



CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

CAOC announces 2015 award finalists

Consumer Attorney and Street Fighter of the Year revealed Nov. 7

SACRAMENTO (Aug. 25, 2015) – Consumer Attorneys of California president Brian Chase 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. 7, to be held in conjunction with [CAOC’s 54th Annual 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, 2014 and May 15, 2015, with no further legal work to occur, including appeals.

Here are the 2015 finalists:

CONSUMER ATTORNEY OF THE YEAR

POTT v. JOHN B., et al.

B. Robert Allard, Lauren A. Cerri and Mark J. Boskovich

HOLDING CYBERBULLIES ACCOUNTABLE FOR A TEEN SUICIDE

Bay Area high school student Audrie Pott, 15, was sexually assaulted while passed out at a party, then photographed and humiliated at school by her assailants, who shared the photos in text messages. Audrie committed suicide eight days after the assault. The boys who assaulted her showed no remorse and suffered only minor consequences from the criminal justice system. School officials were not allowed to punish them because the assault took place off campus. Audrie’s parents filed a civil suit to force the boys to understand the magnitude of what they had done. After settling the suit, the boys issued stirring apologies and are required to make presentations at schools or youth groups about the dangers of behavior like their own. The Potts and their attorneys also worked to pass two state laws (SB 838 and AB 256) to increase accountability for perpetrators of these crimes. The *San Jose Mercury News* said the civil case did a “service to the broader public” by “reminding us of the courts’ ability to bring clarity to societal issues – and the value of individuals who take grievances public in ways that help shift the course of history toward a truer justice.”

BOICE v. EMERITUS CORP.

Lesley Ann Clement, Valerie Dawson, Daniel U. Smith and Valerie T. McGinty

EXPOSING DANGEROUS CONDITIONS IN ASSISTED LIVING HOMES

Joan Boice, 81 and suffering Alzheimer's disease, spent three months as a resident at an Auburn facility run by Emeritus, the nation's largest assisted living company. While there, she lost 20 pounds and suffered at least four major bedsores. She died shortly after leaving the facility; the bedsores were listed as significant factors in causing her death. The attorneys found the facility was understaffed, and the staff it had wasn't properly qualified, trained or supervised. The conditions exemplified the behavior of those nursing home operators who shave expenses to increase profits, with a single-minded focus on getting residents in the door and a total disregard for their care and safety once there. The Boice family refused an offer to settle the lawsuit before trial because it would have required them to sign confidentiality agreements. A Sacramento County Superior Court jury found Emeritus at fault for Joan Boice's death and awarded significant punitive damages (the two sides reached a settlement during the appeal process). PBS' *Frontline* aired a one-hour special that used this case as the centerpiece of its examination of regulatory and industry failures. As a result, legislation was passed in California requiring increased inspections of assisted living facilities, increased penalties for violations and increased staffing and training requirements.

ALLEN, et al. v. NRG SYSTEMS, INC., et al.

Roger A. Dreyer and Kelsey J. Fischer

CHANGING UNSAFE CONDITIONS FOR AGRICULTURAL PILOTS

Pilot Stephen Allen died when his crop-duster plane hit an unmarked and unlit weather monitoring tower in Contra Costa County that was just eight inches wide and invisible from the air. The tower was 60 meters tall, less than two feet short of the height that would have required it to be marked and lighted under Federal Aviation Administration regulations, but it had a seven-foot lightning rod on top. The attorneys were able to obtain correspondence that showed the defendants considered putting lights and orange balls on the tower but ultimately decided not to. The defendants went from saying Allen was completely responsible for his death to making a significant resolution offer that acknowledged those who manufacture, install and use such towers are ultimately responsible for making them visible. This lawsuit changed industry practices and resulted in changes in the law in California and several other states. Contra Costa County now requires aviation beacons atop any weather tower 150 feet or taller, and California law now requires visibility markings for towers more than 50 feet tall. Allen's widow Karen was recognized by the National Agricultural Aviation Association as its Person of the Year for her efforts to bring the issue of aviator safety to the forefront of the agriculture industry.

NEGRETE, et al. v. ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA
Andrew S. Friedman, Theodore J. Pintar, Steven M. Jodlowski and Ingrid M. Evans

STANDING UP FOR SENIORS MISLED BY DEFERRED ANNUITY SALES

Allianz Life used abusive sales tactics in a widespread campaign to tap into the wealth of seniors by selling them billions of dollars of deceptively-designed deferred annuities that provided low returns and had high surrender penalties. By enticing agents with high sales commissions, these annuities were often sold to seniors at misleading, high-pressure “estate planning” seminars. The annuities were marketed as safe, risk-free alternatives to traditional investments, but they were actually very complex and risky with high, undisclosed costs. In many instances seniors invested their life savings, only to discover later that the annuities’ hefty surrender penalties prevented them from accessing their money. The attorneys invoked the federal RICO statute, typically used to prosecute organized crime, as well as the California Elder Abuse and Unfair Competition laws. After more than nine years of litigation and several appeals in two different Circuits, a settlement was reached on the eve of trial that benefitted some 238,000 seniors, including bonuses to annuity values, a reduction in surrender penalties or enhanced withdrawal capabilities, and cash payments to some who had surrendered their annuities. The settlement has benefitted consumers by bringing about industry-wide changes to how these opaque and risky investment products are sold.

STATE OF CALIFORNIA EX REL. SHERWIN v. OFFICE DEPOT

Robert J. Nelson, Lexi J. Hazam, Eric R. Havian, Stephen S. Hasegawa and Edward H. Arens

RECOVERING MONEY FOR PUBLIC ENTITIES NOT GIVEN “BEST PRICES”

David Sherwin, a former employee of Office Depot, blew the whistle on the company’s practice of not providing promised “best prices” to California public entities, such as school districts. Members of the U.S. Communities Government Purchasing Alliance, a national cooperative purchasing program for state and local government entities, are guaranteed to receive Office Depot’s best available government pricing. Sherwin alleged that Office Depot gave some entities a lower discount than it offered U.S. Communities members, and that company officials instructed account managers to manipulate their government customers into agreeing to purchases that were much more expensive than the contract allowed. Sherwin continued to participate in the prosecution of the lawsuit even after he was diagnosed with terminal cancer, and he died just a month after giving his testimony in the case. When the case settled before trial, \$68.5 million was recovered for more than 1,000 taxpayer-funded California public entities that were cheated out of promised best prices for school and office supplies, including multi-million dollar recoveries for the City of Los Angeles and the County of Santa Clara. Had it not been for this whistleblower suit, these cash-strapped entities likely would not have known they had been overcharged. The case vividly demonstrates how the civil justice system works to halt corporate fraud and advance the public good.

MARTINEZ, et al. v. HERNDON PARTNERS, LLC, et al.
Craig M. Peters and S. Anoush Lancaster

REVEALING UNSAFE WORKING CONDITIONS THAT LED TO A DEATH

Francisco Martinez, 27, died while working on a home renovation project. Normally he worked on cleaning up the job site (he was a tile-setter by trade), but one day he was told to feed a doorbell wire up the inside of the wall of the house using a metal fishtape. The fishtape pierced a live wire and Martinez was electrocuted. Martinez and his co-workers were required to perform numerous dangerous tasks outside the scope of their employment without safety training, safety equipment or competent supervision. Herndon Partners, the owner/developer of the property, tried to avoid liability by playing a shell game with various companies it owned, in an effort to leave the Martinez family with only inadequate compensation through the workers compensation system. A Fresno County Superior Court jury found Herndon Partners was indeed Martinez's employer and was 100 percent liable for his death. Martinez's widow, infant daughter and mother were awarded damages to compensate for his lost future wages and the loss of a husband, father and only child. In litigating this case, the attorneys shed light on how deaths like this can be prevented if companies are held accountable to safely train their workers and not take shortcuts to save money.

DOES 1 AND 2 v. MORAGA SCHOOL DISTRICT, et al.
David M. Ring

FORCING A SCHOOL DISTRICT TO CRACK DOWN ON PREDATORS

Two female middle school students were molested by their middle school science teacher, Daniel Witters, in the mid-1990s. All investigations of Witters ended when he drove his car off a cliff in Big Sur in 1996, soon after he learned the police were investigating him. The young women were 30 years old when they filed a lawsuit against the school district in 2012. Attorney David Ring was able to uncover critical documents that revealed school leaders had been warned several times that Witters was sexually harassing and assaulting girls in his classroom, yet they failed to investigate or report his behavior and went to great lengths to cover it up. This was proven by memos and key testimony of former teachers and former students, all of whom were located and persuaded to come forward so the truth could be told. Ring also proved the school district concealed all the prior complaints after Witters committed suicide. In settling the case, Moraga School District implemented new policies, procedures and training programs and promised this would never happen again. The new administration vowed to be vigilant about predators in schools. The case was featured on the CBS news show *48 Hours*.

HERMAN v. CARDIEL
Gregory G. Rizio and Darren M. Pirozzi

HELPING A FAMILY CARE FOR A BADLY INJURED CRASH VICTIM

Tim Herman, 21, fell asleep while driving on Interstate 15 during in Riverside County. His car wound up facing oncoming traffic in the fast lane, and Tim exited his vehicle just as Margarito

Cardiel's car struck it. Tim was knocked off the elevated freeway, suffering a massive brain injury that left him in pain but unable to move any part of his body. Cardiel had the minimum-required \$15,000 insurance policy with Farmers. Several law firms rejected the case and advised Tim's mother that Farmers should pay the policy limit. She twice offered to accept the minimal \$15,000 policy limit, as she hoped to use the money to purchase a comfortable van to take her son to his numerous medical appointments, but Farmers rejected both offers. She turned to attorneys Rizio and Pirozzi, who agreed to take the case without payment. Rizio discovered that Farmers failed to read the policy language that required it to settle when Tim's mother sent in the offers. Farmers' error forced it to significantly increase the settlement offer, which the attorneys rejected as it was very short of providing enough money for Tim's future medical needs. The case settled on appeal after a Riverside County Superior Court jury awarded damages to help compensate Tim for his life-changing injuries.

STREET FIGHTER OF THE YEAR

HEDAYATI v. VANWYK

Torsten M. Bassell and Nicole Lari-Joni

DEMONSTRATING A CLIENT'S NEED FOR A BETTER PROSTHETIC LEG

Maryam Hedayati suffered a traumatic brain injury and left leg amputation after she was hit by Maurice Vanwyk's vehicle in a Laguna Hills crosswalk. Due to her age, head injury, fitness level and insurance problems, Hedayati did not receive a prosthetic leg until seven months after the accident. At that time, she received a low-quality prosthetic leg, which did not fit properly. Due to the pain and discomfort, she reverted to using a wheelchair instead of the prosthetic leg for the following year. By the time of trial, her level of mobilization was inadequate under established Medicare and insurer guidelines to justify providing her with the advanced prostheses she deserved. However, attorneys Bassell and Lari-Joni argued that the advanced prostheses could provide a substantial benefit to a brain-injured, inadequately mobilized individual. As a result, an Orange County Superior Court jury awarded damages sufficient to provide the 45-year-old Hedayati with advanced prostheses for the rest of her life. The verdict laid the groundwork for recognizing the need of older, immobilized and brain-injured amputees to have access to the best, assistive medical devices available. By exposing industry classifications as arbitrary and outdated, the verdict established that all amputees – not just the mobilized and athletic ones – could live better and fuller lives with the latest technology available today.

WILLIAMS v. CHINO VALLEY INDEPENDENT FIRE DISTRICT

David M. deRubertis and Norman Pine

PRESERVING THE RIGHT TO PURSUE DISCRIMINATION CLAIMS

Firefighter Loring Williams sued his employer for disability discrimination in violation of California's Fair Employment and Housing Act (FEHA), the primary civil rights law that protects California workers. The trial court found in favor of the fire district and ordered Williams to pay the district's legal costs, more than \$5,000. Williams appealed, arguing he should not have to pay costs because his discrimination claim was not frivolous, unreasonable or

groundless. Attorneys deRubertis and Pine agreed to take his case without pay because of the importance of the issue to all FEHA plaintiffs in the future who could be forced to pay costs for pursuing redress when they believe they are discriminated against. The appeal reached the California Supreme Court, which ruled that a losing plaintiff may be ordered to pay the defendant's costs only if the court finds the lawsuit is "objectively without foundation when brought, or the plaintiff continued to litigate after it clearly became so." Over the years, many California employees with righteous cases have been deterred from filing lawsuits out of fear that they could be forced to pay their employer's costs. Now employees who are suing for discrimination, harassment or retaliation under FEHA can pursue justice without fear that they will be bankrupted if they lose.

B.B. v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, et al.
Micha Star Liberty

PROTECTING SPECIAL NEEDS STUDENTS FROM SEXUAL ASSAULT

A 14-year-old special needs student was sexually assaulted by another special needs student in a boys' restroom on the campus of De Anza High School in Richmond. Attorney Micha Star Liberty found the school district knew the victim was susceptible to sexual assault because his mother had told the school of an incident outside of school where the same perpetrator pulled the victim under a table and kissed him. The district also knew of two prior incidents of on-campus sexual assault involving the perpetrator, one of which had occurred just a few days before this incident. And the district was on notice that, as a whole, it had a hostile, sexually-charged environment due to an investigation by the U.S. Department of Education Office for Civil Rights. Liberty also argued that the perpetrator's individualized education plan required an aide's presence inside the restroom and supervision at all times. A judgment was entered against the school district. Failure to supervise and protect special needs students is a huge problem around the state, and many districts simply dismiss claims of sexual assault of the disabled because the victims cannot easily report the impact of the abuse. Holding school districts accountable in cases like this one will motivate them to protect students from abuse.

GRAY v. R.J. REYNOLDS TOBACCO COMPANY
Sarah R. London

A YOUNG LAWYER UNCOVERS A TOBACCO COMPANY'S DECEIT

Attorney Sarah London had been practicing law for only four years when her mentors encouraged her to take a significant leadership role in trials involving victims of smoking-related diseases or their surviving family members. She was lead trial counsel in a Florida lawsuit filed against tobacco giant R.J. Reynolds (RJR) by the widow of Henry Gray, who died at age 63 from lung cancer. The evidence showed RJR violated one of the most basic obligations expected from all manufacturers: to tell the public the truth about the dangers in their products when they know about them. Not only did RJR break this rule, but the company conspired for decades with other tobacco companies to conceal and deny the hazards of smoking and the addictive nature of cigarettes, and it secretly engineered the cigarettes Gray smoked to be as addictive as possible. A federal court jury found that Gray was addicted to cigarettes and smoking caused his death,

holding RJR 50 percent responsible for his death. The verdict was one of several that London helped bring about that led to the settlements of hundreds of other cases, holding RJR accountable for its actions and compensating injured smokers or their families for the company's wrongdoing.

GILLE, et al. v. COURY, et al.

Kimberly M. Swierenga and Frank J. Fox

FIGHTING FOR AN ELDERLY COUPLE SWINDLED OUT OF THEIR HOME AND SAVINGS

Illnesses put Dorothy and Peter Gille, married nearly 60 years, in different Los Angeles area hospitals at the same time. Placement service worker Preena Sanders offered Dorothy (who was blind) "free help" finding a place to convalesce with Peter. In the process, Sanders learned the Gilles were confused and easily misled, but they owned their home and were estranged from their only child. The Gilles just wanted someone to retrieve an address book from their home so they could contact friends from church, but Sanders convinced them to give Sandy Office a power of attorney in order to do so. The power of attorney gave Office complete control over the Gilles' finances. Sanders, Office and Timothy Coury then tricked the Gilles into signing documents giving their home to Coury. The trio took the Gilles' home, money and cars and disposed of their clothes, furniture, appliances and other possessions, leaving the elderly couple with nothing. The district attorney's office declined to pursue the case, and multiple attorneys turned down the case as "unrecoverable." Swierenga, Fox and Zeko took the case after being recommended by California Advocates for Nursing Home Reform and settled with Coury and Sanders before winning a verdict against Office, giving the Gilles six-figure trust accounts.

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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