

... AND JUSTICE DAY FOR ALL

It was Albert Einstein who said, "In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same." Consumer Attorneys of California (CAOC) epitomizes this concept. CAOC's website describes it best:

by Rebecca Lack Mowbray

... CAOC is the first line of defense in Sacramento and at the ballot box to protect consumers' legal rights. Their team of experienced advocates reviews thousands of bills introduced into the California Legislature for their impact on consumers. CAOC's goal is to ensure that each and every consumer and business has the full ability to seek and receive reasonable redress through the jury system. Each year bills are introduced by big tobacco, insurance, HMO and other corporations to restrict or eliminate your legal rights. CAOC is there to fight such "tort reform" measures and to ensure that every Californian has access to the courts. CAOC has been successful in defeating such anti-consumer measures in the capitol and at the ballot box while working through the state budgetary process to ensure adequate funding of California's civil justice system.



Rebecca Lack Mowbray is a principal at Mowbray Law Firm and the 2013 President of Consumer Attorneys of San Diego. She's the seventh woman President of CASD. She practices civil litigation with an emphasis on insurance bad faith and personal injury law and is very proud to call herself an attorney. CASD has recently awarded Rebecca an "Outstanding Trial Lawyer" award. She currently shares her life with her two standard poodles.

CAOC President, Brian Kabateck, says the organization's primary goal is to restore adequate funding to California's courts so this critical branch of government will work properly for consumers and businesses.

When I began my research for this month's article, I had no idea there was actually a Justice Day (fka Lobby Day) several times a year. For instance, some of the many organizations that converge on Sacramento to speak with legislators are the American Medical Association, California State Parks Foundation, The Humane Society, California Defense Counsel, LGBT, California Chamber of Commerce, Sierra Club, California Unity Conference (medical cannabis movement), ACLU, National Association of Social Workers and California Catholic Conference. As you can see, just about anything one can believe in, can be advocated in Sacramento.

For trial lawyers, our Justice Day is scheduled around Law Day. Law Day is a national day to celebrate the rule of law and its contributions to the freedoms Americans enjoy. Law Day had its origin in 1957 when American Bar Association President Charles S. Rhyne envisioned a special day for celebrating our legal system. On February 3, 1958, President Dwight D. Eisenhower established Law Day to mark the nation's commitment to the rule of law by issuing a Proclamation.

On April 7, 1961, Congress issued a joint resolution designating May 1 as the official date for celebrating Law Day, which was subsequently codified (U.S. Code, Title 36, Section 113). The Joint Resolution requests the President to issue a Proclamation each year and provides that Law Day:

[Law Day] is a special day of celebration by the people of the United States ... in appreciation of their liberties and the reaffirmation of their loyalty to the United States and of their rededication to the ideals of equality and justice under law in their relations with each other and with other countries; ... for the cultivation of the respect for law that is so vital to the democratic way of life ... inviting the people of the United States to observe Law Day, U.S.A., with appropriate ceremonies and in other appropriate ways, through public entities and private

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organizations and in schools and other suitable places.

Every president since 1961 has issued a Law Day proclamation on May 1 to celebrate the nation's commitment to the rule of law.

CAOC needs the assistance of all consumer organizations to continue marching across the battlefield we, as plaintiffs' attorneys, find ourselves on every day. One way you can help is to attend Justice Day in Sacramento. Trial lawyers from consumer groups all over the state travel to Sacramento to discuss bills with legislators that are then pending. CAOC determines which bills will be discussed on Justice Day. CAOC determines which attorneys will meet with which lawmakers. It's up to us to educate them about issues that are important to our clients, to our practice and to the public in general. Because businesses have been successful at convincing our legislators to limit damages in health care cases, *i.e.*, MICRA, getting laws passed which provide

immunity to the responsible party, as well as many other laws that have harmed consumers, it's important that we do what we have to do to protect the legal profession and our clients' rights.

This year Justice Day will take place on May 7. Any of you and all of you are needed and invited to participate in this event each year. I, along with many other members of CASD, will fly to Sacramento the night before, stay at The Citizen Hotel, and attend a breakfast meeting to obtain our assignments for the day. We'll be scheduled to meet with three or four legislators throughout the Capitol Building to talk about bills that are supported by CAOC. I don't know on what bills I'll be educating lawmakers this year, but these are some of the bills currently sponsored by CAOC:

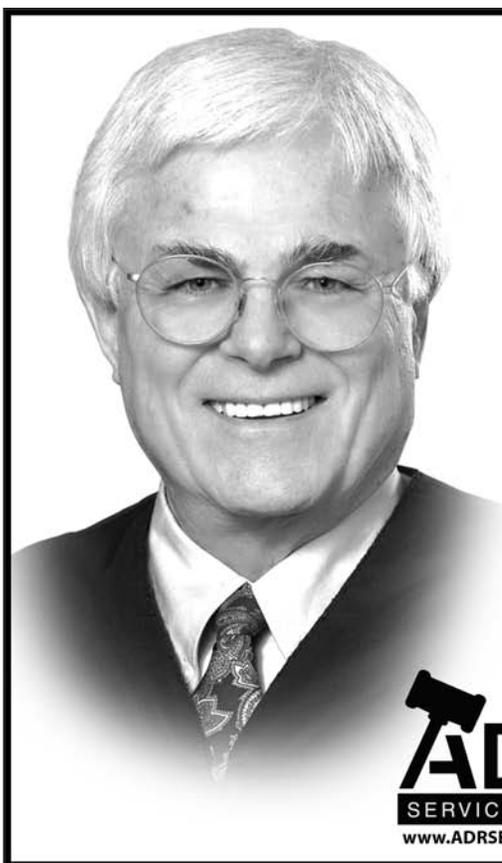
Assembly Bill 862 (Wieckowski) -- Current law prohibits the maximum liability of an insurer providing underinsured motorist coverage for bodily injury to the insured caused

by one or more vehicles from exceeding the insured's underinsured motorist coverage limits, less the amount paid to the insured by or for any person or organization that may be held legally liable for the injury. This bill would authorize an insurer to offer a separately rated underinsured motorist policy where the maximum liability to the insurer is the underinsured motorist coverage limit. The bill would require, if an insurer elects to offer this policy to its insureds, the insurer to notify its insureds of this fact at the time it begins offering the policy and every other year thereafter upon renewal of an insured's policy, as specified.

Senate Bill 315 (Ted Lieu) -- This bill liberalizes the use of telephonic court appearances, helping cut costs both for private parties and the courts.

Assembly Bill 715 (Dickinson) -- This bill would clarify that *de novo* review is the standard for evidentiary objections at summary judgment.

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- Daily Journal Judicial Profile, August 17, 2012

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The tireless work of CAOC and consumer attorneys from all over the State has prevented, thwarted and entirely defeated efforts by PHARMA, the Chamber of Commerce and other organizations hell bent on tort reform and the fabricated frivolous-lawsuit crisis. Had it not been for the dedicated work of CAOC and consumer attorneys, several anti-consumer measures would be in place. For instance, in 2005, the Pharmaceutical Research and Manufacturers of America introduced an initiative that would have capped contingency fees at 10 or 15%. The work of CAOC kept that initiative from becoming a bill. In 2006, Chevron and The Civil Justice Association of California (CJAC) attempted to limit punitive damages by filing an initiative that would have done so. In 2007, the Chamber of Commerce and CJAC filed an initiative that would have barred class actions. That initiative too failed. That these measures never made it on the ballot was the direct result of prepar-

ing counter-initiatives and strategic negotiations by CAOC.

The bills we discussed with legislators in 2010 at Lobby Day were all made into law. Having been there and played a part really made me feel like I made a difference. The pro-consumer legislation that passed was:

Peremptory Challenges (AB 1894)

– CAOC worked with the California Defense Counsel and the Judicial Council of California to consolidate and improve Code of Civil Procedure §170.6. This bill clarified two conflicting time periods and made 15 days applicable to all peremptory challenges, thus avoiding traps for litigants. The bill clarified the law for practitioners by putting all applicable provisions in one code and aligned the law to the current practice of requiring filing and service of the motion on all parties.

Expedited Jury Trials (AB 2284)

– This bill authorized a system of summary, one-day jury trials for small cases, modeled on a South Carolina

program. Under the leadership of 2009 President Christine Spagnoli and 2010 President Christopher B. Dolan, CAOC worked with the Judicial Council and defense attorneys to reach a consensus of this exciting new program. This law has helped to hasten some of these small cases that have taken up to five years to resolve under the current system.

Social Host Immunity (AB 2486)

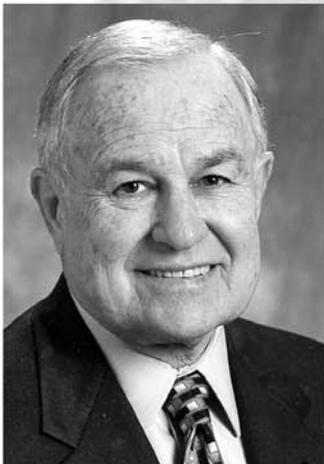
– This bill was introduced after a tragedy in Northern California in which a teenager died at a house party where the parents allegedly provided the alcohol. This bill changed the current absolute immunity for social hosts so that it would not apply to adults who knowingly provide alcohol to minors in the home.

Radiation Reporting (SB 1237)

– The cumulative effect of medical radiation is a very serious and dangerous problem, as is severe over-radiation. Recent news reports revealed that more than 330 patients

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at Cedars-Sinai Medical Center and several other Los Angeles hospitals received excess radiation while undergoing CT brain perfusions scans. SB 1237 required the radiation dose to be recorded in a patient's radiology report, established a quality assurance program, and staged the notification of radiation deviations by informing the Department of Public Health and treating physician first, and ten days later notifying the affected patient directly.

In 2011, the CAOC-sponsored bills that passed the Legislature and were signed into law by Governor Brown were:

Service of Process on Out of Country Parties (AB 621) – The Yak is back!!! This measure assisted drivers and the state by making sure that the insurance a car renter buys can actually be relied upon as intended. It requires the car rental company to be the agent for service of process for claims against motorists from outside the U.S. who rent a car in California, get in an accident, then head home well before the legal dust settles. Why the yak? A few years ago, one of our attorneys had to hire a courier in Tibet who used a yak to deliver legal papers to a rental-car-accident defendant in the Himalayan kingdom.

Voir Dire Protection (AB 1403) – This bill addressed the issue of unreasonable and arbitrary restrictions on attorney voir dire of potential members of a jury. CAOC joined with the defense bar in the belief that liberal and probing voir dire is necessary to ensure that the 7th Amendment right to a jury trial is meaningful. Some individual judges were denying jury questionnaires and slowing down voir dire by failing to provide a list of prospective jurors in the order they are called. This reform assisted all involved in the process.

Fairness in Court Filing Fees (SB 384) – This bill addressed confusion that had arisen in Sacramento, San Francisco and other courts. In Sacramento, a judge charged civil plaintiffs appearing on the same first paper multiple \$550 filing fees, even though the statute had always intended for only one fee to be charged. Similar attempts were made in San Francisco and while the practice was not widespread, questions arose persistently and repeatedly because of the statute's poor drafting. This created the need to adopt the clarifying language in SB 384. This bill finally put this matter to rest.

Electronic Health Records (SB 850) – Electronic health records have

been lauded as a sure-fire way to reduce medical errors. Unfortunately, the reliance on new technology opened up new avenues for error. As a result of federal healthcare reform, most if not all healthcare providers will switch over to using electronic health records (EHR) by 2015. Many EHR software systems have design flaws that can cause serious errors if left uncorrected. In some situations, healthcare providers have taken advantage of these design flaws to cover up errors by modifying or deleting earlier entries. SB 850 ensures the accuracy, integrity and efficiency of electronic health records in order to achieve the ultimate goal of reducing medical errors.

I can think of no better way to celebrate the rule of law and its contributions to the freedoms Americans enjoy than to participate in Justice Day. Becoming part of the process, you really can make a difference.

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