

Legal Alert

Providing clients worldwide access to sophisticated legal advice and exceptional service.

hawaiiattorney.com

DAMON KEY LEONG KUPCHAK HASTERT
A LAW CORPORATION



Inside this Issue:

Legal Blogs

Maritime and Aviation

Developments in Employment Eligibility Requirements

Discovering Damon Key's Legal Blogs

Meet Damon Key's legal bloggers

How much would it be worth to hear your lawyer think out loud in his area of expertise?

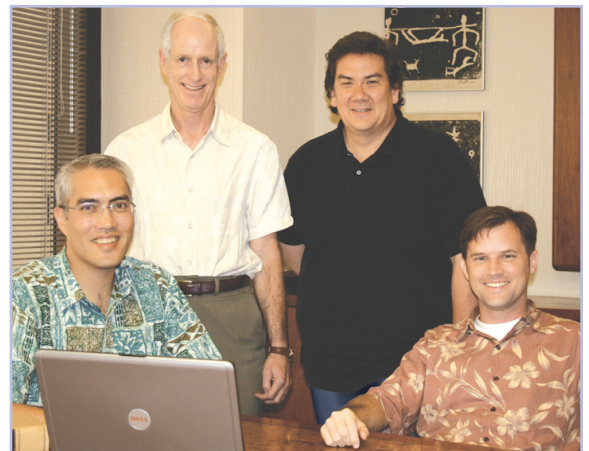
What if we told you that you can eavesdrop on four Damon Key attorneys for free?

If this interests you, read on.

"Blog" is internet shorthand for "web log," a web page set up as a topical journal or newsletter, containing short articles (known as "posts"). Although originally derided as "guys sitting in their living rooms in their pajamas," blogs have matured from simple web diaries into the internet norm for delivering up-to-date news, commentary and analysis on a wide variety of subjects. CNN anchors and reporters have blogs. Sports stars and CEO's have blogs. Even Oprah Winfrey has a blog.

Lawyers are no exception. A law blog is a web site where an attorney posts articles about his or her area of expertise and interest -- these articles may provide in-depth summaries and analysis of recent cases or legislation, or may contain practical insight and commentary. Recent decision not reported in the traditional media outlets may be posted.

Most importantly, law blogs permit a direct view into the mind of the lawyer-author. As one blogger aptly observed, the main advantage of



Mark Murakami, Tred Eyerly, Robert Thomas, and Robert D. Harris, Damon Key's legal bloggers

blogs authored by attorneys is they allow the reader to "overhear lawyers think."

Four Damon Key attorneys blog about their practices. Robert Thomas, Mark Murakami, Robert D. Harris, and Tred Eyerly write and publish blogs where you can find the latest news and articles about Land Use, Maritime, and Insurance law. Damon Key's legal blogs are written and published directly by our attorneys, providing the reader a direct line to their thoughts on these subjects.

Damon Key is at the forefront of law blogging both locally and nationally, and is the only Hawaii law firm that has taken to this new form of communication and information dissemination.

Continued on page 2

Robert Thomas' inversecondemnation.com

For nearly two years, Robert Thomas, a firm director, has been writing and publishing inversecondemnation.com, a blog about land use law, eminent domain, and property rights, and one of the first law blogs in Hawaii. His blog was recently cited in the *Zoning & Planning Law Report* as one of the nation's leading blogs in this area of law:

The blog, written by land use and appellate attorney Robert H. Thomas of Hawaii, is dedicated to recent developments and commentary on regulatory takings, eminent domain, inverse condemnation, property rights, and Hawaii land use law. The posts, updated several times per week, largely focus on recent case decisions dealing with this subject matter, as well as relevant news article and other current events. Postings are categorized for easy access under more than a dozen topics including: development agreements, due process, regulatory takings, and vested rights. This blog also contains links to briefs in some of the higher profile takings and eminent domain cases, and it provides links to other resources including oral arguments of the Hawaii Supreme Court. A section of links to other blogs on eminent domain and land use is provided, as well as information of books and upcoming conferences and programs. Readers may subscribe via feeds or e-mail.

Robert notes, "In Hawaii there is intense public interest in land use issues, eminent domain, environmental laws and property rights, and the blog is an accessible way for readers to obtain up-to-the-minute information about these topics, but in a format which is easy for everyone, not just lawyers, to understand." Robert's readers are not limited to Hawaii, and his blog has hundreds of subscribers from across the country.

Recent posts on inversecondemnation.com include:

- an analysis of a recent Ninth Circuit case about the City and County of Honolulu's repeal of Chapter 38, the City's "condo conversion" law, which allowed apartment owners to use eminent domain to condemn their fee interest
- a review of a book on eminent domain and the U.S. Supreme Court's infamous 2005 decision in *Kelo v. City of New London*
- analysis of the "vacation rental" controversy which has erupted on Maui, Kauai, and Oahu
- details on the latest county restrictions on shoreline development

inversecondemnation.com

"...nor shall private property be taken for public use, without just compensation."
Fifth Amendment, U.S. Constitution

« County Motion in Maui Affordable Housing Exaction Case | Main | The Euclidization of Public Use - A Dose of Reality For the Kelo Majority »

April 25, 2008

Kauai Springs Zoning Permit Appeal

Today we filed the [Opening Brief in Kauai Springs](#) appeal from the January 2007 decision by the Kauai Planning Commission to deny three zoning permits to the small, Kauai-family-owned water bottling company.

The case is an appeal from an agency decision under the Hawaii Administrative Procedures Act (a procedure known in other jurisdictions as a petition for a writ of administrative mandate or a petition for a writ of mandamus). I won't go into the details of the case in this post, since the [brief](#) spells out the facts and the arguments in support.

For more information about the case, here are some links to earlier media coverage:

- A [May 2006 story](#) about the case from the Honolulu Star-Bulletin
- A [story](#) from the Kauai newspaper about the TRO that halted the County's attempt to shut the business down while the appeal was being considered.

THIS BLOG IS...
dedicated to recent developments and commentary on regulatory takings, eminent domain, inverse condemnation, property rights, and Hawaii land use law.

AUTHOR
a land use and appellate lawyer based in Honolulu, Hawaii
email | bio | publications
my other blog: [Hawaii Appellate Opinions](#)

YEAR IN REVIEW
2007's major land use cases and events
2006's major land use cases and events

EVENTS | NOTICES
May 14, 2008
I'll be on the faculty of Integrating Water Law and Land Use Planning in Honolulu. I will be speaking about "Water Rights, Property Rights and the Law of Eminent Domain" - Agenda and registration information here

SUBSCRIBE

Visit and subscribe to Robert's blog at www.inversecondemnation.com, or e-mail him at rht@hawaiilawyer.com for more information.

Mark Murakami's hawaiiocanlaw.com

Damon Key director Mark Murakami writes and publishes his law blog, hawaiiocanlaw.com, which is about (not surprisingly) maritime and ocean law in and around Hawaii, Oceania, and beyond.

Recent posts on Mark's blog include articles about:

- the expansion of the Coast Guard's Biometric fingerprinting-at-sea program
- the proposed Fuel Law for Kauai's Nawiliwili Harbor
- an analysis of a recent Ninth Circuit decision on the definition of "fishing vessel" under the federal Shark Fin Prohibition Act

Continued on page 3

Mark appreciates the immediacy and direct contact his blog allows him. "One of the great things about a law blog is that unlike a traditional web site, it allows the reader to organize the content, and current information arrives in real time." For example, a reader of Mark's blog may choose to request an email whenever Mark posts a new blog story, may subscribe by a RSS newsfeed, or may read the blog like a traditional web site. "Subscribing to a blog lets readers closely tailor the way their information is delivered," he adds, "and the information is presented in the way the reader, not the author, desires."

Mark's blog can be found at www.hawaiiocelaw.com, and you can contact him directly at mmm@hawaiilawyer.com.

Robert D. Harris and Tred Eyerly's insurancelawhawaii.com

Damon Key associates Robert D. Harris and Tred Eyerly, who practice in the firm's Insurance Law Group, write and publish a blog about Insurance Law named, appropriately enough, insurancelawhawaii.com.

Robert and Tred post articles with developments, updates, and key court decisions to their blog frequently -- often daily -- keeping their readers abreast of the latest information on these and other related topics. Recent posts include:

- an analysis of a Hawaii appellate court decision about fees charged to insurance companies are unconstitutional taxes
- a summary and analysis of a Ninth Circuit decision striking down Nevada's requirement that out-of-state insurance agents have an in-state agent sign-off on all insurance policies
- a report on the short-lived Hawaii Medical Malpractice Liability Bill
- an article by Tred entitled, "Flood Insurance: To Buy or Not to Buy"

Robert and Tred take a slightly different approach than their colleagues, since they produce their blog jointly, and alternate writing articles. "We post to insurancelawhawaii.com between our daily work as firm attorneys," Tred notes, "and it helps that Robert and I share posting duties."

Robert adds, "one reason we started the blog on Insurance Law is that it is such a critical, yet usually obscure, area of law, and we hoped that we could provide an accessible way for our readers to understand what they need to know about the subject."

Visit Insurance Law Hawaii at www.insurancelawhawaii.com, or contact Robert at rdh@hawaiilawyer.com, and Tred at te@hawaiilawyer.com.

We hope you pay a visit to one or more of our firm's law blogs. If you want to overhear what our lawyers are thinking, visit the sites listed above, or check out all three at www.hawaiilawyer.com/blogs.

We promise we're not wearing our pajamas.

Maritime and Aviation Practice Group



The Maritime and Aviation Practice Group at Damon Key Leong Kupchak Hastert, consists of attorneys who have been practicing maritime and aviation law for a combined total of over 88 years, have served in the U.S. Coast Guard and are members of the Hawaii State Bar Association Admiralty Section, and Maritime Law Association.

Our maritime and aviation practice provides a full range of specialized maritime and aviation litigation and transactional services to our clients. Our attorneys represent and have successfully represented clients in the following maritime and aviation matters:

- *We represent businesses involved in the aviation and maritime industries with all of their business and financial concerns, including regulatory issues, operations, ownership transfer, leasing, insurance, management and financing;*
- *We have successfully defended aircraft owners, operators, maintenance providers, and pilots, in aviation personal injury cases arising on all major Hawaiian Islands, including catastrophic injuries and multi-fatality losses;*
- *We have litigated cases involving pilot error and mechanical failure involving operations under FAR parts 91 and 135;*
- *We have engaged extensively in litigation regarding airport access, cargo damage and aviation-related employment;*
- *We have litigated and prosecuted cases involving the collection of unpaid freight and damages, maritime-related employment, maritime personal injury, cargo damage, and maritime liens for repairs and necessities; and*
- *We have successfully litigated ocean freight claims for ocean carriers in both domestic and international trade.*

Our direct experience and our active involvement in these industries ensures our commitment to the practices areas of maritime and aviation. We look forward to assisting you with your maritime and aviation legal needs.

For assistance, please contact Mark M. Murakami for maritime related matters or Gregory W. Kugle for aviation related matters.

Please also visit Mark M. Murakami's maritime blog at www.hawaiioceanlaw.com.



Meet The Maritime and Aviation Practice Group



Diane D. Hastert

Listed in The Best Lawyers in America, Diane's practice focuses on complex litigation, aviation and dispute resolution. Diane is involved in a number of professional and civic community activities, servicing on the Disciplinary Board of the Hawai'i Supreme Court, as Board Chair of the Easter Seals Foundation, and as a director of Aloha United Way, among others.

Continued on page 5



James C. McWhinnie:

Jim also has been selected by his peers to be included in The Best Lawyers in America. He has also been rated “AV” (the highest available rating) by Martindale Hubbell for many years, and is a member of The Million Dollar Advocates Forum (attorneys who have won million and multi-million dollar cases). As a director of the firm, he is responsible for substantial commercial, product liability, aviation, construction, environmental, and personal injury cases. He also has extensive experience in all aspects of alternative dispute resolution, having acted as an advocate, arbitrator and mediator. Jim chairs the firm’s practice management committee and serves as Vice Chair of Meritas Law Firms Worldwide.

Gregory W. Kugle

Greg practices aviation, marine, insurance, construction, land use, real estate, bankruptcy and admiralty law. He has litigated cases before the Hawai’i Circuit Courts and the United States District Court, and has handled appeals before the Hawai’i Supreme Court and the Ninth Circuit Court of Appeals.



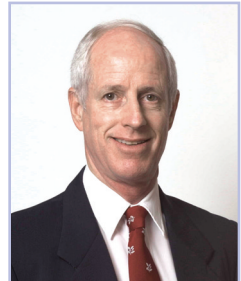
Mark M. Murukami

Mark practices in the firm’s aviation, land use, trust and commercial litigation group, and is the coordinator of the firm’s Maritime practice group. He authors a blog on ocean and coastal legal issues, www.hawaiiocanlaw.com. Mark was the Valedictorian of the Class of 1999 from the William S. Richardson School of Law at the University of Hawai’i. He is a graduate of the U.S. Coast Guard Academy in New London, Connecticut and was twice nominated for the American Bar Association’s Military Lawyer of the Year Award.



Tred R. Eyerly

Tred has accumulated a wide variety of litigation skills over the past twenty-eight years having practiced in Alaska for twelve years, the Commonwealth of the Northern Mariana Islands for ten years, and Hawai’i for the past six. He practices in insurance, aviation, business and commercial disputes, employment and commercial litigation. Tred and Robert Harris together write and publish a blog on insurance issues, www.insurancelawhawaii.com.



Robert D. Harris

Robert practices in the area of civil litigation with an interest in environmental, insurance coverage, and health related matters. He authors a blog on insurance issues with Tred Eyerly, at www.insurancelawhawaii.com. Robert received a B.A. in chemistry and environmental science from the University of Hawai’i and a J.D. cum laude, from the University of Hawai’i William S. Richardson School of Law.



Tricia K. Fujikawa Lee

Tricia joined the firm in 2006 and practices in aviation, maritime, civil litigation and business and commercial transactions. She received her J.D. from the University of Hawai’i, William S. Richardson School of Law, where she served as an editor of the University of Hawai’i Law Review. She also served as an extern for Chief Judge David A. Ezra of the U.S. District Court, District of Hawai’i, and in the office of Lieutenant Governor James “Duke” Aiona.



Meet our newest director Mark M. Murakami

Born on Maui and raised in Kailua, Oahu, Mark graduated from Kailua High School in 1987 where he was active in music and soccer. As a young man, Mark's creative skills led him to the dramatic arts at the Castle Performing Arts Center as a lead in its production of *Sweet Charity*, which was performed at the International Thespian Festival in 1988.



Both his parents were educators so he knew the importance of pursuing a higher education but he yearned to "see the world and do things that mattered" and by joining the Coast Guard he was able to do so! In 1988, he entered the U.S. Coast Guard Academy at New London, Connecticut, the only military academy where all cadets must openly compete for acceptance (no Congressional or Presidential appointments are made). At the Academy, Mark excelled and graduated with honors with a Bachelors of Science degree in Government. He not only distinguished himself academically but as a military leader, earning an appointment to serve as a Battalion Commander.

During his thirteen years on active duty, he served on three Coast Guard cutters off the Atlantic and Pacific coasts. He explains that his experiences at sea were exciting, sobering and rewarding - as missions varied from search and rescue (immigration) to law enforcement (drug smuggling). In recognition of the maturity and leadership skills he reflected as a commander, he was one of seven of his classmates selected for assignment as the skipper of a patrol boat in Morro Bay, California. His final assignment afloat was as Executive Officer of a Medium Endurance Cutter in Florida, on the front lines of homeland security. "Having to manage a large budget and a diverse crew of sailors while operating an important mission provided me with a real-world perspective of balancing mission, people and money." This experience would serve him well later as an officer of the court.

The call of the sea was not as strong as the call of the law. Selected for the prestigious Coast Guard Law Program, Mark entered UH law school in 1996. As at the Academy, Mark excelled at law school. Among his honors, he served as Articles Editor of the Law Review; became a Dean's Scholar, received the Porter Scholastic Award (not once, but twice), received the Kono Award for Academic Achievement, the Phi Delta Phi Professional Responsibility Award, Hawaii State Bar Association Real Property and Financial Services Section Award; and served as the Valedictorian of his law school class.

After law school, he continued his service with the Coast Guard as a Judge Advocate. He was assigned to the Fourteenth Coast Guard District Legal Office in Hawaii. There, he prosecuted court-martials, litigated cases as a Special Assistant U.S. Attorney in federal court and advised Coast Guard officers on maritime, criminal, environmental and international law. Twice nominated for the American Bar Association's Military Lawyer of the Year Award while assigned in Honolulu, he was awarded a Coast Guard Commendation Medal and an Achievement Medal.

In October of 2005, Mark joined Damon Key. Since then, he has practiced in the firm's land use, trust dispute, maritime and commercial litigation areas. He has proven himself to be ready to address the complex issues that clients face and now heads the Maritime practice area as Damon Key's newest partner. "My experience in the Coast Guard has helped me to be a better lawyer," he says. "From my military service, I learned the art of leadership, the importance of teamwork and the emphasis on results. The Coast Guard, like all military services, has a motto - Semper Paratus, Always Ready. That applies not only for the Coast Guard, but for me as an attorney to effectively represent my clients."

Mark met his wife Kimberly in law school. They treasure the time they spend with their children, four year old Tyler and one year old Kyra, and Mark truly enjoys his all-to-brief chances to chaperone pre-school outings.

So what does a former Coast Guard skipper, now attorney do in his spare time? For one, he continues his career in the Coast Guard as a reservist. He was recently selected for promotion to the rank of Commander and currently serves on the staff of the Commander of U.S. Pacific Command at Camp Smith. Mark is an avid history buff, emphasizing World War II. And what about the sea? Mark answers the call now on his infrequent surf outings and by teaching his children to swim.

Recent Developments in Employment Eligibility Requirements and the E-Verify Online Verification System



By Caprice R. Itagaki

A few months ago, the Department of Homeland Security (DHS) published new regulations relating to the unlawful hiring or continued employment of aliens who are not authorized to work in the U.S. These new regulations describe the legal obligations of an employer: (1) when the employer receives a “no-match” letter from the Social Security Administration (SSA) informing them that an employee name and reported social security number do not match SSA records, or (2) when the employer receives a letter from DHS notifying the employer of problems with its I-9 employment verification forms. If implemented, these regulations could impose “constructive knowledge” on U.S. employers. Therefore, DHS could conclude that an employer hired illegal workers if the SSA/DHS records are not corrected or the affected employees are not terminated.

The good news is that as a result of a Federal lawsuit, implementation of these regulations is currently on hold. The bad news is that DHS is determined to place the burden on employers and is working quickly to expand this area of enforcement. Employers are being held to a much higher standard than before. Deficiencies in employment eligibility paperwork can expose employers to administrative fines and civil penalties, as well as possible criminal prosecution. In light of these warning signs, it is imperative that employers engage in proper hiring practices and policies.

One helpful tool to employers is the U.S. Customs and Immigration Service’s (USCIS) new E-Verify system. E-Verify is a free web-based system that allows participating employers to electronically verify the employment eligibility of newly-hired employees. Federal law requires that all employers verify the identity and employment eligibility of all new employees (including U.S. citizens) within three days of hire. Employers are required to complete a Form I-9, and employees must provide employers with documentation establishing both identity and eligibility to work in the United States. The E-Verify program electronically compares new employee information taken from the employee’s I-9 form with more than 425 million records in the Social Security Administration’s database and more than 60 million records in the DHS’s immigration databases.

In order to use the E-Verify system, an employer must register and agree to certain terms and conditions. The system first checks the data against the employee’s SSA records to determine if the employee is a U.S. citizen and therefore given immediate employment eligibility confirmation. If the individual is not a U.S. citizen or is otherwise unauthorized to work, then the employer will receive a tentative non-confirmation. The individual may appeal this non-confirmation decision by personally going to their local SSA office. A new feature even allows an employer to compare the photo of an employment authorization document or a permanent resident card against those in the database in order to determine whether the presented document is genuine or false. E-Verify is a quick and easy way to assist employers in verifying the employment eligibility of all newly-hired employees.

If your company wishes to participate in E-Verify, as a user, designated agent, or corporate administrator, or if your company is interested in the web-service access method, you can visit the E-Verify website at www.uscis.gov/e-verify for more information.

For more information or questions regarding this article, please call Caprice at 531-8031 ext 611 or email her at cri@hawaii lawyer.com

1600 Pauahi Tower
1003 Bishop Street
Honolulu, Hawaii 96813

DAMON KEY LEONG KUPCHAK HASTER
A LAW CORPORATION

hawaii.lawyer.com

Attorneys in the News

Tred R. Eyerly led a discussion at the April HSBA Insurance Practice Group meeting on the anti-concurrent clause provision.

Anna H. Oshiro taught at a seminar for Risk Management on Construction Projects for the ASCE.

Christine A. Kubota moderated the Ready, Set, Growth...Building Hawaii's New Economy panel discussion sponsored by DBEDT, HJCC International Business Development Committee and the Honolulu Japanese Chamber of Commerce.

Christine A. Kubota will be speaking to the Probate and Estate Planning Section of the HSBA on Estate Planning issues for Japan based clients.

Gregory W. Kugle spoke at the April 2008 annual meeting of the American Bar Association's Forum on the Construction Industry, on what to do when you discover bones or other archeological resources on a construction site.

Important Event

Damon Key Leong Kupchak Hastert
Client Breakfast Update:

The next client breakfast is
scheduled for June 24th and the
featured speaker is

Jim Donovan,
University of Hawaii's
New Athletic Director.

Send us an email with your
contact information to
clientbreakfast@hawaii.lawyer.com
if you are interested in attending.

