



# CONSUMER ATTORNEYS OF CALIFORNIA

*Seeking Justice for All*

## CAOC announces 2020 award finalists

Consumer Attorney of the Year, Street Fighter of the Year to be honored

**SACRAMENTO (Aug. 27, 2020)** – Consumer Attorneys of California president Micha Star Liberty today announced this year’s finalists for the organization’s two major member awards, Consumer Attorney of the Year and Street Fighter of the Year.

Consumer Attorney of the Year is awarded to a CAOC member or members who significantly advanced the rights or safety of California consumers by achieving a noteworthy result in a case. Eligibility for Street Fighter of the Year is limited to CAOC members who have practiced law for no more than ten years or work in a firm with no more than five attorneys. To be considered for either award the case must have finally resolved between May 15, 2019 and May 15, 2020, with no further legal work to occur, including appeals.

The finalists for these awards were selected by a committee consisting of members of CAOC’s Executive Committee, representatives of the attorney groups that won these awards in each of the last three years, and six randomly selected members of CAOC’s Board of Governors. The winners will be chosen by secret ballot of CAOC board members after Zoom presentations about each case at the board meeting on September 25. The winners will be announced on a date to be determined soon.

Here are the 2020 finalists:

### **CONSUMER ATTORNEY OF THE YEAR**

**Deborah S. Chang, Brian J. Panish, Patrick K. Gunning and Alan Charles Dell’Ario**  
*Rosen v. The Regents of the University of California, et al.*

### **REQUIRING COLLEGES TO PROTECT STUDENTS FROM KNOWN DANGERS**

In October 2009, UCLA sophomore Katherine Rosen was finishing her organic chemistry laboratory when she was suddenly and brutally attacked by a fellow student who had been diagnosed with schizophrenia and who had brought a knife to silence the voices he was hearing in his head that he believed came from Rosen. Unbeknownst to Rosen, he had been the subject of numerous emails, letters and documentation of troubled behavior, as well as reports of disturbing and threatening statements by him that should have raised red flags but were ignored because of a lack of communication between different departments within the university. This attack came just two years after a mentally ill student at Virginia Tech killed 32 people in a mass shooting, causing universities and colleges all over the world, including the University of California, to re-examine their policies and institute appropriate threat assessment and violence prevention mechanisms. Although courts nationwide had long held that K-12 schools have a duty to protect students from foreseeable violence, UCLA argued that postsecondary schools did not have a duty

to protect their students from third-party misconduct, and its argument was supported by all other universities and colleges in California. After an appeals court dismissed the case, the California Supreme Court, by unanimous decision, concluded that universities and colleges have a duty to protect their students from known dangers in all curricular activities, leading to a settlement in this case. “Students are comparatively vulnerable and dependent on their colleges for a safe environment,” Justice Carol A. Corrigan wrote for the court. “Although a criminal act is always shocking to some degree, it is not completely unpredictable if a defendant is aware of the risk.” Legal scholars and commentators said the decision has extremely broad implications for colleges and universities throughout the country.

**C. Brooks Cutter, Robert A. Buccola, Steven M. Campora and John R. Parker, Jr.**  
*Doan, et al. v. State Farm General Ins. Co.*

### **ENDING AN ILLEGAL PRACTICE OF OVER-DEPRECIATING INSURED LOSSES**

After a legal battle that lasted over ten years, California consumers won the right to receive fair compensation from their insurers for their damaged personal property. For many years, State Farm shorted its policyholders by over-depreciating personal property. State Farm used a secretive “depreciation guide” – violating California law by failing to calculate depreciation based on the physical condition of property at the time of loss. State Farm’s guide calculated depreciation based on age only, even if the item had never or rarely been used. In this case, after a fire at the Doan residence, State Farm would not agree to pay what was owed, even on items that were in “like new” condition, and illegally over-depreciated the insured’s losses by more than \$20,000. The case was filed in 2008 on behalf of all State Farm policyholders. In June 2009, the trial court dismissed the case, but that ruling was completely reversed on appeal in 2011, in a published decision. As the case proceeded, the attorneys learned that all California insurers calculated depreciation almost entirely through the use of a “depreciation guide,” and that State Farm failed to provide a written explanation of how it calculated depreciation, as required by California law. In the first phase of an expert-intensive trial, the trial court found entirely for the plaintiff class and held that State Farm’s was breaking the law in how it over-depreciated claims. A settlement was later reached before a trial on the damages to the class. The settlement provided complete relief to class members, with interest paid to class members who elected to reopen their claims and who were shorted on their payouts. As a result, policyholders and their attorneys are now able to force ALL insurance carriers in California to follow the law when adjusting personal property claims.

**Christopher B. Dolan, Dianna L. Albin and Megan R. Irish**  
*Castro and Perez v. Edwards and City of Long Beach*

### **HOLDING A CITY RESPONSIBLE FOR AN OBSTRUCTED STOP SIGN**

On a dark evening in February 2015, Richard Castro sustained a brain injury when his car was broadsided at a four-way intersection in Long Beach. The intersection was controlled by stop signs on the north and south corners. Castro, heading west, was struck by Lindy Edwards, who admittedly ran the stop sign while traveling at 35 mph, ten miles over the speed limit. Following the collision Edwards, for the first time, saw the stop sign which had been partially occluded by a tree. Dolan and Albin sued Edwards for negligence and the City of Long Beach for a dangerous

condition of public property. Discovery revealed that Long Beach was aware that this tree, between trimming cycles, would grow to block the stop sign, yet the city did nothing to trim it more frequently. The case presented significant hurdles because there was no prior documented collision because of a failure to stop because of the tree; Edwards admittedly was traveling above the speed limit and ran the stop sign; Castro suffered from an “invisible injury,” Pseudo Bulbar Affect, which causes sudden, exaggerated, emotional outburst, causing him to cry, get angry or laugh, and his PBA, made it impossible for him to testify: when he took the stand he just burst into tears. Arduous jury selection, over four days, led to Dolan having 62 jurors dismissed for cause. Strategically, and with great risk, a Deputy City Attorney from Los Angeles, who handled government tort defense, was left on the jury by Dolan and Albini. The trial lasted two months with the jury, including the Deputy City Attorney, returning a unanimous verdict holding the City of Long Beach 55% liable. Since the lawsuit, the tree has been heavily pruned to prevent further collisions.

**Dale K. Galipo**

*Schroeder v. County of San Bernardino, et al.*

### **HOLDING LAW ENFORCEMENT ACCOUNTABLE FOR EXCESSIVE FORCE**

Jayd Schroeder was driving home from work when Rialto police officers claimed to have observed him speeding and failing to signal for a turn. After the officers activated their lights and siren, Schroeder continued driving, making several turns until he pulled into his driveway. The officers stopped, drew their handguns, and began giving commands. Schroeder contended that he complied with the officer commands, while the officers contended that he did not and continually dropped his hands towards his waistband. After Schroeder exited the vehicle, walked backwards to the sidewalk, and went to his knees, the officers claimed that Schroeder tensed up and refused to go to the ground. In response, the officers pushed Schroeder to the ground then claimed that Schroeder rolled partially on top of the officer. The 6’5”, 260-pound officer then began punching Schroeder claiming that he was resisting. Schroeder suffered a torn retina, which went untreated and resulted in blindness. This case presented several difficulties: Schroeder was under the influence of drugs; he was evading the police prior to the altercation; he had pled guilty to evading and driving under the influence; the only force used was punches and two baton strikes; since Schroeder was punched on the left side of his head and face, it was highly disputed that a retinal tear to his right eye was caused by punches to the opposite side; and the officers argued even if the force was unreasonable, the ultimate blindness was due to Schroeder’s failure to receive treatment and his injury pre-dated the incident. After less than two hours of deliberation, a unanimous jury found the force used against Schroeder to be excessive and awarded full compensation for his unnecessary injuries, 68 times what the city had offered to settle.

**J. Gary Gwilliam and Randall E. Strauss**

*Colombo, et al. vs. BNC Mortgage, Inc., et al.*

### **JUSTICE FOR WOMEN WHO BLEW THE WHISTLE ON FRAUDULENT LENDING**

Six women who worked at the Sacramento branch of BNC Mortgage, Inc., a wholly owned subsidiary of Lehman Brothers that specialized in sub-prime mortgages, each complained to their

superiors about fraudulent lending practices in 2005. Each of them was told to look the other way and when they persisted in expressing their concerns, these women were subjected to retaliation, sexual harassment and other forms of abuse that was designed to force them to quit. The sexual harassment was inflicted by a supervisor as a direct response to their whistleblowing about fraudulent loan packages and was sanctioned by company officials as a way to force the women either to resign or to approve falsified loans in order to get the harassment to stop. These women were sounding an alarm that went unheeded. Lax and fraudulent underwriting packages led to the collapse of the sub-prime mortgage market, helping to precipitate the downfall of Lehman Brothers and with it the worldwide economy. Rather than being lauded as heroes for reporting practices that ultimately led to financial ruin for many thousands of Americans, each of these women were instead victimized by the company they were trying to protect. BNC closed its doors and Lehman Brothers filed for bankruptcy in January 2008. After nearly 14 years of litigation, with bankruptcy imposing a threat that no compensation would be possible, these six women received a significant settlement. Each of them would say that they battled this corporate behemoth for so many years because of the harm caused to the public by BNC and Lehman Brothers' actions. This case vindicated the rights of whistleblowers who were forced to resign after shedding light on corporate greed and wrongdoing, upheld the rights of sexual harassment victims in the workplace, and shed light on the fraudulent lending practices of one of the largest financial institutions in the world.

#### **H. Gavin Long**

#### ***Cunningham v. Narconon Redwood Cliffs and Bright Futures Recovery***

### **SHOWING DRUG REHAB FACILITIES WERE RESPONSIBLE FOR A PATIENT'S SUICIDE**

The for-profit drug rehab business has been heavily infiltrated by Scientology through its entity Narconon. While Scientology uses Narconon to make millions and recruit members, its detox/rehab program is extremely dangerous. It is not evidence-based medicine and the detox is "cold turkey" and occurs in saunas. In 2010, 58-year-old John Cunningham injured his back, got addicted to Vicodin and later got addicted to benzodiazepines. His family found a rehab facility called "Redwood Cliffs." Unbeknownst to them, it was actually Narconon Redwood Cliffs. The family paid "Redwood Cliffs" \$37,500 for John's rehab. Cunningham arrived at Narconon in withdrawal and needed a detox. Narconon's detox was too dangerous for Cunningham, but Narconon wanted to keep the \$37,500, so Narconon sent him to Bright Futures Recovery (BFR) for the medically assisted detox. By using BFR for Cunningham's detox, Narconon made sure he came back to them for rehab. BFR had been licensed for only six weeks, owned by a 25-year-old former heroin addict and Narconon student. BFR horribly mismanaged Cunningham's withdrawal. He was taken to the hospital three times in five days for the severe withdrawal symptoms. After one week at BFR, he was in such turmoil that he hanged himself at BFR. A Santa Cruz County jury awarded damages to Cunningham's wife and two adult daughters, finding BFR 55% responsible, Narconon 35% responsible and Cunningham 15% responsible. Since 1985, 25 suicide cases have been tried in California, 17 off which were defense verdicts. Of the eight plaintiff verdicts, the Cunningham verdict is the largest. According to defense post-trial motions, there was a 1 in 368 chance in obtaining the Cunningham verdict. This verdict significantly advanced the safety of California consumers because it sent the

strongest message ever to Narconon and the for-profit drug treatment industry: stop putting money ahead of safety when treating addicts.

**Rahul Ravipudi, Paul A. Traina, Ian P. Samson, Bobby Saadian and Jonathan C. Teller**  
*Sanchez v. Victor Elementary School District*

## **PROTECTING SPECIAL NEEDS STUDENTS WHO NEED SAFE TRANSPORTATION**

Fabian Sanchez, a fifth-grade student in Victorville, suffered from deficits in executive planning and spatial memory. After assessing him for an Individualized Education Program (IEP), a federal- and state-mandated education plan for special needs students, Victor Elementary School District officials concluded Fabian was eligible for “curb-to-curb” transportation because he could not safely walk home from school. However, district personnel told his mother guidelines prohibited transportation within a two-mile radius from campus. Fabian lived less than a mile from school. As a result, Fabian walked home, often alone—a direct violation of his IEP. One day in February 2017, he attempted to cross a four-lane road just a few blocks from school and was hit by a car travelling 50 mph. He suffered catastrophic injuries; his cognitive function, speech and motor control remain severely impaired, and he will require 24/7 care, therapy and medical attention for the rest of his life. During the liability phase of the trial, the attorneys conclusively proved the district’s failure to follow federal guidelines for special needs students was the sole cause of Fabian’s tragic injuries. The parties then reached a settlement, allowing Fabian to have the necessary medical care and treatment for the rest of his life. The district also agreed to non-monetary relief. To ensure it and other districts could learn from Fabian’s tragedy, it submitted to a third-party review of its practices for implementing IEP and Section 504 plans and agreed to publicly release the results to other schools. Those findings, released in January 2020, contain several recommendations districts throughout California and the nation can also implement to avoid another tragedy. The district also agreed to provide educational resources for parents to learn of their rights under the Individuals with Disabilities Education Act, the federal statute governing IEPs and their implementation.

## **STREET FIGHTER OF THE YEAR**

**Roger E. Booth, Carly L. Sanchez and Andrew S. Pruitt**  
*Jacquelyn H. v. County of Riverside*

## **STANDING UP FOR A YOUNG GIRL IMPREGNATED BY HER MOTHER’S BOYFRIEND**

Jacquelyn was 11 when she told a teacher that her mother’s live-in boyfriend, Deon Welch, had been raping her on a regular basis. The teacher contacted Riverside County child protective services (CPS), as required by law. A Riverside County social worker and Hemet police found Jacquelyn’s accusation to be credible and sought to interview Welch, but they were told by the girl’s mother (who has limited intellectual capacity) that he had moved to Mexico. The investigation was closed, with the social worker reporting that Jacquelyn’s allegations were “inconclusive.” Four months later, a different Riverside County social worker learned that Welch was back in the home, but did not notify police or do anything to protect Jacquelyn; in fact, the County social worker asked Welch to sign a “safety plan” as one of Jacquelyn’s “caregivers” and

requested that he supervise the children in the mother's absence. As a result, Welch was emboldened to continue the abuse, and Jacquelyn's mother continued to falsely believe that Jacquelyn was safe living with Welch. The sexual abuse continued, and when Jacquelyn was 13, she became pregnant; blood tests determined Welch was the father. Jacquelyn gave birth at 14, and the child was placed for adoption. Faced with overwhelming evidence of ongoing sexual abuse and severe neglect, the County CPS office had done nothing to try to remove Welch from the home, to alert Hemet police of his whereabouts or to protect Jacquelyn. Welch was able to avoid arrest until after he had impregnated Jacquelyn, more than two years after the initial report made by the teacher. A settlement, believed to be the highest ever for a single victim of sexual abuse in California, compensated Jacquelyn for her horrible abuse and led to significant changes within the Riverside County Department of Public Social Services, including the resignation of its director.

**Conal Doyle, Robert S. Gianelli and Joshua S. Davis**  
*Trujillo and Harden v. United Healthcare Insurance Company*

### **HELPING AMPUTEES GAIN PROSTHETIC LIMBS AFTER UNLAWFUL INSURANCE DENIALS**

This case involved protecting amputees from predatory and unlawful claims practices by the nation's largest health insurer, United Healthcare. Conal Doyle discovered United would deny prosthetic limbs to amputees insured through group health plans, relying on policy language that stated, "If more than one prosthetic device can meet your functional needs, benefits are available only for the prosthetic device that meets the minimum specifications for your needs." The litigation was able to establish that United denied claims without determining and identifying an alternative device that would meet the insured's functional needs and denied claims they admitted were covered if even one of multiple component parts that comprise a prosthetic limb were deemed "not covered" by United. United's denial letters did not inform the insured that some component parts were covered or that an alternative device would be covered if requested. As a result, prosthetic claims nationwide were denied or delayed, leaving amputees with valid insurance coverage unable to ambulate without the use of a prosthetic limb. The case involved complex legal and factual issues and was vigorously defended. It was settled the week prior to trial after the plaintiff's legal team had expended more than 2,000 hours on the case. The litigation was a team effort- Rob Gianelli and Josh Davis took the lead on the legal and class issues, while Conal Doyle secured the deposition testimony establishing the unlawful claims practices. This litigation forced United to change its unlawful claims practices and reprocess more than 1,000 prosthetic claims that had been denied over a five-year period, giving it a significant impact on amputee healthcare nationwide.

**Thomas J. Johnston and Donald G. Liddy**  
*Annocki v. Peterson Enterprises, LLC dba Geoffrey's Malibu, et al.*

### **ESTABLISHING PRIVATE PROPERTY OWNERS' DUTY TO WARN OF DANGEROUS CONDITIONS ON PUBLIC PROPERTY**

After having dinner at Geoffrey's Malibu restaurant, Terry Turner, a tourist from Oklahoma, left the restaurant by driving the wrong way onto the Pacific Coast Highway, which is a one-way highway in front of the restaurant. Joseph Annocki, 41, was riding his motorcycle in the proper direction and attempted to avoid Turner, but he fell from his motorcycle and was killed. The attorneys contended that either the restaurant or Caltrans should have warned customers about the dangerous driveway leading to the one-way highway, but the restaurant contended they were a private business and did not have to warn of dangerous conditions on public property. Caltrans contended the one-way highway was not dangerous because the median dividers along the highway were sufficient to warn customers leaving Geoffrey's of the one-way traffic and that another sign would not have made a difference. The original lawsuit was dismissed, but a unanimous Court of Appeal reversed that decision, finding that Geoffrey's Malibu had a duty to warn its customers of the one-way highway and had notice of the danger, particularly because of nighttime conditions, the likelihood of serious injury, the configuration of Geoffrey's Malibu's driveway and the fact that customers are served alcohol. In one of the most significant published opinions regarding roadway safety in the last 20 years, California law was changed by establishing that a private property owner has a duty to warn of known dangerous conditions on public property. The case then went to trial and a Los Angeles Superior Court jury awarded damages to Annocki's parents, finding Turner 50% at fault, Geoffrey's Malibu 35% and Caltrans 15% (Caltrans had agreed to a settlement before the trial). This seven-year legal battle resulted in additional protection for all California consumers.

*Consumer Attorneys of California is a professional organization of plaintiffs' attorneys representing consumers seeking accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.*

**For more information:**

**J.G. Preston, CAOC Press Secretary, 916-600-9692, [jgpreston@caoc.org](mailto:jgpreston@caoc.org)  
Eric Bailey, CAOC Communications Director, 916-669-7122, [ebailey@caoc.org](mailto:ebailey@caoc.org)**