



CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

CAOC announces award finalists

Consumer Attorney and Street Fighter of the Year revealed Nov. 16

SACRAMENTO (Sept. 17, 2013) – Consumer Attorneys of California President Brian Kabateck today announced this year’s finalists for the organization’s two major member awards, Consumer Attorney of the Year and Street Fighter of the Year. The winners will be revealed at CAOC’s [Annual Installation and Awards Dinner](#) Nov. 16, to be held in conjunction with the [52nd annual CAOC Convention](#) at the Palace Hotel in San Francisco.

Consumer Attorney of the Year is awarded to a CAOC member or members who significantly advanced the rights or safety of California consumers by achieving a noteworthy result in a case. Eligibility for Street Fighter of the Year is limited to CAOC members who have practiced law for no more than ten years or work in a firm with no more than five attorneys. To be considered for either award the case must have finally resolved between May 15, 2012 and May 15, 2013, with no further legal work to occur, including appeals.

Here are the 2013 finalists:

CONSUMER ATTORNEY OF THE YEAR.

BURKE V. CITY OF SAN DIEGO

Browne Greene, Daniel K. Balaban, Andrew J. Spielberger and Ivan Puchalt

HOLDING A CITY ACCOUNTABLE FOR PROPERTY MAINTENANCE

Michael Burke was struck down by a 70-year-old San Diego palm tree during a storm and was left paralyzed from the waist down. The city had accepted this tree, along with thousands of other palms, as a gift decades ago. Many of these trees are now at the end of their natural life cycle and pose a continuing falling hazard. In 2007, prior to this incident, city officials decided to stop the regular inspections of all its trees that it had carried out for decades. Burke's attorneys argued that if the city had a reasonable inspection system, one that included annual inspections of older trees in “high target” areas at a cost of \$15 per tree, they would have been aware of the deteriorating condition of the tree that injured Burke. A jury awarded Burke compensation for his injuries, sending a message that the city should inspect and maintain its trees as opposed to relying on untrained citizens to discover and report dangerous conditions. Browne Greene said, “We were testing the whole notion that a governmental entity can walk away from a responsibility by saying they don’t want to pay for something.” According to Daniel Balaban, “The hope from this case is that cities will be proactive and not reactive.”

EVANS V. STATE OF CALIFORNIA

Gregory L. Bentley and Robert A. Parris

PROVING THE DANGEROUS CONDITION OF A STATE HIGHWAY

David Evans was riding a motorcycle on State Route 138 in San Bernardino County when he was hit by a car making a dangerous illegal left turn from the other direction on the same road. Evans suffered catastrophic brain and spinal cord injuries, is ventilator-dependent and will require 24-hour nursing care

for the rest of his life. His wife now spends her life caring for him. The intersection where the crash occurred does not have 90-degree angles. Attorneys Bentley and Parris brought a cause of action for dangerous condition of public property against Caltrans for its failure to give proper guidance to drivers through the placement of pylons to safely direct left-turning motorists through the intersection. They showed there had been previous crashes at the intersection that, while not identical, served as notice of a dangerous condition, and numerous witnesses confirmed the type of illegal turn that caused this crash happened all the time at the intersection. Eventually Caltrans had to admit the intersection had an operational problem, not a design problem, meaning it could not be immune from responsibility. A jury found Caltrans partially at fault for the crash because of the hazardous intersection, with Evans receiving a negotiated settlement to compensate for his terrible injuries.

GREIG V. PG&E/BULLIS V. PG&E
Steve Campora/Frank Pitre

FORCING NEW SAFETY MEASURES AFTER A GAS LINE EXPLOSION

These cases arose from the gas line explosion and fire that killed eight people and destroyed 38 homes in San Bruno in September 2010. Campora represented the husband/father and daughter/sister of a woman and 13-year-old girl who were burned to death in the front yard of their home. Pitre represented the wife/mother of a man and 17-year-old boy who burned to death in their home. PG&E claimed the explosion was an isolated incident resulting from a uniquely flawed weld in its pipeline, but Pitre and Campora proved that the explosion was symptomatic of a corporate culture that repeatedly circumvented rules and regulations necessary to assure the safety and integrity of its pipelines. PG&E engineers and other managing executives were forced to acknowledge that PG&E elected to push profits up to nearly a billion dollars per year, rather than testing and replacing its worn-out transmission lines to assure public safety. Campora and Pitre turned down significant monetary offers to negotiate a settlement that required PG&E to conduct more rigorous safety assessments than that required by regulators of the industry.

IN RE CHASE BANK USA, N.A. "CHECK LOAN" CONTRACT LITIGATION
Elizabeth J. Cabraser, Michael W. Sobol, Roger N. Heller, Eric H. Gibbs, Robert S. Green, Jeff S. Westerman and Geoffrey A. Munroe

USING A CLASS ACTION TO BRING RELIEF TO WRONGED BORROWERS

In return for an up-front fee, Chase promised its existing customers low interest rates on balance transfers from other loans that were to remain fixed for the "life of loan" so long as the borrower made timely monthly payments. But in the midst of the great recession of 2008-09, Chase identified those borrowers who continued to benefit from the promised low interest rate and increased their minimum required monthly payment by 150% unless the borrower agreed to a higher interest rate. The plaintiffs charged that Chase breached the bargain it had struck by compelling its most responsible borrowers, many of whom were managing very tight budgets, to surrender their low fixed interest rates. Chase fought every aspect of the case, resisting any meaningful resolution until it exhausted its challenges to nationwide class certification and the parties were on the verge of trial. In a text book example of how a well-litigated class action and the civil justice system can hold powerful corporations accountable, plaintiffs secured a settlement that provided checks directly to more than a million class members. This case shows how plaintiffs' attorneys can stop banks from punishing responsible borrowers.

IN RE TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION

Bruce L. Simon, Richard M. Heimann, Clifford H. Pearson, Eric B. Fastiff, Aaron M. Sheanin, Brendan P. Glackin, Robert G. Retana, Marc A. Pilotin, Veronica W. Glaze and Thomas K. Boardman

CURBING THE POWER OF GLOBAL CORPORATIONS TO FIX PRICES

Lieff Cabraser Heimann & Bernstein, LLP, and Pearson, Simon & Warshaw, LLP, represented direct purchasers of Thin Film Transistor-Liquid Crystal Displays (“TFT-LCDs”) who charged that the world’s leading electronics manufacturers conspired to raise and fix prices of TFT-LCDs for over a decade. TFT-LCDs are used in flat-panel televisions as well as in computer monitors, laptop computers, mobile phones, personal digital assistants, and in other devices. The litigation spanned multiple countries and lasted more than six years as the lawyers reviewed more than 40 million pages of documents, written in four languages, and took more than 100 depositions. All the defendants settled before trial except Toshiba, which unlike the other defendants had not been accused of criminal wrongdoing by the U.S. Department of Justice. Plaintiffs’ counsel investigated and uncovered the evidence necessary to prove Toshiba’s participation in the conspiracy. After a six-week trial, the jury returned a unanimous verdict against Toshiba. The total recovery for class members constitutes one of the most successful direct purchaser class actions in history. California Lawyer magazine said the work of the attorneys in this case “created a roadmap for large-scale civil prosecution and restored the threat of trial in major antitrust class cases.”

MARTINEZ V. STATE OF CALIFORNIA, ET AL.

Timothy G. Tietjen

SETTLING A COMPLEX CASE AFTER A CRASH INVOLVING 34 VEHICLES

In October 2007 33 commercial trucks and one auto were involved in a series of chain reaction collisions in the 544-foot-long Newhall Tunnel in Los Angeles County. The incident began when the driver of a speeding truck lost control of the vehicle after exiting the tunnel and crashed into the center divider, causing trailing vehicles to slow down and setting off the crashes. One crash just outside the tunnel started a fire that quickly spread through the entire tunnel, creating an inferno. CHP concluded that 14 of the 34 drivers were traveling at an unsafe speed at the time of the crash, and it was claimed the design of the tunnel presented a dangerous condition of property as the sight distance was inadequate for the posted speed limit. Nearly 150 claims were consolidated into this action including three deaths, five personal injury actions and dozens of property damage claims, with Tietjen as lead counsel for all the plaintiffs. The case was technically quite difficult and complex, requiring multiple mediations over several years. Tietjen first reached a settlement with the State of California, then settled the claim with the truck company that triggered the collision before negotiating settlements with 11 other defendants. The result was one of the highest settlements for a wrongful death case of this nature in California.

MAURO, ET AL. V. FORD MOTOR COMPANY, INC.

Roger A. Dreyer, Christine D. Spagnoli and Robert B. Bale

SHOWING A VEHICLE MAKER’S RESPONSIBILITY FOR KNOWN TIRE DEFECTS

A Ford Econoline E-350 van owned by a church went out of control and rolled over four times after a catastrophic right rear tire tread separation. The driver and front-seat passenger were killed and another passenger was injured. The attorneys showed the tire that failed had been recognized by the National Highway and Traffic Safety Administration as having a very high incidence of catastrophic failures, and the NHTSA had determined the E-350 had a high propensity for rollovers after catastrophic failures of

this particular tire. Goodyear, the tire's manufacturer, conducted its own investigation and ultimately stopped making the tire in 1999. Ford knew about the NHTSA's investigation and Goodyear's discontinuation of the tire, but it never communicated to its E-350 owners or its dealerships that the tire was defective and dangerous. Key Ford executives testified they didn't notify dealers about the Goodyear tire problem because they saw it as a "Goodyear campaign" and Goodyear never asked Ford to be involved. The attorneys showed this contradicted Ford's behavior in nearly a dozen prior recalls of other tires, in which Ford often spent millions of dollars in proactively notifying its customers. A jury awarded a substantial verdict, including punitive damages against Ford.

STREET FIGHTER OF THE YEAR

BERSHADSKY V. LEE

Daniel K. Balaban

HELPING A MEDICAL NEGLIGENCE VICTIM EARN JUSTICE BEFORE DEATH

Ilya Bershadsky, 60, went to see gastroenterologist Dr. Martin Lee with complaints of radiating back and stomach pain. Dr. Lee sent Bershadsky to the ER for a CT scan that detected a mass in Bershadsky's pancreas. Dr. Lee was told about the mass but didn't tell Bershadsky about it during a follow-up appointment three weeks later. Bershadsky's cancer went undiagnosed for more than a year until the tumor had grown five times in size, at which time a second doctor ran a CT scan and gave Bershadsky the news. The defendants stalled the case, because if Bershadsky died prior to trial, his case would die with him, and under the law for terminal cancer cases there could be no case for wrongful death by his heirs. As his health rapidly declined it became clear Bershadsky wouldn't live to see his trial date. On a Friday, Balaban submitted a request for an earlier trial with any judge, waiving the right to a jury, and was able to get one the following Monday. Bershadsky was in hospice when the court awarded him a verdict; he died within a week. Balaban did not take a fee and said Bershadsky got accountability for his situation, some money for his family – and a new respect for lawyers.

KATZ AND SELVAGGIO V. BLUE CROSS OF CALIFORNIA DBA ANTHEM BLUE CROSS

Kathryn M. Trepinski, Michael L. Cohen and Heather M. McKeon

MAKING AN INSURER CHANGE A POLICY HARMFUL TO THE MENTALLY ILL

This was a class action on behalf of policyholders who have received a diagnosis of a severe mental illness, such as schizophrenia, bipolar disorder, anorexia, bulimia and autism. The severely mentally ill are a protected class under the Unruh Civil Rights Act. Beginning in January 2010 Anthem Blue Cross capped treatment at 12 psychotherapy sessions a year, even if patients were being treated once or twice a week before that. To go beyond 12 sessions patients were required to undergo a pre-authorization process that often resulted in denials or limited treatment. The attorneys sued Anthem for violation of the Unruh Civil Rights Act and violation of the Unfair Competition Law based on failure to comply with the California Mental Health Parity Act. Anthem agreed to terminate its pre-authorization program and lift the 12-session cap. It also agreed to pay each policyholder who was denied treatment for a severe mental illness. Not only did the attorneys force Anthem to reverse itself on its policy, the case is the first California class action in which an insurance company made a penalty payment to policyholders for violating their civil rights.

**PEREZ AND CARBONE V. ONTARIO CEMETERY ASSOCIATION DBA BELLEVUE
MEMORIAL PARK**

Daren H. Lipinsky and Aaron Ray Boyd

FIGHTING FOR WORKERS FIRED FOR GOOD FAITH COMPLAINTS

Robert Perez and Kimberly Carbone worked as family service counselors for Ontario Cemetery Association. They raised complaints to the board of directors and general manager about favoritism exhibited by the general manager to a co-worker, including what they believed to be a sexual relationship. Two weeks after making the complaints Perez and Carbone were fired, with the cemetery alleging they had unlawfully accessed its computer system and claiming Perez had threatened a co-worker. Lipinsky and Boyd filed suit for wrongful termination, saying their firings were in retaliation for their complaints. Perez, 63, was a decorated Vietnam veteran and a long-time sales associate. After he was fired he had to get a job several hours away from his home and dependent mother. He also had several close relatives buried at the cemetery he was unable to visit after being fired. Carbone, 43, was a single mother without a high school diploma. After she was fired she had to seek a much lower paying job and was diagnosed with depression. An arbitrator found in favor of Perez and Carbone on the wrongful termination claims, and against the cemetery on its allegations, and awarded the wrongfully-fired employees compensation for lost earnings and emotional distress.

SALAZAR V. WELTER

John Michael Montevideo

RACIAL JUSTICE AND COMPENSATION FOR AN INJURED CLEANING WOMAN

Maria Salazar, an employee of an Orange County apartment complex, was pushing a cleaning cart along the walkway in front of tenants' garages, on her way to clean the gym, when her cart was struck by the vehicle of a resident, Wallace Welter, backing out of his garage. Welter took off, and there were no other witnesses. Salazar suffered a torn rotator cuff, was unable to work and had to move in with her brother to avoid being on the streets. She had surgery and physical therapy and still required further surgery as the case was litigated. Welter denied hitting Salazar and blamed her. He also blamed Toyota for making a quiet car and blamed the design of the apartment complex. A jury awarded more than nine times what Welter's attorney had offered to settle the case. Montevideo, who also handled workers' compensation elements of the case, said the defense attorneys had a false belief that a jury in such a conservative area as Orange County would never find in favor of a Latina female janitor in a case against a white male professional. This case proved them wrong.

Consumer Attorneys of California is a professional organization of plaintiffs' attorneys representing consumers seeking accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.

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