legal malpractice case where television personality Duane "Dog" Chapman of reality show, "Dog the Bounty Hunter," sought to recover attorney fees paid for by the show's production company, A&E Entertainment. The case originated from Chapman's arrest on kidnapping charges by Puerto Vallarta Police in Mexico.

The incident occurred while the "Dog Bounty Hunting" team was filming the pilot to the A&E reality show, which documented Chapman's capture of Max Factor heir and then-fugitive serial rapist Andrew Luster. Luster had "skipped bail" while standing trial on rape charges in Santa Barbara Federal Court, and fled to Puerto Vallarta, Mexico, where he was hiding out when the Chapman team caught up with him.

Following the Luster capture, and the Chapmans' arrest in Mexico, the Chapmans themselves failed to appear in court, instead returning to the United States where they hired M&C's clients as their attorneys. The attorneys thereafter engaged the Mexican officials in protracted negotiations, thereby prolonging the Mexican criminal case long enough for the Statute of Limitations to run. The Mexican authorities issued an extradition warrant on the Chapmans, and A&E decided to hire their own Mexican counsel to take over the case from M&C's attorney clients.

The Chapmans were later dismissed based on the running of the Statute of Limitations. They then sued M&C's clients, alleging legal malpractice and claiming alleged damages consisting of attorney fees paid by A&E. However, the arbitrator found that because the Chapmans got the "best result possible" in the Mexican criminal case, and that the attorney fees were voluntarily paid by a third party, the Chapmans' legal malpractice claims were unfounded and dismissed (lacking in "causation" and "damages").

M&C Wins Defense Ruling on Fraud Claims in "Dog the Bounty Hunter" Case

B. Casey Yim and Scott R. Jackman, won a second defense result against Duane "Dog the Bounty Hunter" Chapman on July 27, 2011.

The plaintiffs alleged that Chapman was "fraudulently induced" to enter into the attorney-fee agreement because the attorneys were "not licensed to practice law in Mexico," and that it was only recently discovered in November 2009. However, the plaintiffs' claim of practicing law without a license was one of the original grounds of legal malpractice in the plaintiffs' original arbitration demand issued in June 2008, which has been defensed.

The court ruled that even if the fraud claim was valid, the plaintiffs waived it by waiting to file for over two and a half years, and after the arbitrator's substantive adverse rulings granting the defense motion for summary adjudication.

Appellate Decision Won, Upholding Defense Judgment in Favor of HOA

James S. Williams successfully argued an appeal on behalf of a Homeowners Association (HOA), its management company, as well as past and current HOA Board members. A homeowner had sued, claiming that an election enacting amended covenants, conditions, and restrictions (CC&Rs) was invalid, that the CC&Rs were amended for improper purposes and that the amended CC&Rs could not be used as a basis for HOA assessment-collection proceedings against her. She alleged that the HOA's attempt to collect assessments from her under the allegedly invalid CC&Rs violated the Davis-Stirling Common Interest Development Act and state and federal fair debt collection law, among other laws. She also claimed that the HOA failed to maintain fire breaks and landscaping in the common area. The homeowner sought money damages as well as a declaration that the amended CC&Rs were invalid, an injunction, an accounting and numerous other forms of equitable relief.

Litigants are not entitled to a jury trial of equitable claims, such as those for an injunction or an accounting. In California, when a lawsuit presents both legal and equitable claims, equitable claims are generally to be tried first without a jury. Only if unresolved factual issues remain after the equitable phase of the trial is a second "legal" phase tried with a jury. This was the procedure requested by the defense and adopted by the trial court in this case.

At the end of the equitable phase of the trial, the judge ruled for the defense on all claims, held that there were no factual issues remaining to be tried before a jury and entered judgment for the defendants.

The homeowner appealed, claiming, among other things, that she had been denied her Constitutional right to a trial by jury with respect to her legal claims and that the judgment should be reversed. The Court of Appeal disagreed and affirmed the judgment in full.

Developer's *Crawford v. Weather Shield* Summary Judgment Motion Defeated

Tim M. Agajanian, Daniel G. Pezold and Carolyn A. Mathews achieved a significant favorable ruling on a *Crawford v. Weather Shield*-based Motion for Summary Adjudication filed against M&C's client, a commercial window and glass subcontractor. The defendant opposed the developer's motion seeking the court's declaration that the subcontractor had a duty to defend under the terms and conditions of an indemnity provision in the subcontract.

Mr. Pezold and Ms. Mathews prepared a detailed opposition to the cross-complainant's motion and Mr. Pezold appeared before the Hon. Gail A. Andler for oral argument. The opposing papers and oral argument focused on the documented actions of the moving party's failure to

cooperate over an extended period of time, or to meet and confer as ordered. Issues regarding the number of currently defending insurers, ambiguity in the indemnity agreement and disputed issues as to the defense allegedly being provided by the moving party were also raised.

The successful opposition of a *Crawford v. Weather Shield* motion for summary adjudication is not a common event. This ruling is indirectly significant in that there are a large number of law firms, insurers and parties involved in this litigation.

This highly complex matter involves multiple related projects and actions between the owners and contractors for the construction of the Anaheim Lofts, Doria Lofts, the Carnegie Plaza and Broadway Arms in Anaheim, California. M&C's client installed aluminum storefront windows and doors in the Broadway Arms project.

Defense Judgment Upheld by Appellate Court in Discrimination Case

Joseph Fox successfully argued a disability discrimination case before the United States District Court and the Ninth Circuit Court of Appeal.

The suit arose from a denied request to install an above-ground trampoline in the plaintiff's place of residence. The plaintiff sued the owners and managers of the El Camino 76 Mobil Home Park for denying the request, claiming it as an "accommodation" under the Fair Housing Act Amendments. During the initial bench trial, the plaintiff argued that the trampoline was necessary for his autistic daughter to have an equal opportunity to enjoy their dwelling.

Judge Jeffrey Miller found against the plaintiff on the grounds that a trampoline is too dangerous to be a reasonable accommodation and that the plaintiff failed to prove it necessary for the treatment of his daughter's autism-related behaviors. The plaintiff appealed the decision, but the justices held that there was no clear error in the district court's ruling, upholding the judgment for the defense.

Summary Judgment Granted in Product Liability Matter

Gina E. Och and Corine Zygelman obtained summary judgment on behalf of their client, a distributor of motion picture cameras, digital intermediate systems, and lighting equipment.

The plaintiff sued his employer, the defendant, for negligence and products liability, claiming to have sustained injury while moving a scanner, manufactured by a parent company of the defendant, down a city street for a customer. The defendant moved for summary judgment and the court granted the motion, finding that the plaintiff's claims were barred by the workers' compensation exclusive remedy and the plaintiff failed to show that he fell within the exception regarding a dual employer based on the employer's role as the product manufacturer. The court further found that plaintiff failed to show (1) he was a consumer or end user of the product and (2) the defendant company was the manufacturer of the product.

Verdict in Favor of Landlord Client after Bench Trial

James P. Collins, Jr. successfully tried a non-jury case in the United States District Court, on behalf of a Long Beach landlord client.

The defendant, M&C's client, was being sued by one of his tenants, a major telecommunications company, for claims of negligence, breach of lease and monetary damages. The claims arose from an incident whereby one of the microwave towers the company had contracted to place on top of the landlord's building caught fire, damaging both the tower and building. The plaintiff claimed the defendant had allowed unauthorized access to the roof where the towers were located, and that the unauthorized individual started the fire.

The judge rendered a decision, finding the defendant not negligent and not responsible for the tenant's damages.

Premises Liability Case Dismissed after Court Grants Demurrer

Tim M. Agajanian and German A. Marcucci received a voluntary dismissal and waiver of costs in a premises liability case after the court granted demurrer.

The plaintiff claimed that while working on a construction project, he was exposed to sandblasting and painting byproducts, allegedly created by the defendants and resulting in the plaintiff suffering permanent respiratory injuries. The plaintiff's wife sought damages for loss of consortium. Mr. Marcucci and Mr. Agajanian demurred to the plaintiff's complaint on the grounds that the injuries sustained were within the exclusive jurisdiction of the California Workers Compensation Act.

The Court granted the demurrer with leave to amend. Shortly thereafter, the plaintiffs agreed to dismiss their case in exchange for a waiver of costs.

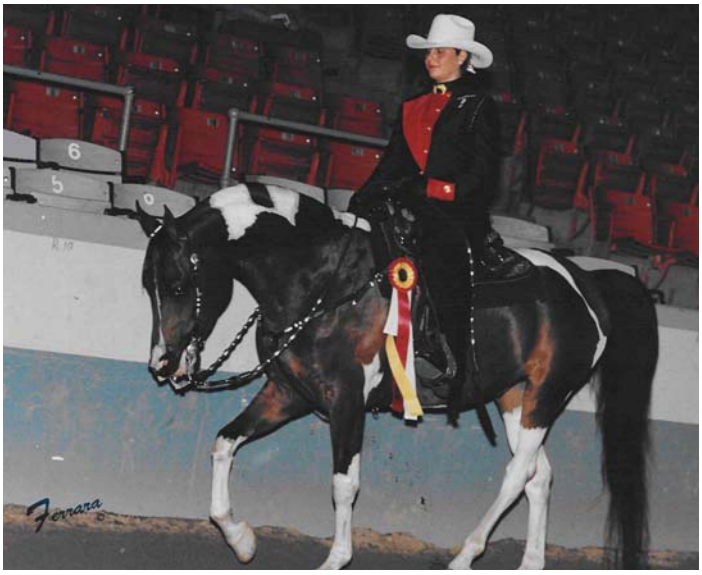
M&C Welcomes

Making Trails: Maria Toto Develops Equine Litigation Practice

When M&C Las Vegas attorney Maria D. Toto began riding horses at four years old, she could not have imagined that her personal passion would weave its way into her professional adult life. With a nearly life-long interest and involvement in the equestrian industry, it was only a matter of time before she gravitated toward equine litigation.

Ms. Toto's dedication to both her profession and her equestrian interests is evident in the manner she has led her life. During summer vacation, while most children her age were enjoying freedom from regimented schedules and instruction, she lived with her equestrian trainer and spent most of her time with her horse, Frosty, practicing for competitions and traveling to various horse shows.

Ms. Toto's participation in competitions waned only during law school and the beginning of her career, but she continued to attend horse shows such as The Arabian and Half Arabian National Championships and The Ohio Buckeye Sweepstakes.



Through event involvement and past participation, she develops and maintains strong ties to the industry and its professionals. Ms. Toto even introduced her colleagues to the industry, inviting Las Vegas office Partner-in-Charge Michael J. Nuñez to a horse show in Scottsdale, Arizona.

Marrying her equestrian and legal interests, Ms. Toto brings awareness and first-hand knowledge of the industry to equine litigation.

"Few attorneys have both legal and industry background. When adjusters handling equine claims are horse people it is important to 'talk the talk'; to have the resources and background to successfully handle those claims," Ms. Toto said.

M&C has long served the equine industry, with Jean M. Lawler of the firm's Los Angeles office handling equine insurance coverage matters. As a member of the industry and the firm's equine practice, Ms. Toto intends to spread awareness about equine insurance issues to her peers.

She noted that many people in the business are not educated about equine insurance, and that increased awareness would benefit insurance companies, lawyers and equestrians.

To horse owners who do not own equine insurance, Ms. Toto asks, "Would you drive your car without insurance?"

As Ms. Toto prepares to pick up where she left off in competitions with her horse, Jean Claude van Gramm (affectionately known as "BJ"), she also prepares to make trails in the equine litigation arena.

M&C is Pleased to Introduce

David M. Hall returns to M&C, after having worked at Zurich Insurance Company, as Of Counsel in the San Diego office of M&C where he focuses his practice in the areas of construction law and general liability.

Point of Interest: Mr. Hall has coached in both Little League baseball and youth basketball.

Steven J. McEvoy is an Associate in the Los Angeles office of M&C where he focuses his practice in the areas of business litigation, general liability, and toxic tort and environmental litigation.

Point of Interest: Mr. McEvoy joins his father and brother, both M&C attorneys.

Training/Education & Other Client Services

2011 Insurance Roundtable Series

Join us for these informative and interactive roundtable discussions on "cutting edge" topics affecting insurers, risk managers, brokers and agents, presented by Insurance Law practice group Co-Chairs Jean M. Lawler and Bryan M. Weiss.

Insurance Roundtable Series

September 13	Writing Effective Reservation and Denial Letters
November 15	Important Court Decisions this Year for the Insurance Industry

Attendance Details

Time	Noon – 1:30 p.m. Lunch will be served
Location	Murchison & Cumming, LLP 801 South Grand Avenue, 9th Floor Los Angeles, CA 90017
Cost	No charge; Limited seating
Registration	amilian@murchisonlaw.com
Parking	Grand Avenue entrance Parking will be validated

Telephonic participation is available for non-local attendees.

For more information, please contact Arleen Milian, Director of Client Relations at 213.630.1071 or amilian@murchisonlaw.com.

This program is approved for MCLE, RPA and CPCU continuing education credits.

Upcoming Speaking Engagements

Bryan M. Weiss, "Reserving Rights and Potential Impact on Coverage," PLRB/LIRB 2011 Regional Adjusters Conferences, September 7-8, 2011, Indianapolis, Indiana (central region); November 8-9, 2011, Sacramento, California (western region)

Jean M. Lawler, "Understanding the Effect of State and Local Jurisdictions and the Impact on Risk," USLAW/Bowring Marsh (Bermuda) Ltd. Boot Camp, Bermuda, September 12, 2011

Edmund G. Farrell, III, "Effect of Federal Preemption in Product Cases," USLAW/Bowring Marsh (Bermuda) Ltd. Boot Camp, Bermuda, September 12, 2011

Guy R. Gruppie, "Lose the Evidence, Lose Your Case," Southern California Elevator Industry Group Meeting, Los Angeles, CA, September 20, 2011

Steven C. Spronz, "Issues in International Commercial Transactions," Fall 2011 USLAW Network Client Conference, Chicago, IL, September 23, 2011

Jean M. Lawler, "Mediation Strategies and Effective Negotiation," Fall 2011 USLAW Network Client Conference, Chicago, IL, September 24, 2011

Client Services

- Arbitration & Mediation
- Auditing Services
- Coordinating, National, Regional and Local Counsel Services
- Expert Witness Services
- Monitoring Counsel
- Pre-Appellate Trial Related Services
- Professional Education, Claims Handling and Fraud Training & Certification
- Sexual Harassment and other Employment Training

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 M. Lawler at jlawler@murchisonlaw.com or (213) 630-1019.

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