

MEMBER FOCUS

LEGISLATIVE LAW

2007 – Victories, Thwarted Tort Reform Efforts, And MICRA, MICRA, MICRA!

By Tim Blood and Lea-Ann Tratten

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The first year of the 2007-2008 legislative session came to a close on October 30, but not entirely. Several pressing issues -- health care reform, transportation, and water -- left unaddressed in the regular legislative session, saw continued life in a special session declared by Governor Schwarzenegger. The legislative sands are ever-shifting on these critical issues and are inescapably viewed through the lens of term limits. As of this writing, a vote on health care has been postponed and the contents of the health care package are far from certain.

Whenever the legislature remains in session, the potential for attacks on the civil justice system remain alive. Threats of caps on damages can arise anytime and our legislative advocates in Sacramento stay tuned-in to protect our interests and to look for opportunities. Even if some form of health care reform passes the legislature, the funding mechanism will likely require voter approval. With a bleak budget outlook, the entire health care package is vulnerable. At the same time, all eyes in Sacramento are focused on February 6, 2008, when the public will again have the opportunity to vote on term limits.

CAOC made substantial strides on its long-standing priority: changing the 1975 Medical Injury Compensation Reform Act ("MICRA") cap. Under President Ray Boucher's leadership, the CAOC organization took direct action this year, creating a multi-faceted approach to educate legislators on the crucial need to change this 32-year-old law.

In the first stage, CAOC worked to explain why MICRA is a shameful law designed to further punish those already injured by medical malpractice. Fifty Assembly and Senate members met in their districts with victims of medical malpractice living in the legislators' districts. Through an extensive vetting program, CAOC has identified more than 40 medical malpractice victims with highly compelling cases, which are available to help in further public education and legislative contacts.

Those district contacts were layered with meetings at the State Capitol with CAOC lobbyists and a Lobby Day that focused on MICRA and medical errors. These efforts added to the successful political strategy of electing pro-consumer legislators in the past three election cycles. It is now clear that, because of these combined efforts, legislators know first hand the impact MICRA has on patients and they have a better understanding of the insurance industry's role in opposing changes. Legislators cannot claim an ignorance of the injustice that MICRA causes to patients. MICRA remains a top priority for CAOC and the groundwork laid in 2007 will provide a strong foundation for future efforts to change the law.

While eradicating MICRA consumed much attention, CAOC effectively squelched all tort reform efforts for the year. Our advocates reviewed more than 2,800 bills that were introduced in Sacramento and ensured that no legislation passed would harm the interests of plaintiffs' lawyers and their clients. Attempts to limit punitive damages, to impose "loser pays" attorney fees statutes, to gain immunity for countless wrongs, to limit successor liability and even to alter the outcome of pending cases were stalled in their tracks.

Our battleground increasingly lies outside the Legislature. Well-funded corporate interests are bypassing the legislative process, where their efforts to take away consumer rights have been thwarted, and are instead choosing the initiative process. In the past three years, CAOC has successfully stopped five initiatives that were filed with the intent to dismantle the civil justice system. Each initiative brought its own set of challenges and CAOC responded with unique and successful strategies for each one.

The most recent initiative was filed by the Civil Justice Association of California ("CJAC") and the Chamber of Commerce, and was designed to eliminate Californians' right to bring class actions. CAOC engaged in aggressive and novel campaign techniques, relying strongly on internet advocacy and targeted attacks exposing the self interest of the CJAC board members who were using the initiative process for their own gain. CAOC struck at the heart of CJAC's corporate funders by filing three initiatives designed to check corporate power and abuse. Those three measures have been released from the Attorney General's office and are ready for signature gathering. CAOC raised an unprecedented \$1 million war chest in just over one month to show our strength and commitment to protecting the civil justice system. These efforts have far-reaching impacts. As they say, the best defense is a good offense and CAOC is prepared to continue to fight back so that our members and their clients do not face a constant onslaught of initiative battles.

The corporate interests' strategy is to divide the plaintiffs' bar, peeling away rights in narrow practice areas, as George Bush successfully did in Texas during his tenure as governor of that state. Their efforts have been largely unsuccessful because the plaintiffs' bar continues to recognize that an attack on any of the people we represent – the personally injured, workers, consumers and investors – is an attack on all of those in need of a fair and efficient civil justice system.

Despite a Governor hostile to the civil justice system, CAOC also supported bills to improve the practice of law. The next time you pick up the telephone to make an appearance in a civil case, thank CAOC. CAOC sponsored AB 500 by Assembly Member Ted Lieu (D- Torrance) which requires uniform rules for telephonic appearances in general civil cases. The new law will permit a party in a general civil case to appear by telephone for conferences, hearings, and proceedings not requiring live testimony. Before AB 500, the rules governing telephonic appearances varied from county to county and from judge to judge. Many judges did not permit telephonic appearances, even for routine status conferences that would require travel. The bill also requires the Judicial Council to adopt rules effectuating its provisions by the end of the year.

As part of our coalition efforts, the Sierra Club also voiced support for the bill, citing the environmental advantages of not requiring lawyers to drive long distances to courthouses.

Need to add a Doe defendant at trial? Now you can. CAOC sponsored AB 1264 by Assembly Member Mike Eng (D- Monterey Park), which prohibits a court from severing a Doe defendant before the conclusion of introduction of evidence at trial.

And last, but not least, legislation was passed to help plaintiffs lawyers in resolving Medi-Cal liens. CAOC was successful in passing new amendments to the Welfare and Institutions Code to provide equitable guideposts for resolving Medi-Cal liens, consistent with the U. S. Supreme Court decision in *Ahlborn (Arkansas Dept. of Health & Human Services v. Ahlborn (2006) 126 S. Ct. 1752*. The provisions make significant changes to the Medi-Cal lien statutes and create an equitable way to reach a determination as to what constitutes a reasonable reimbursement to the state Department of Health Services in instances where, because of limited coverage, issues of liability or comparative fault, a client does not receive full compensation for his or her injuries.

The full text of that bill can be viewed at http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0201-0250/ab_203_bill_20070824_chaptered.html.

A new legislative year is just around the corner with the legislature reconvening on January 7. January is a busy month at CAOC because any bill that was introduced in 2007, but that did not pass its first house deadline, is given a second chance in January. This includes most tort reform bills. Those “two-year bills” must pass to the second house by January 31. All new legislation must then be introduced by February 22, 2008.

CAOC is currently assessing legislative priorities for 2008. If you have any suggestions for the improvement of the civil justice system or positive tort reform, please send your suggestions to Steve Ingram at CAOC: fax 916-442-7734 or email to singram@caoc.org.