



## In the Arena

By Niall McCarthy, CAOC president

The credit belongs to the man who is actually in the arena ... who at best knows in the end the triumph of high achievement, and who at worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who have never tasted victory or defeat.

— President Theodore Roosevelt

That classic Teddy Roosevelt phrase has stuck with me, and it applies perfectly to CAOC's 2012 legislative efforts. We took on big issues. We had some big victories. And, unfortunately, we had a big defeat in our fight to address the *Howell* decision.

But this organization has never been one to give up after one battle gone wrong. We are trial lawyers. We don't avoid fights. CAOC will learn from this year's successes and failures, we will carry the fight to this November's election and onward to the 2013 legislative year. We will strive, as Roosevelt said, to dare greatly.

We came out a big winner on one of our top priority bills, AB 1875, which will effectively eliminate marathon depositions of plaintiffs by limiting the questioning to seven hours in a single day for most cases. This important bill will reduce litigation costs, save just about every trial lawyer many days of time and money as well as save your clients needless grief at the hands of opposing attorneys playing tactical games. Every trial lawyer owes a debt of gratitude to Assemblyman Mike Gatto (D-Burbank) for championing this measure.

CAOC once again successfully fought off efforts by the California Chamber of Commerce, the Civil Justice Assn. of California and the rest of the tort reform crowd to push through legislation that would put further limits on class action litigation, wipe out Business and Professions Code

17200 cases and allow defendants not to post bonds on appeal.

We battled hard to ensure that funding to our courts wasn't going to turn out worse than it might have been – and it truly might have been if not for the efforts of our team. An example: We helped successfully convince court leaders and the Legislature to use diverted court construction money to fund court operations instead of being siphoned off for other state programs.

In the final weeks of session, we fixed a problem with trial attorneys being charged multiple jury fees in a single case.

But on another of our top bills, SB 1528 dealing with the erroneous *Howell v. Hamilton Meats and Provisions* decision by the state Supreme Court in 2011, we fought long and hard all year, we pulled out all the stops, we devoted countless hours in negotiations with stakeholders and pushed hard on all the power centers of the statehouse, but came up short during the final hours of the legislative session.

In the best of times, fixing *Howell* would have been a tough task, but 2012 was a tougher year than most. Proposition 30, pension reform, CEQA and other gargantuan battles took legislative priorities. Even as powerful a leader as Assembly Speaker John Perez couldn't win approval for the top priority bill he authored on college tuitions.

Add to the mix the reality of our adversaries on *Howell*. The insurance industry has the deepest of pockets and an army of lobbyists. The makeup of the Legislature remains one in which moderate Democrats can side with Republicans to defeat even the best consumer rights legislation. Undaunted, we started early to meet with the governor, key legislative leaders and stakeholders. By the very last week of the session it looked like we might be able to strike an agreement that would address a

huge hole in *Howell* – making changes to achieve fair assessment of medical care for patients in HMOs and other capitated health care plans. That change alone would have been tremendous. Ultimately, the demands of our adversaries proved too great to accept. By the final vote in the Assembly, the debate turned from substantive to nonsensical, as the health care lobby's legislative puppets spouted ludicrous suggestions that our bill somehow upended MICRA.

Now we move onward to the November elections and what could prove to be a politically different state Legislature for the 2013-14 session. This year's elections are the first for the new districts drawn by a citizen commission and the first test of the top-two finisher primary system. It remains unclear both to the pundits and regular people whether it will yield a Legislature that is dominated by weak-knee lawmakers afraid to make tough decisions or one that will prove willing to take on our top priorities of protecting justice, promoting consumer rights and ensuring corporate accountability.

All of us in the trial bar can play a part in shaping that outcome. All of us care about the future of our law practices and the sanctity of the civil justice system. So we need to put our time and treasure on the line for it. Look to CAOC for where you can help with the upcoming elections to support candidates who will truly make a difference.

We don't fail unless we stop fighting. ■

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