

## Headliners

### New Chance for Reform

The Civil Justice Association of California is sponsoring three new bills to improve class action law and deter frivolous claims.

The bills, introduced in February, are:

- *Class certification appeal*: This bill would allow the defendant to appeal a decision to certify a class. Now, only the plaintiff can appeal the denial of class certification (**AB 1905** – Adams).
- *Withholding of attorney's fees*: This bill would allow judges, at their discretion, to withhold part of the plaintiff's attorney's fees in class action lawsuits until class members have been contacted and have received their portion of the settlement (**SB 1202** – Harman).
- *Frivolous lawsuits*: This bill would allow courts to carve frivolous claims out of a lawsuit but let people continue to pursue claims with merit. It redefines frivolous actions or delay tactics and allows judges to order the payment of attorney's fees required to defeat such tactics (**AB 1891** – Niello).

### Judgeships on Cutting Block

Funding for 50 new judgeships may be frozen as state legislators try to close a \$3.7 billion budget deficit. Ten earlier-approved judgeships will also remain unfilled.

Last year, the Governor signed CJAC-supported AB 159, which authorized the new judgeships. Now, 22 trial courts may not see the new judgeships until at least June 2009 — though it could be longer.

Of the 50 new positions, Riverside, Sacramento, and San Bernardino are slated to receive a total of 20 judges.

### Twenty Years Young

High tech, legal reform, and political leaders in January honored former California Congressman Thomas Campbell for his persistent work to improve the nation's civil justice system. Campbell, now Dean of the Haas School of Business at University of California at Berkeley, was a key player in the Silicon Valley's first sustained legal reform effort — the mid-1980s founding of the California Legal Reform Institute.

The CJAC-sponsored San Jose reception honoring Campbell fell on the 20th anniversary of the merger of the California Legal Reform Institute and CJAC's predecessor, the Association for California Tort Reform.

Campbell's interest in improving the nation's civil justice system has run throughout his career. He has published respected papers and law review articles on topics including the link between liability reforms and productivity, labor law and economics, employment discrimination law, and anti-trust litigation.

He served as a U.S. Congressman, a California State Senator, and as Director of the California Department of Finance.

### New Communications Director



**Cynthia Neff** has joined the CJAC staff as Director of Communications and Research. Announcing her hiring, CJAC President John H. Sullivan said: "Never has there been more news — nationally and in California — illustrating the need for balanced civil justice reform. Ms. Neff will play a key role for CJAC in getting that message out to the media and the public."

Prior to joining the CJAC team, Neff covered crime as a reporter for the Fort Worth *Star-Telegram*. She has also covered city and county governments and education while reporting for *The* (San Luis Obispo) *Tribune* and the Merced *Sun-Star*.

A Sacramento native, Neff earned an undergraduate degree in journalism and a French minor from Cal Poly, San Luis Obispo.

She can be reached at (916) 443-4900 or [cneff@cjac.org](mailto:cneff@cjac.org).



## In Sacramento

### Civil Justice Leadership Award

State Assemblyman Greg Aghazarian was awarded CJAC's Civil Justice Leadership Award for his work in the 2006-07 legislative session. He received the award at a Stockton luncheon, one of the cities Aghazarian represents in the 26th Assembly District.

Aghazarian serves as vice-chairman of the Assembly Public Safety Committee, where he authored landmark bipartisan prison reform legislation.

During the legislative session, he fought against trial-lawyer efforts to artificially inflate damages in certain injury cases, voted against bills that would have led to additional employment lawsuits, and worked to try to find a fair solution to the problem of out-of-state lawyers coming to California courts to sue.

In receiving the award, Aghazarian said: "I am proud to be recognized by the Civil Justice Association of California for simply doing the right thing in supporting pro-growth policies that have led to more job creation in our state and more opportunity for hard-working Californians. ... I hope

my colleagues will join with me in rejecting junk lawsuits and costly new burdens on businesses that will hurt our fiscal outlook, force companies to shut their doors or move out of state, and threaten thousands of jobs.”

## Verbatim

### Lerach Reactions

- “I pleaded guilty in this case because I was guilty. It was, as they say, felony stupid. I just did not have the strength of character to stand up to what was going on in the bar.” — *Bill Lerach, before sentencing*
- “William Lerach incessantly whines that, while he got caught, everyone else was doing it, too. That mantra is right out of preschool. It didn’t fly then, and it certainly doesn’t fly now. Wrong is wrong, no matter how many people are doing it.” — *Diann Rogers, President, Central California C.A.L.A.*
- “This whole conspiracy corrupted the law firm and it corrupted it in the most evil way.” — *U.S. District Judge John Walter, at sentencing hearing*
- “Mr. Lerach’s op-ed mentioned the architects of the Enron fraud, but passed over the many decades worth of prison sentences handed out in that case and others, such as WorldCom. Instead, he offered up the following gem: ‘It turns out that the legal system is a lot tougher on shareholder lawyers than it appears to be on Wall Street executives.’ We doubt WorldCom’s Bernie Ebbers, serving not two but 25 years, agrees.” — *Wall Street Journal, referring to Lerach’s sentencing and a commentary he published in The Washington Post*
- “He earned a fortune by suing firms, typically after a fall in their share prices, which he would allege was due to wrongful behavior by

managers. Whether shareholders benefitted from this was unclear, as it was their own money that was paid out to them — minus the legal fees, of course ... Mr. Lerach’s imprisonment comes at a difficult time for trial lawyers. Recent actions in Congress and the Supreme Court have reduced the scope for bringing shareholder class-action lawsuits ... for those who believe that excessive risk of being sued is one of the biggest drags on the competitiveness of American business, it is all rather encouraging.” — *The Economist*

- “Lerach’s sentence is absurdly lenient, considering what he and his former law partners did to the nation’s legal system. Lerach claims kickbacks were commonplace among class-action litigators when he was practicing. This should trigger a wider-ranging federal investigation of the plaintiffs bar, if indeed such a probe is not already being conducted.” — *The Washington, D.C., Examiner*
- “When it’s all over, the bribes Lerach paid his plaintiffs to roll over are likely to look like a pittance

compared with the perfectly legal — and totally corrupting — sums the class-action bar is now doling out to sign up cooperative clients.” — *Forbes, “Shakedown Street”*



## In the Courts

### Proposition 64 Holds Strong

The Supreme Court has brought down the curtain on a creative lawyer’s attempt to evade Proposition 64’s “actual loss” rule by buying a product for his client and claiming that gave her standing to sue.

In court documents, plaintiff Katherine Buckland admitted she told her attorney to buy a skin cream product in order to establish standing by losing money on a product she didn’t like.

A trial judge observed that the purchase did not give her grounds to sue because “the costs were incurred solely to facilitate her litigation” and did not constitute the “requisite injury in fact.” A Court of Appeal upheld this ruling in October, and the Supreme Court slammed the door on the gambit once and for all by denying a petition to review (*Katherine Lee Buckland v. Threshold Enterprises LTD*).

## CJAC in the News

### Challenges Over Employment Laws

Employment class action lawsuits are hitting Silicon Valley tech companies especially hard. The price may be fewer jobs in California.

“The very technology that put the Silicon Valley on the map worldwide makes it possible for valley jobs to be relocated anywhere on the globe,” noted CJAC President John H. Sullivan in a Silicon Valley/San Jose Business Journal commentary.

“Now California’s labor and class action laws seem to be working to make that happen. Fee-seeking trial lawyers are combining state class action rules and inflexible guidelines for distinguishing hourly and salaried employees. The resulting lawyers’ perfect storm makes it dangerous to maintain a skilled employee base in California.

“Our association’s study found that 47% of the more than 3,400 class action lawsuits filed in California courts over the past three years were employment-law based.

“The problem won’t be solved until balance and common sense are restored to California class action law and state workplace rules.”

You can read CJAC's amicus brief in the case at [www.cjac.org/publications/news/files/CJACamicusbrief-Buckland.pdf](http://www.cjac.org/publications/news/files/CJACamicusbrief-Buckland.pdf).



## Trial Lawyer Watch

### The Mess in Mississippi

Only days ahead of his trial date, Mississippi plaintiffs lawyer Richard "Dickie" Scruggs pleaded guilty to conspiring to bribe a Mississippi judge for a favorable ruling in a legal-fee dispute over Hurricane Katrina-related insurance litigation. Co-defendant Sidney Backstrom also pleaded guilty to conspiracy to bribe a judge. The trial was slated to start March 31.

Scruggs was also mentioned — but not indicted — in a separate case, in which another Mississippi plaintiffs lawyer, Joey Langston, agreed to plead guilty to conspiring to illegally influence a judge.

### Lawyers Troll For Clients

Residents in Fort Wentworth, Georgia, are disgusted by plaintiffs lawyers' attempts to round up clients before flames from a sugar refinery explosion at the Imperial Sugar plant could be extinguished and the workers' remains fully recovered, The Associated Press reported.

One law firm grabbed a domain name, [www.sugarrefineryexplosion.com](http://www.sugarrefineryexplosion.com), which includes a form where victims can share their information with the firm's attorneys.

Other lawyers took out newspaper ads trolling for clients. Dallas lawyer Jeffrey Slakter's full-page ad includes details of Imperial Sugar's financial status and images of the explosion's aftermath.



## Studies of Note

### Class Action Suits Spike

The number of companies sued in securities fraud class action litigation

## CJAC in the Courts

### Decisions Rendered...

■ **Court of Appeal, 2nd District:** The court requested CJAC's amicus input on this punitive damage case; CJAC filed a brief September 24, 2007, arguing that whenever there is a possibility the jury might consider "harm to others" in setting punitive damages, due process requires the trial court to instruct that this consideration is improper. The court on January 30 unanimously decided to overturn the punitive damage award and require a new trial limited to the amount of punitive damages. (*Bullock v. Philip Morris USA, Inc.*)

### Decisions Pending...

■ **Court of Appeal, 6th District:** The case asks whether government can contract on a contingency fee basis with counsel to prosecute a public nuisance action by 10 counties and cities against numerous companies involved in the manufacture and distribution of lead-based paint. Oral argument was held January 17. The CJAC amicus brief defends the 22-year-old case law rule against such contingency fee agreements. (*County of Santa Clara V. Superior Court*)

■ **California Supreme Court:** The case involves a punitive damage award of \$200 million — on top of a compensatory award in excess of \$300 million — for failure to pay royalties in a research/patent assignment contract. The appellate court upheld the award. The CJAC amicus brief in support of Genentech argues that punitive damages are not appropriate in this contract dispute. Oral arguments were heard February 5. (*City of Hope National Medical Center v. Genentech, Inc.*)

jumped 43% from 2006 to 2007, from 116 to 166. The spike in activity is directly correlated to stock market price volatility and the subprime mortgage crisis, according to a new report by Stanford Law School Securities Class Action Clearinghouse and Cornerstone Research. The Second Circuit in New York had the most securities class action filings in 2007, with 58, followed by California's Ninth Circuit, with 39.

The researchers noted that the increase may not signal a longer-term trend, since securities fraud class action litigation has been driven by market-wide events. The 2007 activity remained below historical averages.

To see the full text of the report go to <http://securities.stanford.edu> or [www.cornerstone.com](http://www.cornerstone.com).

### Online Health Searches Mislead

A report recently published by the New York-based Center for Medicine in the Public Interest concluded that

people searching for health information online often received misleading — and sometimes dangerous — results.

A simple Google search for two medications found that nearly half of the first three pages of search results belonged to lawyers and attorney referral services seeking plaintiffs for class action lawsuits, wrote the Center's President, Peter J. Pitts.

Dr. Randy Fink, an obstetrician/gynecologist in Miami, Florida, says he spends time daily correcting information patients found on the Internet — often on sites paid for or sponsored by class action law firms or legal marketing sites searching for plaintiff referrals.

Learn more at: [http://drugwonks.com/CMPI\\_Insta\\_American\\_Study\\_01\\_08\\_08.pdf](http://drugwonks.com/CMPI_Insta_American_Study_01_08_08.pdf).

### Breakthrough Technology

New DNA testing could have far-reaching consequences for an unlikely beneficiary: the civil justice system. New

technology can allow medical experts to pinpoint how specific chemicals impact a person's DNA, according to Bruce S. Gillis, CEO of the Cytokine Institute, which pioneered the technology.

As a *Daily Journal* story pointed out, proving certain via DNA whether a particular chemical caused a potential plaintiff's cell damage would leave toxic tort/class action plaintiffs and defense lawyers with little to argue about, expert witnesses with little new to say, and judges free to preside over something else. Read Cytokine's summary of this potential breakthrough at: [http://www.cytoinst.com/pdfs/tci\\_tort\\_change.pdf](http://www.cytoinst.com/pdfs/tci_tort_change.pdf).

## Medical Expenses Escalate

Medical expenses reported by auto injury claimants continue to rise faster than the rate of inflation, finds a new study by the Insurance Research Council. Average claimed economic losses grew 9% annually, to \$8,522 in 2007 from \$5,520 in 2002.

The driving force behind these gains is growth in medical care expenses, which has continued to escalate despite the fact that injuries from auto accidents are becoming less serious on average, according to the study.

The study, "Auto Injury Insurance Claims: Countywide Patterns in Treatment, Cost and Compensation, 2008 Edition," can be ordered at <http://www.ircweb.org/>.

## New CJAC Board Members



**Lori Ortenstone**, General Attorney for at&t, is responsible for legislative matters in Sacramento. She joined the Pacific Bell (now at&t) legal department in 1987 and worked in the San Diego office, providing advice and counsel on network issues, until November 2007.

Prior to joining Pacific Bell, she worked for a civil litigation firm in Los Angeles. Ortenstone grew up in Minnesota and moved to California in 1978. She received her Juris Doctor Degree from the University of California at Davis in 1984.



**Melissa H. Brown** is Chief Counsel, Legislative Legal Affairs, for Georgia-Pacific. Prior to joining Georgia-Pacific's Law Department, Brown was a partner at Baach Robinson & Lewis PLLC in Washington, D.C., with a successful practice in legislative reform primarily focusing on asbestos and tort reform.

Before that, Brown spent three years in Kampala, Uganda, where she held positions as Consultant and Legal Advisor to UNICEF. She was also the Democracy and Governance Advisor for the United States Agency for International Development, as well as a General Advisor for the Forum for Women in Democracy.

Brown began her legal career as a litigation associate at Akin, Gump, Strauss, Hauer & Feld, LLP in Washington. She has a bachelor's degree from Newcomb College of Tulane University and a J.D. from American University Washington College of Law.



**Brian K. Sullivan**, BP's General Manager of West Coast Government & Public Affairs, manages BP's government and public affairs issues in Arizona, California, Hawaii, Idaho, Nevada, Oregon, and Washington.

When ARCO merged with BP in April 2000, Sullivan was ARCO's Director of External Affairs for the Northwest in Seattle. Prior to joining ARCO in 1991, Sullivan worked for General Motors Research Laboratories, developing advanced engine and emission control

systems. He has also served as project engineer and engineering supervisor at ARCO's Los Angeles Refinery, ARCO's California lobbyist in Sacramento, and director of federal and international issues.

He currently serves as Chairman of the Government Affairs Committee of the Western States Petroleum Association (WSPA).

A Kansas native, Sullivan has a Bachelor's Degree in mechanical engineering from Kansas State University and a Master's Degree from MIT.

## 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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