



Headliners

CJAC Triggers Investigation

Following a request by the Civil Justice Association of California, the California State Bar has launched an investigation of a California asbestos plaintiffs' law firm after it was banned from an Ohio court for what a judge there called "representations [that] were patently false and could only have been designed to deceive this Court..."

Judge Harry Hanna of the Cuyahoga County Court of Common Pleas in Cleveland issued a blistering 19-page order barring the Marin County firm of Brayton Purcell and its attorney Christopher Andreas from his court. He said they failed to abide by the rules of the court proscribing dishonesty, fraud, deceit or misrepresentation and "have not conducted themselves with dignity."

In CJAC's letter to the State Bar, association President John H. Sullivan said "the national attention this exceptionally strong order has generated puts all of the California Bar in an unsavory light. An investigation of this incident should include determining whether the violations specifically identified are part of a larger pattern of conduct." In a reply stating that a confidential investigation would be conducted, a State Bar representative said the Bar shared CJAC's concern with the matter.

(Links to the CJAC letter and Judge Hanna's ruling are at the end of the CJAC news release on the CJAC web site: <http://www.cjac.org/publications/news/detail.cfm?HeadlineID=1207>)

Brockovich Skid Continues

An Erin Brockovich-sponsored lawsuit that reeked with junk science has finally been dismissed in Los Angeles County Superior Court. The suit claimed that emissions from oil wells near Beverly Hills High School and a nearby heating and cooling plant for Century City had caused cancer among former students and others.

The ruling came on the heels of action by a federal judge in Los Angeles who nixed some dozen and a half Brockovich lawsuits which claimed hospitals and nursing homes were abusing Medicare patients and overbilling. The court said she established neither legal standing nor evidence of abuse.

Commenting on the cancer case, Beverly Hills Mayor Steve Webb said, "The city and the school district have spent more than a million dollars on testing at the high school to determine that the school today is safe for students, faculty, and staff. We are gratified that the court's decision is consistent with the results of our testing."

John H. Sullivan, CJAC President, said "the baseless lawsuit that was laid to rest by the court's ruling ends what has basically been an attempt to defraud the city and school and their taxpayers." He said credit for the win goes in part to California newswoman Norma Zager. While working at Beverly Hills *Courier*, she uncovered the bogus science behind the suit long before the court's ruling. She was honored in 2004 by the Los Angeles Press Club for her work in unveiling Brockovich's quack claims. Zager's reporting was also chronicled by the *Columbia Law Review*

in a 2004 article: "Muckraker 90210: A Most Unlikely Reporter Nails Erin Brockovich." You can see the article at www.cjr.org/issues/2004/2/umansky-muck.asp and read CJAC's report of the L.A. Press Club award at: <http://www.cjac.org/publications/news/detail.cfm?HeadlineID=1090>

Intel's Hall New CJAC Chair



Richard C. Hall, Director, Corporate Government Affairs, Intel Corporation, has been elected by the CJAC Board of

Directors to chair the association for the next two years. Hall manages Intel's California state government affairs operations, its federal political action committee, and coordinates Intel's U.S. state government affairs programs among the company's corporate, international, and Washington, D.C., offices. He joined Intel in 1991 as public affairs manager at the company's Folsom, California, site. Previously, he worked in the news media and in public affairs in the utility and high-tech industry in California, Illinois, and Arizona.

Hall succeeds Stephen E. Pickett, Vice President and General Counsel, Southern California Edison, who was CJAC chair during 2005-06.

Also elected by the Board to new positions were: Michael Duffy, Partner/Director State Government Relations, Ernst & Young, Vice-Chair; Vera Janushkowsky, Western Regional Director, Pfizer, Inc., Treasurer-Secretary; and Joe Manero, Government Relations Director, CNA Insurance Companies, Executive Committee member.



In Sacramento

Lock Yer Deals Up

An Associated Press investigation has revealed that the state Department of Justice under termed-out Attorney General Bill Lockyer improperly concealed some 1,700 contracts worth more than \$100 million. The money went to lobbyists, consultants, law firms — even couriers and parking garages.

It took some digging by AP reporter Michael R. Blood, whose first request for the names of the hidden contractors was rejected on the basis that it would be too laborious to review so many contracts. Then the department agreed to inspect a sample of 131 contracts. Result? Only 12 of the sampled contracts were correctly identified as confidential.

Comments on the contract-hiding included disbelief in the department's "clerical error" excuse:

Roger Myers, general outside counsel for the California First Amendment Coalition: "It's either incredible bureaucratic bungling ... or it was the intentional use of this policy to protect from disclosure and scrutiny documents it was never intended to cover. It's hard to imagine what reading of the public records act would allow them to withhold that information from the public."

Sacramento *Bee*: "Talk about a sad irony! The state agency charged with issuing opinions on the California Public Records Act has fessed up to improperly withholding information about agency contracts that involve millions of taxpayer dollars."

The [Fremont] *Argus*: "The people of California should be outraged at such incompetence and deception in Sacramento. It makes the state justice department appear as if it's been a secret wheeler-dealer with numerous special interests. Either way, our trust in state

government has once again been violated — and lowered."

New Judicial Selection Deputy

Sharon Majors-Lewis, a chief deputy district attorney in the San Diego County District Attorney's office, has been appointed Judicial Appointments Secretary to Governor Arnold Schwarzenegger.

An employee of the District Attorney's office since 1987, Majors-Lewis, according to the Governor's Office news release, "oversees the North County Branch in Vista, the East County Branch in El Cajon and the South Bay Branch in Chula Vista, as well as the juvenile division and the District Attorney's Office travel budget."

Majors-Lewis began her career with the Department of Defense, working there from 1968 to 1987. She became a member of the California Bar in 1985. She is a member of the Lawyers Club of San Diego, San Diego Bar Association, Earl B. Gilliam Bar Association, and National College of Prosecutors. Additionally, she serves on the Board of Directors for the Young Women's Christian Association. She earned a Bachelor of Arts degree in business administration and a Juris Doctorate degree from National University. She is a Republican.

Announcing his appointment, the Governor said: "Sharon's legal expertise makes her a great asset and a fantastic addition to my administration. I look forward to working with her to appoint qualified and diverse individuals to the bench," said Governor Schwarzenegger. In the announcement news release, Majors-Lewis said: "I am honored Governor Schwarzenegger has chosen me to advise him on appointments to the California judiciary. I look forward to working with a Governor who has demonstrated he has the conviction to think outside the box to make positive changes."

Keep Up To Date at www.cjac.org

Text of legislation CJAC is tracking, bill status, CJAC support and opposition letters, and more — all are quickly available at CJAC's web site under "Legislation — List of Bills CJAC is Tracking." Bookmark it for the 2007-08 Legislative Session!



Around the State

CJAC's Local Action Director



Adrienne "Andy" Kotner has been named Local Action Director for the Civil Justice Association of California. Based in San Diego, she will direct

CJAC's expanding effort to cooperate with local organizations in telling the legal reform story around the state.

Since 1999 she has been president of San Diego County Citizens Against Lawsuit Abuse (CALA) where she developed many innovative grassroots programs. Over the past five years, she has received national, state and local awards for her work at CALA. She has been a marketing consultant and voiced commercials for a San Diego radio station, sold real estate in San Diego, and managed a medical practice for more than 16 years. She currently serves as a member of the Board of Directors and a member of the audit committee of the San Diego Family Care Community Clinics. She and her husband are aviation enthusiasts and she recently completed her pre-solo written test. She is expected to start making solo flights shortly.

Prop. 65: Some Lawyers Remember It Well

Twenty-plus years ago, when voters passed the "clean drinking water" Proposition 65, few would have guessed they were building a new facility for the trail lawyer industry. But recent data show

that in the past six years, Proposition 65 settlements have generated more than \$55 million in payments to private plaintiffs, most of it for their attorney fees. The initiative has turned out to deal less with water and more with those ever-present cancer warnings.

Lawyers can on their own sue a business for not having the right warning displayed or not displaying the right one in the right way. Because of the proposition's guilty-'til-proven-innocent rule, lawyers walk away with settlement money from companies that can't or don't want to incur the high cost of lawyers and scientists needed to fight back. Nearly 5,000 of these gambits have been launched by private lawyers since 2001.

The Legend Continues

It was far from the first time Los Angeles has been called the auto insurance "fraud capitol of the world." But when the county's district attorney repeated it in January he had the names of 101 defendants to back him up. This time it was personal injury lawyers and corrupt medical clinics colluding to overbill insurers by fabricating or exaggerating accident injuries. Newly-elected Insurance Commissioner Steve Poizner, whose department cooperated in the investigation, said insurance fraud of all kinds totals \$15 billion a year in California.



Around the Nation

X-Ray Roamers Zapped

The legal system continues to be shocked by the legal-medical frauds perpetrated via roaming X-ray trailers producing silicon and asbestos "cases" by the thousands. Pennsylvania's environmental protection agency fined a New Jersey medical screening company \$80,500 for X-raying potential silicosis plaintiffs in motel parking lots without

CJAC in the Courts

Cases Argued...

■ **California Supreme Court:** The Court heard arguments on January 29 on whether it should uphold the long-standing rule requiring a trial judge to rule on class action certification before reaching the merits of the claims involved. The CJAC brief filed last May supports the current requirement. (*Fireside Bank v. Superior Court*)

■ **California Supreme Court:** On January 30 the Court heard arguments over the effect of Proposition 35, enacted in 2000, regarding legislative restrictions on contracting out state work. The CJAC brief argues that the proposition's constitutional amendment clearly lifts those restrictions and that the court should call a halt to public employee union lawsuits trying to block the state public works contracts with private architects and engineers. (*Professional Engineers in State Government v. Morales*)

prior written authorization or the presence of a licensed medical practitioner.



In the Courts

Punitive Pullback

The U.S. Supreme Court's recent measured step to bring fairness to the world of punitive damages has been welcomed by business defendants and approved by much of the media.

Writing for the 5-4 majority, Justice Stephen G. Breyer said defendants should not be punished for injuries they might have caused "strangers to the litigation," as jurors in the Oregon case against Phillip Morris were urged by plaintiffs' lawyers to do.

The Los Angeles *Times* editorialized that "the court went further this week — though not far enough — in reining in juries in civil cases that award outlandish punitive damages....the court did impose a sensible rule that should make it harder for juries to sock deep-pocket and easily-demonized defendants....The court is rightly applying the brake to the notion that private litigation can serve as a substitute for the regulatory power of the state."

A Washington *Post* editorial: "The high court has set an important precedent.... [Without such a ruling defendants] "would not have a fair chance to defend themselves

against the hypothetical harm they might have done to an unspecified number of people under varying conditions.

"The question the court did not answer is whether the punitive award the jury handed down was 'grossly excessive,' a standard that the court established in the past but has not concretely defined. The court has indicated that punitive damages generally should be a single-digit multiple of the base compensation a jury awards a plaintiff. That vague standard and the current majority's sidestepping of the issue reflect the difficulty judges have had in establishing clear limits on the often outrageous size of punitive awards.

"Capping punitive damages is a task suited for state legislatures, and it's one states should complete."



Verbatim

Unusual Accountability

"What is newsworthy about Judge Harmon's order for the Lerach firm to pay some of Alliance Capital's legal fees is that it was actually newsworthy. How ironic that our legal system, which is designed to compensate victims of negligence from professionals of all stripes, nearly always finds it necessary to exempt its own from any sort of accountability. Until lawyers are routinely held accountable for their

own negligence, whether in initiating or maintaining a civil action, our justice system will continue to disappoint nearly everyone except those lawyers who game the system.” — Bill Bloomfield, founder of the Los Angeles Chapter, Citizens Against Lawsuit Abuse, writing the *Wall Street Journal* in response to the report of a federal judge’s dismissal of an Enron-related lawsuit because it was without merit.

Shouldn’t Have Asked

“When I ask jurors how many of them think that all plaintiffs are liars and there are too many frivolous lawsuits, half the jury puts up their hands.” — James G. Butler, Jr., past president, San Francisco Trial Lawyers Association, quoted in the *Daily Journal* legal newspaper.

To California?

“Firms are breaking up or dropping whole practice groups. Some lawyers have simply retired or left the profession. More than a few plaintiffs’ lawyers are taking their cases and skills to other states and associating with lawyers there.” — “Tort Reform Texas Style,” *American Bar Association Journal*.

Terrorist Law

“For just as Willie Sutton legendarily said he robbed banks ‘because that’s where the money is,’ plaintiffs’ attorneys are weaving creative legal theories to hold legitimate third parties liable for the intentional acts of terrorists. This friendly fire could end up doing almost as much financial damage as the terrorists themselves, with the lawyers getting rich in the process.” — Ted Frank, Resident Fellow, American Enterprise Institute, writing in the *Wall Street Journal*.

Fraud May Be Widespread

“Recent investigative work by defense counsel in asbestos and silica cases suggests that fraud may be widespread in mass torts. The evidence that has emerged may be just the tip of the iceberg. Judges have a duty

to investigate allegations of wrongdoing and to act when problems are found.” — Griffin B. Bell, former U.S. Attorney General and U.S. Circuit Judge, writing in *Legal Opinion Letter* for the Washington Legal Foundation.



Trial Lawyer Watch

Run But Can’t Hide, Continued...

Atlanta-based plaintiffs firm Thornton & Easom announced its business cards henceforth will identify its lawyers as “civil justice attorneys” instead of “trial lawyers,” following the Association of Trial Lawyers of America’s renaming as the “American Association for Justice.” A spokesman explained that in the past, when he’s told people he’s a trial lawyer, “they would step back and lean out of the conversation. The phrase has been stolen from lawyers. I’m not going to let them steal civil justice from us.”

Comp Lawyers Look Elsewhere

California’s workers compensation law reforms have sent “applicants attorneys” — as workers compensation lawyers are known — looking at Fair Employment and Housing Act (FEHA) for replacement income. A successful claim that a company discriminated against an employee injured on the job, can produce far more money than a workers compensation claim. Though a FEHA claim can be made administratively (where lost pay and emotional damages can be awarded), it can also proceed to court where juries can award punitive damages.

The *Daily Journal* legal newspaper has reported that the California Association of Applicants Attorneys is offering seminars on expanding a practice into FEHA law.

Meantime, a workers comp lawyer has filed initiative language with the state, hoping for a successful ballot measure to reverse the Governor’s workers

compensation reforms and return the work comp system to a lawyer money maker.



Studies of Note

See You in California Court

Forty-five percent of the 422 companies — U.S. and international — participating in the Fulbright & Jaworski 2006 poll reported a “significant case pending” in California. More than in any other state. This and much more can be found in the law firm’s third annual “Litigation Trends Survey Findings” at www.fulbright.com/litigationfindings.

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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