

## **LAWSUIT UPDATE...**

Judge Walker has been awaiting the 9th Circuit's decision in *Chevron v. Lingle*, which is a case out of Hawaii dealing with rent control affecting gas stations. The case has been in a holding pattern while the Ninth Circuit debated and decided *Lingle*. The *Lingle* decision was published on April 1.

In *Lingle*, the Ninth Circuit upheld the trial court's determination that the rent control ordinance was unconstitutional because it did not result in either lower rents for station owners or lower gas prices for Hawaiians. Part of Chevron's theory was that the law created a premium, which the station owners sold to successive owners, thus capturing the premium without passing it through to consumers.

Judge Walker is likely now to ask the parties to submit briefs explaining the impact of *Lingle* on our case. The *Lingle* decision does not mean that any time there is a premium created, the ordinance causing the premium is unconstitutional. It does mean that the City must have solid goals in enacting the ordinance and the ordinance must actually work to achieve those goals.

The case is distinguishable from ours for several reasons: the ultimate goal of lower housing prices and protected equity has been met here; and the San Rafael ordinance has other stated goals, such as protecting housing for seniors.

We should know in the next few days what the next steps will be. If there is additional briefing, Judge Walker will then consider that briefing and make a decision as to whether the San Rafael ordinance is unconstitutional. Whichever way he decides, he most likely will make his decision in the near future.

*Craig C. Daniel, Litigation Associate*  
*Cooley Godward LLP*

[4/6/04]