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## Damon Key's Commitment to Community Service Dates Back 50 Years!



By Christopher Pan

Community service has been a value at Damon Key Leong Kupchak Hastert since its founding in 1963. To celebrate the firm's 50th Anniversary, the firm is participating in a year-long service initiative that reflects its commitment to the people and community of Hawaii. Entitled "50 Ways to Give Back," the firm will be participating in two large volunteer projects and a number of smaller initiatives that will benefit a variety of organizations in need.

"I'm very proud to have this community service initiative be a large part of our golden anniversary celebration," said Anna Oshiro, chair of the 50th Anniversary Committee. "We're looking forward to another 50 years of making a difference in Hawaii."

The founders of Damon Key were actively involved with numerous non-profit organizations throughout the island. For example, the firm has a long history of active involvement in the Hawaii State Bar Association, with Frank Damon serving as Bar President in 1968, and Charlie Key serving in 1989. Successive generations of lawyers have continued the founder's service to community. Ken Kupchak has participated with reforestation efforts on the Big Island for over 30 years, with the Friends of Hawaii Volcanoes National Park, the Department of Land and Natural Resources and Pu'u Mali. Diane Hastert has served with Easter Seals Hawaii since 1990 and has been on the Easter Seals National Board of Directors since 2005. Christine Kubota is the current President of the United Japanese Society and the immediate Past Chair of the Honolulu Japanese Chamber of Commerce.



Damon Key was recognized by the 2013 Hawaii State Legislature for participation in the Access to Justice program.

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Already this year, firm employees have donated blood to the Blood Bank of Hawaii, counted migrating whales for the National Oceanic and Atmospheric Administration (NOAA) and coordinated the cleanup of Sandy Beach for the Sierra Club. Mark Murakami, on the Board of Directors of Good Beginnings Alliance, is particularly proud of that group's Be My Voice campaign, which is advocating for preschool for all Hawaii's 4-year olds. Just recently, on February 21, 2013, the firm received an official resolution from the Hawaii State Legislature praising the firm's commitment to providing pro bono services and equal access to justice.

**Lyon Arboretum.** The first of the firm's larger opportunities will come on June 22, 2013, at the Lyon Arboretum and Botanical Garden. The Arboretum consists of almost 200 acres at the top of Manoa used for research and community education about plants and the natural environments of Hawaii. The Arboretum is the only university botanical garden located in a tropical rainforest in the United States as well as the only easily accessible tropical rainforest on the island of Oahu. David McCauley and Mark Hastert, Diane Hastert's husband, have been longtime board members of the Friends of Lyon Arboretum. On June 22, the firm's lawyers, staff, clients and families will be assisting the Sustainable Urban Garden Manager in the installation and management of Ulu, the Arboretum's newest display garden, which will be focused on educating the homeowner on ways to create beautiful and environmentally friendly urban spaces. The garden, one of Hawaii's first sustainable gardens, will feature environmentally conscious concepts like a bioswale and water catchment and will involve native plant conservation, cultural, medicinal and edible gardens, composting, storm water management and the reduction of trash exports by building with recycled materials. The firm's volunteers will also be assisting in the beautification of the Arboretum's trails and grounds. If you are interested in participating, please feel free to contact us.

**Access to Justice.** Later in the year, the firm's attorneys will be providing the volunteer staffing for the entire month of November for the Access to Justice Room at the Honolulu District Court. The Access to Justice Room connects self-represented litigants with volunteer attorneys who provide short-term legal advice on civil matters related to landlord-tenant cases, collection cases and temporary restraining orders. The Access to Justice Room is a joint effort of the Hawaii State Judiciary, the Hawaii Access to Justice Commission, the Hawaii State Bar Association, and the Legal Aid Society of Hawaii, with support from the AmeriCorps Program as well.

Check the firm's Facebook page for updates to our community service initiative, including how to get involved at the Lyon Arboretum on June 22, 2013.

A partial list of other organizations employees of the firm will be supporting this year includes:

- Aloha United Way
- Best Buddies Hawaii
- Disciplinary Board of Hawaii Supreme Court
- Easter Seals of Hawaii
- Equal Access to Justice
- Friends of Hawaii Volcanoes National Park
- Garden Club of Honolulu
- Goodwill Contract Services Hawaii
- Hawaii Public Radio
- Hawaii Senior Life Enrichment Association
- Hawaii Supreme Court Committee on the Certification in Language Access to the Courts
- Hiroshima Kenjinkai
- Honolulu Japanese Chamber of Commerce
- Honolulu Japanese Chamber Charitable Corporation
- Honolulu Museum of Art
- Honolulu Theatre for Youth
- Ho'okua'aina
- HSBA Legal Line
- Institute for Human Services Homeless Shelter
- International Justice Mission
- Japan-America Society of Hawaii
- Japanese Cultural Center of Hawaii
- Kapiolani Medical Center
- Koko Head Skeet Club
- Legal Aid Society of Hawaii
- Manoa Waioli Lions Club
- Newman Center
- 'Oahu 'Oahu Ko'olau
- PBS Hawaii
- Papahana Kuaola
- Project Dana
- Queen's Medical Center
- United Japanese Society
- UH Foundation
- U.S. Japan Council
- YWCA of Oahu

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# Bethel Church/The Friend Newspaper

**B**ethel Church Became Central Union Church: The Oahu Bethel Church was established by the Reverend John Diell in 1837 and reconstituted in 1850 as the permanent Bethel Church of the Congregational Church (also known as “Bethel Church”) under the Reverend Samuel Chenery Damon (our Frank Damon’s great-grandfather). Between 1840 and 1870, an annual 6,000 seamen visited Honolulu, many worshipping at Bethel Church. Bethel Street takes its name from Bethel Church.

Central Union Church traces its roots back to Bethel Church. As Bethel Church’s numbers grew, the need for a separate church became evident. In 1852, some Bethel Church members left to form Fort Street Church. In 1886, the raging Chinatown and waterfront fire destroyed Bethel Church. The idea surfaced of combining Bethel Church and Fort Street Church. In 1887, a formal merger created Central Union Church with 337 members. In 1892, Central Union Church moved into a building across from Washington Place, Queen Liliuokalani’s residence. Within 15 years, however, rapid growth plus noise and ventilation problems created pressures to move.

In 1920, Central Union Church’s then pastor, Dr. Albert Palmer, chose an 8.3-acre site at Punahou and Beretania Streets. The site was “Woodlawn”, for years the residence and dairy farm of prominent businessman B.F. Dillingham and his family. Mrs. Emma Louise Dillingham, by then a widow, agreed to sell - she had been a member since Bethel Church days. In 1922, the cornerstone was laid, and the present sanctuary was completed in 1924.

**The Friend - Oldest Newspaper West of the Rockies:** Reverend Damon, who had originally hoped to lead a ministry to India, was the founding editor of the English-language paper *The Friend* in 1843 and ran the paper from the Bethel Church until his death in 1885. After the Chinatown and waterfront fire destroyed Bethel Church in 1886, in 1887, builder George Lucas began erecting a single, two-story brick building on the makai (ocean) side of this double parcel to house *The Friend* and other papers, both English language and Hawaiian, printed by the Press Publishing Company. A new, purpose-built printing plant took over the site; a boiling house and engine were located at the rear. The Press Publishing Company remained here until the early twentieth century, when the Bishop Trust Co. and the Bishop Insurance Co. became the new tenants.

*The Friend* described itself as the “Oldest Newspaper West of the Rockies” in the early 1900’s. After Reverend Damon died in 1885, his son, Francis Williams Damon (our Frank Damon’s grandfather), continued to run *The Friend*. *The Friend* is still published today as a church newsletter by the Hawaii Conference United Church of Christ, a conference of 126 Hawaii-based churches.

***Excerpted with permission from Chinatown Honolulu Culture & Arts District Exhibitions, published in 2011 and Central Union Church 2002-2003, A Short History Of Our Church.***



*The Friend Building 1887 and c.1900, 926 Bethel Street*



# Group Builders Update Two - Divergence Between Federal and State Court Interpretations Regarding Coverage for Construction Defects



By Tred R. Eyerly

**F**allout continues from the Hawaii Intermediate Court of Appeals 2010 decision, *Group Builders v. Admiral Insurance Co.* In a brief decision, *Group Builders* determined that property damage caused by alleged faulty workmanship (i.e., a construction defect) is not covered under a contractor's or subcontractor's liability policy because the claim arises from breach of contract. To be covered under a liability policy, a loss must arise from an "occurrence" or accident. *Group Builders* followed a 2004 Ninth Circuit case which predicted that, when faced with the issue, the Hawaii Supreme Court would find construction defects are not covered losses because such losses arise from a breach of contract. *Burlington Ins. Co. v. Oceanic Design & Constr., Inc.*

In our winter 2010 issue of Legal Alert, we focused on the overall impact *Group Builders* has had on the construction industry. And last summer, Legal Alert discussed the enactment of Act 83, the legislature's response to the impact of *Group Builders* on the construction industry. The legislation requires that the interpretation of the term "occurrence" be based upon the case law existing at the time the policy was issued.

In several pending cases, Damon Key lawyers have argued that Act 83 requires consideration of three relevant cases in which the Hawaii Supreme suggested there is coverage for construction defects: (1) *Sturla Inc. v. Fireman's Fund Inc. Co.*, (2) *Hurtig v. Terminix Wood Treating & Contracting Co. Ltd.*, and (3) *Sentinel Ins. Co. Ltd. v. First Ins. Co. of Hawaii, Ltd.* Incredibly, these relevant Supreme Court cases were not cited by either *Burlington* or *Group Builders*.

Since Act 83 was enacted, at least three decisions from the federal district court in Hawaii have also ignored these three cases from the Hawaii Supreme Court, instead determining that there is no coverage for construction defects. In *State Farm v. Vogelesang*, the insured party cited no case law and made no effort to demonstrate the meaning of "occurrence" at the time the policy was issued. Accordingly, Judge Mollway followed *Burlington*.

In a second case, the insured argued *Sturla, Hurtig, and Sentinel* established coverage for construction defects. See *Illinois Nat'l Ins. Co v. Nordic PLC Constr.* Judge Mollway, however, determined that these cases must have been considered and rejected by *Burlington* and *Group Builders*. Therefore, Judge Mollway again felt compelled to follow the Ninth Circuit precedent in *Burlington*. This reasoning seems disingenuous because it is inconceivable that these relevant, precedential Supreme Court cases would have been considered

and discarded by *Burlington* and *Group Builders* without any mention. In a recent development in *Nordic*, Judge Mollway was asked to certify a question on coverage for construction defects to the Hawaii Supreme Court, but she denied the motion.

A third federal district court case considering Act 83's impact upon *Group Builders* was decided by Judge Kobayashi. See *Evanston Ins. Co. v. Nagano*. Without analysis, Judge Kobayashi declined to follow *Sturla, Hurtig* and *Sentinel* to the extent they were inconsistent with *Group Builders* and *Burlington*. Instead, Judge Kobayashi reasoned that *Group Builders* and *Burlington* were accurate descriptions of the law in Hawaii at the time the policy was issued. *Id.* In other words, *Nagano* adopts the predictions by the federal district court cited by *Burlington* regarding coverage under Hawaii insurance law instead of paying credence to the most relevant decisions issued by the Hawaii Supreme Court.

On the other side of the coin, one federal judge and three state court judges have suggested that Act 83 does indeed change the analysis for deciding whether there is coverage for construction defects. In *National Union v. Simpson Mfg. Co.*, Judge Kay noted that Act 83 denounced *Group Builders* and sought to eliminate the uncertainty caused by the decision. State circuit court judges Chang, Border and Sakamoto have also issued rulings, albeit unpublished, which find that Act 83 renders *Group Builders* nonbinding.

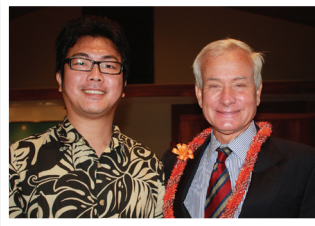
Therefore, the insurance coverage bar and the insurance industry eagerly await a proper case to reach the Hawaii Supreme Court so that a definitive ruling can be issued on coverage for loss caused by faulty workmanship. Until the Hawaii Supreme Court decides the issue, there will undoubtedly be continued uncertainty on whether such claims are covered.



**For more information on this article, please call Tred at 531-8031 ext 625, email him at [te@hawaiilawyer.com](mailto:te@hawaiilawyer.com) or scan the code with your smartphone.**

# Damon Key's Client Breakfast with Mayor Kirk Caldwell

In Honor of Damon Key's 50<sup>th</sup> Anniversary Year, we are proud to present:  
**"Our Honolulu: the Best City"**



# Damon Key's 50th Anniversary Wine Tasting





# The Damons: Equality Through Education

**F**rank Damon co-founded Damon Key Leong Kupchak Hastert. His family founded many of Hawaii's leading schools in an effort to help our state's immigrant groups and laboring class native Hawaiians.

Frank Damon's grandfather, Francis Williams Damon ("Rev. Frank"), left to travel the world after graduating from Amherst College and after returning to teach at Punahou School. While visiting China, Rev. Frank met a friend of his father, Dr. Andrew Happer, who was originally from Pennsylvania. Dr. Happer was a medical doctor who was also a Christian missionary raising his family in China. Rev. Frank noticed with special interest one of Dr. Happer's daughters, Mary, and they were later married. In China, Mary grew up speaking, reading and writing Chinese along with English. She was raised among Chinese, was bi-cultural and like her father had already started to work on bettering the conditions of Chinese with particular attention given to education. Rev. Frank could see in the future of Asian Americans and native Hawaiians in Hawaii that they could be excluded from the good life and relegated to labor and lesser employment, or they could become educated Christians and be smoothly absorbed into society. His future as a practicing Christian minister was now even more chartered than before.

The need for private schooling started to grow in the late 1800s. In continuing their quest to set an example for the world to follow by educating the disadvantaged, in 1892 Rev. Frank and his wife started a small private school in their home on Chaplain Lane on the edge of Chinatown. At first, the Damons enrolled five Chinese and one Japanese student. Soon, this small model grew and became known as the Mills Institute for Oriental Boys, which by 1900 was educating 140 students from the same site.

Rev. Frank believed that giving children a head start at a young age in education would better prepare them for their future years of schooling. In 1892, Rev. Frank started the first free kindergarten in Honolulu and the world for Chinese children. With Mother Rice and other missionaries, kindergarten classes in the Fort Street



area for all races became known as the Kindergarten Children's Aid Association ("KCCA"), which has since switched from kindergarten education to pre-schools. In 1901-02, the enrollment included 167 Portuguese, 124 part Hawaiians, 106 Chinese, 87 Japanese, and 15 of other nationalities. Over the years KCAA has served about 140,000 children of diverse heritages. Today, KCAA provides care and education at seven locations for about 900 children a year between ages 18 months and five years, following what the Rev. Frank and his wife started at their Fort Street kindergarten.

Kawaiha'ō Seminary, started in 1864, was attended by mostly Hawaiian girls between ages 7 and 20. In 1896, Reverend Takie Okumura started the Japanese Christian Boarding School for Japanese boys from his home much as the Rev. Frank did for mostly Chinese students.

By 1906, because of the influx of Korean workers, the Mills Institute was giving instructions in Korean, still from the Damon property. All three schools needed larger and better facilities to accommodate their growing student bodies and boarding students. Rev. Frank had not given up on his life long dream of providing multi-cultural and multi-racial education, and another challenge was before him.

Around 1906, with Hawaii's Board of Evangelical Association, Rev. Frank began the planning to combine his Mills Institute, Okumura School and Kawaiaha'o Seminary into a single girls and boys boarding educational institution. A location in Palolo was rejected, but an area which expanded to about 60 acres in Manoa was selected for the new school named Mid-Pacific Institute.

Construction of the buildings began during the years following. The undertaking took five years to complete. Initially, the school had separate girls and boys schools. After a number of years, it became co-educational. Once the school opened, Rev. Frank assisted in various capacities including serving as the president of the Board of Managers and as principal. Missionary families provided the additional energy and the funds to establish Mid-Pacific Institute. Besides the Damons, included were familiar missionary families with names such as Atherton, Castle, Dillingham, Allen, Cooke, Baldwin, Lowrey, Foster, and Gulick. In 1909, G.N. Wilcox donated \$115,000 to complete the new Mills Building which was later named the Wilcox Building. At the time, this was the second largest building in Hawaii.

Mid-Pacific Institute continues as a top rated multi-racial, multi-cultural educational institution offering pre-school through grade 12 classes. In his honor, the baseball field at Mid-Pacific Institute is named the "Francis Williams Damon Field" shortened to the "Damon Field." There is also a Damon Hall. Frank's late brother Richard, taught at Mid-Pacific Institute and there is a "Richard C. Damon Memorial



*Mills Institute, photo with principal Rev. Frank seated in center.*

Scholarship Fund" named after him, which was established by Frank and his brother, Gordon. In addition, there is a "Francis and Mary Damon Scholarship Fund." The gymnasium is named the "Mills Gymnasium" after Frank's great grandmother, Julia Mills. The current "Damon Hall" is the former "Damon Library." Rev. Frank was a Trustee and Frank is still an Honorary Trustee. Today, the current Damon Key President, Kenneth Kupchak, continues the legacy as the school's Chair of the Board of Trustees.

In addition to Mills Institute, Mid-Pacific Institute, and KCAA, the Damon family pursued their interest in educating the youth of Hawaii through Punahou School. Ever interested in education, Rev. Samuel Chenery Damon, Rev. Frank, C.F. Damon, and C.F. Damon, Jr. for four generations served as trustees at Punahou School, which was founded in 1841.

*Excerpted from "All Men Are Brothers The Life & Times of Francis Williams Damon," by Paul Berry, published in year 2005.*

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***Look for our next issue of Legal Alert  
on Francis Williams Damon's influence on  
Sun Yat-Sen's formative years at Punahou.***

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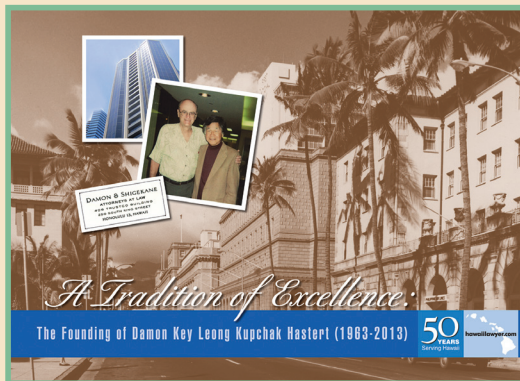
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## Attorneys in the News



Here's the recently-published book about our firm's two founders, C. Frank Damon and Henry Shigekane. Go to <http://tinyurl.com/bowfcy8> to download a copy, or email us at [legalalert@hawaiilawyer.com](mailto:legalalert@hawaiilawyer.com) and we'll mail you a copy.

**Damon Key** was recognized by the legislature for participation in the Access to Justice program, which provides legal counsel to pro bono litigants at the Hawaii state District Court. Mark Murakami and Tred Eyerly were individually recognized for volunteering time with the Access to Justice program.

**Christine A. Kubota** conducted a half-day seminar about "What Foreign Investors Should Know" with Old Republic Title & Escrow in March and will do another session in Tokyo at the American Club on June 1, 2013.

**James C. McWhinnie** was reappointed as a member of the Special Committee on Judicial Performance of the Supreme Court of the State of Hawai'i for a fifth term of three years.

**James C. McWhinnie, Gregory W. Kugle** and **Matthew T. Evans** will be attending the Meritas Annual Meeting in Vancouver, British Columbia, Canada in April.

**Mark M. Murkami** will be attending the ABA Section on Litigation Annual Conference in Chicago, Illinois.

**Mark M. Murakami, Bethany C.K. Ace,** and **Robert H. Thomas** co-authored an article "Recent Developments in Public Use in Eminent Domain - Public Use." Their article will be presented at the Spring Meeting of the ABA's Section of State and Local Government Law in Nashville, Tennessee in May.

**Robert H. Thomas** will be delivering the Keynote Address at the 7th Annual Virginia Eminent Domain Conference in Irvington, Virginia in April. His presentation will focus on "Virginia's Place in National Eminent Domain Trends." He will also be presenting a session on "Tough Takings Questions - Regulatory Takings, Zoning Issues, and Judicial Takings" at the Conference.

**Tred R. Eyerly** co-authored an article appearing in the recent edition of the University of Hawaii Law Review entitled, "Key Issues in Hawaii Insurance Law Answered by the Moon Court." Tred also participated in a panel addressing bad faith issues at the ABA's Insurance Coverage Litigation Committee's 25th annual meeting in Tucson.