



# NEWSLETTER

## It's Happening!! – FBA is Going to a Padres Game 8/11

By Garrison “Bud” Klueck, CFLS

In many past years, members of the Foothills Bar Association, and judicial officers and court personnel, have attended together multiple San Diego Padres games. That tradition, unfortunately, has been interrupted recently and FBA has not attended Padres games for several years. That is now going to change!

The Special Events Committee of your Foothills Bar Association is organizing an outing to a Padre game. The game selected is against the Cincinnati Reds on Tuesday evening, August 11.

After several off-season acquisitions, the Padres appear to be doing better this year (kind of). Meanwhile, the Reds appear to be one of the weaker teams in the National League. Using our lawyerly deductive reasoning, we can conclude that the Padres may have a pretty good chance of winning on 8/11.

Padre night games start at 7:05 PM—so there is time to complete a late afternoon calendar and still make it to Petco Park on time. There is lots of food and drink at the ballpark and we can all get a great dinner there!

In order for FBA to qualify for a group rate break on the tickets we had to commit to having 20 people going to the game. These are terrific tickets with a good discount. The tickets are in sections 111-119 on the Field level. The tickets normally sell for \$54.50 and the discounted group rate is just \$42 a ticket—a 23 % discount! Such a sweet deal! And it will be kind of good, if not sweet, to see the lawyers and judges associated with the Foothills Bar enjoying themselves at a ball game. (Even better, the FBA will totally get our name on the Petco Park scoreboard!!)

If you want to take yourself and a significant other out to the “ol’ ball park,” please contact the Foothills Bar Special Events Chairperson, Bud Klueck. Bud’s email address is [Garrison@FamilyLawSanDiego.com](mailto:Garrison@FamilyLawSanDiego.com) and the law firm’s telephone number is 619-448-6500. Please contact “Jodi” at the Klueck law firm to add your name to the list of attendees.

## Upcoming Events Calendar

**July 3 – Independence Day**  
State and Federal Courts Closed

**July 9**  
**Estate Planning and Probate Section**  
**12:15 - 1:15 p.m.**

Law Offices of Nancy Kaupp Ewin, Esq.  
8166 La Mesa Blvd., La Mesa  
Topic: TBA  
Speaker: TBA

**July 21**  
**Family Law Section**  
**12:00 - 1:15 p.m.**

East County Court, Dept. 7  
250 E. Main Street, El Cajon  
Topic: Dividing Stock Options and Restricted  
Stock in Divorce  
Speaker: Thea Glazer, CFP, CDFA,  
MS Accounting

## Living in an Immaterial World

By Keith Jones, Esq.

Insurance is a necessary part of our lives, whether it be auto insurance, health insurance, or homeowner's insurance, to name a few. Laws mandate what we must have in some instances, while lenders and others require us to have coverage as part of the contractual relationships.

I have reviewed many commercial loans and leases over the years in my practice. Insurance provisions may take several pages, detailing insurance obligations for the lender and borrower, or the landlord and tenant, for a variety of coverages: general liability, fire, personal property, hazardous substances, workers' compensation, loss of business income, theft, and, where applicable, liability relating to the sale of alcoholic beverages. Such insurance sections usually include clauses requiring the parties to provide proof of insurance, to name additional insureds, and to compel a borrower or tenant to pay for forced insurance if the lender or landlord purchases insurance for the party who fails to do so.

A landlord can seek to evict a tenant who fails to maintain the insurance coverages required by the lease, usually starting with service of a notice to perform or quit. But we know as lawyers, there are exceptions to the rules as a residential landlord discovered when it tried to evict a tenant for failing to maintain insurance.

The landlord in NIVO 1 LLC v. Antunez (2013) 217 Cal.App.4th Supp 1, had a written lease which required the tenant to maintain insurance to cover losses of the tenant's personal property or vehicle. The landlord issued a subsequent notice to change the terms of the tenancy which stated that any breach of the lease was "*a material breach*." The landlord served the tenant with a notice to perform covenant or quit when the tenant failed to have insurance, and then filed an unlawful detainer action to evict the tenant when she didn't comply.

The trial court found that the tenant's failure to maintain insurance was not a material breach, and thus could not support a forfeiture of the lease leading to the tenant's eviction. The appellate court agreed, relying on the trial court's findings that the tenant didn't have anything worth insuring and that the provision benefited the tenant not the landlord. Thus, the tenant's lack of insurance was a "*trivial breach*" which would not support an eviction.

The appellate court in NIVO 1 LLC focused on the distinction between material and inconsequential breaches. In making that determination, the courts "*must weigh the purpose to be served, the desire to be gratified, the excuse or deviation from the letter, the cruelty of enforced adherence . . .*"

Compounding the landlord's problem, the trial court found that the landlord's notice to change the terms of the tenancy did not comply with the municipal code. As such, the terms in the notice were invalid. So whether the tenant's action constituted a trivial breach, or the landlord's unsuccessfully changed the tenancy with an invalid term, the tenant continued to reside in her immaterial-insurance-clause world.

# REMINDER:

---

It's time to renew your Foothills Bar Association membership for the 2015-2016 year. Membership renewal for existing members or sign up for new members may be done on-line at:

<http://foothillsbar.org/membership/>.

The membership application is also provided with the newsletter.

<http://foothillsbar.org/membership/>.

---

Law Office of Patrick F. O'Connor  
Civil Litigation Only  
Serious Personal Injury  
Employment  
Defamation  
AV-Rated. One of San Diego Magazine's TOP LAWYERS of 2015.  
Tele. 619-463-4284  
E-mail: [patrick@pfoloaw.com](mailto:patrick@pfoloaw.com)

**Looking for Speakers for Future FBA Civil Litigation Section Meetings:**

**If you have a litigation topic you would like to present at an upcoming Civil Litigation Section MCLE meeting, please contact Section Co-Chairs Mark Raftery at [mraftery@epsten.com](mailto:mraftery@epsten.com) or Elizabeth Smith-Chavez at [liz@smithchavezlaw.com](mailto:liz@smithchavezlaw.com).**

Newsletter Advertising Rates  
Business Card Size  
\$25.00 for two months  
\$125.00 for twelve months

The Foothills Bar Association seeks a chairperson for the criminal law section. Responsibilities will involve scheduling speakers for lunch time MCLE programs on topics of interest and providing Section meeting status reports to the Foothills Board of Directors. Interested attorneys should contact Glen Honig at [honigesq@gmail.com](mailto:honigesq@gmail.com) or (619) 315-9962.

**Foothills Bar Association Notice of Board Meeting:**

**The Foothills Bar Association Board of Directors meets on the third Tuesday of each month. The next meeting will be on July 21, 2015 at the Kriger Law Firm, 8220 University Avenue, 2<sup>nd</sup> Floor conference room, La Mesa, CA 91942. The meeting will begin at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming events planning or would simply like to learn more about the organization, your attendance is welcome.**

The Family Court needs settlement conference judges. Please volunteer and share your expertise. Contact Kelly Fabros at 619-456-4065 or [Kelly.Fabros@SDCourt.CA.Gov](mailto:Kelly.Fabros@SDCourt.CA.Gov).

# 2015 FBA OFFICERS, DIRECTORS, SECTION CHAIRS & COMMITTEES

## OFFICERS

<b>President</b>	<b>Cheryl L. Stengel</b>	<a href="mailto:clstengel@outlook.com">clstengel@outlook.com</a>	<b>619-269-2126</b>
<b>Vice President</b>	<b>Glen Honig</b>	<a href="mailto:honigesq@gmail.com">honigesq@gmail.com</a>	<b>619-315-9962</b>
<b>Treasurer</b>	<b>Bradley Schuber</b>	<a href="mailto:bschuber@krigerlawfirm.com">bschuber@krigerlawfirm.com</a>	<b>619-589-8800</b>
<b>Secretary</b>	<b>Traci Hoppes</b>	<a href="mailto:tracihoppes@yahoo.com">tracihoppes@yahoo.com</a>	<b>619-448-6500</b>
<b>Immediate Past President</b>	<b>Keith Jones</b>	<a href="mailto:kjones9001@gmail.com">kjones9001@gmail.com</a>	<b>619-462-6220</b>

## DIRECTORS

<b>Carolyn R. Brock</b>	<a href="mailto:carolyn@crbrocklaw.com">carolyn@crbrocklaw.com</a>	<b>619-741-0233</b>
<b>Kim Marie Staron</b>	<a href="mailto:kstaron@lawinsandiego.com">kstaron@lawinsandiego.com</a>	<b>619-574-8000</b>
<b>Nancy Kaupp Ewin</b>	<a href="mailto:nancy@nkewinlaw.com">nancy@nkewinlaw.com</a>	<b>619-698-1788</b>
<b>Garrison Klueck</b>	<a href="mailto:garrisonklueck@yahoo.com">garrisonklueck@yahoo.com</a>	<b>619-448-6500</b>
<b>Mark R. Raftery</b>	<a href="mailto:mraftery@epsten.com">mraftery@epsten.com</a>	<b>858-527-0111</b>
<b>Elizabeth Smith-Chavez</b>	<a href="mailto:liz@smithchavezlaw.com">liz@smithchavezlaw.com</a>	<b>619-800-2092</b>
<b>George de la Flor</b>	<a href="mailto:gldelaflor@cs.com">gldelaflor@cs.com</a>	<b>619-246-9544</b>

## REPRESENTATIVES

<b>Dan Bacal, SDCBA</b>	<b>619-588-2064</b>
-------------------------	---------------------

## SECTION CHAIRS/MEMBERS

<b>FAMILY LAW:</b>	<b>Traci Hoppes</b>
<b>CIVIL LITIGATION:</b>	<b>Cheryl Stengel, Mark R. Raftery &amp; Elizabeth Smith-Chavez</b>
<b>ESTATE PLANNING:</b>	<b>Nancy Kaupp Ewin, Carolyn R. Brock</b>

## COMMITTEES

<b>ADVERTISING</b>	<b>Chair: Nancy Kaupp Ewin</b>
<b>LAW DAY</b>	<b>Chair: Carolyn R. Brock &amp; George de la Flor</b>
<b>HARD-TO-GET</b>	<b>Chair: Keith Jones, Garrison Klueck &amp; Elizabeth Smith-Chavez</b>
<b>CREDITS SEMINAR</b>	
<b>MEMBERSHIP</b>	<b>Chair: Bradley Schuber &amp; George de la Flor</b>
<b>ADDRESS CHANGES</b>	<b>Chair: Bradley Schuber</b>

**SUBMISSIONS**

Your submissions are welcome! Send articles, letters, flyers, and other non-advertising submissions to Cheryl Stengel at [clstengel@outlook.com](mailto:clstengel@outlook.com).

**ADDRESS CHANGES**

Send change of address or telephone number to Bradley Schuber at [bschuber@krigerlawfirm.com](mailto:bschuber@krigerlawfirm.com)

---

**Foothills Bar Association  
P.O. Box 1077  
El Cajon, CA 92022**

**Addressee Name  
4321 First Street  
Anytown, State 54321**

**Foothills Bar Association  
Of San Diego County**

P.O. Box 1077  
El Cajon, CA 92020

**Membership Application**

The FBA Membership year is July 1 – June 30

**\$65.00 Membership Fee**

**\*\*Dues are waived for first-time applicants who have been a member  
of the CA State Bar for less than one (1) year\*\***

***Please Print or Type:***

*Required fields \*\**

New  Renew with changes as noted  Renew with No changes

**\*\* Name:** \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Office Address: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*(I understand that by providing my fax number and email address, I hereby consent to receive faxes and email messages by  
or on behalf of the Foothills Bar Association)*

I agree that my professional contact information may be published on the Foothills Bar Association website  
and in the annual Foothills Bar Association Attorney Directory.

If you DO NOT want your professional information published in the directory or on the website, please initial  
here: \_\_\_\_\_

Foreign Languages Spoken: \_\_\_\_\_

I am a member in good standing of the State Bar(s) of: \_\_\_\_\_

CA Bar #: \_\_\_\_\_ Year admitted to Practice: \_\_\_\_\_

Are you interested in becoming actively involved? *(please check one)*

- Yes, I would like to become actively involved, and have time to devote.  
 Yes, I would like to become actively involved, but have limited time to devote.  
 No, I do not wish to be actively involved, but do wish to take advantage of FBA  
membership benefits.

If you would like to be actively involved and have time to devote would you like to hold a  
position? *(Please circle one)*  yes or  No

If you answered yes, what committee and/or position are you interested in?

\_\_\_\_\_

Please choose a section:  Family Law  Estate Planning  Civil Litigation  Criminal

Please choose a committee:  Advertising  Annual Dinner  Golf Tournament

Hard-to-Get  Seminar Law Day  MCLE  Membership  Monthly Newsletter  Website

**Check all areas of practice to be included in the Foothills Bar Association Telephone Directory  
and on the Foothills Bar Website:**

Administrative	Internal Revenue Service/ Tax
Adoptions	Insurance
Appellate	Intellectual Properties
Aviation	Juvenile
Banking	Landlord/ Tenant
Bankruptcy	Legal Malpractice
Business/ Corporate	Mechanic's Liens
Civil Litigation	Medi-Cal
Collections/ Consumer	Mediation
Commercial/ Construction	Medical Malpractice
Conservatorship	Military
Criminal	Municipal
Dental malpractice	Personal Injury
Elder	Probate
Eminent Domain	Public Defender
Employment	Real Estate/ Land Use/ Environment
Estate Planning/ Wills/ Trusts	School
Family/ Domestic	Securities
General	Sports/ Entertainment
Guardianship	Social Security
Home Owners Association	Worker's Compensation
Immigration	<b>List all areas of Certified Specialization:</b>

\*\* Date: \_\_\_\_\_ \*\*Applicant Signature: \_\_\_\_\_

*Please return the completed Membership Application, together with your check  
for **\$65.00** made payable to: **Foothills Bar Association** and mail to:*

*Foothills Bar Association  
P.O. Box 1077  
El Cajon, CA 92020  
[www.foothillsbar.org](http://www.foothillsbar.org)*

*If you wish to pay the membership fee by credit card, please complete the credit card information on the  
following page. Your credit card information will be not be retained after processing.*

*For payments by credit card:*

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Credit Card Number: \_\_\_\_\_ Security Code: \_\_\_\_\_

Type of Card (i.e. MasterCard, VISA, American Express): \_\_\_\_\_

Name on Credit Card: \_\_\_\_\_

Expiration month/year: \_\_\_\_\_

**Please note: This information will be not retained after processing.**