



HEADLINERS

Boosts for Economic Recovery

The Civil Justice Association of California (CJAC) is sponsoring three bills this legislative session that would improve the state's civil justice system and send a resonating economic recovery message that California is becoming more hospitable to companies that would like to remain and expand here.

The bills, introduced in February, are:

- Assembly Bill 298 (Tran), which would allow both sides in a class action lawsuit to appeal a judge's initial decision to formally "certify" a class of plaintiffs and allow a lawsuit to proceed. Current law only allows a plaintiff to appeal a denial of class certification. This bill would bring the same balance to class action litigation that exists in federal courts and many states. A similar bill, AB 1905, was sponsored by CJAC last year.

- Assembly Bill 470 (Niello) allows an insurance company to give a copy of a police or accident report directly to an insured person's lawyer instead of going through the insured. The Insurance Code does not now allow this. However, existing law in other California codes already permits the insured's lawyer to obtain a copy of the police report. The change will allow settlements to proceed more quickly and will assist in reducing the number of cases in the courts.

- Senate Bill 393 (Harman) would bring the judicial interest rate up to date and ensure that defendants are paying interest at a rate comparable to market rates. California's current outdated interest rate rules can result in huge windfalls to plaintiffs and discourage defendants from exercising their fundamental right to appeal.



All Fished Out

"I expect (securities class action) filings to drop in 2009 not because the severity of the credit crunch will go away, but because virtually all the major financial-services firms have already been sued. I think for the first time in history, we have a pool of defendants that is fished out."

— Joseph Grundfest, director of Stanford Law School's Securities Class Action Clearinghouse, in an interview with *The Wall Street Journal*

AROUND THE STATE

Lawyers Out

The number of lawyers in the California Legislature continues to dwindle and has hit an all-time low.

The percentage of all lawmakers with a California bar card has dropped to 17.5%, a marked decline from

1970 when nearly half the Legislature was eligible to practice law, according to an article in *The Recorder* legal newspaper.

In the Assembly, only 15 of the 80 members are lawyers. Assemblymen Anthony Adams and Mike Eng attended law school but are not licensed in California. Only one of the licensed lawyers is a Republican — Van Tran of Costa Mesa.

In the Senate, only six of the 40 members are lawyers, though Senator Gil Cedillo attended law school at the Peoples' College of Law. Again, only one Republican Senator — Tom Harman of Orange — is a lawyer.

Local Pols In

There may not be many lawyers, but the number of incoming legislators with local government experience is high.

Of the 25 legislators new to Sacramento, 18 have local government experience. Nine served on city councils, five on county boards of supervisors, and six served on community college or school boards. (Two served in both local government and in education positions.)

Jump Start the Economy

In a letter sent to the Governor and state Legislators commenting on several proposals by CJAC to help bring economic recovery about sooner, CJAC President John H. Sullivan wrote, "tangible legislation that will make California a more attractive place to do business is bound to result in more jobs sooner."

The proposals included bringing more fairness to the state's class action law, encouraging the settlement of lawsuits, establishing a floating post-judgment interest rate, and clarifying California's meal and rest break rules.

The recovery letter and two op-eds by Sullivan can be seen on the new CJAC Blog at <http://www.cjac.org/blog/legal-climate/>.



STUDIES OF NOTE

'A Perfect Storm'

Class action workplace litigation filings were up in 2008, as more companies laid workers off because of the economy — and the trend is expected to continue this year.

That's the conclusion of a report by Chicago-based Seyfarth Shaw. The firm analyzed 2008 class actions and collective-action workplace filings, rulings, and settlements in state and federal courts.

"It's a little bit of a perfect storm with the economy right now," Gerald Maatman Jr., the Seyfarth Shaw partner who oversaw the report, told the National Law Journal.

According to the report, the number of ERISA claims shot up in 2008 as plaintiffs sought recovery for losses to their 401(k) plans. It also found that more displaced workers filed age discrimination and Worker Adjustment and Retraining Notification lawsuits in 2008. Wage-and-hour litigation also rose.

MICRA Cap Works

The landmark Medical Injury Compensation Reform Act of 1975, with its \$250,000 ceiling on non-economic damages, has been effective in reducing and stabilizing medical liability insurance costs, thereby improving access to health care for all Californians.

That's according to a new study, "MICRA Helps Lower Healthcare Costs, Ensuring Patients Have Access to Healthcare," by three authors including former California Legislative Analyst William Hamm. Among its conclusions is that a cap on non-economic damage awards is effective in reducing medical liability insurance costs.

An increase in the cap on non-economic damages to \$500,000 or more would raise health care costs in California by up to \$7.9 billion per year. Doing so would also lead to more litigation, larger awards, and higher litigation-related expenses.

The study also found no evidence that California's cap on non-economic damages has materially reduced access to the courts for those individuals with meritorious claims of medical liability.

A copy of the study is available at www.micra.org.



IN THE COURTS

No Damage, Can't Sue

The California Supreme Court issued an important decision by restricting suits filed under the state's Consumer Legal Remedies Act to plaintiffs who have suffered real damage because of an allegedly unlawful practice.

The case, *Meyer v. Sprint Spectrum L.P.*, began in early 2004 with

allegations, on behalf of the general public, that Sprint violated the state's Unfair Competition Law by including mandatory binding arbitration and other provisions in its customer service agreements, according to The Recorder newspaper and law firm ReedSmith.

Then voters passed CJAC-sponsored Proposition 64 in November 2004, which held that only those who have suffered injury and have lost money or property can bring a lawsuit under the UCL. The original plaintiff — who was not a Sprint customer — was replaced by new named plaintiffs, and CLRA and declaratory relief causes of action were added.

The plaintiffs argued that the CLRA imposed no damage requirement whatsoever, but the court concluded that California's Legislature had "set a low but nonetheless palpable threshold of damage." It also noted that with statutes like the UCL and CLRA, "any rule that would expand the ability of individuals to bring lawsuits has costs as well as benefits."

A New Appointment

California Chief Justice Ronald M. George appointed CJAC President John H. Sullivan in January to serve on the Steering Committee of the Judicial Council of California's Commission for Impartial Courts.

The commission was formed to develop measures to provide additional protections for an impartial judicial system in the state. With a system of non-partisan elections and non-contested retention elections at the appellate levels, California has not experienced the expensive political judicial races occurring in some states.

The Steering Committee oversees four task forces, receives the task forces' reports and recommendations, and then will present its overall recommendations to the Judicial Council.



VERBATIM

Obama and the Trial Lawyers

"The new president is a lawyer from a party dominated by lawyers. His vice-president publicly thanked God last year that lawyers are such a problem for corporate America. When Mr. Obama was in the Senate, he once voted for a mild curb on jurisdiction-shopping by class-action lawyers, but otherwise tended to vote against tort reform. And Democrats in the new Congress are itching to reward the lawyers who donated so generously to their election campaigns ...

"... On the plus side, Mr. Obama will probably never face another Democratic primary contest, so he no longer needs to outdo other Democrats in cosying up to the trial bar."

—*The Economist*, in a January 2009 article, "Law v. Common Sense"

Not the Solution

"... exposure to lead paint is a very real problem. But I also know

that not every problem can be solved by a lawsuit. After assessing the law, facts, and adverse legal rulings in these types of cases nationally ... those at risk — and Ohio's economy — would be best served by focusing on how public/private partnerships can be enhanced to address any existing problems with lead paint exposure."

— *Ohio Attorney General Richard Cordray's announcement of his voluntary dismissal of the lead paint lawsuit filed by his predecessor against 10 paint manufacturers*



TRIAL LAWYER WATCH

No More Lawsuits

Plaintiff Jarek Molski, who filed more than 400 lawsuits under the federal Americans with Disabilities Act, was barred by a federal judge from future litigation, the Los Angeles Times reported in late 2008.

The U.S. Supreme Court turned down his appeal of a lower federal court ruling barring him from future litigation in the Central District of California, which includes Los Angeles.

In 2004 the late U.S. District Judge Edward Rafeedie branded Molski a "hit and run plaintiff" and accused him of systematic Americans with Disabilities Act extortion lawsuits across California. Molski is believed to have earned hundreds of thousands of dollars suing businesses and demanding \$4,000 a day in penalties for the disabled access violations he claimed to observe.

Disbarred

The end of the year saw an end to one plaintiff's lawyer's costly antics. Harpreet Singh Brar, a frequent filer under pre-Proposition 64 Business and Professions Code 17200, was disbarred after being found culpable of misconduct in seven matters. Even after Proposition 64 passed in 2004, Brar tried some creative attempts to establish damages.

The California Lawyers' Discipline Report stated: "He [Brar] acted in bad faith by filing a frivolous motion and appeal. He also harmed the public and the administration of justice by wasting judicial resources and by interfering with the attorney general's duty to protect California consumers."

Illegal Practice

State Bar prosecutors, responding to a tip from the Orange County district attorney's office during a sting operation targeting illegal patient referral and insurance overbilling schemes, shut down the satellite office of a solo practitioner on the grounds that two office administrators were illegally practicing law. The ongoing sting operation is called Operation K-Fraud, which stands for "Knockout Fraudulent Attorneys and Unscrupulous Doctors."

The administrators were ordered to cease and desist from practicing law, The Recorder legal newspaper reported. According to the State Bar, the satellite office handled primarily personal injury claims.

CJAC in the Courts

Decisions Pending ...

■ **California Supreme Court:** The Court heard oral arguments in March in *In re Tobacco II Cases* in San Francisco. The issues in this Proposition 64 case include: under an Unfair Competition Law class action, must every member of the proposed class have suffered "injury in fact" or is it sufficient that the class representative comply with the requirement? Also, in a class action based on a manufacturer's alleged misrepresentation of a product, must every member of the class have actually relied on the manufacturer's representations? The CJAC amicus brief argues that when the UCL is now used as the basis for a class action suit, the "new requirements of Proposition 64 apply not only to claims asserted by the named plaintiff, but equally to the claims asserted on behalf of each absent class member ... [and] that the 'as a result of' language of Proposition 64 requires all private UCL claimants to prove causation." (*In re Tobacco II Cases*)

Briefs Filed ...

■ **Fifth Appellate District:** This case is an attack on the Medical Injury Compensation Reform Act, California's more than 30-year-old landmark medical malpractice reform law. The plaintiffs argue that MICRA's

\$250,000 cap on recoverable noneconomic damages deprives them of the right to a jury trial and violates separation of powers guarantees under the California Constitution. In its amicus brief, CJAC, along with Californians Allied for Patient Protection, argues that MICRA's noneconomic damage ceiling fully complies with the U.S. and California constitutions. The brief also argues that MICRA is a piece of well-crafted legislation that has stabilized medical malpractice insurance costs, assured public access to physicians and hospitals, and secured a fair legal procedure for plaintiffs to adjudicate their claims. (*James Van Buren v. Sian Evan, M.D.*)

■ **California Supreme Court:** This case challenges an appellate court's application of California law on asbestos liability where the plaintiff's exposure to asbestos occurred entirely out of state. The plaintiff alleged that his asbestos exposure occurred when he observed the installation of a generator at the oil refinery where he worked in Oklahoma in 1957. He moved to California in 1975 and developed mesothelioma in 2005. The appellate opinion, which reversed the trial court's judgment in favor of the defendant, held that current California residency is, by itself, sufficient to apply California law and permit an asbestosis suit to go forward even though it would be barred by Oklahoma's statute of repose. The CJAC brief supports the trial court's decision. (*McCann v. Foster Wheeler LLC*)

From the CJAC Blog

California's Gold Rush

Asbestos lawsuits are on the rise in southern California, a Madison County judge told his local paper, *The (Madison, Ill.) Record*. Judge Daniel Stack told the *Record* newspaper that asbestos lawsuits are rising anywhere there is an active docket, but "Los Angeles is a place that's really starting to take off."

The coming years are likely to bring a series of battles for tort reform at the state level, pushing asbestos cases into courts that are more appealing to plaintiffs' attorneys, the newspaper said. Illinois and California remain prime spots for new cases and new settlements.

"California's new gold rush is asbestos litigation," said Mark A. Behrens, a Washington, D.C., attorney with Shook, Hardy & Bacon. Many of the plaintiffs coming to California lack any meaningful connection to the state,

he said. "In a 2006 sample of 1,047 asbestos plaintiffs for whom address information was available, over 300 — or an astonishing 30% — had addresses outside California."

Lerach Fires His Lawyer

Imprisoned former plaintiffs' class action lawyer Bill Lerach, who was upgraded to a high-security suite after he attempted to give a guard football tickets, has fired high-power criminal defense attorney John Kecker of San Francisco and retained Michael Lipman of the San Diego firm Coughlan, Semmer & Lipman. Speculation is that the change was a result of Kecker's apparent failure to get Lerach into an alcohol treatment program — which is seen by some corporate convicts as a ticket to an early release. Lerach agreed to serve a maximum of 24 months in prison.

Visit the CJAC Blog at www.cjac.org/blog.



NEW BOARD MEMBERS

Jan Lynn Owen, JPMorgan Chase & Co.'s State and Local Government and Industry Relations Manager since 2002, manages the company's public policy positions at the state and local levels. Previously, she served as Executive Director of the California Mortgage Bankers Association from 2000-02, the trade association representing the real estate industry in the state, with a membership of more than 250 companies.



In 1999, Owen was appointed by former Governor Gray Davis to direct and manage the California Department of Financial Institutions, a regulatory agency with more than 300 employees and an annual budget of \$20 million. She also created and administered the California Department of Insurance's California Organized Investment Network (COIN), the first statewide program to assist insurance companies to invest in underserved communities.

Owen earned a bachelor's degree in economics from California

State University, Fresno. She currently serves on the California Chamber of Commerce's Public Policy Advisory Council and is a board member of the California Mortgage Banker Association.

Grace Davis, Intel's California Government Affairs Manager, has more than 14 years of experience in government relations. She has been with Intel since 1999 and currently is responsible for analyzing legislation and developing strategies on a wide range of key public policy issues, and represents the company on several state and federal organizations.



Previously, Davis worked as Executive Director of the American Electronics Association in the Bay Area. She was responsible for one third of the association's global membership. Davis also spent several years in Washington, D.C., working for a senior member of Congress on a wide variety of policy issues. Her background includes policy work in the areas of trade, human rights, foreign policy, and press relations.

Davis earned a bachelor's degree in political science from San Jose State University.



CIVIL JUSTICE ASSOCIATION
OF
CALIFORNIA

The Civil Justice Association of California works to reduce the excessive and unwarranted litigation that increases business and government expenses, discourages innovation, and drives up the cost of goods and services for all Californians. We are a non-profit, membership-supported coalition of citizens, taxpayers, businesses, local governments, professionals, manufacturers, financial institutions, insurers, and medical organizations. Founded in 1979, CJAC is the only statewide association working in both the Legislature and the courts to improve California's civil justice system.

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