

Legislative Summary 2009-2010

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We represent consumers—often when no one else can or will—against more powerful, better funded opponents. Our members represent consumers in the courtroom, and CAOC’s legislative advocates represent consumers in the legislative process. CAOC tracked more than 900 pieces of legislation during this two-year session.

Sponsored Legislation

In determining what legislative proposals to sponsor, CAOC looks at a variety of factors, including:

- The proposal’s impact on consumer legal rights.
- Whether the proposal will make the practice of law more efficient and fair.
- The likelihood of success (which was a challenge with Governor Schwarzenegger holding the veto pen).
- And whether the issue gives us educational and outreach opportunities with legislators, the media, the public and our coalition partners.

Despite major obstacles, not the least of which being the state’s enormous budget deficit, CAOC had an ambitious, positive legislative program and found success in several areas during the past two years.

CAOC sponsored bills that were signed by the Governor include:

Expedited jury trials (2010): A summary, one-day jury trial for small cases, modeled on a South Carolina program, will soon be implemented in California. CAOC worked with the California Judicial Council and defense attorneys to reach a consensus on this exciting new program. Under this law, if both sides agree, civil trials can be heard before an eight-member jury. Six jurors must agree to reach a verdict that will be binding with limited right of appeal. Each side will be limited to three hours to present witnesses and evidence, with the object of conducting the entire trial—from jury selection to verdict—in one day. Because the shortened trials will involve lower costs to both sides, it is hoped AB 2284 (Evans) will give Californians with smaller claims a chance to have their cases heard and resolved by a jury.

Medical errors—radiation reporting (2010): The cumulative effect of medical radiation is a very serious and dangerous problem, as is severe overradiation. News reports have shown nearly 300 patients at Cedars-Sinai Hospital in Los Angeles received excess radiation while undergoing CT brain perfusions scans. [SB 1237](#) (Padilla) increases patient safety with safeguards that will reduce the risk of overradiation, by requiring the radiation dose to be recorded in a patient’s radiology report, establishing a quality assurance

program, and requiring notification of radiation deviations to the Department of Public Health, the physician, and the patient.

Social host liability (2010): [AB 2486](#) (Feuer), co-sponsored with Mothers Against Drunk Driving (MADD), was introduced after a tragedy in Northern California in which a teenager died at a house party where the parents allegedly provided the alcohol. This bill changes the current absolute immunity for social hosts so that adults who knowingly provide alcohol to minors in the home can be held accountable in civil court.

Structured settlements—consumer protection (2009): CAOC sponsored [SB 510](#) (Corbett), which assists all parties involved in structured settlements by providing clarity and consistency in the court approval of structured settlement purchases. SB 510 was the product of dozens of hours of discussions among consumer attorneys and the National Association of Structured Settlement Purchasers.

Electronic discovery (2009): CAOC worked for two years with the California Defense Counsel and the Judicial Council to modernize and standardize electronic discovery. Prior to [AB 5](#) (Evans), California had lagged behind in standardizing the way we gain access to evidence stored electronically.

Peremptory challenges (2010): CAOC worked with the California Defense Counsel and the Judicial Council of California to consolidate and improve Code of Civil Procedure Section 170.6. [AB 1894](#) (Monning) clarifies two conflicting time periods, making 15 days applicable to all peremptory challenges, thus avoiding traps for litigants. The bill also conforms the law to the current practice of requiring filing and service of the motion on all parties.

Unruh Civil Rights Act (2009): CAOC sponsored [SB 367](#) (Negrete-McLeod), which preserves the integrity of the Unruh Civil Rights Act by clarifying that the Act does not preclude a business from offering discounts to furloughed workers. Consumer attorneys garnered the support of a diverse coalition, including the AFL-CIO and the California Chamber of Commerce.

CAOC sponsored several other bills that were rejected by the Governor or held in the Legislature:

Service of process (2010): [AB 2059](#) (Calderon) would have assisted plaintiffs and their attorneys who need to serve out-of-country defendants who caused injury while driving a rental car in California. We expect to sponsor this bill again in 2011.

Health care insurance rescission: CAOC sponsored hotly-contested legislation, [AB 2](#) (DeLaTorre), that would have prohibited insurance companies from rescinding health care coverage simply because of an innocent mistake on an insurance application. Although our bill was vetoed, our efforts in California were instrumental in shaping the federal health care debate, and we are pleased to report that similar provisions were included in the final federal law.

Consumer safety: In this session, we decided not to proceed legislatively with the major consumer issues (MICRA, mandatory arbitration, etc.) given the absolute veto threat by the

Governor. We did have one exception related to tire safety. [AB 496](#) (Davis), a CAOC priority bill, would have required tire dealers to inform consumers about the age of a tire, helping drivers avoid injury and death related to old tires. The bill passed the Assembly, but was held in the Senate.

Major Legislation Defeated

CAOC had another successful year in defeating all anti-consumer legislation. Once again, our most serious threats rose from political plays in the budget and from the Governor. Although an official “legislative deadline” calendar exists, the truth is that the only real rule is that there are no real rules. Increasingly, business interests either use the budget process to seek changes they cannot get in the normal legislative course, or seek last minute “gut-and-amends” to move legislation that is intended to undermine pending consumer rights legal actions. A few examples:

- On the eve of the legislative session's close, McKesson—a multibillion dollar corporation unhappy with a pending legal action that seeks to hold it accountable for the disclosure of private patient information—sought major changes to the state's privacy laws. Fortunately, legislative leadership saw the impact on consumer privacy rights and brought in CAOC and other interested parties. We were able to kill the effort, but we expect this issue to return next session.
- Another aborted effort played out in the frenzied moments of the October budget vote. Hotels.com, again unhappy with successful lawsuits brought by CAOC members on behalf of cities for improperly assessing hotel occupancy taxes, ignored the normal legislative process and used the massive budget trailer bills to seek changes it hoped we would not notice. SB 848 (Hollingsworth) caused a three-hour intense lobbying effort, with the online providers on one side and CAOC and cities on the other. Again, we were successful and the bill garnered only 11 votes on the Assembly floor.
- One Monday morning in May started like any other, until a look at one of the hundreds of legislative files we review each week showed an item on a 12-page Budget Subcommittee agenda that had been added *that morning*. The “just added” item was the Governor's proposal to limit punitive damages, extend MICRA caps to public entity design cases, and eviscerate class actions. Even worse, the item was to be heard that same afternoon. CAOC advocates quickly made contact with Senate offices, briefed legislative staff on the proposals and issued an oppose letter. The proposal was defeated before the day was over.

Some of the other main bills we defeated include:

“Loser pays” in medical malpractice and false claim cases: SB 92 (Aanestad) would have imposed a draconian one-sided penalty on a patient and his or her attorney who unsuccessfully pursued a medical malpractice claim. AB 2760 (Tran) would have awarded prevailing defendants fees in False Claim cases.

Employment and wage, hour and meal break changes: SB 287 (Calderon) would have gutted California's meal break protections for workers. Other bills limiting wage and hour claims included: AB 141 (Tran), SB 187 (Benoit), SB 380 (Dutton), SB 665 (Cedillo), SB 807 (Benoit), SB 908 (Wyland), SB 1335 (Cox), SBX8 66 (Cox), SBX8 70 (Dutton), and SBX8 70 (Dutton). AB 227 (Cook) would have restricted penalties on employers who violate labor standards. AB 2424 (Niello) would have changed the law related to payment of wages.

Limits on contingency fees: AB 2227 (Villines) was a spot bill for fee limits.

Product defect limits: AB 2740 (Niello), ABX8 40 (Niello), SB 1017 (Huff), and SBX8 69 (Huff) would have limited product defect actions.

Limits on punitive damages: AB 2740 (Niello) would have limited punitive damages to three times actual damages.

Pre-judgment pro-defendant interest changes: SB 393 (Harman), SB 1206 (Aanestad), and SB 1117 (Walters) would have cut California's pre-judgment interest statute rate nearly in half.

Class action, Unfair Competition Act (UCA) and Private Attorney General Act (PAGA) limitations: AB 298 (Tran), AB 1040 (Strickland), AB 2588 (Strickland), ABX8 38 (Strickland) would have severely restricted California's class action statute by making class certification orders immediately appealable; AB 1835 would have exempted small businesses from the UCA; SB 989 would have placed onerous procedural barriers on plaintiffs in PAGA cases; SBX8 64 would have repealed PAGA.

Legislation benefitting insurers: AB 1054 (Coto) would have permitted insurers to cheat people on their premium charges and then keep the money; SB 350 (Yee) would have allowed greater use of aftermarket crash parts not made by the original equipment manufacturer; AB 2395 (Anderson) would have weakened consumer protections by limiting the scope of the Insurance Commissioner's investigations.

Environmental law: AB 1107 (Blakeslee), AB 1704 (Jeffries), AB 1805 (C. Calderon), SB 1010 (Correa), SBX8 42 (Correa), SB 976 (Hollingsworth) would have limited CEQA (California Environmental Quality Act) protections.

Procedural changes: SB 984 (Hollingsworth) would have changed the time parameters on service of process, to the detriment of consumers.

CAOC and the California Courts

"Severe crisis" best explains the financial situation our courts faced these past two years, including a state budget deficit of more than \$40 *billion* dollars that led to courtroom closures and furloughs. San Francisco Superior Court anticipated closing more than half of its civil courts; Los Angeles and other courts throughout the state were looking at similar cuts. As courts were being closed, insurance companies and defendants seized the opportunity to refuse to settle cases.

Although the cost of running California's courts is only 2.5% of the overall state budget, the courts were and are vulnerable, particularly as they fall in the small portion of the state general fund that can be cut by the legislature. CAOC worked hard and convinced legislative leadership that court access is crucially important to all Californians. CAOC worked intensely with the California Judicial Council, the California Defense Counsel and judges to mitigate these cuts.

When the courts were forced to propose a one-day-a-month closure, we worked successfully behind the scenes to make sure that the shutdown would be uniform, so that litigants would not face a confusing array of cuts and closures across the state. These court closures ended in July.

When all was said and done, CAOC agreed to certain fee increases, but nowhere near the extent to which they were requested. Paper filing fees have increased \$40, but a sunset clause was included, guaranteeing the increase automatically sunsets in three years. Use of court call has increased by \$20. These were painful, but necessary, changes that have already led to court dates being set.

CAOC was instrumental in doubling the cost of a motion for summary judgment from \$200 to \$500 in an effort to discourage frivolous use of these motions, saving the courts time and money. Pro hac vice fees increased to \$500 a year. These changes can help raise as much as \$66 million dollars.

MICRA (Medical Injury Compensation Reform Act)

In 2009, following CAOC implemented a new project to identify and coordinate medical malpractice cases that may be appropriate for a state legal challenge. Spearheaded by respected national constitutional lawyer Bob Peck (Center for Constitutional Litigation), we actively sought cases to pursue.

There are two cases currently proceeding with MICRA challenges. *Stinnett v. Tam* (5th District Court of Appeals) involves a medical malpractice plaintiff whose \$6 million non-economic damage award was reduced to \$250,000 under MICRA. Plaintiffs argue that MICRA is unconstitutional on the grounds there is no longer a "rational basis" for the MICRA cap and that it denies severely injured plaintiffs equal protection under the law. *Stinnett* has been fully briefed and a decision is pending in the Fifth District Court of Appeal.

The second case is *Fisher v. Eisenhower Medical Center*, pending trial before the Superior Court of Riverside. Penny Fisher, a healthy and vibrant 30-year-old mother and triathlete lost one leg to amputation as well as digits on both hands as the result of a misdiagnosis. *Fisher* has an expected mid-2011 trial date.

CAOC's commitment to changing this outdated, unfair law remains a top priority.