Women’s Caucus Report

By Shelley Kaufman, Former Chair of Women’s Caucus

Editor’s Note: This report was submitted by Shelley Kaufman, former chair of the Women’s Caucus, before she was appointed to the Bench on January 17, 2014. Anne Marie Murphy will be 2014 Chair of the Women’s Caucus.

Women’s Caucus 2013-2014 is committed to encouraging and endorsing strong and inspirational female leaders to further the vision of CAOC. We will continue our networking efforts through membership drives, social events, and our ever-energizing monthly conference calls. Please contact Kristine Meredith or Bethany Caracuzzo to help with these events.

This year we intend on making a difference in our communities through motivating community service projects throughout California. Heather Wong welcomes any support and assistance in developing these programs.

Women’s Caucus will also continue the informal roundtable meetings with judicial officers. The first one is slated for early February 2014 in Contra Costa County. This first program will follow our previous successes in San Francisco, Los Angeles, and San Diego. Anyone interested in assisting please contact Lina Melidonian.

Endorsing CAOC’s political and legislative objectives is an important goal of the Women’s Caucus. We are especially interested in encouraging new faces and voices to volunteer to testify in Sacramento on issues that protect our clients and demonstrate our commitment to their plights. Women’s Caucus anticipates strong participation at Justice Day where our voices will be heard! Anne Marie Murphy and Shehnaz Bhujwala will be leading the way for these efforts.

Enthusiasm for Women’s Caucus was demonstrated by the great turnout at CAOC’s 52nd Annual Convention, both at the Women’s Caucus business meeting and the infamous Pink and Red Party. The Pink and Red Party was a huge success.
as usual, with more than 250 attendees kicking off the annual convention. Valerie McGinty’s father, Daniel Smith’s Jazz Ensemble, played smooth tunes throughout the evening. The partygoers made generous donations to our two featured charities: Downtown Women’s Center of Los Angeles and La Casa de Las Madres in San Francisco. Thanks to Anoush Lancaster for her vision.

At the Pink and Red Party, Women’s Caucus was pleased to honor Lori Andrus with the “Woman Consumer Advocate of the Year Award.” The award is given to a trailblazing female CAOC member who has made significant contributions to the profession by (1) pioneering leadership roles for women plaintiffs’ lawyers; (2) inspiring, supporting, and mentoring other women lawyers; (3) obtaining excellent results for consumers and injured victims; (4) helping elect pro-civil justice candidates; or (5) working to either establish new law or protect favorable law for consumers or injured victims. Lori’s multiple achievements are admired and appreciated.

Women’s Caucus monthly telephonic meetings are scheduled the first Wednesday of each month at 4:00 p.m. The first telephonic meeting of the 2013-2014 year was on December 4, 2013 and more than 30 members were on the call. Valerie McGinty kicked off the call with her inspirational words. Valerie has been an amazing leader and we thank her for all of her dedication this past year.

Women’s Caucus spearheaded the following letter sent in response to Justice Alito’s criticism of supporting women leaders in class action cases:

Consumer Attorneys of California, its Women’s Caucus and Diversity Committee applaud Judge Baer of the United States Southern District of New York, who understands that the attorney leadership involved in mass torts and class action cases often fails to mirror the consumer clients they represent. Judge Baer astutely recognizes that the leadership in these cases should include qualified and experienced attorneys of diverse background and that women should be equally assigned leadership roles.

Unfortunately, Justice Alito chose to gratuitously criticize a practice that should merit praise. Justice Alito issued a statement in the denial of a petition for writ of certiorari in Martin v. Blessing, 134 S.Ct. 402 (2013), claiming that Judge Baer engaged in “court-approved discrimination based on gender.” Id. at 403.

As an organization protecting the rights of consumers throughout the state, Consumer Attorneys of California strives to promote leadership and representation by women and minorities and ensure that consumers are justly represented.

We thank Judge Bauer for striving to ensure that women lawyers and lawyers of diverse backgrounds hold leadership positions in class action and mass tort cases. We urge all judges to follow suit.

Nancy Drabble, CAOC Chief Executive Officer
John M. Feder, President CAOC
Shelley Kaufman, Chair, CAOC Women’s Caucus
Vincent Howard, Co-Chair, CAOC Diversity Committee
Micha Star Liberty, Co-Chair, CAOC Diversity Committee

Let’s go Women’s Caucus!

CONSUMER ATTORNEYS OF CALIFORNIA

Women’s Caucus & Diversity Committee

RECEPTION

in conjunction with CAOC Justice Day

Monday – May 5, 2014 | 5:30-7:30pm
The Patio at Cafeteria 15L
1116 15th Street (at L Street)
Sacramento, CA 95814

Please RSVP to womenscaucus@caoc.org
or (916) 442-6902 ext. 115

© Consumer Attorneys Of California
January/February 2014 FORUM 45
This is what diversity looks like in 2014!

By Micha Star Liberty, Diversity Committee Co-Chair

We have a radical agenda. And so does CAOC.

The Diversity Committee’s agenda in 2014 is an effort towards achieving the organization’s overall goal which is to welcome, encourage, and promote diversity and knowledge of diversity issues that face our lawyers today. We intend to identify and implement strategies that will result in significant and measurable progress toward increasing diversity of the plaintiff’s bar, in general, and CAOC in particular.

We will carry forward what has worked in the past and has resulted in attorneys with diverse backgrounds learning about CAOC and eventually signing on as new members. We will once again hold joint social mixers with other specialty bars, with one event being held in the north and one in the south. We are excited to announce our two mixer dates:

- April 10 in San Francisco
- August 7 in Los Angeles

Another way for attorneys with diverse backgrounds to learn about our organization is to receive periodic communication about CAOC and what we do so that they can become more familiar with the organization and want to join; something along the lines of a newsletter that ends with a call to action. CAOC is working on acquiring the mailing/email lists of several different specialty bars so that we can begin sending out info (preferably via email) to them by March 2014. If you know of or are a member of any specialty or diverse bar association, please contact us today so that we may include it on our list!

Further, the DC will continue to endeavor to have 30% of the speakers on a panel being from a diverse background at our Annual Convention. We need to make sure that we continue to build on our database of diverse speakers to present at the convention. We also need to push to have a more diverse panel of webinar speakers.

We also will continue to partner with the Diversity Committee

Diversity Committee

Vince Howard
Co-Chair
Micha Star Liberty
Co-Chair
Shehnaz Bhujwala
Social Co-Chair
Anthony Burton
Social Co-Chair
Shawn Khorrami
Legislative
Sub-Committee
Bahar Dejban
Education
Sub-Committee
Ronnie Whitehead
Education
Sub-Committee
Erika Jacobsen White
Law Academy
Sub-Committee
Ibiere Seck
So Cal Liaison
Matthew George
Nor Cal Liaison
Brian Kabateck
CAOC Immediate
Past President

JOIN US!
www.caoc.org/diversity

© Consumer Attorneys Of California
High School Law Academy Mentorship Program – a project of the State Bar of California and the California Department of Education. The Law Academy Program matches high school students and lawyer mentors with the goal of creating a “diversity pipeline” from high school to law school. Becoming a mentor only requires a commitment to three student meetings plus one orientation meeting. As a mentor, you will have the opportunity to inspire, teach, and make an impact. Specifically, we are looking for volunteers for the De Anza High School program (Richmond) or Cabrillo High School (Long Beach). There are also opportunities in East LA, San Diego, and other locations, so please let us know if you are interested, but those locations do not work for you. Even if you are unsure about the time commitment of the Law Academy Program, you can still get involved with the Diversity Committee in other ways!

Lastly, we will be offering a leadership academy for our members that is designed to train CAOC’s future leaders. CAOC’s Leadership Academy will train CAOC members who are interested in developing their leadership roles within CAOC. The purpose of the Leadership Academy, an initiative of CAOC’s Diversity Committee through New Leaders Council (NLC), is to give CAOC members the skills and techniques needed to make them effective leaders in CAOC, their professional settings and in their communities. The Leadership Academy will select only 20 plaintiff trial lawyers representing various backgrounds and practice areas to attend 3 two-day sessions. Tuition is $225.

The 3 two-day sessions are as follows: Session A: San Francisco (March 29-30)
Session B: Los Angeles (July 19-20)
Session C: San Francisco (October 11-12)

The application deadline is February 15, 2014. To apply on line, please visit www.caoc.org/LeadershipAcademy. The application fee is $35. Apply now!

Please join our effort in 2014, and get involved with the Diversity Committee. Even though we strive to be more inclusive and increase the numbers of attorneys from varied backgrounds, it is our collective dedication to civil justice that binds us together as an organization, not our individual make-up, and there is much work to be done.

The late Nelson Mandela famously once said: “It is not our diversity which divides us; it is not our ethnicity, or religion or culture that divides us. Since we have achieved our freedom, there can only be one division amongst us: between those who cherish democracy and those who do not.” Join us.
New Lawyers Division Report
By Lyssa Roberts, NLD Chair

The NLD is excited to embark on another year of educating and activating new lawyers throughout California. This year, the division will continue working to increase membership, build professional networks, and create opportunities for meaningful political involvement. The NLD will rely on a strong and diverse group of leaders to build and expand on its traditions.

At CAOC’s Annual Convention in San Francisco in November, the NLD held its 2013 business meeting and elected its new Executive Board:
- Chair: Lyssa Roberts of AlderLaw, P.C. in Los Angeles
- Chair-Elect: Amanda Greenburg of Oakland
- Treasurer: Gardner Hensill of Berg Injury Lawyers in Sacramento
- Political Chair: Santo Riccobono of Khorrami Boucher Sumner Sanguinetti LLP in Los Angeles
- Membership Chair: Kevin Smith of Rose, Klein & Marias in Los Angeles
- Immediate Past Chair: Neil Berman of Rucka, O’Boyle, Lombardo & McKenna in Salinas

The NLD also appointed its committee chairs:
- Education: Mary Barnes of Dolan Law Firm in San Francisco
- Law Student Development: Jason Caruso of Hodes Milman Liebeck Mosier in Irvine and Brook Bove of DiMarco Araujo Montevideo in Santa Ana
- Publication and Marketing: Paymon Khatibi of Khorrami Boucher Sumner & Sanguinetti in Los Angeles
- Public Service: Ryan O’Connell of Rucka O’Boyle Lombardo & McKenna in Salinas
- Social: Adam Polk of Girard Gibbs in San Francisco

Additionally, for the first time, the board appointed a number of Regional Captains who will serve the organization by acting as liaisons between new lawyers practicing...
in their respective regions and the NLD. The NLD is pleased to welcome the Regional Captains:

Central Valley: Neil Gehlawat of Chain Cohn Stiles in Bakersfield
Inland Empire / Desert: Doug Brewer of Walter Clark Legal Group in Rancho Mirage
Los Angeles / Valley: Antonio Castillo of Castillo Law in Sherman Oaks
San Diego: Parisima Roshanzamir of Gomez Trial Attorneys in San Diego
San Francisco / Bay Area: John Roach of Brady Law Group in San Rafael

The NLD board has already begun coordinating a series of fantastic events including multiple public service and community outreach projects, membership drives, education panels, law school development programs, Political Insiders functions, and annual social events including NLD Night at the Ballpark and Day at Del Mar. Our first event is Political Outreach Training in Sacramento on May 5, in conjunction with CAOC’s annual Justice Day.

For more information on NLD events and how to get involved, visit our website at www.caoc.org/NewLawyers or contact Samantha at newlawyers@caoc.org.

A trial lawyers, we adhere to the universal motto “Be Prepared,” which is not just the Boy Scout Motto, but a life credo that extends to the professional and volunteer work of Stockton medical malpractice attorney and CAOC member, Steven L. Brown, who is actively involved in the Boy Scouts of America.

Although we all recognize that there have been much publicized institutional problems in the Boy Scout organization and many have been tragically injured by the senseless acts of a few scout leaders, Scouting has helped shape and form many young men, and Steve has taken great pride in being part of that process. There are many within Scouting that provide countless hours of service, and Steve has felt that his participation, along with his sons, has helped him and the young men he has worked with grow and develop. He uses the skills that he has honed in the courtroom to help young men reach higher goals and attain what some thought they could not, due to economic or social challenges.

He has served as a Varsity Scout Leader for many years and leads boys on week-long High Adventure treks in the Sierras. Leaders and youth ages 16-18 hike close to 100 miles while developing survival skills, teamwork and leadership. In addition to hiking, as a scout leader Steven mentors boys in many skills and activities such as cycling and civic responsibilities. The photo captures a couple of the scouts who honored local veterans at the Manteca Memorial Day Celebration.

Steve’s community service roles also include volunteer leadership in his church and in local organizations that include the Interfaith Ministries Food Bank and the local chapter of the Boys and Girls Club. He is a partner with the firm Brown-Gessell and currently serves as the Committee Chair for the San Joaquin County Bar Association’s Civil Litigation Committee and served as President of that Bar Association in 2011.
Amicus Curiae Update

By Kevin K. Green

At CAOC’s 52nd Annual Convention last November, outgoing President Brian Kabateck gave a rousing address to the Board of Governors that fired us up. His year as our leader infused the organization with his dynamism, energy and determination to achieve CAOC’s goals.

Although the anticipated MICRA ballot initiative is at the forefront these days, Brian also highlighted the work of the Amicus Curiae Committee. In 2013, CAOC writers filed more than 25 amicus briefs on the merits, and a dozen amicus letters, in the California Supreme Court, the California Courts of Appeal and the Ninth Circuit.

With no budget, CAOC’s nimble amicus operation labors on an entirely voluntary basis. CAOC shapes appellate precedent through the most knowledgeable and gifted legal writers in the plaintiffs’ bar, who generously dedicate their time and resources.

California’s Anti-SLAPP Statute in Federal Court

For fifteen years, the Ninth Circuit has applied California’s anti-SLAPP law in federal court as a substantive statute protecting persons improperly sued for exercising their constitutional right of free speech and petitioning for redress of grievances. The statute authorizes a motion to strike a cause of action improperly brought to chill the exercise of those rights. (Code Civ. Proc., §§ 425.16-17.)

In *Makaeff v. Trump University, LLC* (9th Cir. 2013) 715 F.3d 254, a three-judge panel reiterated that California’s anti-SLAPP law applies in federal court. (Id. at p. 261.) In a victory for the plaintiff, the court reversed the order denying her motion to strike. (Id. at pp. 271-272.) But not without some fireworks from Chief Judge Kozinski. He wrote separately joining the result, but urging the Ninth Circuit to convene *en banc* to hold that the anti-SLAPP statute does not apply in federal court. As he saw the matter, the Ninth Circuit precedents allowing anti-SLAPP motions in federal court should be reconsidered and overturned. (Id. at pp. 272-276.)

Chief Judge Kozinski’s concurrence led to a high-profile legal skirmish over possible *en banc* rehearing in *Makaeff*. After another round of briefing and more than six months of deliberations, the Ninth Circuit denied *en banc* review in a second published opinion. (*Makaeff v. Trump Univ., LLC* (9th Cir. 2013) 736 F.3d 1180.)

As appellate practice goes, this was high drama. Surviving a stiff challenge, California’s anti-SLAPP law remains available to plaintiffs in federal court. Kudos to Christopher Burke of Scott+Scott LLP, who filed amicus briefs for CAOC at both the merits and *en banc* stages in the Ninth Circuit.

Class Certification in State Court

According to the latest Judicial Council statistics, only 8% of Court of Appeal majority opinions are published in the Official Reports. This is significant because nonpublished dispositions cannot be cited as authority in the California courts.

CAOC’s amicus committee monitors consumer-related litigation for nonpublished opinions that warrant publication status. The ubiquitous David Arbogast of Arbogast Law PC filed a request for publication that was granted recently in *Martinez v. Joe’s Crab Shack Holdings* (2013) 221 Cal.App.4th 1148, a wage-and-hour case. Noting that class certification has long been favored in such cases, the Second District reversed a denial of class status. (2013 Cal. App. Lexis 979, at pp. *1-*3.)

The tone for class certification in this area after *Brinker Restaurant v. Superior Court*, 53 Cal.4th 1004 (2012), is still being set. So far, the law is developing favorably to employees seeking to band together in class actions. *Martinez* is likely to be a significant post-*Brinker* precedent allowing them to do so.

Looking Ahead

CAOC not only makes requests to publish after a decision is issued, but can help facilitate publication by participating at the merits stage. The parties are often grateful for the support.

For example, CAOC has filed an amicus brief in a Riverside appeal captioned *Cobb v. Ironwood Country Club* (No. E058179, Fourth Dist. Ct. App., Div. Two). The main issue is whether the trial court, in denying a motion to compel arbitration, properly concluded that the plaintiffs did not waive their right to trial by jury. The brief filed by David Arbogast was so compelling that the plaintiffs’ counsel wrote a lengthy email to CAOC expressing appreciation. An excerpt: “The supporting arguments made on this subject by you were most helpful to prevent Ironwood from its efforts to deny our clients this important right.”

Last year was a productive one for the Amicus Curiae Committee. In 2014, those efforts will, if anything, ramp up to make an even greater impact.

Kevin K. Green is a Certified Appellate Specialist (State Bar of California Board of Legal Specialization) 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

© Consumer Attorneys Of California
Harveys Lake Tahoe
STATELINE, NEVADA

CONSUMER ATTORNEYS OF CALIFORNIA • COLLEGE OF TRIAL ARTS
CAPITOL CITY TRIAL LAWYERS ASSOCIATION

FRIDAY: Registration 1:30 p.m., Session 2:00 to 6:15 p.m., Welcome Reception 6:30 to 7:30 p.m. SATURDAY: Sessions 8:30 a.m. to 3:15 p.m.

KEYNOTE LUNCH
To Try Or Not To Try – The Art Of The Jury Trial
CYNTHIA McGUINN
The Art Of Story Telling
BRUCE A. BROILLET

TIPS ON DELIVERING THE BEST OPENING STATEMENT BY THE MASTERS
Moderator: Anne Marie Murphy
LESLEY ANN CLEMENT
JOHN M. FEDER

SPECIALTY CREDITS IN 12 EASY STEPS
Moderator: Lee S. Harris
Elimination Of Bias: Come For The Credits, Stay For An Enlightening Discussion
EDIE MERMELSTEIN
AMAR SHERGILL
ZAHRA BILLOO
Substance Abuse In The Legal Profession: Prevention, Detection, And Treatment 2014
DAVID MANN

LIEN-ING IN: A COMPREHENSIVE AND INTERACTIVE LIEN SEMINAR FOR THE AGES (With All Due Modesty)
Moderator: Shawn Khorrami
Minding Medicare’s Interests — Liens And Set-Asides
BRETT NEWMAN
Recent Federal Legislation In Medicaid: Can Minors Avoid ERISA And Learn To Say No To Cases With Too Large A Lien
DANIEL E. WILCOXEN
Handling Kaiser Lien Claims
DONALD M. DE CAMARA
New Frontiers In Liens
THOMAS M. DEMPSEY
The Interplay Between Workers Comp Liens And Third Party Cases
CHRISTOPHER A. VIADRO
Ethics Of Handling Liens
DANIEL DEL RIO
Overall Medical Damages Strategies And The ACA
ROBERT BALE
Howell et al v. Liens v. ALL The Payments?
LAWRENCE “LAN” LIEVENSE

TIPS ON DELIVERING THE BEST CLOSING ARGUMENT BY THE MASTERS
Co-Moderators: Anne Marie Murphy
Catica S. Saraiva
DEBORAH CHANG
WENDY C. YORK
MARK J. GERAGOS
BRIAN S. KABATECK

INTERACTIVE NUTS & BOLTS AUTO
Moderator: Christopher L. Kreeger
Voir Dire (Interactive)
JOHN N. DEMAS
JUDY H. ROTHSCILD, PHD
CHRISTOPHER W. WOOD
CHRISTOPHER B. DOLAN
Preparing The Plaintiff For Direct & Cross Exam
CHRISTOPHER W. WOOD
JAMES E. DONAHUE
Cross Examining The Defense Medical Examiner
CHRISTOPHER B. DOLAN
EDWIN YOUNGER, MD

10 MCLE CREDITS INCLUDING
1.0 Substance Abuse; 1.0 Bias; .5 Ethics

BROCHURE AND REGISTRATION WWW.CAOC.ORG/14TAHOE
© Consumer Attorneys Of California January/February 2014 FORUM 51
The American Association for Justice will hold its Winter Convention in New Orleans, Louisiana, February 8-12, 2014. You can register online at www.justicewinterconvention.org. The AAJ Board will meet Wednesday, February 12, at 10:30 a.m.

Your support for AAJ is crucial. The American Association for Justice is the only national advocacy organization working to preserve the 7th Amendment right to trial by jury, and prevent tort “reforms” from becoming law. AAJ sends its members daily news highlights through the AAJ News Brief, bi-monthly legal news updates online through Trial News, monthly legislative and regulatory updates on the critical work it is doing to protect our practices, plus regular updates on the work of AAJ’s media and communications team and results from the Center for Constitutional Litigation, a national law firm dedicated to complex constitutional and appellate issues.

The 113th Congress has reconvened for the new year and AAJ is tracking and monitoring hundreds of bills. These bills are tracked because of their potential to become “vehicles” for tort “reform” – in other words, bills in which anti-civil justice lawmakers could potentially add provisions as the bill moves through Congress.

Here are some other important issues the American Association for Justice is working on:

Potential Changes to Federal Rules of Civil Procedure
On November 7, AAJ President Burton LeBlanc and other AAJ members testified at a public hearing before the Judicial Conference’s Advisory Committee on Civil Rules. That was the first of three public hearings scheduled before the Judicial Conference.

The second hearing occurred in Phoenix, January 9, with several CAOC members testifying: Jennie Lee Anderson, Dennis Canty, Kathy Dickson and Elise Sanguinetti. As of this writing, a final hearing was scheduled in Dallas, Texas, for February 7. AAJ started an awareness campaign on this issue more than a year ago and has given plaintiff lawyers a presence at the hearings – which are otherwise packed with corporate defense lawyers. Trial lawyers interested in filing comments that show how the proposed changes would negatively impact the practice of law may do so until February 15, 2014.

The proposed changes would:
• Change the scope of discovery in Rule 26(b) from a relevancy standard to a proportionality standard that takes into account five specific factors including: (1) the amount in controversy; (2) the importance of the issues; (3) the parties’ resources; (4) the importance of the discovery in resolving the issue; and, most importantly, (5) whether the burden or expense of the proposed discovery outweighs its likely benefit.
• Reduce the presumptive limit of Rule 30 oral depositions from ten to five and limiting the presumptive number of hours for those depositions from seven to six.
• Reduce the presumptive limit of Rule 31 written depositions from ten to five.
• Reduce the presumptive limit of Rule 33 interrogatories from 25 to 15, including all discrete subparts.
• Impose a presumptive limit for the first time on Rule 36 requests for admissions to 25, including all discrete subparts.
• Reduce the Rule 4 Time Limit for Service from 120 days to 60 days.
• Change the Rule 37(e) “safe harbor” provision for preservation of electronically stored information to a set of presumptive standards for when a court may cure or sanction failure to preserve any evidence, not just electronically stored information.

For more information, AAJ members can log on to the association’s Federal Rules Updates page on the AAJ website at www.justice.org/federalrules. You may also send an e-mail to federalrules@justice.org to request additional information.

Arbitration Update: Senate Judiciary Committee Hearing on Forced Arbitration
On December 17, the U.S. Senate Judiciary Committee held a hearing chaired by Sen. Al Franken (D-MN) titled, “The Federal Arbitration Act and Access to Justice: Will Recent Supreme Court Decisions Undermine the Rights of Consumers, Workers, and Small Businesses?” The hearing covered the impact of several recent Supreme Court cases that have eviscerated the legal rights of consumers, small businesses, investors and even service members. Notably, the hearing highlighted the ever-expanding use of forced arbitration and how it wipes out the ability of states to enforce their own laws and strips individuals of their rights to seek meaningful redress from wrongdoing corporations in court.

AAJ Public Affairs staff were deeply involved with the planning and preparation of the hearing, including coordinating coalition letters, statements for the record and witness preparation. Key witnesses included

Ingrid M. Evans of the Evans Law Firm in San Francisco (www.evanslaw.com) focuses on elder financial and physical abuse, consumer fraud class actions, whistleblower/qui tam and personal injury cases. Her firm also handles estate planning issues, with an emphasis on elder law issues. Ms. Evans is on the Board of Governors for CAOC, AAJ and Public Justice.
testifying at the hearing included: Myr-
imiam Gilles, a Professor of Law at the
jamin N. Cardozo School of Law
who specializes in class actions and
aggregate litigation and who has writ-
ten extensively on class action waivers
in arbitration clauses; Vildan Teske, a
Minneapolis-based attorney special-
izing in state and national class actions
involving violations of the Service-
member’s Civil Relief Act (SCRA); and
Alan Carlson, head chef and owner of
the Italian Colors Restaurant, and lead
plaintiff in the American Express Co.
v. Italian Colors Restaurant decision
issued by U.S. Supreme Court in June
2013. In this case the Court ruled that
the Federal Arbitration Act does not permit
courts to invalidate a contractual waiver
of class arbitration on the grounds that
the plaintiff’s cost of individually arbi-
trating a federal statutory claim exceeds
the potential recovery. Our witnesses
came equipped with facts, were better
prepared and had the U.S. Chamber of
Commerce’s witnesses on the defensive
throughout the entire hearing.

While several senators on the commit-
tee both attended and offered meaningful
contributions to the hearing, Senators
Hirono (D-HI), Whitehouse (D-RI) and
Blumenthal (D-CT) merit special recog-
nition for their powerful testimony dis-
cussing institutional investor protections,
the constitutional protections necessarily
afforded to our civil justice system and the
need to ensure that, at a minimum, our ser-
civemembers are afforded the protection
of our federal laws in the face of forced
arbitration clauses, respectively.

Post-hearing, AAJ Public Affairs has
continued to build on the momentum gar-
nered from the hearing and will continue
working with Congress, the various com-
mittees of Jurisdiction and the numerous
agencies and stakeholders tasked with
the monumental task of ending forced
arbitration.

**Floor Votes Recap**

On November 13, the House considered
and passed H.R. 982, the Furthering As-
bestos Claim Transparency (FACT) Act
of 2013, by a vote of 221-199. This bill,
sponsored by Congressman Blake Far-
enthold (R-TX), would place new and
unnecessary reporting requirements on
asbestos trusts that would waste trust as-
ets, delay recovery and deny compensa-
tion to asbestos victims. On November 14,
the House also took up for consideration
and passed H.R. 2655, the Lawsuit Abuse
Reduction Act (LARA), by a vote of 228 to
195. The bill, sponsored by Congressman
Lamar Smith (R-TX), would change Rule
11 of the Federal Rules of Civil Procedure
to force federal judges to impose sanctions
on parties accused of violating certain
procedural rules.

Both of these bills were heavily lob-
bied by the Majority leadership in the
House and the U.S. Chamber of Com-
merce. However, the AAJ Public Affairs
team worked diligently with Democratic
leadership to educate members on the
negative civil justice implications of
both bills. While both bills passed the
House with overwhelming support from the
Majority, we are happy to report that
because of intense lobbying efforts from
the AAJ Public Affairs team we achieved
almost complete and unified Democratic
opposition to both bills, in addition to a
couple Republican supporters.

This strong showing by Democratic
House Members represents a great success
and will make it less likely that these bills
will ever be considered by the U.S. Senate.
AAJ will continue to advocate our strong
opposition to these bills.

**Regulatory News**

**Generic Drugs**

After extensive advocacy over a two-year
period by AAJ and Public Citizen, the FDA
has issued a proposed rule on generic drug
labeling. The rule, as proposed, would
overturn the *Mensing* decision by allow-
ing generic drug manufacturers to use the
Changes Being Effectected (CBE) process
to update their labels with new safety
information. The FDA’s CBE regulation,
21 C.F.R. §314.70(c), currently al-

The proposed rule will restore account-
ability for generic manufacturers and put
them on equal footing with the brand-
name manufacturers. The proposed rule
was published in the Federal Register on
November 13. The comment period will
be open through mid-March. AAJ will file
comments in support of the rule as well as
pursue other advocacy options to ensure
it becomes effective as soon as possible.

**SMART Act Rulemaking**

Recently, the Centers for Medicare &
Medicaid Services (CMS) released an in-
terim final rule implementing the SMART
Act. The regulations, as drafted by CMS,
are unclear and CMS has postponed phasing
in one section of the SMART Act
regarding attorney access to important
data (such as provider codes) via the
reimbursement website. In addition, the
expedited claims process mandated in the
SMART Act differs distinctly from the
claims process developed by CMS.

AAJ filed comments suggesting that CMS
should clarify the regulations as soon as
possible. These regulations are currently
effective.

*continued*
CAOIE Holiday Party

By Gregory G. Rizio, CAOIE Past President

The CAOIE holiday party was once again held at the Inland Empire’s own version of the Rock-n-Roll Hall of Fame otherwise known as Ricardo Echeverria’s home. As always, the party truly represented what it is like practicing law in the Inland Empire. I looked around and it warmed my heart to see our members laughing, embracing and celebrating each other’s accomplishments. This event was made possible by our generous sponsors Brown & Lipinsky, LLP; Rizio & Nelson; Robinson Calcagnie Robinson Shapiro Davis, Inc.; Shernoff Bidart Echeverria Bentley LLP; Welebir Tierney & Weck; Pat Farber at Atlas Settlement Group; High Impact, Inc.; and Judicate West. As is always the case, Rick Kraemer appeared to be everywhere documenting our celebration. It has been such a great honor serving as your president and I look forward to another great year with each of you and our incoming president, Cory Weck.

AAJ Update

continued from page 53

Medicare Secondary Payer & “Future Medicals”

In August 2012, CMS published an Advanced Notice of Proposed Rulemaking (ANPRM) that purported to require both Medicare beneficiaries and non-Medicare beneficiaries to set aside settlement funds or use one of the other approved processes to ensure that Medicare does not pay for medical care that is the responsibility of another insurer. Unfortunately, these rules as proposed were unfair and deterred settlements, and AAJ filed comments in opposition.

Nevertheless, the rules are moving forward in the process. The next step will be for the agency to publish a Notice of Proposed Rulemaking (NPRM). Currently, the NPRM is still at the Office of Management and Budget (OMB) for its review. The OMB review was officially extended in November.

Toxic Substances Control Act Update

The House Energy and Commerce Environment & the Economy Subcommittee held a hearing in November on S.1009, the Chemical Safety Improvement Act. This was the fourth Congressional hearing of 2013 on amending the Toxic Substances Control Act.

As currently drafted, this bill actually weakens public health safeguards by eliminating the ability of states to protect their own citizens and takes away the right to hold the chemical industry accountable when their products injure or kill Americans. The witnesses included Senators David Vitter (R-LA) and Tom Udall (D-NM), as well as Jim Jones, the Assistant Administrator of EPA, and other important stakeholders.

Senator Udall made some very encouraging statements during his testimony saying, “We must make sure to protect the rights of states to safeguard our citizens. We must also ensure that states retain the authority to protect their citizens from toxic chemicals.”

Additionally, Asst. Administrator Jones, EPA’s assistant administrator for chemical safety and pollution prevention, said there were aspects of the bill that would be an improvement over current law. However, Jones, echoing the sentiments of several House members as well as the bill’s sponsors, said that the bill still needs work.

AAJ Public Affairs continues to work with committee staff and leadership to ensure that state laws are preserved and any other troubling provisions will be amended through the committee process in the coming weeks and months.

Public Education

AAJ’s website focusing on the community outreach and charitable work of trial lawyers (www.TrialLawyersCare.org) continues to grow. If your firm participates substantially in community volunteer work, please let AAJ know by emailing TLC@justice.org.

AAJ’s grassroots civil justice site, Take Justice Back (takejusticeback.com), has a section where you (and your clients) can read about hot topics, sign petitions, and send messages to Congress. Please check it out. If you want the TJB logo for your website, please contact AAJ’s Director of Communications, Michelle.Kimmel@justice.org.

State Membership + National Membership = Strength

AAJ’s strong advocacy depends upon your continued support through your membership or participation in Leaders Forum. In addition, AAJ members and CAOC members may make voluntary contributions of $365, $500 or $1000 (or more, up to $5000 annually) to the AAJ PAC (political action committee) to help elect pro-civil justice lawmakers. I hope you will support AAJ PAC.

To become an AAJ member or renew your membership now, please go to www.justice.org/MembershipJoin.aspx or email membership@justice.org. I personally encourage all of my employees to join the organization and I ask you to do the same so that we can achieve 100 percent participation in AAJ among all our attorneys.
Andre Rekte and Gregory Bentley
Dale Gribow, Patti Gribow and Ricardo Echeverria
Gregory Bentley, Jason Sanchez, Brian Hannemann, Gregory Rizio, William Shapiro, Cynthia Hafif, Cory Weck, Lori Sarracino, Steven Geeting, Daren Lipinsky and Andre Rekte
Geraldine Ly and Brian Hannemann
Cory Weck and Daren Lipinsky
Cynthia Hafif and Lori Rekte

Gregory Bentley, Jason Sanchez, Brian Hannemann, Gregory Rizio, William Shapiro, Cynthia Hafif, Cory Weck, Lori Sarracino, Steven Geeting, Daren Lipinsky and Andre Rekte
Pat Farber and Cynthia Craig
Dale Gribow, Patti Gribow and Ricardo Echeverria
Bill and Terry Weathers
Christy and Joel Johnson

James West and Danica Dougherty
William Shapiro, Rob Gibson and Gregory Rizio
Clare Lucich and Travis Corby
Daren Lipinsky and Steven Geeting
2013 Hawaii Seminar

By Valerie McGinty, Seminar Committee

Once again, the Annual Donald L. Galine Hawaii Seminar was a smashing success. And with a beautiful setting, fantastic presentations, and near-record attendance, how could it not be?! Approximately 75 attorneys and their families reported to the Fairmont Kea Lani Hotel in Wailea, Maui, following the week of Thanksgiving.

The seminar committee, including Frank Pitre, John Feder, Lisa Maki, Elise Sanguinetti, Ashleigh Aitken, Greg Bianco, Mike Gatto, Anthony Label, Valerie McGinty and RJ Waldsmith, put together an excellent educational experience for our attendees. As always, Lori Sarracino, Wendy Murphy, and Leticia Urciaga, all with CAOC, took care of a million details to make this seminar a success.


Nancy Drabble, Nancy Peverini and Lea-Ann Tratten spoke of the upcoming 2014 state legislative session and encouraged all CAOC members to get more involved in our legislative efforts. Don’t miss this year’s Justice Day on May 6th in Sacramento.

Many thanks to program sponsors Janie Street of The James Street Group, reception sponsor Cotchett, Pitre & McCarthy, LLP, breakfast sponsor Garden City Group (GCG), and syllabus co-sponsors Walkup, Melodia, Kelly & Schoenberger, and Rodda, Feder, Tietjen & McGuinn. And, for the second year in a row, The Veen Firm generously sponsored another reception later in the week.

For those of you looking for a beautiful and friendly place to relax, swim in the warm Pacific Ocean, and hone your legal skills, we have the seminar for you. Please mark your calendar to join us on November 29 through December 6, 2014. Possible additions to the next seminar include a sunset cruise and a luau. If you have any thoughts on these or other possible ideas, or if you wish to serve on the 2014 committee, please email Lori Sarracino at lori@caoc.org.
The Donald L. Galine Hawaii Travel Seminar

The Fairmont Kea Lani | November 30 - December 7, 2013