

there is an environmental problem or cleanup that is actually going to be necessary, and to determine the estimated cost of the total cleanup before beginning the adversarial process. In discussing a significant, recent groundwater contamination matter, Nelson notes that "progress was made when, at the beginning of the case, the plaintiffs and defendants met early and agreed to jointly engage in subsurface contamination investigation to determine the actual scope of the problem before finger pointing and other adversarial tactics commenced. By doing this before the usual litigation costs start mounting, there is a far greater likelihood the problem, if it exists, can be jointly solved by money that might otherwise be expended on litigation. Once this dialogue has started, and the parties have evidenced

some good faith in the process, there is also a greater chance the liability issues can be mediated and resolved, and the problem addressed without full scale litigation."

In the Orange County office, numerous Orange County partners and associates have faced the same types of cases and the same issues. Orange senior partners Stephen Nichols and Nick Cipiti have also recently encountered groundwater contamination, oil spill, chemical manufacturing leak, and metal fabrication property contamination cases. Nichols opines that it is critical at the outset of the case to get a good understanding of the nature, extent and causes of whatever contamination will drive clean up and its costs.



Nicholas Cipiti

The immediate goal has to be a solution that is going to get the approval of the regulatory agency pushing the cleanup, or at a minimum, an agreement on how the cleanup will be funded. In the strict liability setting of CERCLA, for example, unless a client really should not be a party to the lawsuit or has been misidentified or wrongly named, there is no real justifiable alternative to early efforts at resolution through dialogue.

As Nichols says, "Until a cleanup can be funded and approved, no plaintiff will ever dismiss its lawsuit. Attorneys who spend hours and hours 'litigating,' i.e. looking for answers in depositions and standard discovery when the real answers are readily available in regulatory files, miss the boat and cost their clients money that could be

spent on the problem". Nichols feels that most sophisticated environmental attorneys, clients and carriers recognize this and set aside the innate desire to beat each other up by keeping their eye on the main target and seeking creative approaches that lead to a solution that does not involve litigation or, if litigation is unavoidable, managing the lawsuit in the most efficient, cost-effective way.



Steve Nichols

Andrew Nelson can be contacted at the firm's San Francisco office or by email at anelson@wfbm.com. Nick Cipiti and Stephen Nichols can be contacted at the firm's Orange office or by email at ncipiti@wfbm.com and snichols@wfbm.com, respectively.



ONE CITY BOULEVARD WEST
FIFTH FLOOR
ORANGE CALIFORNIA 92868-3677

WFB&M NEWS



WHEN IS A LANDOWNER RESPONSIBLE FOR INJURIES SUFFERED BY A CONTRACTOR'S EMPLOYEE?

By: Lisa Ackley, Orange Office

WFB&M APPEARS BEFORE CALIFORNIA SUPREME COURT ON IMPORTANT CASE

The California Supreme Court will decide a WFB&M case which will significantly impact premises liability law in this state. The Court is determining when a landowner is liable for a dangerous condition on its property (allegedly) resulting in injury to an employee of a contractor hired by that landowner. A decision by the Court in this case (Kinsman) is expected later this year.

Kinsman arose out of a personal injury claim for asbestos-related injuries. As with most asbestos cases, a number of defendants were sued, among them a party represented by WFB&M. As to the firm's client, the alleged basis of liability was this: The client owned a refinery where the employee worked for an independent contractor. The employee/plaintiff claimed that he was exposed to asbestos through the work of contractors, who allegedly disturbed asbestos that was on the property while removing insulation.

While a landowner is liable for injuries caused by his own willful or negligent acts, the general rule is that the landowner is not liable for injuries to employees of contractors hired by the landowner where those injuries arise from the negligence of one or more independent contractors in the performance of their work. This general rule is subject to a major exception: where the landowner "controls the means and methods" of the work by the contractor(s), the landowner may be responsible.

The practical aspects of the rule and the exception are significant. For example, if a landowner hires

one or more qualified contractors to construct something on the property, should the landowner be responsible if something done by one of the contractors injures one of their (or another contractor's) employees? Under the general rule, the landowner would not be liable, unless the plaintiff could demonstrate that the landowner exercised control over the means and methods of the work of construction.

In Kinsman, the firm's client, deciding not to settle a claim that it viewed as being without merit, chose to go to trial. At trial, WFB&M requested that the Court instruct the jury using the rule applicable to injuries to contractors' employees. The plaintiff countered that landowners have an affirmative duty to all visitors to keep their premises reasonably safe, including the duty to warn persons of a known or reasonably discoverable condition, such as the presence of asbestos. According to the plaintiff, this duty extends even to employees of independent contractors. The distinction between the two arguments is significant: If the law is as the plaintiff asserts, there will be many cases where landowners of all types can be forced to either settle or go to trial based on the conduct of an independent contractor working on the property, on a theory that there was some danger on the property that the landowner had a duty to protect against. If, on the other hand, landowners are not responsible for the acts of independent contractors on their property, regardless of whether there was some allegedly defective or dangerous condition on that property, the general rule protecting landowners

from the acts of contractors is strengthened and it will become much easier for landowners to avoid being sued or, if sued, to get out of cases early.

The trial court sided with the plaintiff, WFB&M, on behalf of its client, appealed. The Court of Appeal reversed the trial court. The Court of Appeal held that the trial court should have instructed the jury that a landowner cannot be liable for injuries to a contractor's employee resulting from a dangerous condition on the property unless the landowner in some manner affirmatively contributed to, or in other words caused, the injury: The mere existence of the asbestos on the property would not, in itself, be sufficient to subject a landowner to liability. The plaintiff asked the California Supreme Court to hear the case and the Court agreed.

Both sides have prepared and filed their briefs with the California Supreme Court and oral argument before that Court is expected around the middle of the year. A written decision usually is rendered within a month or two of oral argument. That decision is likely to significantly impact all types of landowners who hire contractors to work on their premises. We are happy to provide additional information, at no charge, on the California premises liability line of cases. If you have any questions in this area, please contact Lisa Ackley in the Orange Office or Cyrian Tabuena in the San Francisco Office. They can also be reached via email at lackley@wfbm.com and ctabuena@wfbm.com.

INSIDE THIS ISSUE:

- When Is A Landowner Responsible For Injuries Suffered By A Contractor's Employee?Pg.1
- Associates Added to Orange & San Francisco OfficesPg.2
- WFB&M's Managing Partners Start Their Second TermPg.3
- Annual Charity Golf Tournament Coming UpPg.3
- Multi-Party Hazardous Waste Cases: Problem Solving StrategiesPg.3-4



Lisa Ackley

ASSOCIATES ADDED TO ORANGE AND SAN FRANCISCO OFFICES

The following associates have been recently hired by WFB&M:



CECILIA R. AGUAYO. Cecilia is a recent addition to the Orange County office. Cecilia's extensive educational background includes degrees from Santa Clara University, University of Redlands and Chapman University, as well as course work at Loyola New Orleans and California State University at San Bernardino. Cecilia's accomplishments include Chapman University School of Law's Distinguished Graduate of the Year award and the Orange County Women Lawyer's Association's Woman Law Graduate of the Year in 2002. Prior to joining the legal profession, Cecilia worked as an elementary school teacher for Fontana Unified School District.



EMILY CHEN. Emily received her undergraduate degree in Applied Mathematics from the University of California, Berkeley and earned her law degree from the University of Southern California School of Law. Emily served as executive senior editor for the Southern California Law Review. Emily's credentials include litigation experience as counsel for an insurance company and a stint at the United States Securities and Exchange Commission, where she worked on broker-dealer preservation of records issues and insider trading matters. Emily joins the Orange County office.



JASON J. CRUZ. Jason joins WFB&M with extensive experience in commercial and civil litigation. Jason is admitted to the Washington and California state bar associations. Jason received both his undergraduate degree and law degree from the University of Washington in Seattle. Jason's credentials include work as a research assistant for the University of Southern California Institute for Justice and Journalism. Jason's team also placed second in the 1999 Tulane National Sports Law Competition brief writing contest. Jason is working in the Orange County office.



BRIAN M. FRENCH. Brian, a recent addition to the firm's San Francisco office, obtained his undergraduate degree from the University of California at Davis and his law degree with distinction from the University of the Pacific, McGeorge School of Law where he specialized in tax law. Brian served as a writer and editor for The Transnational Lawyer. He was also the recipient of the Verne Adrian Academic Achievement Scholarship. Brian's credentials include work for the Sacramento Municipal Utility District General Counsel's Office where he handled contract, employment, labor, bankruptcy and property matters.



JACQUELINE MAI. Jacqueline works in the firm's Orange County office. Jacqueline boasts an undergraduate degree from the University of California, Los Angeles and a law degree from University of California Hastings College of the Law where she received an honorable mention in the Best Oral Advocate category in the 2002 moot court competition. Prior to joining WFB&M, Jacqueline worked for the San Francisco District Attorney's Office and the California Attorney General's Office in San Diego. She also externed for the Honorable Stephen G. Larson, Federal Magistrate Judge, Central District of California.



ERIC A. RUDOLPH. Eric is the newest member of the firm's San Francisco office. Eric obtained his undergraduate degree with honors in psychology from San Francisco State University and his law degree from Golden Gate University. Eric's accomplishments include a CALI Award in Land Use Regulations and the Witkin Award in Wills & Trusts. Eric also found time during law school to work as a Barri Bar Review representative and to teach a torts review course at Golden Gate University. Eric comes to WFB&M with several years of experience in civil litigation, including insurance defense, contracts, intellectual property and real property matters.



DANIEL A. SHAMA. Daniel graduated cum laude from Claremont McKenna College where he received a degree in psychology and then went on to earn a law degree from the University of San Diego School of Law. Daniel served as an executive board member for the USD School of Law Moot Court and was a contributor to the San Diego International Law Journal. Daniel's professional experience includes criminal defense work and work on complex business and partnership agreements. Daniel joins the Orange County office.

WFB&M'S MANAGING PARTNERS START THEIR SECOND TERM

The firm congratulates Mary Watson Fisher and Sharon Clisham as they begin their second year as managing partners of the Orange and San Francisco offices of WFB&M, respectively. Taking over the position previously held by Ron Bevins of the Orange office, Mary and Sharon capped their first year with the successful transition to a new and exciting technology system, and saw the firm continue to grow and prosper. The firm enjoyed an increase in the number of attorneys in both the Orange and San Francisco offices and saw increasing success in virtually every practice area, particularly in the area of environmental and toxic tort work.

Mary Watson Fisher has been with the firm since December 1992. She graduated from Vassar College and received her J.D. from Pepperdine



Mary Watson Fisher

University Law School. Mary has extensive background and experience in such practice areas as employment law, travel and business litigation. Mary represents employers in litigation and advises them on how to best avoid litigating employment matters. She also handles premises liability and personal injury matters for travel agencies and tour operators, and defends



Sharon L. Clisham

corporate clients in breach of contract claims and partnership disputes.

Sharon Clisham joined WFB&M in February 1993. She graduated from Newcomb College, received a Masters of Arts degree in Applied Social Research from Tulane University, and obtained her J.D. from University of California, Hastings College of

the Law. Sharon practices in several fields, including product liability, environmental tort defense, employment law and general civil litigation. She represents a variety of different clients, including manufactures, premises owners, contractors and suppliers. Sharon has successfully tried several product liability and asbestos cases to verdict.

Over the past year, while making time in their schedules to work for their loyal clients, Mary and Sharon have embraced their new roles and worked together to increase the efficiency and success of WFB&M. They make a great team and the firm is proud of their efforts, enthusiasm and great results.

For more information on our managing partners or WFB&M's practice areas, please visit our website at www.wfbm.com.

ANNUAL CHARITY GOLF TOURNAMENT COMING UP



Ronald Bevins

The 18th Annual Seagull Golf Classic will be held on May 9, 2005, at the Old Ranch Country Club in Seal

Beach, California. What originally started as an informal golf outing hosted by the Seagulls, an Orange County softball team whose original members include WFB&M partners Ron Bevins and Mike McCall, has blossomed into a major charity event. Since 1986, the Seagull Golf Classic has been raising money for the benefit of the Juvenile Diabetes Research Foundation. A turnout in 2004 of more than 140 golfers raised over \$15,000 for the Foundation. The Seagull Golf Classic has raised nearly \$200,000 during its history in support of the fight against juvenile diabetes.

While golfers will undoubtedly enjoy the beautiful Old Ranch Country Club course, the highlight of the event is the lively dinner party and the not so silent auction that follows. Spirited bidding in both the silent and open auctions is punctuated by information on the Foundation and testimonials from those who have benefited from its activities. Whether you're a scratch golfer or a once a year hacker, you are welcome to join WFB&M attorneys, staff and many others at this year's tournament. You will be guaranteed a fun day and evening while helping to support a great cause. Non-

golfers are welcome at the dinner and auction. Registration forms are available by calling Trudy Feikema in our Orange County office or emailing her at tfeikema@wfbm.com.



Michael T. McCall

MULTI PARTY HAZARDOUS WASTE CASES: PROBLEM SOLVING STRATEGIES

Fifteen years ago, WFB&M ran a series of underground storage tank and hazardous waste seminars that predicted an increasing amount of litigation in these areas. That prediction has been proven true. Today, as the tide of governmental and environmental concerns over cleanups and assessing the costs

of those cleanups continues to grow, WFB&M lawyers have identified some basic strategies that can impact both long term solutions and the effective management of costs on these matters.

In the San Francisco office, WFB&M attorneys have handled a wide variety of environmental matters,

including groundwater contamination, tire fire pollution, and multi-party tort cases for exposures to all manner of (actual or alleged) "toxic" substances. Senior associate Andrew Nelson notes that the common theme in many of these cases is an immediate



Andrew Nelson

expenditure of costs due to the sheer number of parties named in the suit, sometimes without a controlled or early assessment of whether all of those costs are necessary.

At the outset, notes Nelson, it is important to first assess whether