

THANK YOU

After 15 years in business, we are able to reflect back on the past and realize that we have succeeded where others may have failed because of referrals from you, our friends and clients. We thank you for doing so.

No business can grow without referrals and we value the confidence you have placed in us with your business and referrals. We hope you will continue to show us your confidence with future referrals.

Coleman & Horowitz, LLP provides legal counsel to the business community in the areas of business, commercial, and real estate litigation and transactions, construction litigation, appeals, professional liability defense, casualty insurance defense, insurance coverage, tax, probate and estate planning. This newsletter is intended to provide the reader with general information regarding current legal issues. It is not to be construed as specific legal advice or as a substitute for the need to seek competent legal advice on specific legal matters. This publication is not meant to serve as a solicitation of business. To the extent that this may be considered advertising, then it is herewith identified as such.

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Firm Directory

William H. Coleman
Transactions
wcoleman@ch-law.com
Ext. 110

Sheryl D. Noel
Litigation & Transactions
snoel@ch-law.com
Ext. 140

Laurence Y. Wong
Litigation
lwong@ch-law.com
(310) 203-3882

Jennifer T. Poochigian
Litigation
jpoochigian@ch-law.com
Ext. 105

C. Fred Meine III
Litigation
fmeine@ch-law.com
Ext. 134

Rema M. Koligian
rkoligian@ch-law.com
Ext. 117

William E. McComas
Litigation
wmccomas@ch-law.com
Ext. 152

Matthew R. Nutting
Transactions
mnutting@ch-law.com
Ext. 115

Darryl J. Horowitz
Litigation
dhorowitz@ch-law.com
Ext. 111

Eliot S. Nahigian
Transactions
enahigian@ch-law.com
Ext. 129

Philip J. Norgaard
Litigation
pnorgaard@ch-law.com
Ext. 138

Kurt V. Jaenike
Litigation / Creditor Rights
kjaenike@ch-law.com
Ext. 114

John M. Cardot
Transactions
jcardot@ch-law.com

Lacey N. Sanchez
Litigation
lsanchez@ch-law.com
Ext. 116

Maria O'Neill
Administrator
moneill@ch-law.com
Ext. 104

Forwarding & Address Service Requested

Coleman & Horowitz, LLP
Attorneys At Law
499 West Shaw, Suite 116
Fresno, CA 93704

499 West Shaw, #116
Fresno, CA 93704
(559) 248-4820
FAX (559) 248-4830

1880 Century Park East, Suite 1511
Los Angeles, CA 90067-1615
(310) 203-3888
FAX (310) 203-3870

www.ch-law.com



COLEMAN & HOROWITT, LLP



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In This Issue:

Coleman & Horowitz, LLP
Welcomes Lawyer 1

Coleman & Horowitz, LLP
Joins Primerus..... 1

Darryl J. Horowitz
Named Superlawyer...
Again..... 2

Avoiding Scams..... 2

Practice Highlight –
Intellectual Property..... 3

Recent
Developments 4

Thank You..... 5

COLEMAN AND HOROWITT, LLP WELCOMES NEW LAWYER

It seems that with each issue of our newsletter, we are welcoming another lawyer at Coleman & Horowitz, LLP. This issue is no different because we are pleased to announce that Lacey N. Sanchez has joined the firm as an associate.

Lacey is a graduate of California State University, Fresno and received her law degree from San Joaquin College of Law. She previously served as a law clerk at the firm. She will work in the firm's litigation department and will represent clients in collections, banking, commercial, real estate and construction litigation as well as alternative dispute resolution. She can be reached at (559) 248-4820 ext. 115, or (800) 891-8362, and by email at lsanchez@chlaw.com.

Please join us in welcoming Lacey.



Lacey N. Sanchez

COLEMAN & HOROWITT, LLP JOINS PRIMERUS

Coleman & Horowitz, LLP is pleased to announce that it has been accepted as a member of the International Society of Primerus Law Firms. Primerus is an independent, international network of small to mid-size law firms that provide an alternative to large law firms. Each law firm subscribes to a Code of Conduct in which they follow the six pillars of Primerus: Integrity, Excellence of Work Product, Reasonable Fee Structure, Professional Education, Civility to Bench and Bar, and Community Service. Primerus provides an avenue whereby corporate clients can obtain creative, responsive, and value driven litigation by small to medium size firms of the highest caliber. It provides a network of attorneys for virtually every field of practice. The Primerus Defense Institute also maintains a referral list of law firms with experience in defending complex business and tort claims. More information can be obtained at www.primerus.com and at www.ch-law.com.

Continued on page 2...

DARRYL J. HOROWITT NAMED SUPERLAWYER... AGAIN

Every year, San Francisco Law & Politics Magazine surveys lawyers, including in-house counsel. These surveys are used to determine the top 5% of the lawyers within the State in various practice areas. They are dubbed "Superlawyers" by the magazine. Darryl J. Horowitz, a partner in the firm's Fresno office and head of the firm's litigation department, has been named a Superlawyer in the field of business litigation. This is a rare honor but, more strikingly, it is the fourth year in a row that Darryl Horowitz has been named a Superlawyer in the field of business litigation. Previously, he was also named a Superlawyer in the field of construction litigation. Mr. Horowitz also has been given a perfect 10.0 rating by AVVO.com (www.avvo.com).

This is a rare honor but, more strikingly, it is the fourth year in a row that Darryl Horowitz has been named a Superlawyer in the field of business litigation.

Past recipients of the Superlawyer designation also include Coleman & Horowitz, LLP partners William H. Coleman and Eliot S. Nahigian, who were past recipients of the Superlawyer designation in the field of estate planning.

AVOIDING SCAMS

There is no doubt that these are difficult economic times. Unfortunately, when a difficult economy arises, scam artists come out of the woodwork. This article will discuss some common sense steps you can take to avoid being duped by these scam artists.

Rule No. 1

Anything that sounds too good to be true is. We live in a market economy in which one of the goals is to make a profit. Unfortunately, however, a sour economy makes it difficult to make a return on your money even in the safest of banks. Con artists know this and prey

on your desire to make money by promising unrealistically high returns on your investment or a quick profit. The offers will seem too good to be true because they are. There are no exceptions. Thus, when an offer that is certainly too good to be true comes your way, say no. Your wallet will thank you.

Rule No. 2

Avoid phishing. Phishing is an inquiry that is made to you through e-mail. In many instances, the inquiry looks like it is coming from your bank, right down to the bank's logo and disclaimer information. The hope is for you to provide the information, after which the scam artist will use your information to either gain access to your bank account or obtain credit using your personal information, but for their benefit. While banks may provide certain alerts and warnings to their customers, they will not ask you for personal information by e-mail and you should not give it in an e-mail. Thus, before responding to any e-mail asking for your personal information, call your local bank branch and ask them if there is a problem. Do not call the number in the e-mail as it will dial the scam artist, not your bank.

Rule No. 3

Take care of your personal information. Crooks use your personal information to gain credit in their name. They get it in numerous ways. They may look over your shoulder to get your PIN while you are at an ATM. They may go through your trash to look for personal information that may be thrown away in a bank statement (which includes your bank and bank account number) or a copy of a credit card or loan application. Thus, be aware of your surroundings when using an ATM. In addition, if you have personal information that you need to destroy, shred it. Many communities and community organizations provide opportunities to bring your personal information for shredding. Take advantage of them. In addition, when throwing away your old cell phones and computers, make sure they are completely erased or that the memory and hard drive are adequately destroyed. Again, many communities and community organizations provide opportunities to bring your electronic gear for recycling. If you take advantage of these opportunities, make sure that the hard drives and memory are deleted to protect your personal information.

Rule No. 4

Learn to say no. Con artists are good at gaining your confidence and making you feel comfortable with the decision to give them money. That is, after all, how the term "con man" came into existence, as it refers to a "confidence" man. Remember this when you are

That is, after all, how the term "con man" came into existence...

talking to people asking you to give them your money for either a product you do not need or an investment that seems too good to be true. These people are very nice, making it hard to say no, but that is just what you need to tell them, no. You worked hard for your money. You need it more than they do. If you want to invest it, find a trusted investment advisor. If you need a particular product, remember that a nearby store probably has it or it is available online through a reputable seller. There is thus no need for people to call you to make you offers for products that are already abundantly available elsewhere.

Rule No. 5

When you have a question about a company, check with the Better Business Bureau. The Better Business Bureau is a valuable resource. It rates companies based on their trustworthiness. More importantly, however, it provides an outlet for you to determine if a company does not treat its customers well. You do not have to be a member of the Better Business Bureau to be rated, though the Better Business Bureau will not rate a company as an accredited business unless they are a member. Thus, if you have a question about a company, call your local Better Business Bureau. If the company has a bad rating, be wary of using them. It is always easier to pay a little more for goods or services from a company that treats its customers well than to lose it to a company that offers a lower price but does not provide the goods and services. There are other similar sources available on the internet. These include Yelp (www.yelp.com), and Angie's List (www.angieslist.com). For lawyers, Martindale-Hubbell (www.martindale.com or www.lawyers.com), AVVO.com (www.avvo.com and www.superlawyers.com) provide unbiased ratings of lawyers. If you have any questions regarding the above

tips, please feel free to call any of us at Coleman & Horowitz, LLP. We can be reached at (559) 248-4820 or (800) 891-8362.

PRACTICE HIGHLIGHT — INTELLECTUAL PROPERTY

Virtually all companies have some form of intellectual property. It may be the unique name of your company or your company's product. It may be the list of customers your company has developed over time. It may be a copyright on software or written materials your company created. It may also be a secret formula for the food you sell. While most companies take steps to protect their company by buying insurance and creating a corporation or LLC to limit liability to the owners, many do not take steps to protect their intellectual property. Since Coleman & Horowitz, LLP

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was founded in 1994, we have helped companies protect their intellectual property and continue to do so. The firm provides assistance to clients in the registration and protection of trademarks and copyrights and the enforcement of trade secrets (both prosecuting and defending such claims). We also assist clients with insurance issues relating to the enforcement of intellectual property when claims arise to make sure that their insurance covers such claims to the extent possible. In addition, for clients who need help with patents, we have established relationships with patent specialty firms so we can refer you to the right firm.

If your company needs help in the registration or protection of its trade secrets, please call Darryl J. Horowitz, William H. Coleman, Matthew R. Nutting, or John M. Cardot at (559) 248-4820 or (800) 891-8362 or Laurence Y. Wong at (310) 203-3882. We are here for you.

RECENT DEVELOPMENTS

We are pleased to report the following results for our clients:

- **Philip J. Norgaard** recently resolved a dispute between two family members. In the action, two brothers went into business to “flip” houses. After the first project, a dispute arose as to how much each should recover from the sale. One brother sued the other. Phil believed that mediation might help resolve the dispute and he was right. While the relationship may take time to heal, the lawsuit is resolved.
- **Darryl J. Horowitz and Rema M. Koligian** obtained a favorable ruling in a recent motion for attorney’s fees. In the action, our client, an automobile finance company, was sued by a consumer who sought rescission of the finance agreement based on actions of the seller. After our client agreed to settle, the plaintiff’s lawyer filed a motion for attorney’s fees and a cost bill seeking over \$40,000 in fees and \$1,000 in costs. We opposed the motion for fees and filed a motion to tax costs. After extensive briefing and oral argument, the court denied the motion for fees and partially granted our motion to tax costs. In all, the plaintiff recovered only \$475 in costs, a savings to our client of over \$41,000.
- **Eliot S. Nahigian and Jennifer T. Poochigian** were able to obtain several favorable rulings in an ongoing probate dispute. In our last issue, we informed you that Eliot and Jennifer obtained an order disqualifying opposing counsel and further requiring counsel to disgorge attorney’s fees which counsel had received pending a final disposition of the action. Defendant’s counsel appealed these orders. The appellate court reversed the order of disqualification, but affirmed the disgorgement order. The trial court then reversed its order requiring disqualification (per the appellate order), but left its disgorgement order intact. Defendant’s counsel appealed, but Eliot and Jennifer’s motion to dismiss the appeal was granted. Eliot and Jennifer also filed a motion for summary adjudication to determine that the trust amendment defendant sought to enforce was invalid. The trial court granted the motion, finding that the trust amendment was revoked. Defendant then filed a motion for reconsideration, which was granted, but the court affirmed its prior determination and issued a new order finding the trust amendment invalid. Defense counsel also filed a motion for sanctions, but Eliot and Jennifer were able to convince the court to deny the motion and award of attorney’s fees for having to defend the sanctions motion.
- **Darryl J. Horowitz and Rema M. Koligian** obtained the dismissal of a consumer action. In the lawsuit, our client, an auto finance company, was sued by a consumer who claimed that a dealer had violated several consumer laws. Our client was sued as the holder of the finance contract. We filed a demurrer seeking to have several of the causes of action dismissed with prejudice. The demurrer was sustained without leave to amend as to all but one cause of action, which was sustained with leave to amend. When plaintiff’s counsel recognized that he could not properly amend, he dismissed our client from the action.
- **Darryl J. Horowitz and Rema M. Koligian** obtained the dismissal of a construction dispute. In the action, our client was the second-lowest bidder on a school project. The bid of the lowest bidder included the name of an unlicensed subcontractor. As a result, the school district rejected the bid on the grounds that it was nonresponsive. The lowest bidder then filed a petition for writ of mandate on the grounds that the bid was responsive and that the contract should be awarded to it. The trial court agreed and issued a writ of mandate, which the school district appealed. The appellate court sustained the determination of the trial court and found that the issue was not one of nonresponsiveness but one of nonresponsibility. It thus directed the school district to either terminate the contract with our client and award it to the lowest bidder or deem the lowest bidder a nonresponsible party and provide a due process hearing, in which event, if the hearing determined that the lowest bidder was not nonresponsible, the contract would be awarded to the lowest bidder. Based on the appellate court’s order, the school district deemed the lowest bidder nonresponsible and a hearing was commenced. A settlement was reached but never finalized. By that time, however, the school project was complete. Rather than asking for a completion of the due process hearing, however, the lowest bidder sued the school district and our client once again, seeking to recover any profits our client had made on the project. We filed a motion for judgment on the pleadings asking the court to dismiss the claim. After extensive briefing and oral argument, the trial court granted the motion without leave to amend.
- **Sheryl D. Noel and Eliot S. Nahigian** successfully resolved a contract dispute between two agricultural companies. Our client, a farm labor contractor, provided services to a farm for several years. Due to the economic downturn, the farming operation was unable to pay our client for services amounting to more than \$100,000. After extensive negotiations, the debtor agreed to pay the full amount of the debt with interest payable over several years. Our litigation and transactions department teamed up once again to settle this matter without the need of significant litigation.
- **Coleman & Horowitz, LLP** was recently recognized by Central Valley Legal Services as its pro bono law firm of the year. This is the second time the firm has been honored as pro bono law firm of the year and reaffirms the commitment of Coleman & Horowitz, LLP to provide legal services at no charge to the under-served in our community who need them.
- **Coleman & Horowitz, LLP** recently received recognition from one of our clients for promoting diversity. Our client, a national manufacturer of commercial transportation equipment and financier for the transportation industry, conducts a survey every year of its outside counsel with the goal of promoting diversity for its lawyers. Coleman & Horowitz, LLP was recognized as promoting diversity within its work force as well as providing opportunity, training, and advancement for women and minorities within the firm.

We are honored to have received such recognition from our valued client. If you have any questions regarding any of the developments referenced above or have a similar matter you may wish to discuss with us, please contact Maria O’Neill at (559)248-4820 / (800)891-8362 or by e-mail at moneill@ch-law.com.