

Weil & Drage News & Views

What's News?

2015 Mountain States Super Lawyers

– Christine Drage, Esq.

Christine Drage has once again been included in the annual list of the top attorneys for the Mountain States, including Nevada and Utah.

Congratulations to Kate Maxson, Esq., for passing the Utah Bar!

Kate Maxson is now a member of both the California and Utah Bars and is assisting on legal matters in those states.

If You Build It, They Will Sue: A White Paper on Condominium Projects

Peter Stacy and Trevor Resurreccion are the authors of an updated white paper on condominium projects which was recently published by the AIA Trust. The paper discusses the implications of the 2014 case of Beacon Residential Community Association v. Skidmore, Owings & Merrill LLP, et al., in which the California Supreme Court held that an architect owes a duty of care to future homeowners where the architect is a “principal architect” on the project. The paper is written to help architects understand their potential liability to clients and third parties on condominium projects as well as offer guidance on how to prospectively address the concerns highlighted by many lawsuits in which architects have been sued by third parties. Architects will gain a better understanding of how to assess the owner client, important contract provisions, and insurance issues so they can better assess and address their risks on condominium projects. The White Paper is available at: www.theaiatrust.com/whitepapers/condos/

AIA Trust White Paper: Disability, Accessibility & Liability: What an Architect Should Know

Jean Weil and Anthony Platt are the authors of the recent AIA Trust White Paper entitled Disability, Accessibility & Liability: What an Architect Should Know, which explores the pitfalls and preventative measures that architects should keep in mind to avoid lawsuits as related to projects governed by the ADA and FHA. The White Paper is available at: www.theaiatrust.com/whitepapers/ada/

Copyright Law

Jacqueline Pons-Bunney was among three panelists presenting a webinar sponsored by ACEC National providing an overview of copyright law and its application to design professional's documents, a sampling of relevant contract provisions and pitfalls, and insurability ramifications of your decisions regarding document ownership. The presentation provided the audience with learning points, to include:

- What rights you are afforded under the law regarding your instruments of service;
- What rights to your designs your client may have by virtue of payment for

Legal Updates

Updates to Arizona's Purchaser Dwelling Act (by Brian P. Roteliuk, Esq.) Effective July 3, 2015, the Arizona Legislature made changes to its Purchaser Dwelling Act (similar to California's Right to Repair Act, Cal. Civil Code Section 895, et seq). The Act governs certain construction defect lawsuits brought by a purchaser against the seller of a dwelling related to the design, construction, condition or sale of the dwelling. The most significant change is the repeal of the portion of the Act that provides mandatory attorney's fees and expert fees to the prevailing party. (A.R.S. § 12-1364)

Another notable change is that the Arizona Legislature, for the first time, has defined a "construction defect" as:

"Construction defect" means a material deficiency in the design, construction, manufacture, repair, alteration, remodeling or landscaping of a dwelling that is the result of one of the following:

- (a) A violation of construction codes applicable to the construction of the dwelling.
- (b) The use of defective materials, products, components or equipment in the design, construction, manufacture, repair, alteration, remodeling or landscaping of the dwelling.
- (c) The failure to adhere to generally accepted workmanship standards in the community.

(A.R.S. § 12-1361 (4))

California Court of Appeal Confirms Four-Year Statute Does Not Apply to Claim for Express Indemnity

(by Jacqueline Pons-Bunney, Esq. and Brian P. Roteliuk, Esq.)

In the recently decided Valley Crest case, the California Court of Appeal held that California's four-year statute of repose does not apply to claims for express indemnity. *Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.* (2015) 238 Cal.App.4th 468.

Update to AAA Arbitration Rules Regarding Dispositive Motions

(by Brian P. Roteliuk, Esq.)

Recently, the American Arbitration Association ("AAA") amended its Construction Industry Arbitration Rules and Mediation Procedures, effective July 1, 2015. The prior version of the AAA Construction Industry rules were those amended and effective October 1, 2009.

A significant addition to the newly revised AAA Construction Industry rules is the inclusion of new rule R-34, entitled "**Dispositive Motions**," and which sets forth as follows:

"Upon prior written application, the arbitrator may permit motions that dispose of all or part of a claim, or narrow the issues in a case."

(See AAA Construction Industry Rule R-34, amended and effective July 1, 2015.)

Read more . . .

Did You Know?

Copyright Rights and Wrongs (by Jacqueline Pons-Bunnev. Esq.)

Company Updates

Case Victory

Trevor Resurreccion and John Grijalva recently prevailed on a Motion for Summary Judgment against a plaintiff on the grounds that the plaintiff had no legally valid assignment of claims and, therefore, was barred from pursuing any claims against the defendant. The case, which involved a dispute between two former business partners, was venued in the Orange County Superior Court. Trevor and John were hired after nearly five years of litigation and two prior law firms represented the defendant. In seven months, Trevor and John were successful in turning the case around through discovery and the dispositive motion. The parties entered into a confidential settlement of the case before the defendant filed a motion for attorney's fees and costs as the prevailing party pursuant to contract.

See www.weildrage.com for a full listing of legal services provided.

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