President’s Club recognition event

President’s Club members are the lifeblood of our organization. Their generous support strengthens CAOC’s ability to pursue justice for the individuals in our state. We sincerely appreciate their continued support and make every effort to recognize and thank them every chance we can. Fun was had by all and the Angels won!!
Greetings from the hinterland! The San Joaquin County Trial Lawyers in conjunction with CAOC held a seminar regarding Motions for Summary Judgment (MSJ) on June 27 at the Valley Brew Restaurant. The event was well attended and covered many kinds of cases that commonly see MSJ’s such as employment cases, medical malpractice, and the like. Introductions were performed after a discussion regarding the crisis in court funding and the upcoming Pack Act initiative.

The Honorable Lesley Holland covered the bench perspective from San Joaquin County. Some of the topics he discussed included that the civil judges in the county do all their own research except MSJ’s, which go directly to a research attorney. The number one issue is objections to the evidence. Objections must be separately stated pursuant to California Rule of Court 3.1354. Additionally, custodian of records declarations are often lacking the sufficient foundation to admit the hearsay evidence the documents contain. Requests for Judicial Notice also require the necessary foundation for the evidence they contain.

Finally, the judge stressed lawyers must read the cases cited, otherwise embarrassment usually ensues.

Appellate attorney Daniel U. Smith of Smith & McGinty suggested, among other things, that opposing parties must gauge their discovery. If a MSJ is received and more discovery is required to oppose it, move to continue the hearing date immediately. When witnesses are being deposed rehabilitate them at the deposition. Judges can ignore declarations that are an attempt to rehabilitate a witness’s deposition testimony. Always remember the issues are framed by the complaint, if you must move to amend. Finally, if an MSJ appears abusive file a motion to strike.

Matthew J. Weber of Downey Brand, LLP, counseled that service should always be examined to make sure it is proper. If you have evidence, don’t hold back – include it or be prevented from raising that evidence. He suggested short headings, followed by a thorough recitation of the law to educate the reader. Finally, like the judge, Mr. Weber stressed that objections must be filed separately along with a proposed order on the objections. If the Reply contains objections immediately prepare a document refuting the objections in writing prior to the judge’s tentative ruling. Although this document is not contemplated by statute, it is the only way to document your position regarding those objections other than verbally at the hearing.

The seminar was sponsored by California Deposition Reporters Hill & McPherson, Creative Legal Funding and The Alcaine Group of Robert W. Baird & Co. Without our sponsors’ support these programs could not be as successful as they are. These loyal vendors continue to support us, as we should support them. The next SJCTLA lunch seminar is scheduled for September 26, and is expected to cover trial skills. Hope to see you there.
Amicus Curiae Update
By Kevin K. Green

With the recent retirement of Justice Joyce Kennard and upcoming departure of Justice Marvin Baxter, the California Supreme Court is in transition. One constant, however, is CAOC continuing to shape favorable precedent through its Amicus Curiae Committee. This update summarizes two opinions by Justice Goodwin Liu, who is proving to be the intellectual force many predicted when he donned his robe in 2011.

PAGA Actions Coexist With U.S. Supreme Court Precedent

Due to the Golden State’s trendsetting legal influence, California Supreme Court cases often attract many amici curiae. Even then, Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348 stands out for the attention it received from friends of the court hither and yon — in reality, friends of parties. Nine amici curiae lined up behind plaintiff Arshavir Iskanian and eleven behind the defendant employer. In the end, the resulting opinion was half good and half bad.

On behalf of a proposed class, Iskanian asserted wage-and-hour claims for unpaid overtime and failure to compensate for meal and rest periods. He also sought to bring a representative action under the Labor Code Private Attorneys General Act of 2004 (PAGA) (Lab. Code, § 2698 et seq.). As a condition of employment, he was subject to an arbitration clause foregoing class proceedings. (Id. at pp. 359-360.)

Many anticipated that given recent U.S. Supreme Court pronouncements on arbitration, the California Supreme Court’s ruling in Gentry v. Superior Court (2007) 42 Cal.4th 443 would not survive. Justice Liu indeed concluded that Gentry “has been abrogated by recent United States Supreme Court precedent,” particularly AT&T Mobility LLC v. Concepcion (2011) 563 U.S. ____ [179 L. Ed. 2d 742, 131 S. Ct. 1740]. (Id. at p. 360.)

Although Gentry was laid to rest, the Iskanian decision has preserved the viability of PAGA actions to enforce the Labor Code for the state. As urged by Amicus Curiae Committee member David M. Arbo gast for CAOC, the court recognized that workers must have a legal vehicle to vindicate their statutory rights. Concepcion and its progeny do not affect PAGA because “promoting arbitration as a means of private dispute resolution” is different from “deputizing employees to prosecute Labor Code violations on the state’s behalf.” (Id. at p. 360.)

The beast of federal preemption through arbitration in recent years has significantly affected class actions. But after Iskanian, there is hope for genuine consumer protection in the employment context. PAGA remains alive and well to bring representative actions that give real meaning to California’s protective labor laws.

Architects Owe a Duty of Care to Homeowners

In Beacon Residential Community Association v. Skidmore, Owings & Merrill LLP (2014) 59 Cal.4th 568, the California Supreme Court held unanimously that the principal architect of new residential construction owes a duty of care to eventual homeowners.

Several amicus briefs were filed supporting the architects, while just one spoke for consumer interests — but one was good enough. The court adopted several arguments that CAOC made in its amicus brief by Matt J. Malone of Berding & Weil LLP. As CAOC urged, for example, the developer’s own legal responsibility for defects does not let architects off the hook. Architects owe a duty of care to homeowners, but may raise the distinct issue of causation and also pursue equitable indemnity against the developer. (Id. at pp. 582-584.)

The court rejected the notion that privity — a contractual relationship — was necessary for a duty to be imposed on the primary architect. Among the factors favoring a duty of care, the builder or developer usually constructs the residence based on the architect’s design plans. (Id. at p. 582.)

The California Supreme Court echoed CAOC’s position that it is “unrealistic” to expect home purchasers “to employ their own architects to fully investigate the structure and design” of a home. (Id. at p. 585.) The buyer grapples with any defects after the fact. By contrast, the architect is uniquely positioned to prevent design defects by exercising due care at the inception. The California Supreme Court thus agreed with CAOC that “no reason appears to favor homeowners as opposed to architects as efficient distributors of loss resulting from negligent design.” (Id. at p. 586.)

Beacon Residential is a powerful judicial statement, as CAOC advocated, that homeowners are consumers warranting the law’s protection when purchasing a residence.

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. www.rgrdlaw.com
Diversity Committee Report
By Micha Liberty, Diversity Committee Chair

CAOC Leadership Academy, an initiative of the Diversity Committee, is making a difference. Never doubt that a small group of thoughtful, concerned citizens can change the world. Indeed it is the only thing that ever has.

– Margaret Mead

This past month, a new generation of lawyer-leaders honed their skills in Los Angeles. As part of the CAOC Leadership Academy, the group gathered to learn the delicate and essential skills of effective political communications.

The Academy – a project of the CAOC Diversity Committee in partnership with New Leaders Council – is designed to identify rising stars in CAOC and to give them the skills to effectively lead an organization, develop a winning message, and lock in their vision through policy changes.

For this session, the training focused on the intricacies of political communications and issue advocacy. In particular, the fellows learned how to develop a values-based issue narrative, to leverage the lessons of cognitive linguistics to instill their message in the public, and to best present themselves and their communities in the media and on television.

This session is one of three that make up the Academy. The first, held this past March in San Francisco, focused on developing individual leadership capacity. The third will be held in San Francisco this coming October and will focus on the practicalities of legislative influence and political fundraising.

The Leadership Academy was privileged to have some of the nation’s leading lights in political messaging as trainers, particularly Bill Carrick, a friend of CAOC and leading California political strategist. The fellows also learned from Caitlin Howarth, leadership development director for the Truman National Security Project.

Here’s what our leadership academy fellows are saying about their Leadership Academy experience:

The Leadership Academy has given me invaluable hands-on training in dealing with the media, fundraising, communicating with and understanding our opponents, and setting goals for growth within CAOC. Our group is energized and ready to show the organization how we can take it into a new direction.

– Alexis Djivre, Los Angeles, CA

CAOC’s Diversity committee partnered with New Leaders Council to administer this program. New Leaders Council is a national 501(c) (3) organization dedicated to training a new generation of progressive political entrepreneurs.

We look forward to offering this program again in 2015 and give the new generations of members within our Association, the skills and techniques needed to make them effective leaders in professional settings, in CAOC and in their communities and are accepting applications now. To find out more about the Leadership Academy, please visit www.caoc.org/14LeaderAcad-Oct or contact Laurie Klimchock at laurie@caoc.org.

Authors’ Correction

The authors of the article “Warning cases: Caution about causation” (May/June 2014) wish to correct a misstatement of law that appeared in footnote 3. The footnote stated:

It is important to note that the limitations on a defendant’s duty under the sophisticated user and sophisticated intermediary exceptions apply only to negligence, failure to warn, and strict liability design defect on the consumer expectations theory. Sophisticated user is not a defense to strict liability design defect on a risk-benefit theory. (Johnson v. Honeywell, 179 Cal. App.4th 549, 556-558 & fn. 4.

This footnote should have stated:

It is important to note that while defendants have successfully asserted the sophisticated user and sophisticated intermediary defenses to negligence, failure to warn, and strict liability design defect on the consumer expectations theory, the law is unsettled as to whether either defense properly may be asserted against a consumer expectations theory. (See, e.g., Scott v. Ford Motor Co. (2014) 224 Cal. App.4th 1492, 1502-1503; see also CACI 1244, expressly limiting the defense to failure-to-warn.) As far as the authors are aware, neither defense has ever been applied to strict liability design defect on a risk-benefit theory. Also, please note that on July 9, 2014, the Cal. Supreme Court granted review of Ramos v. Brenntag Specialties, 2014 WL 3361288, so it is not citable authority at this time.
Welcome!

NEW MEMBERS

JOINED OR REJOINED JULY AND AUGUST 2014

Ani Aghaeian, Encino
Mona Amini, Costa Mesa
Patrick Ian Andrews, San Francisco
Serge E Arslanian, Tarzana
Gregory T. Babbitt, San Diego
Houman S. Banafsheh, Beverly Hills
Chris D. Beaty, Oakland
Alejandro Blanco, Glendale
Sarah R. Boot, San Diego
Bradley L. Bostick, Oakland
Anna M. Bruty, Irvine
Angel Junior Carrazco, Tustin
Daniel W. Chudleigh, Santa Ana
Bennett M. Cohen, San Francisco
Blaine J. Cunningham, National City
David Peter Cwiklo, Woodland Hills
Samuel Dagan, San Diego
Mardiros H. Dakessian, Los Angeles
Stephen D. Daner, San Diego
Darrel Davis, Fayetteville, AR
Gloria G. Dralla, Los Altos
Cara Eisenberg, Beverly Hills
Bibianne U. Fell, San Diego
Carlos E. Figari, Santa Monica
Lonnie Finkel, Walnut Creek
Ray E. Gallo, San Rafael
David E. Gentry, Santa Ana
Joseph C. George, Ph.D., Sacramento
James Ghilotti, Novato
Susan Green, Los Angeles
Humberto Guizar, Montebello
Joel Gussman, Berkeley
Michael D. Herman, Concord
Ronald K. Herron, San Francisco
Steven D. Hillyard, San Francisco
Nora Hovsepian, Encino
Robert A. Kahn, Woodland Hills
Marc Karlin, Los Angeles
Scott R. Kaufman, Los Altos
John A. Kawai, Bakersfield
Jeff Kichaven, Los Angeles
Laurence D. King, San Francisco
John Kinney, El Dorado Hills
Kelly A. Knight, Studio City
Therese M. Lawless, San Francisco
David G. Lee, Sacramento
Barbara Luna, Sherman Oaks
Jonathan D. Mason, Santa Ana
Jerome P. Mayer-Cantu, San Francisco
Katie McVey, San Luis Obispo
Donald T. McMillan, Santa Rosa
Michael E. Mitchell, Fresno
Michael F. Moran, Santa Ana
Matthew Nezhad, Sherman Oaks
Lorraine M. Nisbet, San Diego
Madelyn Orr, San Jose
Erik Ortegon, San Antonio, TX
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Dean Petruklaks, Modesto
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A. Chowning Poppler, San Francisco
Kerry A. Renn, San Francisco
Devon K. Roepcke, San Diego
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Maurice Rosenblum, Oakland
Richard S. Sailer, Whittier
Katrina M. Saleen, Palo Alto
Jared Salter, San Luis Obispo
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Ryan Eric Stern, Pasadena
Mona Tashroudian, Tarzana
Steven M. Tindall, San Francisco
Darren Trisel, Roseville
Robert E. Underdown, Scottsdale, AZ
David Scott Vassalli, Rancho Mirage
Charles Victor Wear, Loma Linda
Vince C. Wilson, Santa Ana
John P. Worgul, El Segundo
David Harmik Yeremian, Glendale
Thomas C. Zaret, Los Angeles
Rossana A. Zubrzycki Blanco, Glendale

Thank You!

to these volunteers who recruited new members in July and August 2014

Sharon J. Arkin, Los Angeles
Timothy G. Blood, San Diego
Lauren A. Cerri, San Jose
Brian D. Chase, Newport Beach
Walter Clark, Rancho Mirage
Moseley C. Collins, El Dorado Hills
John M. Feder, San Francisco
Ben Glen, Walnut Creek
Vincent D. Howard, Costa Mesa
Anoush Lancaster, Oakland
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Jessica Pride, San Diego
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Steven Craig Smith, Santa Ana
Scott H.Z. Sumner, Walnut Creek
Heather H. Wong, San Francisco

Consumer Attorneys of California... Seeking Justice For All
NLD has been busy!

By Paymon Khatibi, NLD Publications and Marketing Chair

On August 15th, the New Lawyer’s Division gathered for its second annual “Night at the Races” in Del Mar. Attendees enjoyed food, drinks and a great view from the Ancient Title Suite as they mingled with CAOC board members and local trial lawyer organizations, including OCTLA and CASD. After the fourth contest of the night – aptly coined the “Consumer Attorneys” race – Nancy Drabble and Fred Schenk were invited to the Winner’s Circle to present the number seven horse, Eltoni-nadress, with flowers and a trophy. Many thanks to our generous friends at Casey Gerry Schenk Francavilla Blatt & Penfield, Advanced Depositions, and Manny Valdez & Manuel Valdez of Ringler Associates for another fantastic Night at the Races. The NLD also thanks OCTLA and CASD for their continued support and camaraderie. We look forward to seeing everyone back in Del Mar in 2015!

In July, the NLD Breakfast Club completed its trial tactics series with a presentation by renowned trial lawyer John Gomez, who spoke to new lawyers about effectively presenting a closing argument to the jury. Special thanks to John as well as to Shalini Kedia, John Gruenberg, Fred Schenk and Ken Turek who have all volunteered their time to provide valuable insight, pointers and advice to new lawyers on topics ranging from mediation and trial strategy to marketing and networking. The Breakfast Club meets on the last Thursday of each month. For information, please contact newlawyers@caoc.org.

On August 14, CAOC and ACCTLA NLD members teamed up for their third annual summer happy hour networking mixer at The District in Oakland. A big thanks to our generous sponsor Aiken & Welch Court Reporters www.aikenwelch.com for their support!

The NLD is gearing up for CAOC’s annual convention. The New Lawyers will join forces with the Women’s Caucus for the annual public service event at the San Francisco Food Bank on Thursday, November 13, 2014. Spend time with fellow consumer attorneys while giving back to those in need throughout the Bay Area. Be sure to register for the convention and plan to attend our annual business meeting on Thursday afternoon as well as the NLD convention party on Friday, November 14. For more information on CAOC-NLD events and how to get involved, please visit our website at www.caoc.com/NewLawyers, or contact Paul Woods at newlawyers@caoc.org.

If you’re looking for some grassroots action and want to help ensure passage of Prop 46, the Troy and Alana Pack Patient Safety Act, NLD is working on an outreach program to law schools across the state. The object of the outreach will be to educate future lawyers on Prop 46 and to mobilize them – particularly for action through social media and campus networks – to help spread the word about the Pack Act. To get involved, or for more information on the schools NLD will be reaching out to, please email NLD at newlawyers@caoc.org. And, if you haven’t already done so, please visit www.YesOn46.org for more information about the Pack Act.
American Association for Justice Update

By Ingrid M. Evans

The American Association for Justice held its Annual Convention July 26-30 in Baltimore, Maryland, welcoming thousands of attorneys, guests, and exhibitors to Charm City. In addition to presenting 47 CLE programs with 410 speakers, moderators, and panelists, AAJ also hosted 125 Section and Litigation Group meetings, and gave 25 different awards and scholarships to more than 70 recipients. As always the meetings, speakers and events were inspirational.

Attendees also enjoyed events such as the day-long Women Trial Lawyer Caucus Summit and Reception, the Leadership Breakfast featuring Professor Laurence Tribe, the Women Trial Lawyer Caucus brunch featuring Lilly Ledbetter, and our Membership Luncheon featuring First Sergeant Matt Eversmann (Ret.), who was part of the group of elite U.S. soldiers sent to Somalia in 1993 as part of a United Nations peacekeeping operation.

In addition, members had a chance to volunteer through a number of different projects. The Minority Caucus held an outreach event with young students of color in the Baltimore area, sharing advice about ways to enrich their law school experiences, pursue interests in litigation, and obtain information about different professional organizations that can assist them. The New Lawyers Division participated in a Habitat for Humanity building project. Convention attendees volunteered for a fellowship project with Baltimore Station, a non-profit organization that helps veterans, and they also donated to a non-profit called Clean the World, through which AAJ members could provide hygiene kits for people in need.

Because we are headed toward the fall election season, AAJ held an information session for convention attendees about how they could use their legal skills to volunteer on Election Day. AAJ has a Voter Protection Action Committee (VPAC) and partners with Election Protection, which is led by the non-partisan Lawyer’s Committee for Civil Rights Under Law, as well as other coalition partners.

AAJ is looking for lawyers to volunteer help make sure that every vote counts. You do not have to be an AAJ member to sign up to volunteer, and guidance and training will be provided. More information is available at www.justice.org/VPAC.

AAJ Public Education & Media

The association’s message of why we need a strong civil justice system is working with Congress and the media. During a U.S. Senate subcommittee hearing in July on the need to improve patient safety, Senator Bernie Sanders [I-VT] opened the hearing by stating, “The third leading cause of death in America is preventable medical errors.”

The American Association for Justice features the abominable figure of 440,000 annual preventable medical error-related deaths on its public education and grassroots campaign Take Justice Back. AAJ’s ongoing outreach and the U.S. Senate hearing resulted in excellent coverage in Politico Pro and in the Milwaukee Wisconsin Journal Sentinel.

Below, you’ll find more information about AAJ’s public education and media efforts and how you can get involved.

Taking it to the Streets:

Supporters and staff of the American Association for Justice, the Alliance for Justice, and Public Citizen handed out fliers about forced arbitration to Microsoft conference attendees and the public. People were shocked and angered to learn that Microsoft and other companies are able to single-handedly revoke Americans’ constitutional rights.

Driven to Safety:

AAJ’s Driven to Safety (www.DriventoSafety.org) campaign was incredibly effective. More than 3,600 letters were sent to members of Congress to demand support for the Sunshine in Litigation Act. The campaign centered on the release of our report called Driven to Safety which shows how the civil justice system has been the driving force in automobile improvements that have protected consumers.

Telling People’s Stories:

Each month AAJ adds new stories at www.TakeJusticeBack.com to highlight the need for a strong civil justice system. AAJ recently added stories about the devastating harm of medical errors and the urgent need to increase insurance minimums for motor carriers.

Hall of Hypocrites:

Coming soon to Take Justice Back will be a feature called Hall of Hypocrites where AAJ will expose those corporations which are critical of the civil justice system but have no qualms using it for their own benefit.

The next AAJ winter convention will be in Palm Springs, CA from February 21-25. I hope to see a large California contingent since it will be in our back yard! Go to: www.justicewinterconvention.org.
Support these vendors that support your profession!

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Volunteer spotlight: Jessica Pride

By Kristine Meredith

Wills for Heroes, FaceLift, Ask a Lawyer, Big Brothers Big Sisters, Habitat for Humanity, Make-A-Wish, these organizations are among the many for which, San Diego sexual assault attorney, Jessica Pride has volunteered since law school. Much of these efforts are combined with her service in legal organizations such as her law school legal fraternity, San Diego Bar Association New Lawyers’ Division, Consumer Attorneys of San Diego, American Association for Justice New Lawyers’ Division. While the list runs long, the commitment also runs deep.

Notably, she devoted one day every other weekend for three years to Little Sister Brianna who was five years old when they were matched. Brianna’s family also benefited from the Casey Gerry’s Adopt a Family Christmas program which Jessica initiated at the firm with partner Fred Schenk’s wife, Shari. Jessica worked at Casey Gerry for seven years before joining her husband Dante T. Pride at the Pride Law Firm. Following the birth of her child, Jessica’s role in Brianna’s life transitioned from Big Sister to family friend.

As the immediate past chair of AAJ’s NLD, Jessica has volunteered in Habitat for Humanity Builds twice a year for the past four years. Last year as part of the annual NLD executive retreat, Jessica planned a weekend in Guadalupe Valley for a relaxing planning meeting with her executive board. While dining, the executive committee befriended one of the servers, Flor Carta, and learned that she was an orphan living at a home funded by Corazon de Vida. Touched by her tragic yet inspiring story, the excom decided to raise money for Flor. A commitment by the board resulted in a $4600 donation that will be used to send Flor to school to become a veterinarian. This spontaneous act of service demonstrates a deep commitment to giving her time and resources to improve and to empower those less fortunate.

Her service in legal organizations has led to community awareness of the good lawyers do. For example, with the former CASD Chair John Gomez, Jessica toured her county Rotary Club lunches speaking on the topic “Real Life of an Ambulance Chaser.” They began the speech with the CAOC video “A World Without Lawyers” and emphasized the significant improvements in consumer safety due to the efforts of trial lawyers. She included a brief description of her practice representing rape victims explaining that only approximately five percent of rapists end up in jail, and due in part to the high burden of proof many cases are not prosecuted criminally. She seeks justice in civil courts for victims of rape which often ends institutional ignorance of perpetual rape. The lunch attendees welcomed learning about the various ways of the practice of law improves the community.

Where does all of this compassion and generosity come from? Jessica explained that giving back has always been part of her life. Her father was an orphan but through his academic achievements became a self-made engineer. She also shared a family thanksgiving tradition. From a young age, each Thanksgiving she collected the toys she no longer played with and took them with her as her family fed the homeless on Thanksgiving day. Looking for opportunities to improve others’ lives, became a way of life.

Flor Carta is attending veterinary school thanks to a donation from the AAJ NLD Board

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