



# CONSUMER ATTORNEYS OF CALIFORNIA

*Seeking Justice for All*

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## CAOC Announces Award Finalists

**SACRAMENTO (Sept. 20, 2011)** – CAOC President John Montevideo today announced the 10 finalists for Consumer Attorneys of California’s top annual award, the Consumer Attorney of the Year. The winner will be announced Nov. 12 at the CAOC Annual Awards Dinner to be held in conjunction with the 50<sup>th</sup> Annual CAOC Convention at the Palace Hotel in San Francisco. In addition, the three finalists were announced for CAOC’s annual Street Fighter of the Year award, also to be presented that evening.

### CONSUMER ATTORNEY OF THE YEAR - Finalists

**Conal Doyle, Adele Kimmel, Amy Radon and Thomas Dempsey**  
*Castaneda v. State of California and Castaneda v. United States*

#### **FIGHTING TO IMPROVE HEALTHCARE FOR IMMIGRATION DETAINEES**

Francisco Castaneda, an undocumented immigrant detained on a felony drug offense, made numerous attempts to seek medical attention for a visible penile lesion. During his fourteen months in state and federal custody, both state and federal officials refused him a urology consult and biopsy. But the lesion was cancerous, and by the time it was diagnosed and his penis amputated, it was too late to save Castaneda’s life. His 17-year-old daughter brought wrongful death claims against the state and federal governments. Several firms turned down the case before attorney Conal Doyle agreed to represent the plaintiff along with co-counsel from Public Justice. The two related cases were vigorously defended for four years before a verdict was returned in favor of the plaintiff in Los Angeles Superior Court last November, then a settlement of the federal case was reached in April. Along the way, Doyle argued a constitutional law issue before the Ninth Circuit and U.S. Supreme Court. The Supreme Court ruled that federal doctors could not be sued for constitutional violations, but permitted the medical negligence claims to proceed against the United States. The cases have been credited with changing the way government provides healthcare to immigration detainees.

**Brian Panish, Spencer Lucas and Juan Dominguez**  
*Curiel v. SSA Marine DVC*

#### **CLEANING UP A WORKPLACE MADE DANGEROUS BY DRUG AND ALCOHOL USE**

Felipe Curiel suffered serious spinal injuries when a 25,000-pound shipping container, knocked off a stack by a port employee operating a crane, fell more than 40 feet and landed on the truck in which he was sitting. The crane operator tested positive for marijuana. The attorneys filed suit against the crane operator’s employer, SSA Terminal, the largest port operator in the world, with a history of turning a blind eye to a culture of alcohol and

drugs on the docks and failing to perform drug tests. The attorneys found hundreds of people at the docks have been seriously injured in recent years as a result of drug- and alcohol-related incidents. During discovery, their firm received death threats and promises of witness retaliation for exposing the port and shipping industry's longstanding problems with substance abuse. In winning a verdict for their client that is believed to be the largest ever in Long Beach, the attorneys have forced SSA to make safety a priority and launch a program of screening dock workers for drug and alcohol use.

**Richard M. Heimann, Richard D. McCune and Michael W. Sobol**  
*Gutierrez, et al., v. Wells Fargo Bank, N.A.*

#### **ENDING UNJUST BANK OVERDRAFT FEE PRACTICES**

Instead of posting California customers' debit card transactions in the order in which they occurred, Wells Fargo re-sequenced the transactions at the end of each day in order of amount, from the highest dollar amount to the lowest, so as to maximize the number of overdraft fees charged. This practice had the greatest impact on the bank's poorest customers, because they often lacked the economic sophistication to recognize the situation and negotiate the removal of the fees. The attorneys filed suit in federal court claiming violation of California's Unfair Competition Law, and a judge found that Wells Fargo had manipulated its transaction processing to "squeeze as much as possible" (in the words of the ruling) out of its customers. The court further found that the bank not only failed to adequately disclose its posting practices but in fact misrepresented how transactions were processed in its account agreements and marketing materials. The judge ordered restitution and prohibited Wells Fargo from continuing the practice. The ruling may have an impact on a class action case involving similar claims against 30 other lending institutions that have been consolidated in federal court in Florida.

**Stephen Estey and Donald Beck**  
*John Doe v. Giarretto Institute*

#### **WINNING JUSTICE FOR A BOY SEXUALLY ABUSED BY HIS FOSTER FATHER**

While he was placed in John Jackson's foster home in Santa Clara County from 1995 to 1999, young "John Doe" was the victim of more than 500 acts of sexual abuse. The Giarretto Institute was licensed by the state to monitor the Jackson home. Now 25 years old, "Doe" suffers from residual mental distress as a result of the abuse and filed suit against both Jackson and the institute. At trial, attorneys Stephen Estey and Donald Beck presented evidence that several foster children had raised previous allegations of misconduct in the Jackson home that were not properly investigated. The institute did not employ any supervisors with sexual abuse investigation experience or provide proper training on such investigations to staff members. Estey and Beck also pointed out that a basic background check would have disqualified Jackson from being a foster parent because of his past inappropriate sexual conduct with a minor, among other things. The jury found in favor of "Doe," with the institute deemed 75% liable and Jackson 25%.

**Frank Pitre and Ara Jabaghourian**  
***Mazurek v. American Medical Response***

#### **WINNING JUSTICE FOR A FAMILY AFTER AN INADEQUATE POLICE INVESTIGATION**

Michael Mazurek, a high-ranking naval surgeon and a married father of three, was riding his bicycle to work when he was struck by an emergency response vehicle. The driver of the vehicle was making a right turn into a shopping center parking lot without signaling while Mazurek was attempting to pass on the right. Mazurek was hospitalized for three weeks before dying of injuries stemming from the crash. The police report determined Mazurek was at fault for the crash, but Mazurek's survivors did not believe he would have put himself at risk and jeopardized leaving his family without a husband and father. Attorneys Frank Pitre and Ara Jabaghourian interviewed witnesses who had not been interviewed by police and hired experts who revealed the inadequacy of the police investigation. A jury took issue with the driver's account of events and the defense team's portrayal of the evidence and returned what is believed to be the largest-ever individual wrongful death verdict in San Diego County, finding the driver 75 percent liable for the crash. The case serves as a reminder that inadequate investigations of wrongdoing can produce misleading results with devastating consequences.

**Michael Alder and Erik B. Feingold**  
***Pedefferri v. White, et al.***

#### **DETERMINING LIABILITY FOR A CHP OFFICER'S DEVASTATING INJURIES**

While driving on Highway 101 north of Ventura, 19-year-old Jeremy White became distracted when two dirt bikes he was hauling came loose from their tethers in the bed of his truck. As he turned his head to look at the bikes, his truck left the road and hit a vehicle that was parked on the shoulder after being stopped by a California Highway Patrol officer. The driver who had been stopped was killed, and CHP Officer Anthony Pedefferri was left a quadriplegic. White pleaded guilty to gross vehicular manslaughter. Attorneys Michael Alder and Erik Feingold discovered employees of Bert's Mega Mall, the largest dirt bike dealer in the country, had negligently loaded the bikes and improperly secured them, leading to the chain of events that resulted in Pedefferri's injuries. Bert's argued it was not negligent and that Jeremy White's marijuana use was an intervening cause of the accident. A Ventura County Superior Court jury disagreed and returned the largest-ever personal injury verdict in the county, finding found Bert's 33 percent liable for the injuries (the rest of the liability being assigned to White) and giving Pedefferri and his family the compensation to which they were entitled.

**Christine Spagnoli and Bruce Broillet**  
***Sang-Mook Lee v. California Institute of Technology and Ford Motor Company***

#### **SHOWING A QUADRIPLÉGIC WAS INJURED BY POOR VAN DESIGN**

Professor Sang-Mook Lee, a Korean citizen, brought a group of his students from Seoul National University to go on a field trip with students from Caltech. Lee was driving one of the Ford E350 Econoline vans provided by Caltech when the vehicle slid on a dirt road and rolled over. He was wearing a seat belt, but the van's collapsed roof pinned him in his seat and the resulting spinal cord injury left him a quadriplegic. Attorneys Christine Spagnoli and Bruce Broillet argued the van's design was defective because it lacked adequate protection for occupants in the event of just such a rollover, with no roof-strength standard. Under cross-examination, Ford's experts conceded the roof could have been made stronger but they thought there was no need to do so. The

jury found that the E350's roof failed to meet consumer expectations, that the risks posed outweighed the benefits of the design, and that the design of the roof caused Lee's injuries. Ford was found 65% at fault. Professor Lee has returned to Korea, where he has become a nationally-recognized advocate for the disabled and has taken up the cause of improving roof strength in vehicles.

**Niall McCarthy and Justin Berger**  
***State of California v. Quest Diagnostics***

#### **HELPING TAXPAYERS BY EXPOSING MEDI-CAL FRAUD**

Attorneys Niall McCarthy and Justin Berger represented the CEO of a company that provides laboratory testing services to medical providers. They filed a whistleblower suit against a competitor, Quest Diagnostics, California's biggest provider of medical lab testing, claiming Quest was systematically overcharging patients covered by Medi-Cal, the state's medical insurance program for the poor. The suit also claimed Quest gave illegal kickbacks to doctors, hospitals and clinics that referred Medi-Cal patients, then charged the state up to six times more than what patients without insurance would pay for the same tests, in direct violation of state law requiring Medi-Cal be billed the lowest possible rate for lab services. A three-year investigation by the California Attorney General's office led to a settlement in which Quest agreed to repay the state for more than 15 years of overcharges to Medi-Cal. Attorney General Kamala Harris said the settlement is the largest ever recovered under California's False Claims Act. Quest also agreed to provide the state with written reports about its pricing.

**Robert S. Gianelli, Ray Mattison and Don A. Ernst**  
***Stephens v. American Equity Investment Life Insurance Company***

#### **WINNING REFUNDS FOR SENIORS TAKEN ADVANTAGE OF BY AN INSURANCE COMPANY**

This suit filed on behalf of a class of 8,600 California senior citizens alleged that, in the sale of annuities to seniors, American Equity failed to disclose onerous surrender penalties and associated "market value adjustment" penalties (which in total could exceed 40%) in the manner required by California law, and thus those penalties were not enforceable. The suit also alleged that American Equity failed to disclose that the returns paid on these annuities were reduced to recoup high selling agent commissions and other expenses. The case was aggressively defended over five years, and there was never a settlement offer before or during the trial. In the first phase of the trifurcated case, a San Luis Obispo Superior Court judge ruled in favor of the class, awarding a full refund of the penalties with pre-judgment interest. That decision led directly to the settlement of the entire case, which included payments or credits of between 3.152% and 7.85% of policy value, depending on policy status, that are being distributed to the class without any claims form or claims process. American Equity had successfully blocked similar class actions in other states or settled them on a claims-made "penny-on-the-dollar" basis.

**W. Timothy Needham, Michael J. Crowley, Amelia F. Burroughs, Patrik Griego, Michael D. Thamer and Christopher J. Healey**  
*Vinnie Lavender, et al., v. Skilled Healthcare Group, Inc., et al.*

#### **FORCING NURSING HOMES TO PROVIDE REQUIRED MINIMUM STAFFING**

This suit was filed on behalf of 32,000 residents, former residents and family members of residents of 22 California nursing facilities owned by Skilled Healthcare Group, the nation's fifth-largest nursing home chain. The suit came after a number of wrongful death claims in which attorneys learned the underlying cause for many of the deaths was inadequate staffing. The attorneys presented evidence that Skilled regularly failed to meet minimum staffing requirements under the California Health and Safety Code and sought damages up to the maximum allowed under the California Consumer Legal Remedies Act. The trial lasted seven months, during which 150 witnesses were called and more than 5,000 exhibits were introduced. This was the first class action on nursing home understaffing to be tried to a verdict, which was the largest ever in a case against a nursing home chain. Before punitive damages could be decided, the case was resolved with the inclusion of an injunction under which Skilled Healthcare is paying for a court-appointed monitor to ensure it meets minimum staffing requirements. The verdict has caused nursing homes throughout California to re-evaluate their staffing levels.

#### **STREET FIGHTER OF THE YEAR – Finalists**

**Shawn A. McMillan**  
*Deanna Fogarty-Hardwick v. County of Orange, et al.*

#### **REUNITING A MOTHER AND DAUGHTERS AFTER SOCIAL SERVICES ABUSES**

Deanna Fogarty was awarded custody of her two daughters after her divorce. Child Protective Services investigated the children's claims of abuse by their father and allowed him only monitored visitation. After a personality clash with Ms. Fogarty, social workers falsely claimed she skipped a mandatory visit and told the girls their father was trying to take them away from her. The court then ordered the children removed from Fogarty's home. Social workers coerced Fogarty into giving her ex-husband full custody of the children. In 2001 Fogarty sued for violation of her constitutional right to familial association, alleging social workers fabricated evidence and withheld evidence from the juvenile court to obtain orders allowing the removal of her daughters. Fogarty also sued Orange County, claiming its customs, policies, and practices were unconstitutional. In 2007 an Orange County jury found the defendants liable and handed down one of the largest parental rights judgments against a child protective services agency in the U.S. It took Fogarty more than six years to regain custody of her children. Attorney Shawn McMillan was lead counsel at trial and on appeal. The judgment became final in April 2011, when the U.S. Supreme Court refused to hear it.

**Steven R. Young**  
***Urga v. Redlands Community Hospital***

#### **EXPOSING A SUBTERFUGE THAT EVADED REQUIRED OVERTIME PAY**

Some 1,300 nurses and respiratory therapists at Redlands Community Hospital (RCH) filed a class action against the hospital, claiming they were cheated out of overtime pay by the hospital's illegal pay practice. Even after the California legislature passed a law in 1999 mandating time-and-a-half for work in excess of eight hours a day, RCH and many other hospitals used mathematical calculations that effectively paid straight time to 12-hour-shift employees no matter how many hours were worked in a day. Attorney Steven Young, who was called in on the case just days before the trial, convinced a San Bernardino County Superior Court jury that the pay plan was an artifice adopted by the hospital to evade legal overtime requirements. A judge who heard the Unfair Competition Law claim simultaneously with the jury trial awarded significant restitution to the class, finding the pay plan was "deceptive and unfair" and misled the class because, in the words of her decision, "the more the employees worked, the less they were paid." The case is expected to affect many similar suits across the state challenging the pay practice and to cause employers to reconsider trying to avoid payment of overtime due their employees.

**Thomas J. Johnston**  
***Wong v. Los Angeles County MTA***

#### **USING AN INJURY TO MAKE A COMMUNITY SAFER**

David Wong, a 78-year-old Vietnamese national who fought alongside the US in the Vietnam War, got off a Los Angeles County MTA bus outside Chinatown and then entered the crosswalk to cross the street in front of the bus, even though the light was green for the bus and red for Wong. The bus hit Wong and knocked him to the ground, causing him to suffer a brain bleed. The bus driver said he was not expecting to see a passenger walking in front of the bus and in fact never saw Wong. Attorney Thomas Johnston established that the elderly residents of Chinatown often times started crossing streets just before getting a green light in order to be able to get across before the pedestrian signal turns red again. The MTA agreed as part of a substantial settlement to institute community service programs to educate elderly residents of Chinatown of the dangers presented by buses near crosswalks. The outreach program is a joint program between the MTA and Johnston's five-lawyer firm. This marked the first time an attorney requested community outreach as part of a settlement, and that was a major factor in winning approval of the settlement.

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*Consumer Attorneys of California is a professional organization for nearly 3,000 plaintiffs' attorneys representing consumers who utilize the civil justice system to seek accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.*

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