

FGPPR OBTAINS FULL DEFENSE VERDICT IN BREACH OF CONTRACT CASE

By Andrea Bednarova, Esq.

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FGPPR Legal Reflections is a publication of FORAN GLENNON PALANDECH PONZI & RUDLOFF PC.

This publication is meant to provide general information and is not intended to provide specific legal advice. If you have any questions as to the contents of this publication or need legal advice as to a specific issue, please contact FGPPR.



Marjie D. Barrows

We are pleased to announce that on Tuesday, October 11, 2011, Foran Glennon Palandech Ponzi & Rudloff PC obtained a unanimous jury verdict for its client, The Travelers Indemnity Company of Connecticut in *The Michel Family Trust v. Travelers Indemnity Company of Connecticut, et al*, Case No. C09-04144 PSG, United States District Court for the Northern District of California, Honorable Paul S. Grewal presiding.

Lead trial counsel was Marjie D. Barrows, assisted by Andrea Bednarova and Kathleen M. DeLaney. The case involved an insurance claim for 2004 fire damage to two units in a strip mall owned by the Trust. Travelers investigated the claim and issued payments for the actual cash value of the building repairs and loss of business income within the first year from the notice of claim while the Trust did nothing to initiate repairs to the property. Travelers kept working with the Trust and adjusting the claim despite the Trust's failure to provide most of the information requested by Travelers, including a Sworn Proof of Loss for the loss of



Kathleen M. DeLaney

business income. At the end of 2006, the Trust yet again promised to provide the information and documents sought by Travelers. After receiving no further communication from the Trust for six months, Travelers closed its file.

Travelers heard nothing from the Trust for two more years, until January 2009, when the Trust made additional claims and threatened to file a lawsuit. During the course of discovery, Travelers finally received many of the documents and information it had been requesting since 2004. Based on this belated information and expert witness evaluations, Travelers issued another actual cash value payment in 2010. Travelers also learned during the discovery process that the Trust spent less to repair and upgrade the exterior of the property than it was paid for the actual cash value of the loss.

In the lawsuit, the Trust claimed nearly \$2 million in damages. Because settlement efforts had been unsuccessful, the case proceeded to trial on October 3, 2011.



Andrea Bednarova

Since the Trust dismissed the bad faith cause of action and its request for punitive damages prior to trial, the trial was limited to the breach of contract cause of action. The Trust claimed damages in three areas: (1) additional costs to repair the building; (2) reimbursement of incurred expenses; and (3) more than 90 months of loss of business income. On the morning of closing arguments, the Trust announced that it was no longer seeking damages for the building repair and proceeded to request that the jury award the Trust over a million dollars for the loss of business income and incurred expenses. The jury took less than two hours to return a full defense verdict for Travelers, finding that the Trust breached its duties under the Policy and was owed no additional policy benefits. ■



A MESSAGE FROM CHICAGO PARTNER MARY O'CONNOR



Mary O'Connor, Esq.

On August 16, 2001, Foran Glennon Palandech & Ponzi opened its doors in Chicago and Orange County, respectively, for the first time. At that time, the Firm consisted of nine lawyers and four staff members. Over the next ten years, the Firm grew to 45 lawyers and 78 total employees. Most of this growth occurred over the course of the last 19 months with the welcome addition of the Emeryville, California, and New York

offices.

The success and growth of the Firm could not have occurred without the support and friendship of our many clients and colleagues. We value your support and take pride and satisfaction in the success and blessings our mutual teamwork has produced. ■



PRESENTATIONS

In July 2011, San Francisco partner Marjie Barrows participated in a training session regarding mediation presented by Chubb Group of Insurance Companies to select brokers. The well attended and lively session centered on a mock mediation session. In addition to the mock mediation, which raised a number of issues that often arise at mediations, the training panel discussed mediation communication techniques, effective ways to resolve conflicts and what parties can reasonably expect at mediations. ■

In September 2011, Ed Rudloff and Marjie Barrows, San Francisco partners, participated in a panel discussion at the *Combined Claim Conference of Northern California* in Sacramento entitled "The Challenges of Controlling Claims and Litigation Expenses in Today's World." Some 50 to 75 claims professionals were in attendance. The two-hour discussion was very spirited. Ed moderated the panel which included Steve Rosenthal of RGL Forensics, Peter Evans of Evans Adjusters, Larry Campbell from Farmers Insurance, Orville Hormann from Nationwide Insurance, and Marjie. Obviously, the subject is timely and of great concern to the insurance industry. ■

On September 27, 2011, Douglas Palandech and Thomas B. Orlando, partners in the Chicago office, presented "Appellate Process Primer" at the annual conference of the *Spring Manufacturers Institute* in Las Vegas, Nevada. ■

SPORTS UPDATE

On September 25, 2011, partner Renée Peters completed the Northern California Half Moon Bay Half-Marathon. She ran along the coast, much of it on a single track dirt trail that headed out towards the Ritz Carlton, an area known for its spectacular scenery. Renée met her goal to complete the half-marathon in under 2 hours. ■

Ed Rudloff has continued to compete in Masters Swimming events across the continental United States and the Hawaiian Islands. In his age group (60-64), he was named Pacific Masters Open Water Swimmer of the Year for 2011. In September, Ed's "Grand Makule" team from The Olympic Club of San Francisco won the prestigious Maui Channel Swim for the fifth straight year. Shortly following the Maui Channel swim, Ed competed in the very difficult Waikiki Rough Water Swim (2.4 miles) where he finished second in his age group and 85th overall out of nearly 1000 competitors ranging from teenagers to folks up there at Ed's generation. ■

Appellate Victory in Environmental Coverage Case

(continued from page 3)

Since the *Foster-Gardner* decision, the vast majority of jurisdictions outside of California have rejected California's "literal" interpretation of the CGL policy. Last year, insureds obtained an important victory in California in *Ameron International v. Insurance Company of the State of Pennsylvania* (2010) 50 Cal.4th 1370. In that case, the California Supreme Court held that a quasi-adjudicative proceeding before the United States Department of Interior Board of Contract Appeals was a "suit" for purposes of triggering coverage under CGL insurance policy.

The insured in *Thomson* argued not only that the *Foster-Gardner* holding was wrong and should be reversed, but its first main argument was that California law did not apply to the dispute. The Court of Appeal refused to consider the direct challenge to *Foster-Gardner* and its opinion instead focused on the choice of law analysis used by the California courts for an

insurance coverage dispute action. The insured had a number of facts to argue that non-California law applied, including because its corporate headquarter is in Indiana; the insurer was located in Connecticut; and, the insurance broker where the insurance policy was negotiated was in Illinois.

However, California statutory **It is the Law!** law provides that choice of law is determined by the "place of performance," and a recent California case held in the liability insurance context "place of performance" means where the risk is or the jurisdiction where the insured is being sued and seeks a defense. (*Frontier Oil Corp. v. RLI Ins. Co.* (2007) 153 Cal.App.4th 1436.)

The Court of Appeal in *Thomson* held that California was the place of performance because the insured was seeking defense coverage for claims pending in California concerning properties and operations located in California.

The Court of Appeal Justice noted at the oral argument hearing

his concern that California remain a relatively favorable business environment for insurers. The Justice specifically discussed that prior to the *Foster Gardner* decision, insurance carriers had been leaving the state because of the many anti-insurer court decisions in the 1970s and 1980s. Thus, the Court was concerned that maintaining a good insurance market in California meant that the Court must follow standing precedents.

The insured in *Thomson* filed a Petition for Review by the California Supreme Court. That petition for review was denied on November 22, 2011. ■



FGPPR OBTAINS FAVORABLE SETTLEMENT OUTCOMES ON BEHALF OF ITS CLIENTS

By Diana Lotfi, Esq.



Diana Lotfi

Diana Lotfi of the Newport Beach office recently obtained a very favorable outcome in favor of FGPPR's client relative to a claim for equitable contribution.

In the action, venued in the Superior Court in the County of Los Angeles, California, FGPPR represented a client seeking equitable contribution from an insurance carrier who refused to provide coverage

for its insured's portion of a water damage loss. In addition to arguing liability, FGPPR pressed for a full settlement resolution. After extensive discovery, the adverse insurance carrier not only admitted liability for equitable contribution, but settled for full contribution *in addition* to all costs associated with the carrier's delay in failing to provide coverage for the loss upfront. ■

FGPPR also obtained a favorable recovery on behalf of two insurers and their insureds as a result of a failure involving a UPS module. The UPS Module failed as a result of

an internal malfunction which caused a fire in the server room where the Module was maintained. The Firm established all elements of a Strict Product Liability claim during the discovery phase and favorably settled the case in advance of expert depositions. ■



NEW FACES AT FGPPR



Laura G. Postilion Joins FGPPR as Of Counsel

Laura G. Postilion joined FGPPR as of counsel in August 2011. Laura earned her J.D. degree from The John Marshall Law School, Chicago. She brings to FGPPR's medical malpractice defense department, extensive experience managing complex medical negligence litigation. ■

FGPPR Welcomes Executive Director Nanine Schweda

The firm is pleased to announce that on September 20, 2011, Nanine Schweda joined FGPPR as the firm's Executive Director. Nanine holds an MBA degree from the University of Phoenix, San Diego, California and has over 15 years experience as a legal administrator. ■

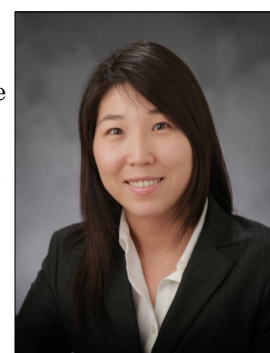


FGPPR Welcomes Associate Attorney Jonathan M. Mraunac

Jonathan M. Mraunac joined the FGPPR Chicago office as an associate attorney in June this year. Jonathan obtained his J.D. degree from Thomas Jefferson School of Law and works primarily with partner Doug Palandech's construction group. ■

Associate Attorney Sherolyn Lee Joins FGPPR

On November 9, 2011, Sherolyn Lee joined the FGPPR San Francisco Bay Area office as an associate attorney. Sherolyn is a graduate of Bryn Mawr College and St. John's University School of Law and is a member of the California, New York and New Jersey bars. ■



FGPPR Chicago Welcomes New Paralegals

In August this year, Valerie Bartman and Elizabeth Raddatz joined the FGPPR family. Valerie, an Illinois native who graduated with a Bachelor of Science degree from George Williams College in Illinois, received a Paralegal Certificate with Honors from Loyola University in Chicago. Valerie works primarily for the property group. Elizabeth, a Chicago native with more than 21 years experience as a paralegal, is a graduate student at the Harvard Extension School and works primarily for partner Mary O'Connor's Healthcare team. ■



Mara Hsiung

Mara Hsiung, Matthew Fernandez Konigsberg, Sarah F. Oline and Laura Williams Join FGPPR's New York Office

In June this year, FGPPR welcomed to its New York office associate attorneys Mara Hsiung, a graduate of Brooklyn Law School and Matthew Fernandez Konigsberg, a Rutgers Law School graduate. Both Mara and Matthew work primarily with New York managing partner Charles Rocco on first party coverage matters. Sarah F. Oline who recently graduated from the Boston University School of Law joined FGPPR this fall as an associate attorney. In addition to Mara, Matthew and Sarah, in June 2011, the New York office welcomed Laura Williams as an administrative assistant. ■



Matthew Konigsberg

Announcement

FGPPR congratulates its New York and San Francisco Bay Area colleagues Sarah F. Oline and Rose Njugu for passing the New York and California bars, respectively. ■

FORETHOUGHT BY G. EDWARD RUDLOFF, JR., ESQ.



G. Edward Rudloff, Jr.

Well, Friends,
we hope you
enjoyed this
latest issue of
*Legal
Reflections*.

All of us at
FGPPR are ex-
traordinarily
proud of the
San Francisco

trial team led by Marjie Barrows,
with Andrea Bednarova serving as
second chair, that won a defense
verdict on behalf of The Travelers
Indemnity Company of Connecticut
in the *Michel Family Trust* case.
The case is something of a mile-
stone in that it marks a point in

*“Our path to success is to provide
our clients with high quality, cost
effective, aggressive advocacy
tempered only by civility and
dignity.”*

Ed Rudloff

time when literally every lawyer in
the San Francisco Bay Area office
has now been a participant in a
jury trial. Few firms across the
country can say that.

We are also very proud of our
firm’s lawyers who were again rec-
ognized for the quality of their ad-
vocacy in the area of insurance cov-
erage. Matthew Ponzi, in Chicago,
along with Marjie Barrows, Dianne

Meconis, Kathleen DeLaney, Renée
Peters, and yours truly who were
again recognized as “Super Law-
yers” in Northern California.

This year marks the tenth an-
niversary of the Firm. We have
grown by leaps and bounds and are
proud to be recognized among the
several top insurance law firms in
the United States.

Happy Holidays to all of you
and your families. Health and
happiness from us to you, and pros-
perity in 2012. ■



UPCOMING PRESENTATION SCHEDULED FOR JANUARY 2012

In January, 2012, San Francisco partners Ed Rudloff and Marjie Barrows will again participate in the panel discussion entitled “Controlling Claims and Litigation Expenses in Today’s World” at the annual meeting of the Loss Executives Association in Tampa, Florida. They will be joined on the panel by Orville Hormann, Peter Evans, Steve Rosenthal, along with Damien Renella, ACE USA, and Richard Verna, Markel. This presentation will include back to back three-hour workshops. The Loss Executives Association is considered one of the foremost organizations of high level company property insurance professionals both here in the United States and across the globe. ■

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