



# Legal Briefing

## HK&C Welcomes Three New Attorneys

We are pleased to announce the recent addition of Kimberly Wind, Ryan Egan and Elissa Klug to Hart, King & Coldren.



**Kimberly Wind** is a senior associate who comes to us with over 20 years of experience, representing general contractors, subcontractors, and developers throughout California and Nevada. Much of her practice focuses on legal issues dealing with contract/construction defect disputes, commercial/industrial development, public works/audit and compliance, mechanics' liens/stop notice litigation, environmental claims, surety bond claims/insurance coverage issues, union and labor/wage disputes, bid protests and licensing issues. Kimberly received her law degree from the University of San Diego School of Law, where she graduated with honors, and her undergraduate degree from Pennsylvania State University.



**Ryan Egan** is an associate whose practice focuses primarily on real estate and land use matters. He has broad experience in commercial and real estate law, with a particular emphasis in national mortgage modification class actions. Ryan received his law degree from Western State University School of Law and his undergraduate degree from Arizona State.



**Elissa Klug** is an associate focusing her practice on a variety of civil litigation matters. She received her law and undergraduate degrees from the University of Georgia.

The addition of these three professionals to Hart, King & Coldren will significantly strengthen the legal expertise that we bring to our clients every day.

## Why Insurance Matters

By William R. Hart

Over the years, a constant refrain from lawyers to their clients is "tender" any and all claims to your insurance carrier. That ongoing recommendation is generally paired with another thought—challenge any denial of coverage if grounds exist. Three recent matters that arose for Hart, King & Coldren clients are textbook examples of why the twin recommendations are made.

**Scenario 1** – *Obtained a \$500,000 settlement for a mobilehome community owner.*

In this case, the insurer had refused to provide a defense to the community owner with respect to a lawsuit concerning leases and rent increases. We ultimately convinced the insurer to provide a defense. The insurer then refused to reimburse the community owner for defense expenses incurred prior to the insurer's acceptance of the defense. At the conclusion of the underlying lawsuit, we suggested that the insurer mediate the reimbursement dispute. Mediation occurred and the insurer ultimately agreed to reimburse the owner for all pre-acceptance defense legal fees and costs. To the mutual benefit of the owner and the insurance carrier, this result was accomplished without either party commencing costly and time-consuming litigation.

**Scenario 2** – *A dispute with another client's insurer over the insurer's bad faith failure to settle and its appointment of defense counsel.*

We tendered the suit, obtained a legal defense for the client, and were retained to "monitor" the lawsuit. We continually urged the insurer to settle the underlying litigation within policy limits, based in part upon our observation that the insurer should consider the unlimited attorneys' fees that could be payable to the opposing counsel under the policy's supplementary payments provisions. The insurer refused to settle until after entry of judgment against the client. We succeeded in our demand that the insurer settle the underlying suit for several million dollars, and obtained a monetary recovery from the insurer in excess of \$300,000 representing the client's additional "bad faith" damages due to the failure to settle before judgment was entered. Like the first scenario, we were able to achieve this result at an early mediation without the expense and time of protracted litigation.

**Scenario 3** – *A mediated recovery of nearly a quarter of a million dollars from the client's insurers and insurance brokers.*

This case involved three underlying lawsuits for various claims including breach of contract and property damage.

*(continued)*

## A Change at HK&C... What's Next for Rob Coldren?

After more than 30 years of service to clients and the industry, co-founding partner, Robert S. Coldren, is retiring from the full-time practice of law at Hart, King & Coldren, effective January 1, 2014. Rob will focus on new and exciting real estate opportunities, both regionally and nationally and looks forward to a bit more time with friends and family.

*"Rob has a deep understanding of the real estate market and the manufactured housing industry and has provided a wealth of knowledge to the firm for over 30 years" said co-founding and managing partner, Bill Hart. "He was and is a great resource for the firm, and we wish him well in this new chapter."*

Rob stated, *"It has been my personal and professional pleasure to have co-founded the firm and to have led the Manufactured Housing practice for all of these years. I can honestly say that I leave this chapter of my career, knowing that the practice I built is in the very capable hands of remaining co-founder, Bill Hart and the Manufactured Housing Industry Group."* The Manufactured Housing Industry Group is led by John Pentecost, Bill Dahlin, Mark Alpert and Robert Williamson.

*"HK&C has established a reputation for the highest caliber of legal representation, and I am confident that the firm will maintain, and indeed, grow that well-deserved reputation,"* said Rob.



# Loss of Corporate Powers – Who Cares?

**Why Insurance Matters** (continued)

By C. William Dahlin

We asserted that the brokers committed professional negligence with respect to obtaining the policies, and that the insurers wrongly refused to defend the underlying actions. We were successful in prosecuting two lawsuits and defending a third action for declaratory relief with respect to these brokers and insurers, securing a favorable result at mediation that allowed the client to recoup a large percentage of its significant defense costs.

**Conclusion** - Similar “coverage” disputes arise hundreds of times throughout California every year. The difference for these three property owners discussed above is that each of them: (a) tendered their claims, and (b) pushed back when their carrier declined to provide a legal defense and/or coverage.

*Bill Hart is a co-founder and the managing partner of Hart, King & Coldren. He can be reached at (714) 432-8700 or [whart@hkclaw.com](mailto:whart@hkclaw.com)*

The California Supreme Court recently decided a case watched by lawyers throughout the state. The case (*Bourhis vs. Lord*) concerned the impact of a corporate entity being able to defend itself in litigation when its corporate powers had been suspended for failure to pay taxes. California law prohibits a corporation that has suspended powers from defending itself. However, California law is also very liberal in allowing those corporate powers to be revived. The *Bourhis* case dealt with a situation where the corporate entity had its powers suspended for non-payment of franchise taxes. Judgment was entered against the defendant and it filed notice of appeal. After the notice of appeal was filed, the corporation revived its corporate status. The question before the California Supreme Court was whether that revival was effective in view of the undisputed fact that the notice of appeal was filed by an entity that was suspended.

The California Supreme Court, in a 6-1 decision, concluded that the revival under California law is effectively “retroactive” and thus the notice of appeal would be deemed to be timely filed. The vigorous dissent argued that the decision, though compelled by prior case law, was contrary to sound public policy and that the lack of any permanent consequences to the failure to timely pay taxes should not be countenanced. This decision, unless changed by the California legislature, will control future disputes. It will be interesting to note if the legislature will change the existing policy as a means of coercing corporate entities to be current in their taxes. If there is one aspect of California law this decision signifies it is that, when faced with a choice, the courts will allow a party to have their day in court.

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## Trust Litigation Victory

HK&C partner, Andrew Kienle, recently prevailed on a summary judgment motion in a probate litigation matter in Orange County Superior Court. He filed the motion on behalf of a client who was sued by a family member to disinherit him from the family trust. In this motion, Andrew argued that the case should be dismissed since the family trust could no longer be amended or terminated. Although a rare occurrence, the motion was granted confirming the client’s right to his inheritance of over \$1,500,000. The client was extremely pleased that we obtained a full dismissal of the case and a judgment in his favor, thus avoiding the need for an expensive and time consuming trial.

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