



# Legal Briefing

## 12-0 Defense Jury Verdict For HKC Clients

By James S. Morse, Esq.

After a trial that stretched over 3 weeks, a Riverside County Superior Court jury returned a unanimous defense verdict in favor of our clients, a homeowners' association and management company, represented by James Morse a partner at Hart, King & Coldren.

Plaintiff, a 52 year old woman and resident of the association at the time of the incident, sought \$750,000 in past and future medical expenses as a result of alleged extensive personal injuries resulting from a slip and fall in a stream of water on the association managed streets. Plaintiff contended that the defendants allowed a dangerous condition to exist, failed to safely maintain the property and failed to warn plaintiff of the danger caused by algae growing in the water runoff from other association residents.

A defense civil engineering expert and board members of the association refuted the claim that a dangerous condition existed and that any warning



was necessary for an 'open and obvious' condition. The defense also retained a spine orthopedist who negated plaintiff's claims that her back and neck injuries were a result of her alleged fall by proving that the injuries were pre-existing. California Medical Board disciplinary records against plaintiff's treating physician were also presented to the jury to discredit the scope and expense of plaintiff's medical treatment.

After closing arguments, the jurors returned from their deliberations in just 20 minutes with a 12-0 finding in favor of all defendants on all causes of action. Judgment was entered on behalf of defendants who are now entitled to recover their costs against plaintiff.

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## \$1.3 Million Awarded to HKC Manufacturing and Importing Client

By James S. Morse, Esq.



A garment manufacturing and importing client of HKC was awarded \$1,300,000 on personal guarantees in an arbitration conducted in April by James Morse of HKC to a retired Los Angeles Superior Court judge now serving with the American Arbitration Association.

HKC enforced our clients' exclusive manufacturing agreement under which the respondents personally guaranteed the advances to their companies for orders placed and filled. When payment was not forthcoming, the action was prosecuted. With testimony from the company general manager and bookkeeper, the arbitrator was able to determine that the entire unpaid \$1,300,000 advanced was personally owed by the principals of the now-insolvent respondent companies.

HKC's client was pleased to have the terms of their contract validated and gratified to obtain a judgment for this large outstanding debt.

## Web Sites Gone Wild

By David Christopher Baker, Esq.

It was an exciting day at Profits 'R' Us. It was the day the new company Web site went live and expectations were high.

Key executives and the entire Marketing Department were assembled in the conference room watching the big screen monitor in hushed anticipation as the IT Director counted down "...Three...Two...One...And, we're LIVE." Everyone cheered, knowing that this moment marked the arrival of Profits to the upper tier of companies in its industry. Now, it would be only a matter of time before the world's Web browsers directed Internet traffic to the site and sales went through the roof.

Unfortunately, when Google, Bing, Yahoo, and other search engines sent online customers to the Profits site, they also sent competitors and their hungry IP attorneys to the site as well. And, as sales increased, so too did the attention of those competitors, who began to notice opportunities of their own.

(continued)

# New Case Law

## Affecting Trust and Probate Estates

By Richard Gerber, Esq.

### Did you know...?

A self-dealing beneficiary to a Trust who tries to deprive another beneficiary of their inheritance can be sued?

There are steps you can take to protect yourself from being disinherited, or in the alternative, steps you should take if you are going to receive a larger share of a Trust distribution than other beneficiaries: (e.g., a disinherited sibling could sue you claiming you influenced the grantor to change their estate planning in your favor.)

In 2006, HKC sued just such a beneficiary who was trying to derive more money from her parents' Estate than the Trust provided by attempting to deprive her brother of his rightful half of the Estate. Six years ago we predicted the Court

of Appeal would ultimately decide that this should be the law in California--and now it has. *Beckwith v. Dahl* (May 3, 2012).

Checklist to defend against a Self-Dealing Beneficiary:

1. Document what you expected to inherit. (The previous/amended will or Trust is Exhibit "A.")
2. Document that you had a fair shot at receiving your original inheritance had the other beneficiary, not interfered.
3. Document the action taken to interfere with your inheritance. (e.g., bad mouthing you, forging a signature, etc.)

Checklist to avoid being sued by a

change in the Grantor's estate plan where you are benefited

1. Make sure the grantor (e.g., mom or dad) has independent counsel if they are elderly and seek to change their estate to favor one child over another.
2. Consider videotaping the meeting with the independent estate planning attorney to demonstrate competence of the grantor.
3. Consider a written opinion from the grantor's physician confirming that they have adequate mental capacity to make the change.
4. Suggest that the grantor recite the reasons for the change in their estate plan in writing.

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The first "cease and desist" letter arrived at Profits' headquarters a month after the site went live. It complained about infringing images used on the site. The second arrived just a week later. It complained about similarities between the new logo and a competitor's logo. The third threatened "immediate legal action" if Profits didn't take the site down because of claimed unfair competition. Profits management went into damage control mode.

At an emergency meeting of the company's top brass the CEO asked the gathered executives, tech professionals,

and house legal counsel, "How could we have avoided this mess and what is it going to cost to fix it?"

Profits 'R' Us learned the hard (and expensive) lesson that Web sites are a potential minefield of legal issues. Whether they involve copyrighted images, text and sound, services, or even the disclosure of sensitive trade secrets, IP issues can be devastating to a company if mishandled. Luckily, the Profits experience can be instructive for companies who complete their due diligence and take proper preventive action before their Web sites go live.

If this scenario is a potential concern HKC can help guide you through these complex issues and avoid the risk of expensive mistakes before they happen.

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