

APRIL 2005 PRESIDENT'S COLUMN

The Threat is Real

by Robert J. Francavilla

Robert Francavilla is CASD's President for 2005. He is a partner in the firm of Casey, Gerry, Reed & Schenk where he practices all aspects of personal injury and wrongful death litigation. Mr. Francavilla was formerly the Tort Law Column Editor of Trial Bar News and is a frequent lecturer at legal seminars and San Diego Inn of Court. He has received CASD's Outstanding Trial Lawyer award on three occasions. He may be reached by e-mail at: rjf@cglaw.com.

I want to take you back to the most difficult and challenging case you have ever handled, against the biggest and most powerful corporation and/or insurance company you have ever been up against, on behalf of one of the most deserving clients you can ever recall having the privilege of representing. Now, I want you to remember how hard you had to fight, how much the defendants put your client through, and how much was on the line during that battle. Now, multiply the blood, sweat, and tears you expended in that noble fight by 1,000 and you begin to understand the seriousness of the battle we are facing to defeat the attorney's fee cap initiative brought by the pharmaceutical industry.

Make no mistake, **this initiative is an all out war by corporate America against our clients, their rights, and our ability to protect those rights for them.** By now, I don't have to tell any of you that if the fee initiative passes, it will virtually wipe out the ability of plaintiffs personal injury lawyers to protect the rights of injured victims.

We can win this battle! But not without each and every one of you pitching in and helping until you are exhausted. What we cannot do, if we expect to win, is stand on the sidelines believing that others will pick up the slack for us. Trial lawyers faced similar initiatives in past years (1988, 1996) and narrowly defeated them by getting the right message to the voting public. A similar concerted effort is needed to win again.

Consider that the initiative caps contingency fees at 20%, after deduction of costs, which effectively sets the net fee at between 16 and 18% if it were to pass. Everyone of us is staring at an initiative that will cut lawyers fees essentially in half. This is going to make it very difficult for most of us to jump into a battle against a corporate defendant or insurance company on behalf of a deserving victim, because the risk of doing so will simply be too high. That is exactly the result corporate America is looking for in pushing this initiative.

If you are afraid of what this initiative will mean to your practice, you should be. **You absolutely must watch the members section of our web site at www.casd.org for the latest information about this initiative.**

This President's message is not meant to raise fear in your hearts and minds. Rather, it is simply meant to point out the truth of what we face so that you can each keep informed.

I care deeply about our system of justice and the opportunity this system gives us to provide a voice for those who cannot speak for themselves and to protect those who cannot protect themselves and I am committed to doing everything in my power to see that system of justice remain intact.