

# CAOC's court of last resort

By Niall McCarthy



Imagine a trial held simultaneously in two cavernous courtrooms with a jury of 120 women and men from around the state. All of them are exposed to outside sources of misinformation if not outright mischief. There is no one judge keeping order. In fact, the process is often not based on fact.

This is no attorney's nightmare. It is the California state Legislature. Though we think of the gold-domed Capitol as home to the elected governing body for our state, in some respects it represents our court of last resort.

No more so than this year. The highest courts in the state and nation have passed down decrees that hammered hard on the trial bar and the rights of our clients. In *Howell*, the state Supreme Court undercut fairness for victims of injury and the ability to hold fully accountable those who cause injury. In *Concepcion*, the U.S. Supreme Court threw open a dangerous door to allow corporations to run roughshod by forcing consumers into one-sided arbitrations. While both decisions will inevitably

be pushed and pulled by future court rulings in ways for good or ill, those legal alterations could be years in the making or never come at all. We need to have a more immediate impact, and correct as soon as possible the infirmities caused by *Howell* and *Concepcion*.

This is why CAOC has turned to our state Legislature for a course correction, sponsoring legislation on *Howell* that is being carried by one of the most powerful people in the statehouse, Senate President Pro Tem Darrell Steinberg (D-Sacramento). Of particular note in these hard times for state government, it is our position that this legislation, SB 1528, can help California's coffers by ensuring that the state's Medi-Cal program is adequately reimbursed in tort cases for the costs of providing care to the program's members. This year, we are busy building coalitions with the medical provider community and working to find a solution that fairly compensates the injured person and health care providers while making the wrongdoer bear the cost.

Likewise, with our efforts to correct *Concepcion*, we have a savvy and skilled legislative author, state Sen. Noreen Evans (D-Santa Rosa), the chairwoman of the Judiciary Committee in the upper house. Any alteration to SCOTUS' 2011 decision in that case will require an adroit understanding of the dance between state law and federal preemption. Evans is the perfect lawmaker to choreograph those steps, and she will be benefitted by the smarts of a CAOC working group that has brainstormed the issue for months.

These two efforts are just part of CAOC's legislative package this year. We also have a measure that would put a stop to marathon defense depositions used as a

stalling tactic (AB 1875 by Assemblyman Mike Gatto). We are planning to fight anew on behalf of California's vulnerable senior citizens for SB 558 by Sen. Joe Simitian (D-Palo Alto). And as always, we will keep a ready eye open for any opportunity to modernize MICRA and yank its antiquated \$250,000 cap on non-economic damages into the 21st Century.

None of this would happen without the best collection of legislative advocates to set foot in the statehouse. If anyone can captain our multi-front legislative battle, it's CEO and Chief Lobbyist Nancy Drabble, with the help of Legislative Director Nancy Peverini and Political Director Lea-Ann Tratten. They are the best reason I can think of to support CAOC, year in and year out providing a blanket of protection for your practice and the rights of your clients.

Lastly, our efforts would not be possible without each of you, our dedicated members. This year, with the election and an aggressive, high-impact legislative agenda, CAOC needs your assistance more than ever before. We remain outgunned by big insurance, the health care industries and other corporate kingpins in many of these battles. We win with smarts and full engagement by every single one of our nearly 3,000 members.

So when we ask you to give, understand why. When we ask you to help grow our membership, understand why. The future of your practice – and your clients' rights – depends on it. ■

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