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To promote legal excellence, high ethical standards and professional conduct in the practice of law;

To improve access to legal services for all people in Ventura County; and

To work to improve the administration of justice.

Commissioner Bruce Young

By Denise Abundis Brogna

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EULUA ACCOUNTING

PRESIDENTS MESSAGE: FOR THE LOVE OF MAX

By Don Hurley



Max is a salt and pepper Miniature Schnauzer who allowed us to adopt him into our family four and half years ago. My wife Carol and I had lost our second Schnauzer, Fred, only weeks before, after a long battle with heart and lung problems and a relationship of more than fourteen years. Like all pet owners after such an experience, we debated whether to find another dog, with full knowledge that, in all likelihood, after becoming hopelessly and emotionally attached, we would again suffer this heart-wrenching loss in the future. However, we also knew that our house would be far too lonely without a wagging tail around. And so the search began.

We found Max in a breeder's residence in Palos Verdes, surrounded by his littermates, small balls of grey, black and white fluff, aggressively attacking each other or, in some cases, finding a quiet corner of the puppy play area to catch up on the much needed twelve hours of daily sleep. Except Max, who spotted Carol and eagerly bulldozed (puppydozed?) his way through his brothers and sisters to arrive at her lap, where he immediately made himself comfortable and immovable. There was no other option. Max had made his choice – as had we.

Arriving home after the Palos Verdes trip, we allowed Max the run of the front yard, whereupon he made a beeline for Gary, the female cat who lived next door (gender identification issues; don't ask). Stymied temporarily by my chasing him down, he then proceeded to launch himself at a Doberman Pinscher walking on the sidewalk, thankfully leashed to his owner. It was then that we discovered our new dog's belief that all cats were to be chased and that everyone and every dog should be approached in a full gallop mode, with friendly but furious barking. This

attitude never changed over the years and resulted in many, many misunderstandings with unhappy, agitated cats and a variety of walkers, runners and other dog owners. Restraint was not to be within Max's vocabulary.

Just prior to Thanksgiving, Max threw up, which, in and of itself, was not that abnormal. It was only when he refused to eat for three days that we realized something was amiss and took him to our veterinarian of over twenty-five years, expecting at worst a diagnosis of upset stomach or possibly constipation. I was notified the next day to bring Max back to the office for the blood test results without further explanation. It was then that I had the first thoughts that this might have more serious consequences.

Restraint was not to be within Max's vocabulary.

The test results indicated that Max's kidneys were functioning at only a 15% level. There was no immediate diagnosis as to the cause but the Doctor suggested that we take our dog to a specialty vet hospital in Ventura for further treatment. The veterinarians at the hospital explained the options, none of which were either promising or inexpensive. While we might have hesitated in accepting the financial estimate of the costs of his care for the next few days, there was, of course, no question, whatever it took, as long as there was reasonable hope, we would do it. If my own doctor had suggested the amount of this bill for my own care, I might have responded, "Well, leave the arrow in my arm, maybe it will get better on its own."

There was no encouraging news from the vet hospital. During a period of five days Max's condition marginally improved with intravenous injections of fluids and medication, but this was only temporary, and his kidney functions again decreased and his appetite disappeared. Max was sent home on December 7, 2004, with nothing more than a short-term prognosis. We continued to administer saline subcutaneously twice a day but he refused to eat, and lay motionless on the carpet for hours, without energy and without understanding why he felt this way. I contacted our regular veterinarian and advised him, with some difficulty, of the

circumstances, making mental arrangements for scattering Max's ashes in the backyard.

At 5:00 a.m. on December 9th, Max appeared in the entryway of our bedroom and announced, with only his expression, that he wanted to go outside. There followed an early-morning round the block stroll, which I felt would probably be his last in that he was visibly weak and wobbly on the leash. However, upon arriving back home Max sat by the small kitchen table as I was attempting to begin breakfast. There was no mistaking the demanding stare so I took a small piece of chicken and gently put it under his nose. He ate it and again looked up for more which I provided and which he slowly ate. My first thought was that maybe if he could eat for a few more days, we would make it past December 13th, which was our thirty-fifth wedding Anniversary. Perhaps selfishly, I didn't want to forever cast a pall on that date with the memory of Max's death.

When Max continued to consume small pieces of chicken and turkey I again telephoned our vet, who arranged an appointment for later that same day for another blood test. While our dog was noticeably stronger, he was far from what he had been, and the doctor cautioned us that kidney damage does not repair itself and that maybe Max could stabilize at a level of function which would allow him some additional quality time. He took two blood tests, one of which was sent out, the other he performed immediately. The results were dramatic and totally unexpected, so much so that the vet waited for confirmation of the second test before letting us know.

This column is being prepared just prior to Christmas for publication in the February issue of Citations. Max has returned to his outward normal self with the result that no dog, cat, or person can walk down the street without being greeted with unrestrained enthusiasm. For reasons which may never be explained medically, his kidney functions are almost normal and Max should be with us for many more years. And if he isn't, if this is just a short-term turnaround, we will be thankful for the prayers of our friends and relatives which allowed us these few extra days with him as a special holiday present.

Don Hurley is an Assistant County Counsel for the County of Ventura and is President of the Bar Association.

Commissioner Bruce Young

By Denise Abundis Brogna

Commissioner Bruce Young was born in Warren, Ohio. Because his older brother had severe asthma and allergies, the family moved to Phoenix, Arizona when Bruce was six weeks old. After one long, hot Arizona summer, the family moved to Ventura, California when Bruce was one.

Bruce attended Buena High school while his mother worked for the Ventura Unified School District, and played basketball. Though Bruce was reluctant to discuss his own athletic achievements, our director, Steve Henderson has quipped "I have heard tales that Commissioner Young was one of the finest high school players in the history of Ventura County. Some may argue that there were more skilled athletes, but few will deny his tenacity and achievements." Joe Chrisman, who had graduated a few years earlier than Bruce, later had the chance to play against him in a Wednesday night group. Says Chrisman, Commissioner Young "was and is a good player. You always wanted him on your team."

Since graduating from Buena High, Commissioner Young has been an active alumnus. He coached basketball and baseball. He participated in alumni basketball games, the last of which he played against his son. The commissioner claims he doesn't play much basketball anymore because it is a "young man's game." Instead, he proudly watched his son complete 4 years of basketball and make All Channel League.

Commissioner Young is equally supportive of the girls' basketball program. For years, he scouted the talent on other teams to help the Buena girls better defend against potential offensive threats. The downside of this invaluable service was that he missed many of the Buena girls' basketball games. "Though I never played against him personally," qualified Michael O'Brien, "Bruce has always been gracious and enjoyed the game. He always complimented talented children and their parents."

Commissioner Young is proud to be the first of his generation to attend college. His father had an eighth grade education, and his mother attended Kent State University during World War II. Both parents stressed the importance of education.

Commissioner Young attended Ventura College



and California Polytechnic University at San Luis Obispo majoring in history. At Cal Poly, he became fascinated with American Revolutionary War and the Civil War. His hobby is to visit historic sites. With thoughts of being a professor still on the back burner,

to keep business going. Commissioner Young remembers a case with Ron Gill as the opposing counsel representing Bank of A. Levy. That trial nearly killed him because he was in trial all day, then working all night on trial preparation and running the law office.

"I have heard tales that Commissioner Young was one of the finest high school players in the history of Ventura County. Some may argue that there were more skilled athletes, but few will deny his tenacity and achievements."

Commissioner Young also watches the History Channel and reads biographies.

Commissioner Young was always a good student. However, his father used to tell him that he would get into trouble for talking too much, or that he should get paid for talking and become a lawyer. As he met his parents' friends and acquaintances in the legal profession, such as Justices Ed Beach and Steve Perren, Commissioner Young decided that being a lawyer might be a good thing.

Commissioner Young attended Pepperdine University School of Law. After graduation, he became an associate at Romney, Smith & Drescher in Santa Paula, and then at the Law Offices of Phillip C. Drescher. As he matured, he became a partner in Drescher, McConica and Young. He practiced solo for a few years and then became a partner at Lagerlof, Senecal, Drescher & Swift, and then at Drescher, McConica, Onstot, Schuck & Young.

It is his years as a solo practitioner that Commissioner Young remembers as the toughest. He had no litigation support, and found it difficult conducting a trial and trying

As a litigator, Commissioner Young was always congenial. He believed that it was alright to disagree as long as you were civil about it. He would like

to see civil litigators take the cue from deputy district attorneys and public defenders who cooperate more because they see each other all the time.

Commissioner Young made an unusual career change in jumping from private practice into public practice as a Deputy District Attorney in the Elder Abuse Unit. Working for the District Attorney was culture shock for Commissioner Young; he had no secretarial support, started work on Monday and tried his first case on Wednesday. Even though the workload was tremendous, Commissioner Young enjoyed it. He was committed to helping people become aware of aging, the "Graying of America." His private practice experience with bank and real estate fraud was extremely helpful in the prevention and prosecution elder abuse.

As Commissioner, he now has experience in traffic and criminal arraignments, family law, diversity custody evaluations, pension tax benefit assessments, and business appraisals and valuations. He also handles small claims matters and has at least two days a week at the Simi Valley Court House. Commissioner Young thinks his job has improved listening

skills. "You can't tune out or fall asleep while on the bench because you have to keep control of court room and the evidence."

Commissioner Young has found the other judges and commissioners very helpful. He also admires the Family Law Bar for resolving issues outside of court. However, since he has become a commissioner, he has become less social and more conscious of potential conflicts of interest. He feels he can't let his hair down, "what little hair I have left, anyway."

Commissioner Young is blessed with a wife who is "better than I deserve," and time to golf. His philosophy in life is that "things have a way of working out."



Denise Abundis Brogna handles appeals at Lascher & Lascher in Ventura. She is a member of CITATIONS' editorial board. You can reach her at denise@lascher.com

EAR TO THE WALL

Family law attorney **Ellen J. Hirvela**, formerly of Advocacy and Mediation Services in the Financial Plaza and Richard Ross Associates, has opened her sole practice in downtown Ventura, at 675 E. Main Street, Suite E. Her telephone number is 805-643-9001; fax number is 805-643-9002. E-mail is ejhlawandmediation@sbcglobal.net. The focus of Ellen's practice is Mediation and Collaborative Divorce, and she also provides unbundled services, "coach" attorney for mediation, document review, and drafting prenuptial agreements. Ellen is a board member for the Ventura Area Coalition for Collaborative Divorce.

After nine years as In-House Counsel for Ventura Unified School District, **Don Austin** has taken a new position with the law firm of Lee, Smart, Cook, Martin & Patterson in Seattle, Washington, effective February 1st. Don is particularly grateful for everything he learned about practicing law from the attorneys he has worked with in Ventura since 1988, particularly Judge Harry Walsh, Terence Bonham, and Byron Lawler.

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GRAVITY, RAIN, MUD AND LITIGATION

By Michael McQueen

Ventura County as it appears today is the result of millennia of coastal uplift, stream carving, slumping, landslides and erosion. The constant presence of gravity and elements of erosion sculpt the rolling hills that we admire. It is not a static system. From a geological standpoint, the place is just hopping.

And into this delightful environment, we build homes in flood plains, on the sides of hills, under ancient landslides; we move dirt hither and yon in blithe disregard of the consequences. Because it hardly rains, we don't recognize that the landscape and normal runoff patterns of surface water can be inadvertently and tragically altered.

These combinations of natural events will one day lead to a panicked call from a client knee deep in water in her kitchen, screaming about her flooded property. She demands to know who is going to pay for the damage to her grandma's armoire. This is what you do.

GET OUT OF THE OFFICE

To properly evaluate your client's potential claim, you have to get out of the office. You have to understand the topography, geology and surface water flows in your client's neighborhood.

Walk the Watershed

How did the water flood your client's property? Was the inundation a natural result of lots of water or was the water artificially diverted there? You buy some contour maps and determine the extent of the watershed area, i.e. the drainage area where your client's property is located. If there is a ridge behind your client's home, you are not normally concerned about the water that falls away from your client's drainage area. You are, however, concerned about how water flows through the various nooks and crannies, drains and ditches of the neighborhood.

Manhole Covers

What entities are involved and responsible for drainage control? Look at the manhole covers and catch basins. They will often indicate what entity installed them or maintains them. Sometimes, it is difficult to determine whether a particular ditch or drain is maintained by the City, the County, a private water district, or private property owner. Easements are a good source of information. Inspect the deed to the property.



Diversions

As you walk through the watershed, try to imagine and follow the path of the surface water diversions. Make note of any recent improvements. In one case I handled, a neighbor on top of a ridge built a retaining wall to keep street drain water from going onto her front yard. This diverted drainage from her yard to her neighbor's, who had lowered a berm on the ridge in order to make an un-permitted improvement. Lowering the berm allowed the water from one watershed area to be diverted from the street, over the ridge and down the canyon onto my client's property. The water flow caused a mud and debris slide that clogged up a large catch basin. Water saturated the canyon, inundated the soils, causing the foundation to subside and pull the house apart. This all resulted from a property owner building a small 3' retaining wall on her property. Oops!

COMPLY WITH THE TORT CLAIMS ACT

If a governmental entity is responsible for flood control, drains, and ditches, etc., your client must comply with the Tort Claims Act. A claim must be filed with the appropriate governmental entity within 180 days of the injury. If you are uncertain, you better make claims against the County, the water district, quasi-governmental entities and the local municipalities. It may seem a silly exercise, because rarely will a governmental entity acknowledge liability for the claim, but if you fail to go through this charade, your client may well be barred from pursuing the claim.

RETAIN YOUR EXPERTS

A water damage case is heavily dependent upon expert testimony. You will need to find and retain the following experts early in the process to help evaluate the claim.

1. Meteorologists

There are a limited number of rain gauges situated through the county that will tell you how much rain hit a particular area. They may or may not reflect what actually occurred on your client's property. Small intense storm cells can be contained within a large storm. These cells can aggravatingly miss gauges a mere quarter mile away and dump the proverbial biblical flood in your backyard.

Doppler radar allows meteorologists to identify storm cells and even calculate the amount of rain falling within a particular area. Meteorologists will also help determine the level of the storm involved (meteorologists and engineers like to talk about 50-year, 100-year and 1,000-year storms, reflecting the likelihood of the occurrence of a particularly intense storm).

Though you need to check the local regulations, as a general proposition, the County and local municipalities require that curbs be built in anticipation of 10-year storms. Housing foundations should be designed to withstand storms of at least a 50-year intensity. Recognize that you are dealing with odds. You can actually have several 100-year storms in one season. Most city engineers take the position that it does not make any sense to design for 100- or 1,000-year storms; that kind of design burden would require our houses to be on stilts.

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GRAVITY, RAIN, MUD AND LITIGATION

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2. Hydrologists

A meteorologist will tell you how much rain fell and where it fell, the likely severity (i.e. 10-, 50-, 100- or the mother of all storms), and whether there were severe micro bursts or super cells that could explain the inundation of a small area. What a meteorologist cannot tell you is the amount of water that actually accumulates on the surface. For that you need a hydrologist. The County hydrologist will give you the run-off records of streambed flow gauges and thus has a pretty good idea of the amount of rainfall that accumulates in the area. You need a Hydrologist to define the watershed area where your client lives and calculate the amount of water dumped into the watershed area and the amount of drainage your client's property is exposed to.

3. A Need for a Hydraulic Engineer

In addition to a hydrologist, who tells you how much rain fell, a hydraulic engineer addresses how to handle the water involved. Were the catch basins large enough? Were the ditches large enough? How and where was the water diverted?

What you discover can be surprising. In one case, the watershed area covered residential and agricultural properties. As the hills were paved, the accumulation of surface waters increased. The catch basins were designed too small and the natural drainage flow patterns were blocked off. The slope of the streets was not considered. During the last El Niño episode, the rain knocked thousands of lemons off trees. Lemons and agricultural debris clogged the catch basins. Amazingly, the surface drainage came down a street and turned left, past the blocked-off natural ravines, then right down to a cul-de-sac. The engineers had not thought about designing a secondary outlet in the cul-de-sac, so when the drains clogged, it quickly became a lake. All the houses were substantially damaged. These houses were on a hill, 60 feet above a barranca. The thought that view lots on a hill could be flooded was laughable- until it happened.

4. Real Estate Appraiser

Depending on the nature of your claim, you may have to retain the services of a real estate appraiser. This is more technical than a \$300 appraisal for a refinancing. You will need the appraiser to support the client's argument that the overall value of the house had diminished in an era of soaring property values because of the improper design of the drainage system or the acts of the upstream property owners.

5. Toxic Contamination Expert

Water is often referred to as the universal solvent. As the mud and debris of agricultural and commercial properties accumulate on your client's house, they may bring toxic substances from these other properties. Some people can be quite sensitive to exposure to chemicals, pesticides and mold. Some people become frightened by the very thought of potential exposure and move out. These may be compensable injuries. An expert will be required to explain this exposure and the risk of illness from exposure.

COMMON ENEMY DEFENSE

As a general proposition, municipalities and governmental agencies are not responsible for the damages suffered by the public for the flooding of natural waterways. They are not necessarily responsible for the lack of design capacity for the flood control improvements in natural waterways. The public policy has been that a flood is a "common enemy" in that the municipalities, neighbors and others cannot, and frankly should not, be held responsible for the flooding of natural waterways.

In this day and age where it seems there is not a citizen in this country that does not believe that every harm must have a remedy, this can be difficult to explain to your client. Rain happens. Flooding occurs. Mud slides are not uncommon. Sometimes it is just no one's fault. But you have to go through the evaluation and the above steps to come to that conclusion.

SURFACE WATER DIVERSIONS

One of the nuances in water damage litigation is that a "flood" does not give rise to liability. A "flood" raises the common enemy defense. One should avoid the use of that term, if possible. However, the flooding of your client's property from surface water diversions is certainly not the result of a common enemy. One who alters his property in such a manner that the natural flow of surface waters is changed and results in damage, is responsible for that damage, even if the consequences do not come for many years.

ACT OF GOD DEFENSES

You can count on the city engineers and the defense counsel to embrace the Act of God defense. They will shrug and say that no reasonable, prudent engineer can plan for a 1,000-year storm. That a mystery cell slipped through the Doppler radar and just happened to dump

the equivalent of Lake Erie into your client's backyard; it is not their fault. They could not anticipate such a storm and they should not be held responsible. (In this secular age, one wonders whether an atheist should be able to raise the Act of God defense).

One should be prepared with experts to walk the defendants through the watershed to show that the only reason or the most significant causation was that the natural surface water drainage was altered. Once altered, the consequences are not subject to the Act of God defense. It might be one hell of a storm, but if the topography and drainage had not been altered, it would have been of no consequence to your property. This is often a pivotal issue.

INVERSE CONDEMNATION CLAIM

The developer usually prepares the drainage plan. The plan is submitted to the city engineer for review and acceptance. The city engineer usually refers the plans to a private engineer who checks the hydrology, hydraulics and design capacity. The drainage system is then approved and built, and once built, there is a period of time after which the local municipality obtains control of the public streets and drainage system.

If the diversion results in the flooding of your client's property, you have a basis for pursuing an inverse condemnation claim against the municipality for approving and assuming the responsibility for the drainage works. The argument is that the City has indirectly used your client's property for public drainage purposes. What is often overlooked is though the inverse condemnation claim may be duplicative of your other damage theories, you are allowed to recoup attorney fees under this allegation.

TRESPASS ALLEGATIONS

Often erosion results in a fair amount of debris leaving one piece of property and entering another. A common law count for trespass will survive demurrer if one can allege that the unlawful dumping of debris, dirt, etc., on the property and failure to properly maintain the property upstream resulted in this unintentional trespass. This may also allow a claim for attorney fees. This most often arises in agricultural and rural areas.

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Barry Cane

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GRAVITY, RAIN, MUD AND LITIGATION

Continued from page 9

STATUTE OF LIMITATIONS DEFENSES

Consider naming the original developer or contractor, the engineer, the city, the city's designer and any professionals that contributed to your clients' grief. There is a ten-year statute of limitations for construction defects. The tricky part can be determining when the defect was determined. Issues of whether the drainage problem was a latent defect will be critical to your ability to keep the original developer in the fray. The date the city accepted the improvements may also be critical. Depending on the circumstances and type of defect, you may want to consider obtaining an affidavit of negligence from a design professional.

INSURANCE

Ask your client for all insurance policies. Was the client required to maintain flood insurance under their mortgage agreement? See what kind of homeowner's policy they have. See if you can file under FEMA.

Be careful in making claims for flood damage. Most homeowners' policies will not cover flood damage, but they will cover rain and wind damage. This may possibly raise issues of replacement costs for severely damaged property. This is the unpleasant time when your client realizes that the replacement policy they have been paying premiums on for twenty years does not even remotely cover the cost of replacing their home. This situation is usually caused by the overzealous agent who desires to sell the policy and underestimates the value of the property. Depending on the factual circumstances, this may raise an issue of professional negligence on the part of the agent, which should be explored.

PRIOR EVENTS AND FAILURE TO DISCLOSE

Interview neighbors and local real estate agents about whether these types of drainage problems have occurred in the past, giving the owner of the property notice that there was a drainage problem in the area. There may be a claim against the prior owner if the property was sold without disclosure.

Since the Rodney King case, it's hard to hide things in the world of videotapes. During a mediation I showed a videotape of a street that appeared more like a raging river. It was quite

impressive and rather frightening. The adjusters in the room thought they were watching videos of the actual complained-of event, when in reality they were watching video of a drainage problem that occurred several years before. This raised the issue of notice and failure on the part of the municipality to improve the drainage system as well as the disclosure obligation of the prior owner of the property and local realtors.

DAMAGES

The damages in these types of cases are quite similar to any type of accident, fire or property claim. Retain a company that specializes in damage evaluation and inventory services.

Clients are remarkably inconsistent in assessing their damages. One family will provide you with details, including lost underwear and each version of each comic book in their collection that was destroyed. Others are more casual and won't provide you with details necessary to support their claim. You will have to engage in your normal tug of war with defense counsel in what damages are justified and supportable.

Don't overlook physical injuries that can occur during these disasters. People try to save their homes, they try to move furniture, they exert muscles that they have not used in years. They can suffer wrenched backs, necks and sore muscles. Also, monitor physical reactions to toxic exposure.

Remediation costs can vary from client to client. Those that have the resources do a proper job of drying out, removing flooring and contaminated areas, cabinets, walls and dry wall. Others who do not have the resources basically just slap together the repairs and hope all is well and sell the property, only to find later that the interior walls are now contaminated with mold. Mold growth from water damage can be a significant problem if not properly addressed.

Diminution of value of the property depends to a large extent on whether the municipality is going to alter or modify the drainage system to prohibit the kind of damage in the future. If they don't, then your client is going to have to disclose to a future buyer that the house is subject to periodic water intrusion. You should disclose the event in any case.

The author's commentary: It is ironic that in a democracy we need permission to sue our public servants. What is really happening is that the puppet master behind the screen are the insurance companies for the municipalities. Insurance companies have got to the point in a society that they pretty much decide what we can and cannot do in this country.

Though some people seem to think so, the government cannot and should not be expected to protect us from natural disasters.



Michael McQueen is a trained geologist, and a lawyer in Camarillo. He can be reached at mmcqueen@mcqlaw.com

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ASIAN AMERICAN BAR ASSOCIATION FORMING

Dien Le has taken the lead in organizing an Asian American Bar section of the Ventura County Bar Association.

He identifies four initial goals: The first is seeking appointment of an Asian American when there is an opening on the Ventura County bench. Second is providing legal assistance and outreach to the County's growing Asian population. Dien's experience representing Asian clients is that some have a cultural fear of the legal system. Third is sponsoring interesting MCLE programs focusing on prominent Asian-American judges and attorneys whose services have opened the door to more opportunities for Asian American attorneys. Finally, Dien would like to see the new section host networking events locally and with established Asian bar associations in Los Angeles County and beyond.

To become involved, contact Steve Henderson at the VCBA office, or Dien Le at Sullivan Taketa LLP, 818-889-2299.

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David R. Mavri is an attorney with Mavri & Mavri in Thousand Oaks. He specializes in Family Law and Probate.

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Proposition 64 Limits Standing On Section 17200 Actions

By Michael A. Velthoen

Over the past several years, the California Supreme Court has gradually circumscribed the scope of remedies available under Business & Professions Code Section 17200, otherwise known as the Unfair Competition Law. In November's election, California voters joined the assault by substantially limiting the standing required to bring an action under Section 17200 and its sister statute, Section 17500 of the Business & Professions Code.

Section 17200, which prohibits unfair, unlawful, or fraudulent business practices, has long been the bane of the business community. One unique aspect of Section 17200 – and the one that made it particularly susceptible to abuse – was the lack of any standing requirement. In addition to those parties actually injured by the business practice in question, the statute allowed individuals who had not been harmed to sue on behalf of the general public. As a result, defendants often found themselves sued by plaintiffs who had no actual interest in the subject matter of the litigation. One Bay Area attorney filed dozens of Section 17200 actions on behalf of his mother, who usually had heard almost nothing about the cases filed by her son.

Proposition 64 ends this practice. Section 17200 plaintiffs must now satisfy a rigid standing test that requires them to have suffered "injury in fact" and to have "lost money or property as a result of unfair competition." Plaintiffs may no longer bring actions on behalf of the general public. Proposition 64 – which passed by a healthy margin – will certainly reduce the number of frivolous lawsuits brought under Section 17200.

At the same time, however, Proposition 64 may also limit the ability of plaintiffs who have actually been injured by the unfair competition to seek relief under Section 17200. Many individuals are injured by unfair or unlawful business practices but have not lost money or property as a result. Section 17200 has long been used to stop business practices that injure others in a non-monetary fashion. Indeed, the primary relief available under Section 17200 is injunctive. Under Proposition 64, however, such parties will not have standing unless they have also lost money or property as a result of the business practice.

Industry groups have long lobbied Sacramento for changes to Section 17200. When those efforts were unsuccessful, they took their case directly to the voters. As is often the case in legislation by proposition, the results are mixed and the public gets more than it bargained for.



Michael Velthoen is a partner at Ferguson, Case, Orr, Paterson & Cunningham LLP in Ventura and a member of the Citations editorial board. Mr. Velthoen and Michael Case will present to the Business Litigation Section of the VCBA on recent developments under Business & Professions Code § 17200 at noon on February 8, 2005, at the Tower Club.



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Eugenia M. (Chick) Bernacchi retired December 31 from **Norman, Dowler, Sawyer**, et al. where she was hired three years out of the Ventura College of Law in 1988. Chick worked mostly in the probate and trust administration and estate and disability planning areas. She was also on the board of the Ventura County Museum of History and Art, serving as its president in 1998. The firm celebrated the occasion at the Satocoy CC Dec. 17... There are 53 employees serving as courtroom interpreters for the Superior Court of San Diego, in Spanish, Vietnamese, Cantonese, Chaldean, Mandarin and Russian. The court also hires independent contractors when needed for 76 other languages, including Mam, Pangasinan and Shilluk...

FUN FACT: In ancient Rome, long before the advent of the Christian Bible, Romans would swear to "tell the truth, the whole truth, and nothing but the truth" by placing their right hands on their testicles. It is from this ritual that we derived the term "testimony"... Three new attorneys have joined **Nordman, Cormany, Hair & Compton** to expand the firm's capabilities in the corporate, real estate, intellectual property and estate planning areas. **Nancy K. Schreiner** joins as a partner in the Corporate & Business, Public Agency and Real Estate Law Groups. **Meena P. Kotak** is an associate with Estate Planning, Trust & Probate Law Group. **Nicki F. Kubasak** is an associate with the Corporate & Business and Intellectual Property Law Groups. **Anthony Ramos** has left the firm for the City of Angels and the ability to specialize in school law. This brings **NCH&C** to 37 lawyers, still the largest in the county...

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Steve Henderson, Executive Director

A member of Oklahoma's highest court got passed over for chief justice, and now he's suing his eight colleagues because he thinks they skipped him because of his age. He's 83. **State Supreme Court Justice Marian P. Opala** filed a lawsuit December 29 in federal district court, charging he was discriminated against when his fellow justices changed a rule to allow the chief justice to serve consecutive terms. The post had been rotated every two years. The rule change in November allowed Chief Justice Joseph M. Watt to succeed himself. Opala would have been in line to lead the court. Watt said he was served the summons but declined to comment... When predicting the next U.S. Supreme Court Justice, you might bet on the long shot, the **9th Circuit's Alex Kozinski**. He's listed at Betcom.com, a Costa Rica-based site that allows people to wager on everything from football to whether Bill and Hillary will divorce. The first week of December, the site began taking wagers on whom President Bush would appoint to the high court. So far, more than 4,000 bets have been placed, according to the site...

Richard Norman celebrated his 70th in style, hanging out with the grandkids, golf, a party, and the Trojans winning the Orange Bowl... **Real World Rules**, by Bill Gates. Number 2: The world won't care about your self-esteem. The world will expect you to accomplish something before you feel good about yourself. License Plate of the Month: RADDING, driven by **Eugene Radding**. Eugene joins our Emeritus Attorney corps and the VCBA/VLSP, Inc. staff providing legal services to low income individuals and families. His bar number is 21593, which should give you some idea of the experience he brings to the office on Monday mornings. Give him a welcome call... In Utah first cousins can marry, but only after they are 65 years old...

"What you have today is business on one side, and you've got the trial lawyers on the other side... You've got deep pockets colliding with shallow principles," **Robert Nardelli**, the Chief Executive at Home Depot, said to the laughter from the audience and the President of the United States. Nardelli was one of several Republican donors at the White House Conference on limiting lawsuits. The Center for Responsive Politics found that conference participants donated \$195,000 to various Republican candidates, including \$40,000 to Bush... Connecticut attorney James LeDonne is in trouble with the Statewide Grievance Committee for misplacing a \$64,000 check – and a 1997 Jeep Grand Cherokee. The

committee determined LeDonne ditched the leased Jeep to avoid shelling out \$4,212 in mileage payments and then reported it stolen. In a separate matter, the committee found the attorney violated ethics rules relating to a misplaced \$64,000 check from a client. LeDonne will appear in Court this month to face possible disbarment...

Loyal Dwight Frazier (SBN 24767) will retire at the end of this month – for the second time. Loyal retired 10 years ago from **Frazier, Dame, & Light**, a 9-lawyer, 11 paralegal firm. He recorded 50 years of service January 5. The Oxnard lawyer was admitted in January 1954 and graduated from USC School of Law the year I was born. He "already traveled the world, so I'm going to sit back and enjoy the family"... A Pennsylvania Superior Court panel has tossed out an appeal after finding the defense lawyers "blatantly violated" procedural rules when they flooded the courts with appellate issues that were too many and too wordy. Wrote Judge John Musmanno for the panel, "We can only conclude that the motive underlying such conduct is to overwhelm the court system to such an extent that the courts are forced to throw up their proverbial hands in frustration"... From H.L. Mencken: "If all the lawyers were hanged tomorrow, and their bones sold to a mah-jongg factory, we'd be freer and safer, and our taxes would be reduced by almost half." The bar office will observe President's Day on Monday the 21st...

Steve Henderson has been the executive director of the bar association since November 1990 and was afforded the opportunity to dine at the Tower Club with Dennis LaRochelle, a tie from Dien Le, meals and lodging by all sorts of lawyers including Kurman, Lascher, Barton, Rasnow, Shain, Rabbin, Strauss, and a kayak from Dean Hazard during his stay at the office when Highway 101 was shut down for five days. Curiously, only Judge Back and Bart Bleuel denied him overnight privileges, citing Henderson's numerous bad habits.

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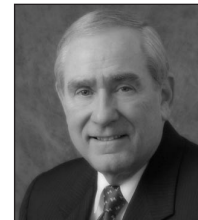
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