

CAOC: An Impact Year at the Capitol

By Nancy Peverini, Legislative Director

im·pact [*n.* im-pakt; *v.* im-pakt]

1. the striking of one thing against another; forceful contact

CAOC's leadership, under the guidance of President Niall McCarthy, President-Elect Brian Kabateck, and Legislative Chair John Feder, has announced an impact year for consumer legal rights. The time is ripe. CAOC has successfully staved off all major tort reform, in the Legislature and via the initiative process, for the past eight years. Now it is time to advance protections for your clients.

2. influence; effect

CAOC has built influence in and out of the Capitol by having unparalleled success rates in support of pro-consumer candidates. The majority of legislators voting on issues today are people who you met and supported when they were first candidates. We urge you to keep participating in our political program so that CAOC (you!) will continue to influence policy making in California.

3. the force exerted by a new idea, concept, technology, or ideology

CAOC is the force – you are CAOC. We intend to educate and convince legislators and the public so that Californians will have the legal protections they need and deserve.

Impact: We are proud to announce CAOC's 2012 legislative priorities

Howell

A 2012 priority for CAOC will be legislation to address the implications of the California State Supreme Court's decision in *Howell v. Hamilton Meats & Provisions* (2011) 52 Cal.4th 541. We strongly believe that because someone who causes injury to another has nothing to do with arranging medical care or the initial payment for that care, any reduction of medical charges which occurs should not benefit the wrongdoer, either because the injured person had the foresight to purchase insurance which provided a discount for the care, or because the charges were reduced to reflect Medi-Cal reimbursement rates, or because a provider choose to write off certain charges. We believe a public policy that ensures that wrongdoers take full responsibility for their actions is essential for a well-functioning society and are committed to pursuing legislation to that end. Damages should not depend on whether a plaintiff has purchased private health insurance, is a donee of medical services, is a Medi-Cal beneficiary, or is uninsured.

The proposed language is a work in progress as our internal committee, chaired by CAOC Past President Bruce Brusavich, continues to evaluate options in light of

CAOC meetings with interested parties, including public entities, health care providers, the Department of Health and others. Senate Pro Tem Darrell Steinberg (D-Sacramento) has agreed to author CAOC's *Howell* legislation.

Concepcion

The United States Supreme Court in April 2011 issued a devastating 5-4 opinion. *Concepcion* held that AT&T may enforce a contract provision that requires customers to arbitrate their disputes individually, rather than class-wide. (*AT&T Mobility LLC v. Concepcion* (2011) 131 S.Ct. 1740, 179 L.Ed.2d 742.) In *Concepcion*, the Supreme Court ruled that the Federal Arbitration Act (FAA) preempts the rule announced by the California Supreme Court in *Discover Bank*, which provided that an arbitration clause that also prohibited arbitration of claims on a class wide basis was unconscionable under specific circumstances. Under the *Discover Bank* rule, contracts of adhesion were unconscionable where the dispute between the contracting parties predictably involved small amounts of damages and if it was alleged that the party with superior bargaining power carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money. (*Discover Bank v. Superior Court (Boehr)* (2005) 36 Cal.4th 148, 113 P.3d 1100.)

Concepcion had the incidental effect of eliminating Californians' right to join claims pursuant to Code of Civil Procedure § 382 and Civil Code § 1781 as class actions. CAOC believes that legislation is needed to restore the right to join claims, while not interfering with the FAA or frustrating its purpose. CAOC is working



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with consumer and labor groups and will be introducing legislation authored by Senate Judiciary and Women's Caucus Chair Noreen Evans (D-Santa Rosa). We also will continue to evaluate opportunities for improving the Consumer Legal Remedies Act and will keep you updated.

Marathon Depositions

You have spoken; we have listened. One consistent issue CAOC members have raised is problems associated with multiple days of depositions. We are pleased to announce that Assembly Member Mike Gatto (D-Burbank) will be introducing legislation generally limiting depositions to one day of seven hours, similar to Federal Rule 30(d)(1). The court can allow additional time if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

Uninsured-Underinsured Motorist Law

Last year CAOC sponsored AB 1063 (Bradford) which was held in the Assembly Insurance Committee by Chair Jose Solorio (D-Santa Ana). Consumers buy uninsured/underinsured motorist coverage (UM/UIM) thinking that they are fully protected if an at-fault driver's motorist coverage is inadequate

to compensate them for the injuries suffered when they're hit by another driver who is uninsured or underinsured. Sadly, the coverage is illusory under current law and is often inadequate to cover the consumer's injuries, leaving the consumer to pay out-of-pocket or turn to government assistance. Assembly Member Bradford will re-introduce legislation in this area and we will continue to work with him and the Department of Insurance to correct this injustice.

Senior Protection

In 2011, CAOC sponsored SB 558 (Simatian) which changed the standard of proof in physical abuse cases brought under the Elder and Dependent Adult Civil Protection Act from clear and convincing to a preponderance standard. Assembly Appropriations Chair Felipe Fuentes (D-Los Angeles) held the bill in his committee. However, this remains a priority issue for CAOC and we intend to continue our efforts on this issue in 2012.

MICRA

Always a priority, CAOC will continue to seek ways to change this outdated, unfair law. We are working with key leaders and outreaching to those who share our concern for patients and a workable health care system.

As you can see, we have an ambitious agenda for change in California. It will by no means be easy and some of these may be multi-year projects. Further, given the drastic impact the state budget has had on court funding, we must, and will continue, to prioritize adequate funding for the courts as none of these advancements mean much if consumers cannot get to court. However, we must proceed if we want to have contact, influence and force. Thank you for your membership in CAOC, and together, let's have an impact in 2012. ■

Join us for
Justice Day
Tuesday • May 1, 2012

[www.caoc.org/
12JusticeDay](http://www.caoc.org/12JusticeDay)

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