Hawaii Seminar Report

By John M. Feder

The weekend after Thanksgiving, 89 CAOC members and their families made the easy journey to Maui to attend the Hawaii Travel Seminar at the beautiful Fairmont Kea Lani Hotel in Wailea. The educational programs started Monday at 8:30 a.m. and were adjourned at 12:45 p.m. on Thursday afternoon, allowing all attendees plenty of time to enjoy the spectacular scenery and climate.

All of the speakers did an excellent job. Our featured speakers were Mike Alder, Mike Arias, Dr. Alireza Bagherian, Carol Bauss, Arthur Bryant, Stephen Cassidy, Brian Chase, Eustace de Saint Phalle, Nancy Drabble, Hon. Lynn Duryee (Ret.), Matthew Edling, Patrick Farber, John Feder, Michael Gatto, Gail Glick, Scott Glovsky, John Gomez, Gary Gwilliam, Katherine Higgins, Clifford Hirsch, Ara R. Jabaghchourian, Brian Kabateck, Shawn Khorrani, Jeff Kichaven, Anoush Lancaster, Kevin Lancaster, Michael Liberty, Kristine Meredith, Dr. Fernando Miranda, Kevin Morrison, Anne Marie Murphy, Craig Peters, Nancy Peverini, Emily Polcari, Chris Purcell, Jeremy Robinson, Elise Sanguinetti, Brett Schreiber, Lawrence Simon, Daniel Smith, Jeff Smith, David Stein, Lea-Ann Tratten, Kimberly Valentine, R. J. Waldsmith, Joshua White, David Winnett, and Kimberly Wong. The daily programs were moderated by Frank Pitre, John Feder, Andje Medina, and Emily Polcari. As always, Lori Sarracino and the CAOC staff did outstanding work to make this excellent seminar a huge success.

Many thanks to program sponsor Patrick Farber of Atlas Settlement Group, Inc. Mr. Farber gave an excellent presentation on the benefits of structuring attorney’s fees. We also thank Cotchett, Pitre & McCarthy, LLP for the welcome reception, Walkup, Melodia, Kelly & Schoenberger and the Veen Firm, PC for the syllabus, and the Veen Firm, PC for a special social hour on Tuesday night. At the welcome reception on Monday night sponsored by Cotchett, Pitre & McCarthy, we welcomed 2015 President Brian Chase and thanked 2014 President John Feder.

Both Nancy Drabble and Nancy Peverini spoke of the upcoming 2015 legislative session and encouraged all to participate in our legislative agenda. We have lots to do in 2015.

Thank you to the seminar chair, Frank M. Pitre, and the committee, Ashleigh Aitken, Darren Aitken, Greg Bianco, Mike Gatto, Brian Kabateck, Anthony Label, Anoush Lancaster, Shawn McCann, Valerie McGinty, Norm Pine, Craig Peters, Eric Ratinoff, Greg Rizio, RJ Waldsmith, President, Brian D. Chase and Immediate Past President John M. Feder.

We invite you to attend next year’s seminar which will begin November 30, 2015. If you would like to speak, or have a suggested topic for the seminar, please let Lori Sarracino know. For those of you looking for a beautiful and friendly place to relax, swim in the warm Pacific Ocean, and hone your legal skills, please join us next year in Maui!
The CAOIE closed out 2014 with its 4th Annual Holiday Party at the home of Ricardo Echeverria. The event simply would not have happened if it wasn’t for Ricardo and the generosity of our sponsors: Robinson Calcagnie Robinson Shapiro Davis, Inc.; Rizio & Nelson; Shernoff Bidart Echeverria Bentley LLP; Brown & Lipinsky, LLP; Welebir Tierney & Weck; Pat Farber at Atlas Settlement Group; and of course Rick Kramer of Executive Presentations, who as always captured all of the evening’s festivities.

As it has in years past, the party brought together new friends and old friends and was a celebration of the past year and the year to come. The CAOIE Board honored Cory Weck, the CAOIE’s 2014 President, by presenting him with the traditional gavel acknowledging their appreciation for his service. The Board also announced and honored me with the opportunity to serve as the CAOIE’s 2015 President.

I look forward to serving with this year’s Board and to the great things in store for the CAOIE in 2015.
CAOC 2014 Awards

By J.G. Preston

CAOC announced its 2014 Consumer Attorneys of the Year and Street Fighters of the Year at the Installation and Awards Dinner during CAOC’s 53rd Annual Convention at The Palace Hotel in San Francisco.

Brian J. Panish, Deborah S. Chang, Gregory L. Bentley and Gregory R. Vanni were honored as Consumer Attorneys of the Year for their work to improve the safety of vehicles that run on compressed natural gas. In Solorio v. Lincoln Composites, et al., Panish, Chang, Bentley and Vanni represented Jose Solorio, who lost his right leg and suffered other serious injuries when two compressed natural gas (CNG) vessels in his delivery van exploded while being filled in March 2009. The catastrophic ruptures occurring within the vessels’ service life called into question the safety of the existing standards, and the design, manufacturing, and testing processes for these all-plastic vessels in CNG vehicles and in future hydrogen vehicles.

The case brought national attention to the issue of regulations and safety – and an investigation was launched by the National Highway Traffic Safety Administration (NHTSA) and NASA’s White Sands Testing Facility. The handling attorneys conducted their own testing and analysis through experts from Lawrence Livermore National Laboratory, the Aerospace Corporation and others. The attorneys also provided funding for the investigation in the interest of public safety at a cost of nearly $2 million. The matter settled in the interest of public safety at a cost of nearly $2 million. The appeal produced a published decision that clarified what had been a murky area: the ability of an agent (such as Young’s daughter) to bind a principal (such as Young) to an arbitration agreement.

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CAOC 2014 Awards

Kathryn Stebner, Kirsten M. Fish and Valerie McGinty were named Street Fighters of the Year for their representation of an 88-year-old woman who contracted herpes when she was raped at a skilled nursing facility. The attorneys had to defeat an unjust arbitration clause in the nursing home contract in order to win justice for their client. In Young v. Horizon West, Inc., Stebner, Fish and McGinty represented Marilyn Young, who was 88 years old and recovering from a stroke at a Horizon West skilled nursing facility in Monterey when she was sexually assaulted and contracted genital herpes. When Young sued, Horizon West moved to force the case to arbitration based on an agreement that her daughter had signed upon admission. Fish and Stebner defeated that motion, and when Horizon West appealed, a process that usually takes upwards of two years, McGinty utilized a little-known strategy and was able to speed up the process based on Young’s age. As a result Young was still alive when the court issued its decision in her favor, and the case was settled shortly afterwards.

The appeal produced a published decision that clarified what had been a murky area: the ability of an agent (such as Young’s daughter) to bind a principal (such as Young) to an arbitration agreement. Because this case presented a perfect example of how dangerous arbitration agreements can be in nursing home contracts, Stebner and Fish worked with California Advocates for Nursing Home Reform to write and produce a public service announcement video featuring Young and her daughter. The video urges the elderly and their families to refuse to agree to arbitration provisions when entering a nursing home and will help other California seniors avoid lengthy legal battles regarding nursing home arbitration agreements.

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 10 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, 2013 and May 15, 2014, with no further legal work to occur, including appeals.

Also honored at the awards dinner were: Christine D. Spagnoli, winner of the Robert E. Cartwright, Sr., Award, given “in recognition of excellence in trial advocacy and dedication to teaching trial advocacy to fellow lawyers and to the public.” One of California’s top trial lawyers, Spagnoli served as CAOC’s president in 2009 and has been a very active participant in CAOC’s continuing education programs and has been generous with her time and talents in behalf of fellow consumer attorneys.

Brian S. Kabateck, winner of the Marvin E. Lewis Award, given “in recognition of continued guidance, loyalty and dedication, all of which have been an inspiration to fellow attorneys.”
CAOC’s president in 2013, Kabateck has given countless hours to CAOC activities, chaired the campaign fundraising committee for Proposition 46 and has played a key role in the effort to restore adequate funding to California’s courts.

Thomas V. Girardi, winner of the Edward I. Pollock Award, given “in recognition of many years of dedication, outstanding efforts and effectiveness on behalf of the causes and ideals.” With nearly fifty years of experience representing victims of corporate wrongdoing, Girardi is recognized as one of the nation’s top consumer attorneys and was named to the California State Bar Trial Lawyer Hall of Fame in 2003.

Darrell Steinberg, honored as Legislator of the Year. Steinberg left office shortly after the convention after 14 years as a champion of consumer rights in the California Legislature, including six years as Senate President pro tempore. Steinberg has been a prominent voice calling for restoration of adequate funding to California’s courts, an active supporter of pro-consumer candidates to the Senate and a relentless advocate for mental healthcare.

Also during CAOC’s 53rd Annual Convention, the CAOC Women’s Caucus honored Helen E. Zukin with its Consumer Advocate Award for her outstanding contributions to the legal profession. Zukin has consistently offered guidance to CAOC’s many female members and extended opportunities for them to advance into leadership positions.
There never will be complete equality until women themselves help to make laws and elect lawmakers.” This powerful statement was made by American suffragist Susan B. Anthony in 1897. Its power derives from its truth, and the relevance of this truth to this day.

As members of the CAOC Women’s Caucus, we not only have an incredible opportunity but, I firmly believe, an obligation to women like Susan who tirelessly fought for many of the rights we enjoy today and to those who will follow us, to share our opinions on CAOC policymaking and legislative goals, to foster professional relationships with politicians in the California Legislature to whom we advocate proactively and defensively on behalf our clients and the courts, to take the reins of this wonderful organization, and to support each other in the process. By working towards these goals, the CAOC Women’s Caucus will carry on the long-standing push for equality, while also preserving hard-earned rights.

As the California Legislature welcomes the largest “freshman” class since 1996, great opportunities exist for the Women’s Caucus to develop relationships with our representatives in the Capitol. Where some have paused at the shifting political landscape – the diminishing numbers of women legislators and legislators with legal backgrounds, the relative inexperience of representatives with respect to politics at the state level – and wondered how it will impact CAOC, we see an opportunity for us to push forward and focus our efforts to develop relationships with the 2015-2016 class. Indeed, one of the goals of the Women’s Caucus will be to continue and strengthen our Legislative Liaison program, which will match up our members with local representatives to discuss and promote our organization’s legislative efforts this year. Another goal is to connect with the California Legislative Women’s Caucus so that we may support our ladyfriends of the California Legislature. Plans are also in the works to host political salons and other educational events throughout the State. Finally, we will continue to support those candidates for office who support our clients and the courts through fundraising.

All of these acts will help advance CAOC’s political and legislative goals and thereby preserve access to justice and the rights of California consumers. All of them will further the goals of the Women’s Caucus and continue to advance the rights of women in this organization, this state, and this country. I truly believe that. Together, we can do this and more. Let’s make the good stuff happen.
The NLD has yet another exciting year ahead of it, with the continuing and ever-present goal of not only educating new lawyers, but energizing and encouraging them to become active in our legal community – both for the purposes of networking and for understanding and promoting CAOC’s political goals. As usual, we will be working hard this year to increase membership and participation in all CAOC and NLD events.

At the Annual Convention in November, the NLD held its business meeting and elected its new executive board and committee chairs. Chair: Kevin Smith of Rose, Klein & Marias; Chair-Elect: Ryan O’Connell of Rucka O’Boyle Lombardo & McKenna; Membership: Paymon Khatibi of Balaban & Spielberger, LLP; Treasurer: Santo Riccobono of Doyle Law; Immediate Past Chair: Lyssa Roberts of AlderLaw, P.C.; Political: Rory Pendergast of Altieri Pendergast; Social Committee: Parisima Roshanzamir of Gomez Trial Attorneys; Education: Neil Gehlawat of Chain Cohn Stiles; Publication /Marketing: Brooke Bove of DiMarco Araujo Montevideo; Public Service: Jamie Rinehart of Rose, Klein & Marias, and Alexis Djivre; and Law School Development: Sarah Havens of Gnau & Tamez Law Group, and Doug Brewer of Walter Clark Legal Group.

The NLD also continued its recent tradition of appointing Regional Chairs to promote the NLD in areas of the state. We are all looking forward to this coming year and to achieving our goals as well as those of CAOC, and to expand and grow under the direction of our new leaders.
Diversity Committee Report
By Deborah Chang, Diversity Committee Chair

Our workforce and our entire economy are strongest when we embrace diversity to its fullest, and that means opening doors of opportunity to everyone and recognizing that the American Dream excludes no one.

– Thomas Perez, U.S. Secretary of Labor

At a time when racial divide and civil unrest are prominently featured in the news throughout the country following the deaths of Michael Brown in Ferguson, Missouri, and Eric Garner in Staten Island, New York, experts agree that the justice system is in need of serious reform because communities are losing confidence in its fairness. The lack of diversity in that system is a serious issue that needs to be addressed. Historically, diverse groups based on race, gender, disability, ethnicity, religion, and sexual orientation have been under-represented in the State Bar – and particularly in the plaintiff’s bar.

To this end, the Consumer Attorneys of California Diversity Committee has set forth a 2015 Strategic Plan to welcome, encourage, and promote diversity and to implement strategies that will result in significant progress toward increasing diversity. You can do your part by taking a good look at your own law firm right now. What is the makeup of your firm? Are you surrounded by white men? Do you make any effort to recruit and retain diverse attorneys? When is the last time a woman in your firm tried a case? Nothing will change until you make a commitment to make your firm more diverse.

We are looking for diverse members to become involved in this organization and to be great leaders. CAOC’s 2015 Leadership Academy, an initiative of the Diversity Committee, trains attorneys to assume leadership roles within our organization, and special consideration is given to members of diverse groups. This year, sessions will be held on April 18-19, August 1-2, and October 24-25. For more information go to: www.caoc.org/15LeadershipAcademy.

I am excited to serve as the new Chair of the Diversity Committee, and look forward to working with you to promote, embrace, and celebrate diversity in our ranks. We should all recognize and thank Micha Star Liberty, our former Diversity Committee Chair, for everything she has done for this committee and for the CAOC. She is tireless, energetic, and a born leader – and she serves as a great inspiration for us all. As the old saying goes, she may have little feet, but she has left some big shoes to fill.
Amicus Curiae Update

By Kevin K. Green

Twenty years ago in law school, I first heard the admonition “don’t make a federal case out of it.” This expression applies with even greater force today. My update focuses on three California decisions favorable to consumers and the injured.

Finally, Some Good News on MICRA

In Rashidi v. Moser (Dec. 15, 2014, S214430) ___Cal.4th___ [2014 Cal. Lexis 11291], the California Supreme Court addressed the interplay, if any under MICRA, between a jury award and a pretrial settlement. The issue was “whether a jury’s award of noneconomic damages, reduced by the court to $250,000 under MICRA, may be further diminished by setting off the amount of a pretrial settlement attributable to noneconomic losses, even when the defendant who went to trial failed to establish the comparative fault of the settling defendant.” (Id. at p. *3, emphasis added.)

The high court answered with a unanimous and resounding “no.” The opinion explained that “[i]t would be anomalous to allow a defendant to obtain a setoff against damages for which he is solely liable.” (Id.) There was no legislative intent, in either the statutory text or history, to punish tort victims twice by giving MICRA this extra bite. (Id.) Justice Carol Corrigan added: “The limitation on noneconomic damages restrains settlements indirectly, by providing a firm ceiling on potential liability as a basis for negotiation. Only noneconomic damages awarded in court are actually capped.” (Id., emphasis added.)

Kudos and thanks go to Amicus Curiae Committee members Steven B. Stevens and Benjamin I. Siminou of Thorsnes Bartolotta McGuire LLP, who filed amicus briefs in Rashidi.

Successful Publication Requests

California precedent is shaped not just by the state’s appellate justices, but with a little help from friends of the court through letters seeking publication. CAOC recently obtained publication of two consumer-friendly Court of Appeal decisions.


The panel held that “the percentage of recovery method for calculating an award of attorneys’ fees is still viable in common fund cases.” (Id. at p. *1.) This point had become murky in the decisional law. Further, the court concluded that a “clear sailing provision in a class action settlement” – meaning the defendant’s agreement not to oppose attorney fees up to a certain amount – “does not, without more, invalidate the agreement as collusive.” (Id.) Emphasizing that Federal Rule of Civil Procedure 23 “does not control in California,” the court declined to adopt In re Mercury Interactive Corp. Securities Litigation (9th Cir. 2010) 618 F.3d 988 as California law. (Id. at p. *18-19.) And the court upheld a 2.13 multiplier in light of, among several factors supporting a fee enhancement, the “contingent nature of the case.” (Id. at p. *37.)

The Lafitte opinion was initially non-published. Amicus Curiae Committee member Kimberly A. Kralovec, who has an enviable success rate in urging publication, filed CAOC’s publication request. Fraud has long been called recession-proof and a growth industry. The second decision covered here concerns the increasing problem of specialized post-secondary schools that promise the employment moon but are little more than diploma mills leaving students not just unemployable, but deeply in debt.

In Vasquez v. California School of Culinary Arts, Inc. (2014) 230 Cal.App.4th 35, the plaintiffs allege they were defrauded into entering culinary school by misrepresentations about graduation rates, employment prospects after graduation and anticipated income levels. (Id. at p. 37.) The opinion addresses the right to discovery of electronically stored information – in Vasquez, student loan data controlled by Sallie Mae. (Id. at p. 42.)

Sallie Mae failed to comply with plaintiffs’ subpoena for this information and moved to quash. “[F]inding that Sallie Mae’s motion to quash was without substantial justification,” the trial court awarded plaintiffs over $11,000 in attorney fees. (Id. at p. 40.) The Second District affirmed. (Id. at p. 45.)

Vasquez is an important precedent elaborating the Electronic Discovery Act, added to the Code of Civil Procedure in 2009. Any decision disapproving discovery gamesmanship adds luster to the Official Reports.

We have former CAOC President Sharon J. Arkin to thank for Vasquez becoming citable precedent. She filed CAOC’s successful publication request.

Kevin K. Green is a Certified Appellate Specialist and member of the California Academy of Appellate Lawyers based in San Diego. He is, along with Sharon J. Arkin and Lee S. Harris, Co-Chair of CAOC’s Amicus Curiae Committee.
"Powerful endings to moving pieces ... colossal and triumphant." While that may refer to his closing argument, more specifically it is a description by CAOC member Phil Bourdette of the "power chord" symphony presented by the Tulare County Symphony’s season. This successful season was provided to Tulare County residents through the efforts of the TCSA board of which Phil has been a member for the past 21 years. As a symphony association board member, Phil actively fundraises for the symphony so it can provide music to its diverse community with programs such as youth concerts, music lessons and the annual local favorite “Pops in the Park.”

Phil also volunteers with the Visalia County Center Rotary. The Rotary is the oldest and largest service club in the world, founded by attorney Paul Harris in Chicago in 1905. It was initially organized to get people together from various businesses so each could learn about different businesses and reduce misconceptions about other businesses. Harris found that a lack of knowledge created misunderstandings about what lawyers did. The meetings would rotate from business to business each week for the meetings, hence the name Rotary. Rotary’s first public service project was the construction of the first public bathroom in Chicago in 1907.

Through his involvement with the Rotary, Phil and his law firm Bourdette and Partners have earned the respect of many Visalia business leaders. The Rotary Club raises funds for local charities and college scholarships, works on Habitat for Humanity projects and provides backpacks for the local Foodlink. The Foodlink project gives low income families with children food for the weekend. The Rotary stuffs backpacks for elementary school children with food and books. They will use the backpacks on Fridays throughout the year to get food for the weekend. Although schools serve food to children during the week, many families have very little food for the weekend. Without the Foodlink project and Rotary volunteers, meals would be missed.

This is just a glimpse at the many ways Phil creates stronger bonds to his community and increases the visibility of plaintiff lawyers in the community.
American Association for Justice Update

By Ingrid Evans and Amanda Greenburg

Palm Springs is Right Around the Corner!

On February 21 – 25, AAJ will hold its Winter Convention in Palm Springs at the J.W. Marriot Resort. This convention gets better each year.

Attorneys from around the country are registered to attend. Take advantage of the convention’s close proximity and register today at: www.justicewinterconvention.org. If you are not an AAJ member, discounts are available that will allow you to become a member and attend convention for one low cost. Please contact Amanda at Amanda.Greenburg@justice.org for more information.

AAJ Membership Continues to Grow


New Firms Join AAJ’s Leaders Forum

AAJ’s Leaders Forum is a dynamic group of member firms that help AAJ fulfill its mission every day. Leaders Forum firms support AAJ’s work to protect the civil justice system by providing the resources necessary to inform the public and educate members of Congress on dozens of issues crucial to individuals and families.

AAJ would like to thank Bisnar and Chase, LLP and Kazerouni Law Group, APC for joining Leaders Forum!

Forced Arbitration: Franken Amendment Limits the Use of Forced Arbitration in Defense Contracts

As part of the recent Congressional spending bill to fund the majority of the government through September 2015, Congress reapproved the Franken amendment to limit the use of forced arbitration in defense contracts. This amendment, originally introduced by Sen. Al Franken (D-MN) and first passed in 2010, significantly limits the ability of defense contractors to require their employees to submit to forced arbitration for employment or civil rights related issues. As a result, defense contractors will remain unable to force their employees into arbitration in many circumstances for at least another year. More broadly, the Franken amendment has also served to buttress our many other avenues of arbitration advocacy, in particular because it has had bipartisan support.

AAJ Public Affairs will continue to build on the amendment’s passage and work toward the monumental task of ending forced arbitration.

FMCSA Releases Advanced Notice of Rulemaking on Insurance Requirements for Motor Carriers

In late November, the Federal Motor Carrier Safety Administration (FMCSA) initiated an Advanced Notice of Proposed Rulemaking (ANPRM) to gather information from concerned stakeholders as the Agency considers formal rulemaking to increase minimum insurance requirements for interstate trucks and motor coaches. The current $750,000 per incident minimum for motor carriers has not changed since 1980 when the Motor Carrier Act was passed, deregulating the industry.

AAJ will file comments in response to FMCSA’s request for input detailing the inadequacy of current insurance minimums to appropriately compensate crash victims as well as the positive impacts of raising financial responsibilities, such as safer roads for all motorists. In addition, AAJ encourages trial lawyers to voice their concerns and submit client stories that illustrate the need to increase insurance requirements. The comment period is open until February 26, 2015.
NTSB Investigation Procedures for Aviation Accidents

The National Transportation Safety Board (NTSB) began rulemaking in October to review its regulations addressing investigation procedures following aviation accidents. Currently, while the Board regularly invites aircraft manufacturers to participate in examinations of wreckage and other evidence, crash victims and their representative may only participate at the discretion of the investigator-in-charge. Moreover, the NTSB is often slow to release information related to the crash which has a detrimental effect on victims’ ability to access the civil justice system before the statute of limitations on their claim has run.

In responding to NTSB’s review, AAJ urged the Board to consider allowing a victim representative to participate in the investigation as an observer, and employing confidentiality agreements to protect against dissemination of information before an investigation is complete. AAJ will continue tracking the Board’s review as it moves through the rulemaking process.

FTC Telemarketing Sales Rule

AAJ filed comments with the Federal Trade Commission (FTC) in November in response to the Commission’s request for input regarding the Telemarketing Sales Rule (TSR). While the clarification of the TSR and rules governing the Do Not Call Registry will be helpful to prevent evasions of important consumer protections, AAJ urged the FTC to also consider expanding the scope of the regulation to include specific language banning the use of forced arbitration clauses between consumers and telemarketers.

Companies that use telemarketing to reach targeted audiences are known to require consumers to sign away their legal rights. While AAJ supports arbitration that is agreed upon by both parties after a dispute arises, AAJ highlighted the many pitfalls of forced arbitration including upfront costs, inconvenient venues, and arbitrators that are “repeat players” with the companies that contract for their services. By eliminating forced arbitration as an avenue for companies to funnel consumer complaints, AAJ argued that the likelihood that consumers prevail in fighting fraudulent activities by telemarketers would be significantly enhanced.

AAJ was able to fend off and defeat many of the legislative attempts made in the 113th Congress that threatened the nation’s vital health, safety, environmental, and financial protections. If these bills had passed, they would have not only set dangerous precedent, but also would have essentially closed the courthouse doors to many citizens with valid legal claims.

AAJ anticipates that in the 114th Congress, the U.S. Chamber of Commerce will continue its assault on the civil justice system through legislation that seeks to shield corporations from liability, overturn critical environmental protections, and derail regulations that would help preserve the safety of all Americans. AAJ will continue to monitor any legislation and new regulatory developments as they move forward to ensure that your clients’ rights are protected and no harmful measures are enacted.