News & Notes

Capital City TLA Silent Auction benefits Sacramento Food Bank

By Stephen Davids, CCTLA President

On May 22, the Capital City Trial Lawyers Association held its 12th annual Spring Celebration, a silent auction benefit for the Sacramento Food Bank and Family Services (SFBFS). Our sincere thanks to everyone who supported this event. Special thanks go to Sue and (retired) Justice Art Scotland for donating the use of their beautiful home. In addition, Justice Scotland tirelessly fundraised, and was largely responsible for a record number of $1,000 sponsorships this year. Blake Young, the CEO of SFBFS, announced that the Spring Celebration has raised a quarter of a million dollars over the last 12 years to assist people in need in the Sacramento community.

The Spring Celebration would not have been possible without the tremendous effort of the event’s chairperson, Margaret Doyle, along with committee members Brianne Doyle, Debbie Keller, Justice Scotland, Jill Telfer, and also Kelly Siefkin and Melissa Arnold, both of the SFBFS.

In addition CCTLA presented its 2014 Joe Ramsey Professionalism award to Daniel Wilcoxen for his devotion of intellect and emotional energy to our organization for decades. Dan is a statewide leader in the lien fight. It is hard, if not impossible, to imagine CCTLA without Dan. CCTLA also presented its 2014 Morton Friedman Humanitarian Award to its Executive Director, Debbie Frayne Keller. Debbie has been an integral part of every single Spring Celebration since its inception. As others have said, CCTLA would not exist were it not for Debbie’s loyalty, and over 30 years of service to CCTLA and the community.

CAOIE seminar report

By Cory Week, CAOIE President

On June 4 at the Double Tree Hotel in Ontario, local attorneys were treated to a powerhouse trio of legendary figures in the Inland Empire legal community. Judges Mac Fisher and John Pacheco teamed up with Bill Shapiro to discuss their thoughts on communicating with jurors in today’s ever changing legal climate in presenting “Making the Connection with Today’s Jurors.” Both judges shared stories of what attorneys “should be doing” in their courtrooms and stories of what attorneys “should not be doing” in their courtrooms. Bill Shapiro provided insight as to what tools he utilizes in every jury trial he conducts. All in attendance were encouraged to ask questions which ultimately enhanced the value of the program to everyone.

The Consumer Attorneys of the Inland Empire would once again like to thank their gracious sponsors of IVAMS and Patrick Farber.com Settlement Brokers for the food and drinks provided.
SMCTLA charity event: Lawyers in the Gutter

By Amanda Riddle, SMCTLA president

On May 14, the San Mateo County Trial Lawyers Association held their 10th Annual Lawyers in the Gutter bowling event, benefitting Samaritan House. With the bowling alley packed with trial lawyers, their staff, friends and family, fun was had by all – bowling to disco lights and music, and feasting on pizza and ice cream, all in the name of a good cause. This year’s Lawyers in the Gutter raised $11,600 for Samaritan House, bringing the ten-year fund-raising total to over $143,000! The SMCTLA could not have reached such heights without the generosity of its co-sponsor, the Danford Foundation, a non-profit in San Mateo County that raises and funds donations to local charities, as well as the kindness of the SMCTLA community who attend and sponsor the event each year: Berberian & Sagatelyan; Constantine Tsagaris; Corey, Luzaich, de Ghetaldi, Nastari & Riddle LLP; Cotchett, Pitre & McCarthy, LLP; Emanuel Law Group; Galine, Fitting & Frye; Harris & Fraser; Law Offices Of Reuben J. Donig; Manos & Curl, LLP; McGlashan & Sarrail, APC; Law Offices of Vincent J. Scotto, III; and Smith & McGinty.

Samaritan House, which celebrates its 40th Anniversary this year, serves low income residents of the San Francisco Peninsula. Its services are designed to meet the immediate and basic needs of its clients for food, clothing, shelter, health care, including medical and dental clinics, worker resources, and counseling services. In 2013 alone, Samaritan House helped file 276 tax returns, bringing $304,000 of refunds into its client community, delivered 13,416 meals to housebound seniors and disabled individuals, provided 31,660 nights of shelter to individuals in need, and served 9,436 uninsured individuals at its medical and dental clinics.
CAOC’s 2014 Legislative Efforts

By Nancy Peverini, CAOC Legislative Director

We are halfway through the legislative year as CAOC continues to represent you and your clients at the state Capitol.

• CAOC has defeated over 15 “tort reform” bills that were introduced in 2014.
• CAOC has four priority bills, all of which passed the crucial “house of origin” deadline in June, despite well-funded and heavily organized opposition, including:

SB 1188 (Jackson) Consumers Legal Remedies Act

Protects consumers by clarifying that fraudulent omission claims under the Consumers Legal Remedies Act (“CLRA”) are not limited solely to matters involving health and safety hazards, but rather include all cases where a merchant violates the act by fraudulently failing to disclose a material fact to a California consumer. This bill was held in the Assembly Judiciary Committee in late June due to massive opposition and the unwillingness of three key Democratic members of the Assembly Judiciary Committee to support the bill (Alejo – AD 30, Muratsuchi – AD 66, and Garcia – AD 58), but remains a priority for the organization.

AB 2171 (Wieckowski) Rights for seniors in RCFEs

Establishes a statutory bill of rights and a narrow private right of action for residents of RCFEs. AB 2171 is crucial to protect the dignity, safety and self-determination of seniors and disabled adults who live in RCFEs. This bill passed the Senate Judiciary Committee on June 24 and will next be heard before the Senate Appropriations Committee.

AB 2617 (Weber) Civil rights: waiver of rights

Prohibits contracts for goods or services from requiring a person to waive his or her civil rights and protections under the Ralph Civil Rights Act or the Tom Bane Civil Rights Act as a condition of entering into the contract. AB 2617 requires any waiver to be knowing, voluntary, in writing, and expressly not made as a condition of providing or receiving goods or services. This bill passed the Senate Judiciary Committee on June 24 and will be heard on the Senate floor in August.

AB 2293 (Bonilla) Insurance coverage for Transportation Network Companies

Mandates insurance and coverage obligations on TNCs such as Uber and Lyft. CAOC is partnering with the insurance industry to make sure that drivers, passengers and pedestrians are protected if injured by a TNC driver. This bill passed the Senate Insurance Committee on June 24 and will be next heard before the Senate Appropriations Committee.

Courts

The final budget approved by the state Legislature for 2014-15 fell short of providing the fiscal relief our deficit-battered courts will need. Going into the budget debate, court officials had hoped to secure funding that would allow them to “tread water” on overall funding. Despite the best efforts of CAOC, the Legislature ultimately went along with Gov. Jerry Brown’s more fiscally restrained budget vision.

In the end, California courts are gaining $129 million in “new” revenue from the state General Fund. But that number can be deceptive, because the courts needed far, far more than that simply to match last year’s funding levels, when the damage was limited by draining reserves. With those reserve funds gone, we needed $266 million in new General Fund revenue. I’ll do the math: We’re left $137 million short of last fiscal year’s funding levels.

What’s our take away from that? Every CAOC member needs to redouble efforts to press the case for better court funding. We need to educate the public and lawmakers. We need to make courts a priority.
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Morgan Stanley
there is no happy face for this one: The final budget approved June 15 by the state Legislature for next year is anything but generous to our courts.

We won’t be “treading water,” holding the line on overall funding for the trial courts as we embark on fiscal year 2014-15. Instead of equaling 2013-14’s level of operational cash, the Legislature veered toward Gov. Jerry Brown’s more conservative vision.

In the final assessment of the twisty and tangled budgetary math utilized in our Capitol, California courts will gain $129 million in new revenue while, out in the real world of not enough courtrooms and long lines at the clerk’s office, we’ll be left $137 million short of current statewide funding levels. How can that be? Last year we survived on cash reserves. This year those reserves are gone, and the courts have been left to sink.

How will it affect your client and your practice? I’ll explain in a moment. First let me recount how we got here.

As we all have seen, California courts have been hammered in the years since the Great Recession, seeing more than $1.1 billion in funding cuts since 2008. State court officials along with CAOC and the Open Courts Coalition fought valiantly once again for better funding in hopes of making some headway.

In the days before budget negotiations between top legislative leaders and the Governor, hopes remained that a deal might be cut with a final number putting the courts closer to the treading water mark. The Senate and Assembly budget committees had called for far more court funding than had the governor, slating a boost of $229 million (Senate) to $239 million (Assembly).

But, despite a rebounding California economy and more plentiful revenues in state coffers, big-picture macroeconomic issues once again undercut the courts.

For starters, Brown was intent on creating a more robust rainy day fund at the expense of any broad restoration of spending on a variety of government services, including the courts. Schools and social services, as usual, were at the front of the line for any additional revenue. Meanwhile, a big influx of new Medi-Cal patients under the Affordable Care Act proved a $1 billion drain on funds. Adding to the mix, the Governor and Legislature went into negotiations far apart on revenue projections for 2014-15, with Brown predicting the state will reap $3 billion less in the coming fiscal year.

In the end, legislative leaders largely bowed to the Governor’s more austere revenue projections, leaving budget negotiators with relatively little new revenue left to divvy up. Adding to the troubles, many county courts in 2013-14 have survived by spending down reserves on the order of $250 million statewide. That cupboard is now bare. So even a modest increase in funding wouldn’t be good enough; the courts needed $266 million in new revenue just to tread water at current funding levels.

The final budget signed by the governor provided an influx of additional cash on the order of $129 million for trial courts. But, given that most of our county courts don’t have any reserves left to augment day-to-day operations, the tide of revenue wasn’t nearly enough to keep the courts above water. Statewide, the trial courts are going to have to make do with $137 million less in 2014-15.

That segues to the matter of how the coming 2014-15 budget will impact your local courthouse and your practice.

Some counties that used up their reserves for current year operations are now facing potential real-world cuts to programs. Contra Costa, for instance, will likely have to lay off about 30 court employees whose jobs were funded in the current fiscal year with reserves. The same will likely prove true in Sacramento County. In other counties scattered throughout the state, we will see more of the same: longer lines, layoffs, more than a few courtrooms shuttered and a slowdown in the administration of justice.

But in counties that had spent down reserves in prior years or held the line on spending, 2014-15 will actually see a net boost in funding. Riverside and San Bernardino counties, for instance, made cuts to their programs in the current year, so for 2014-15 they will likely be able to restore some court services. Both counties also stand to gain because of the state’s new court funding formula, which gives fast growing regions a leg up on any additional revenue.

Many other counties, meanwhile, will simply be struggling to hold the line at an already grave level. Alameda County expects long lines for basic services to remain unresolved. In Los Angeles, hopes have been dashed on restoring adequate services in courts dealing with family law, dependency and small claims, while delays on motions in civil cases won’t be going away any time soon. Orange County’s court staffing will remain lean, and the same goes for San Diego.

Where do we go from here? For starters, let’s redouble this fight. We need to continue pressing the case with the general public we meet each day at courthouses all over the state. We need to keep pushing our local lawmakers. Somehow, we need to impart to Gov. Brown the severity of court cuts on our justice system and the impact on society at large when a cornerstone of democracy is so severely undercut.

We have work to do.
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(Please complete a separate form for each registrant.)

State Bar # __________________ CAOC # __________________
Name ___________________________ Phone (______)________________________
Firm Name _________________________
Address _____________________________
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- CAOC has my permission to communicate with me by fax and email.

**REGISTRATION**
Registration fees include sessions on a variety of different topics, MCLE Certificate, digital syllabus, morning and afternoon food and beverage breaks and admittance to the Friday Welcome Reception. 

**DOES NOT INCLUDE LUNCHES OR THE INSTALLATION & AWARDS DINNER.**

**CANCELLATION POLICY**
NO REFUNDS AFTER OCTOBER 15, 2014. Refunds will be honored only if a written request is submitted to CAOC on or before October 15, 2014, and will be subject to a $75 service charge. Registration substitutions may be made only when the substituting party holds the same membership category as the original registrant. CAOC reserves the right to substitute speakers and/or topics.

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| CAOC Attorney Member | FREE | $525 | $525 | $575 |
| CAOC Attorney Member attending 1st CAOC Convention | $450 | $475 | $475 | $525 |
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**FRIDAY PARALEGAL SESSION**
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(These are not included in the above registration fees)
Must be registered for the Convention in order to purchase lunch tickets.

| | FRIDAY LUNCH | SATURDAY LUNCH | TOTAL |
| | 20 pp | 20 pp | $ | $ |
| Friday Lunch | $20 / No. of tickets | $20 / No. of tickets | $ | $ |
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**WWW.CAOC.ORG/14CONVENTION**
Women’s Caucus Report

By Anne Marie Murphy

The mid-year point in 2014 is the perfect time to reflect on how far we have come as a Women’s Caucus. The Women’s Caucus has grown by leaps and bounds – in membership and in sophistication. Monthly meetings now include dozens of women from throughout the state. Each month there are new participants. We have a busy calendar of networking events and fundraisers.

So how did we get started and why do we exist? First, we have Mary Alexander to thank for coming up with the idea of a Women’s Caucus. As with many good ideas the concept took time to ferment and develop. In 2007 Miriam Bourdette and Christine Spagnoli went to Don Ernst with a proposal for the Caucus as a way to grow future women leaders within the organization and Don wholeheartedly approved. Chris and Miriam scored a coup when they talked Ingrid Evans into being the Women’s Caucus’ first Chair – not for just a one-year tour of duty but for two years (2008-2009) to ensure things would get off to a stable start. In the initial stages the Women’s Caucus tackled networking receptions. Miriam and Phil Bourdette drove up and down the state attending nearly every Women’s Caucus networking reception. The first Women’s Caucus fundraiser was for Betsy Butler.

Along the way Laurie Klimchock (CAOC’s Organizational Development Director) joined the effort and became the engine behind the Women’s Caucus. We have had a number of phenomenal chairs including Lisa Maki (2010), Elise Sanguinetti (2011), Clarice Letizia (2012) and Valerie McGinty (2013). Without exception they all continue to be leaders within CAOC. Under their tutelage the Caucus developed a political education program in connection with Justice Day which is now a yearly event put on with the NLD. Also, the Caucus hosts an annual Pink & Red Party at Convention. Last year, thanks to Val’s tireless efforts we raised over $100,000 for political candidates.

I offer this brief history in order to honor the women who have led the Caucus and who have created opportunities for me and the hundreds of other women in CAOC. Expect great things from the Women’s Caucus as we continue to grow new leaders, including this year’s committee chairs and secretary, Shehnaz Bhujwala, Kristine Meredith, Anoush Lancaster, Lina Melidonian, Heather Wong and Joanna LiCalsi.

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Alex J. Balian, MBA
Diversity Committee Report

By Micha Liberty, Diversity Committee Co-Chair

We have been productive... Here’s what’s going on:

2014 Leadership Academy
The second session focuses on Lawyer as a Storyteller, Proceduralist, Legislator & Civic Leader. The Leadership Academy, an initiative of CAOC’s Diversity Committee through New Leaders Council (NLC), gives CAOC members the skills and techniques needed to make them effective leaders in CAOC, their professional settings and in their communities. This session will take place in Los Angeles on July 19-20.

Troy and Alana Pack Patient Safety Act
We are proud to be leading a grassroots fundraising effort that relies on the good will of our entire membership. We are asking that each CAOC member go to www.caoc.org/MICRAreform and take five minutes to donate $50. Please send this to your colleagues and friends make this fundraising campaign a great success.

Goodbye
Last month, the world said goodbye to a woman of great strength and vision. CAOC Diversity Committee celebrates Maya Angelou as we continue to encourage and promote diversity that will result in measurable progress toward increasing diversity of the plaintiff’s bar.

“We all should know that diversity makes for a rich tapestry, and we must understand that all the threads of the tapestry are equal in value no matter what their color.”

News & Notes

OB-GYN Care At Kaiser: From Midwives To Perinatologists
Dr. Bruce Fagel • Bruce G. Fagel and Associates

Winning Arbitration Techniques For Single Neutral Arbitrators
Cynthia McGuinn • Rouda, Feder, Tietjen & McGuinn

Section 998 And It’s Effect On The Final Award
Noel Ferris • Law Offices Of Noel M. Ferris

Visual Persuasion In Arbitration
Virginia C. Nelson • Law Offices Of Virginia C. Nelson

Preserving Future Damages After ACA And Howell
Michael A. Kelly • Walkup, Melodia, Kelly & Schoenberger

Helpful Mediation Techniques In Kaiser Cases
Craig Needham • Needham, Kepner & Fish LLP

Finding And Using Electronic Medical Records
David E. Smith • Smith Zitano Law Firm

Using Depositions Of Respondents And EMR To Prove The Case
Gerald E. Agnew, Jr. • Agnew Brusavich

Settlement Issues Peculiar To California Medical Malpractice Cases
Scott Freeman • The Settlement Alliance LLC
NEW MEMBERS
JOINED OR REJOINED MAY AND JUNE 2014

Mona A-Sanaei, Walnut Creek
Kym Adams, Los Angeles
Asaf Agazanof, Beverly Hills
Laura Antonini, Santa Monica
Marina Aroditis, Beverly Hills
Rebecca S. Ayers, Sacramento
Tom Bambrick, Bloomfield Hills
Nick J. Barta, Puyallup, WA
Jennifer Bautista, San Francisco
Lawrence A. Bohm, Sacramento
Jack Bollier, San Francisco
Donald S. Brit, Sacramento
Steven J. Brown, Chino Hills
Paul W. Burkett, Reno, NV
Karen K. Contreras, MSN, RN, Fontana
Dwight Cooper, San Francisco
Stephanie C. Cox, Eureka
Glenda De Guzman, Monterey
James O. Devereaux, San Francisco
Bridget Dunnion, Monterey
Dustin Dyer, Stockton
Amber L Eck, San Diego
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Elliot D. Fellman, Santa Monica
Steven E. Fineman, New York, NY
Daniel Fligsten, Los Angeles
Lance Friel, Sacramento
America Gallardo, Fresno
Rusty Garvin, Fresno
Casey Gee, Burlingame
Michael Ghozland, Los Angeles
Jeremy Keith Hanson, Riverside
Shane V. Hapuarachy, Los Angeles

David L. Hart, Pacifica
Jeremy K. Heebner, Sacramento
Brian Heffernan, Los Angeles
Christopher Heim, Vista
Christopher P. Hickey, Indian Wells
Mallory Lynn Homewood, Walnut Creek
Mohammad Iramanesh, San Francisco
Michael G. Jacob, Los Angeles
Ralph L. Jacobson, Orinda
Raphael D. Javid, Beverly Hills
Michael Jeandron, Newport Beach
Gregory Lynn Johnson, Oxnard
Robin Keith Johnson, Folsom
Michele C. Kennedy, Monterey
Rick Kinnan, Los Angeles
Paul E. Lee, Newport Beach
Brian J. Leinbach, Los Angeles
H. Scott Leviant, Woodland Hills
Prescott W. Littlefield, Los Angeles
Joseph R. Lucia, Pleasant Hill
Brian R. Magana, Bainbridge Island, WA
Deirdre A. Marblestone, Redwood City
A. Douglas Mastroianni, Torrance

Stanton T. Mathews, Laguna Hills
Sarah Mattina, Burlingame
Shannon McClure, Oakland
Meghan E. McCormick, San Francisco
Carla V. Minnard, Oakland
James Morris, Los Angeles
James A. Morris, Los Angeles
Rodney K. Nickens, Jr., Oakland
Andrew J. Nissen, Laguna Hills
James L. Oberman, Oakland
David R. Olan, Santa Monica
Jon Lee Oldenburg, Roseville
Tiffany Pack, Fresno
Bryan Pease, San Diego
Joseph P. Pierry, Long Beach
Michael Quirk, San Francisco
Vernon J. Reynolds, Fresno
Susan Sabry, Los Angeles
Paul D. Schlegel, San Diego
Daniel G. Schneiderman, Sacramento
David W. Seal, Irvine
Jordan Stanzler, Palo Alto
Jonathan G. Stein, Elk Grove
Maria Tamez, Fresno
Sandra Isabelle Tan, San Francisco
Michael C. Valdez, Irvine
Gregory P. Waters, Los Angeles
Brendan D.S. Way, San Francisco
Daniel G. Whalen, Los Angeles
David L. Winnett, Los Angeles
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Darryl E. Young, Merced
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to these volunteers who recruited new members in May and June 2014

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Lenore Albert, Huntington Beach
June Bashant, San Francisco
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John Feder, San Francisco
Vincent D. Howard, Costa Mesa
John Hullverson, San Francisco
Anoush Lancaster, Oakland
Micha Star Liberty, Oakland
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Deborah R. Rosenthal, San Francisco
David L. Shain, Ventura
Scott H.Z. Sumner, Walnut Creek
Susan Swan, San Diego

Consumer Attorneys of California ... Seeking Justice For All
The NLD is having a busy summer. On June 20 attorneys from around the Bay Area came to Oakland for the NLD Night at the Ballpark at the Oakland Coliseum. Thanks to our generous sponsors Judicate West, and Doug Merritt and Kathleen Brice of Ringler & Associates, we had access to the BBQ Terrace to watch the Oakland A’s take on the Boston Red Sox.

Right around the corner, on August 15, the NLD is hosting a Night at the Races at Del Mar racetrack. The event is complimentary for CAOC members and will be held in the beautiful “Ancient Title” room. This is an excellent opportunity for NLD members to get together with CAOC board members and the San Diego legal community. This event is generously sponsored by our title sponsor, Casey Gerry Schenk Francavilla Blatt & Penfield, LLP, and our sponsors Advanced Depositions and Manny Valdez & Manuel Valdez of Ringler Associates. Tickets are limited, so act fast.

To RSVP for events or for more information on NLD events and how to get involved, visit our website at www.caoc.org/NewLawyers, or contact Samantha Farmer at 916-442-6902 or newlawyers@caoc.org.
American Association for Justice Update

By Ingrid M. Evans

The American Association for Justice (AAJ) is holding its annual convention this summer in Baltimore from July 26 – 30 and events will include an opening reception at Camden Yards, Lilly Ledbetter will be giving the keynote at the Women’s Caucus Brunch during Convention, and a party for incoming AAJ President Lisa Blue Baron with Huey Lewis and the News performing. You can register online at www.justiceannualconvention.org.

On July 25, AAJ’s Women’s Caucus, led by CAOC board member and AAJ Women’s Caucus Chair Lori Andrus (whose women membership has increased under her leadership), will hold its bi-annual Leadership Summit and is free to convention registrants. The theme this year is “Leadership Inside and Outside of the Courtroom,” and our accomplished speakers are going to help you become a better leader in your practice and your community. The program runs all day long, with breakfast, lunch and a reception. Some of the notable speakers include:

BARBARA ARNWINE, Esq., President & Executive Director of The National Lawyers’ Committee for Civil Rights Under Law; Ms. Arnwine is known for her stellar work on the Civil Rights Act of 1991 and with the United Nations on a platform to protect women of the world from various forms of discrimination. ANU BHAGWATI, Executive Director and Cofounder of the Service Women’s Action Network; Ms. Bhagwati works daily to advocate for and provide services to servicemen and women. Her work focuses on sexual assault in the military. DONNA EDWARDS, Esq., U.S. Representative, Maryland 4th District; Representative Edwards is the first African-American woman to represent the state of Maryland in Congress, and has a strong record of defending the civil justice system. ERIKA FALK, PhD., Author and Communications Expert; Dr. Falk zeroes in on the biases women face in the media when running for office, and in their quest to be equal players in society and the workplace. SANDRA FLUKE, Esq., Women’s Rights Advocate; Ms. Fluke is an advocate for women, and has testified for Congressional hearings regarding the importance of birth control coverage by insurance companies. For her efforts, she has been called a “slut” by Rush Limbaugh. COREY CRISWELL, Leadership Instructor. We will provide each attendee with a Myers-Briggs personality test prior to the Summit, that will be assessed and interpreted by Ms. Criswell and her team. Over lunch, Ms. Criswell will show you how to maximize your results to become a more effective leader. To RSVP, email jennifer.rafter@justice.org.

Public Affairs Update

To date, 38 bills containing tort “reform” and anti-civil justice provisions have been introduced in the 113th Congress, including S. 2196, Good Samaritan Health Professionals Act of 2014, introduced by Senator Lisa Murkowski (R-AK). This bill seeks to provide certain protections from civil liability and sets a dangerous precedent by preempting state law. AAJ’s Public Affairs team will continue to monitor this legislation and work to ensure that this bill, and others like it, is never enacted into law.

Recently, AAJ defeated a patent bill that included several anti-civil-justice measures which we’ve encountered previously and have been fighting for years. Public Affairs and Communications are gearing up for what could be a long battle to protect people injured and killed by asbestos exposure. Public Affairs also made inroads on the regulatory front when AAJ members presented information to the Federal Motor Carrier Safety Administration (FMCSA) advisory committee about the need to increase the minimum insurance for motor carriers. We anticipate that FMCSA will work on a rulemaking that would raise the minimum insurance for motor carriers to $4.4 million. This increase is important for the individuals and families who are represented by our members who handle cases involving trucking deaths and injuries.

In addition, Public Affairs continues to track the process through which changes are made to the Federal Rules of Civil Procedure. These rules are important because, while not all AAJ members practice in federal court, if the changes to the federal rules are adopted, most states will also follow suit and adopt the rules. AAJ anticipates that the Standing Committee of the Judicial Conference of the United States will later this week approve the language recommended in April by the Advisory Committee – language which moves the proposed rules language in a more pro-civil-justice direction.

Ending Forced Arbitration

When the New York Times broke the story that General Mills – owner of grocery staples including Cheerios, Betty Crocker, and Pillsbury – quietly updated its terms
of service to include a forced arbitration clause that eliminated its customers’ rights to hold the corporation accountable in court, AAJ was quoted in the article. Following the story’s publication, AAJ launched an enormously successful advocacy campaign. AAJ’s efforts included additional media outreach and an online grassroots campaign. AAJ President Burton LeBlanc, AAJ CEO Linda Lipsen, and AAJ Director of Federal Programs Julia Duncan were all interviewed on TV stations, multiple radio shows, and for numerous print articles. Through Take Justice Back, AAJ’s grassroots and public education campaign, the public sent more than 6,000 letters to Congress over a three-day period encouraging support for the Arbitration Fairness Act, a bill to end forced arbitration.

As a result of this public pressure, on April 19, only two days after the New York Times story ran, General Mills reversed itself and dropped its forced arbitration clause. This was a clear victory for consumers – not only because General Mills dropped its clause, but because millions of consumers were educated about the dangers of forced arbitration. AAJ Public Affairs will continue to build on the momentum garnered from this story and continue to work with the various committees of jurisdiction, and the numerous agencies and stakeholders tasked with the monumental task of ending forced arbitration.

Public Education
The American Association for Justice’s public education efforts through Take Justice Back and Trial Lawyers Care are crucial elements in the advocacy AAJ does for trial lawyers and their clients.

AAJ issued a press release coinciding with the opening of the National September 11 Memorial and Museum in May. AAJ’s Trial Lawyers Care Report to Congress is now part of the museum’s collection.

AAJ is incredibly proud of services our members provided pro bono for families who applied for help from the September 11th Victim Compensation Fund. This effort was the largest pro bono legal representation project in history. That volunteer spirit continues through the present-day Trial Lawyers Care initiative, which encourages and highlights the volunteer and community outreach of trial lawyers.

One of the featured projects on the Trial Lawyers Care site is End Distracted Driving (EndDD.org), a non-profit organization started by AAJ member Joel Feldman. Joel and other Trial Lawyers Care Committee members will present a session for lawyers and their guests/family at AAJ’s Annual Convention about making safe driving choices and how to get involved in making similar presentations in your communities.

Trial attorneys across the country have now spoken at their local high schools with more than 200,000 teens about how they can end distracted driving.

24 state trial lawyer associations are working directly with EndDD.org to train lawyers to give EndDD presentations in their communities.

Take Justice Back is AAJ’s dynamic public education campaign. In May, Take Justice Back informed the public and the media about the medical errors epidemic plaguing our country. (www.takejusticeback.com/MedicalErrors) New research from the Journal of Patient Safety indicates that up to 440,000 people die every year because of preventable medical errors. That is equivalent to almost the entire population of Atlanta, Ga., dying every year.

Preventable medical errors are the third leading cause of death in the United States and cost our country tens of billions of dollars a year.

In June, the focus for Take Justice Back was our nation’s service members’ fight for justice. Take Justice Back posts real stories about real people fighting for justice. Many of these stories are sent to us by AAJ members and their clients.

AAJ’s public education efforts rely on the stories trial lawyers tell us – about their community service and about how they fight for their clients. AAJ welcomes your stories that are examples of why America needs the civil justice system. You can submit stories to Linda@justice.org.

Minority Caucus Lobby Day
In the spring, 30 AAJ Minority Caucus members attended AAJ’s biennial Minority Caucus Lobby Days in Washington, D.C. Prior to lobbying congressional offices, AAJ’s Public Affairs team provided a comprehensive briefing on the Arbitration Fairness Act, the Servicemembers Civil Relief Act (SCRA) and the Toxic Substances Control Act. Later that evening caucus members also attended a congressional reception on Capitol Hill where they had an opportunity to interact with members of Congress and their staff.

The following day, Minority Caucus members conducted successful meetings with approximately 80 congressional offices from their respective state delegations in both the House and Senate. Attendees discussed various issues including sponsoring bills to end forced arbitration and opposing TSCA legislation that preempts state remedies. From all indications this event was a great success and AAJ looks forward to hosting the Minority Caucus again in the near future.
Amicus Curiae Update

By Kevin K. Green

This update focuses on two recent developments at the California Supreme Court.

As Urged by CAOC, Representative Proof Remains Viable in Class Actions

Since 1872, the Legislature has authorized the class action mechanism in Code of Civil Procedure section 382. But how is a class action tried? The California Supreme Court just provided extensive guidance on this question in Duran v. U.S. Bank National Assn. (May 29, 2014, S200923) ___ Cal.4th ___ [2014 Cal. LEXIS 3758].

Authorised by Justice Carol Corrigan, the opinion begins colorfully: “We encounter here an exceedingly rare beast: a wage and hour class action that proceeded through trial to verdict.” (Duran, supra, 2014 Cal. LEXIS 3758, at p. *3.) The suit involved bank employees who alleged they had been unlawfully classified as exempt “outside” salespeople. Of a class numbering 260, the trial court found liability in favor of plaintiffs by extrapolating from a select witness group of 21 employees. The bank defendant “was not permitted to introduce evidence about the work habits of any plaintiff outside this sample. Nevertheless, based on testimony from the small sample group, the trial court found that the entire class had been misclassified.” (Id. at p. *4, emphasis in original.) The trial court then awarded $15 million in damages to the class.

On appeal, the class found itself in an awkward position. “As even plaintiffs recognize,” the California Supreme Court noted, “this result cannot stand.” (Ibid.) Law professors have long admonished that bad facts make bad law, but this did not happen in Duran. The high court disapproved the trial judge’s approach as “profoundly flawed” but, for future cases, endorsed a more balanced use of statistical sampling to prove both liability and damages classwide. (Id. at p. *5.)

Although class actions rarely reach trial, the state Supreme Court indicated that class certification should assess how a trial will occur and be managed, if there is one. “In the misclassification context, as in other types of cases, trial courts deciding whether to certify a class must consider not just whether common questions exist, but also whether it will be feasible to try the case as a class action.” (Id. at p. *38.) Some wage and hour cases will be suitable for class treatment; others will not. “Depending on the nature of the claimed exemption and the facts of a particular case, a misclassification claim has the potential to raise numerous individual questions that may be difficult, or even impossible, to litigate on a classwide basis.” (Id. at pp. *38-*39.) Individual issues must be manageable through “an appropriate trial plan.” (Id. at p. *39.)

Duran is likely to be a significant precedent not just for wage and hour cases, which are often litigated classwide, but all class actions. Two principles in the lengthy opinion warrant emphasis here.

First, reaffirming seminal decisions such as Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, the California Supreme Court rejected an aggressive push by U.S. Bank and its amici curiae to curtail, if not eliminate, representative evidence in class actions. This would have gutted class device. The court agreed with CAOC that class actions are inherently representative. Thus, as the court stated, “if sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.” (Id. at p. *47.)

Second, the high court rejected the bank’s position, accepted by the First District Court of Appeal, that a class defendant “has a due process right to litigate an affirmative defense as to each individual class member.” (Id. at *64.) This point is important. Individual litigation of affirmative defenses, in a case where common issues predominate, would also effectively thwart appropriate use of class actions.

CAOCObtains a Rare Depublication Order

In the 1980s, the California Supreme Court depublished over 100 Court of Appeal decisions annually. Now, the court depublishes, give or take, only a dozen Court of Appeal opinions each year.

On CAOC’s behalf, Jeffrey I. Ehrlich of the Ehrlich Law Firm recently threaded the needle in Dodd v. Cruz (S217534, depublication ordered June 11, 2014). The Second District Court of Appeal’s decision was potentially damaging because it applied Howell v. Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th 541 adversely to plaintiffs in the discovery context. The depublication order may signal, as CAOC has hoped, the state supreme court’s willingness to limit Howell and give careful thought to its application in personal injury cases.

Kevin K. Green is a Certified Appellate Specialist and a partner at Robbins Geller Rudman & Dowd LLP. He is, along with Sharon Arkin and Lee Harris, Co-Chair of CAOC’s Amicus Curiae Committee.
Volunteer spotlight

By Kristine Meredith

“See What You Think”

That’s the catch-phrase for the Los Altos Art Docents program. San Jose attorney Gloria Dralla helps elementary school children learn critical thinking through art appreciation and to verbalize what they think and feel. She has volunteered as an art docent in Los Altos Hills School District since her children were in elementary school – more than 18 years ago – and is a past president of the Los Altos Art Docents, an all-volunteer program established in 1970. The volunteers write and present over 60 different art appreciation and art hands-on units for grades K-6 for the seven elementary schools in the district. The program complies with state standards and curriculum. The 70 docents participate in a year-long training program and agree to teach at least one lesson a week.

Her favorite artists (American: John Singer Sargent; European: Vermeer; Genius: Van Gogh; and sculptor: Bernini) all created artistic gems that illuminate the world and reflect the human spirit in a variety of thought-provoking ways. And that is what she tries to share with the children.

“What’s compelling about teaching children art appreciation is developing their critical thinking skills ... engaging them in a conversation about what they are seeing. Our group teaches that in art there is no right answer ... and that artists in creating their works are always attempting to solve a problem.” She loves bringing art appreciation into the classroom. Recently, a student commented to her: “I can listen to you all day;” which made her think, “I’d love to hear a juror to say that!”

Gloria Dralla teaching a 19th Century American Art Appreciation class at Gardiner Bullis School in Los Altos Hills