

Navigating the Way Forward While Keeping Our Values

By Geoffrey S. Wells



The coming year is going to be one that will challenge us and, more importantly, the people we represent. As we navigate this year at the state level, let us always remember to keep our values: the values of honesty, integrity, civility, and decency. I believe these values matter, and they're going to be tested in California and in our country this year. Within a few days of returning from our CAOC winter conference in Maui, we were already faced with a number of concerning proposals being floated by city and county attorney groups seeking to put a cap on your clients' damages for cases against governmental entities. The US Chamber of Commerce has come out with another misleading article about the tort system and its costs to society.

It is important to remember that the balance of fairness and risk to the victims of negligence and abuse is a vital one. In order to respond to these threats, let's take a moment to review Proposition 51 (passed in 1986) and its history to see how we arrived at where we are today. As many of you might recall, Prop 51 was the so-called deep pockets initiative that sought to do away with joint and several liability for non-economic human damages. Lobbyists for the insurance companies spent millions of dollars telling the public that your clients were being unfairly compensated for non-economic damages from a defendant who was only responsible for part of the victim's injuries. The public opinion on this issue went against the plaintiffs under

a belief that it was unfair to hold a solvent defendant liable beyond their portion of fault for the injuries and harms suffered by your clients. Under current law (after enactment of Prop 51), joint and several liability only exists for economic damages, meaning a plaintiff can hold a defendant legally responsible for those damages even if that particular defendant was only partially liable. Defendants are only liable for non-economic damages in proportion to their percentage of fault. This involves an important public policy decision about who should bear the risk of a defendant who doesn't have enough insurance and/or assets to pay its share of the non-economic damages in a case. Question: Should it be
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CAOC Partnership with United Policyholders and How You Can Help California Fire Survivors!

CAOC is partnering with United Policyholders (UP), a non-profit 501(c)(3) organization, so trial lawyers can provide pro bono support and other services to fire survivors. UP has over three decades of experience providing guidance and advocacy support to wildfire-impacted households across California through its Roadmap to Recovery® program (R2R).

How You Can Help:

- **Volunteer with UP:** We need attorneys experienced in reading and interpreting policies, counseling, and representing clients on property insurance matters. [Sign up to volunteer.](#)

- **Donate:** Make a financial contribution to CAOC's 501(c)(3) non-profit Public Interest Fund. One hundred percent of every dollar given will be used to support public interest causes related to the California fires. [Donate here.](#)
- **Spread the Word!** Share this information with your firm and peers. Visit the CAOC social media pages to share posts and resources with your community.

For additional resource links and more information on the Roadmap to Recovery Program®, [visit the CAOC website](#). This page will be updated with new information, as needed.

Resources:

- [Sign up to volunteer](#)
- [Donate](#)
- [2025 California Wildfires: Insurance Claim and Recovery Help](#)
- [First Steps After a Wildfire](#)
- [Survivors Speak: Additional Living Expense/Loss of Use](#)



Navigating the Way Forward

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the plaintiff or the solvent at-fault defendant who bears this risk? Public policy of fairness and balancing risk reveal that it is clearly the at-fault solvent defendant who should bear this risk. Let's explore why.

First, let's acknowledge that under this proposal, we are only talking about economic damages. Non-economic damages are limited to the actual percentage of fault of each defendant. So, in the context of non-economic damages, it already is the plaintiff, and not the solvent defendant, that bears the burden of an insolvent or uninsured defendant.

Second, the law already reduces all defendants' fault for the economic damages by the plaintiff (i.e. contributory negligence). So, in these cases, we are only talking about joint and several liability for the defendants' share of fault for economic damages. Additionally, a defendant only has to pay the other defendant's share when that defendant is not solvent (equitable indemnity protects/ allows a defendant to recover what it pays

under joint and several liability from the other at-fault defendants). Many public entities today have or should have express indemnity agreements with its independent contractors and subcontractors as protection for economic damages provided to an injured party.

Clearly, the only issue is what happens to the collectability of economic damages when one defendant is solvent, and the other defendant has no coverage or is insolvent. Some insurance and governmental lobby groups are now seeking to shift this risk to cover this loss onto the plaintiff, who is the party least able to cover this loss, and place none of the risk on a solvent or insured at-fault defendant.

This would be terrible public policy. The better policy is that both plaintiff and the solvent defendant share that risk, i.e. with non-economic damages the risk is on the plaintiff, with economic damages the risk is on the at-fault, solvent, and/or insured defendant. Think about it; in these cases, the severely injured plaintiff has suffered long-term economic damages, both past and future medical bills, past and future

wage loss. Allowing a solvent at-fault defendant to walk away from these obligations places the risk on a plaintiff when they are in the most need of help and have the least ability to react to the insolvency of one or more of the defendants. As we all know, the severely injured plaintiff is in need of money to pay for past medical bills and future care that can help them get back to work and hopefully lessen their dependency on public assistance!

If you read or hear someone say that joint and several liability for non-economic damages doesn't seem fair, please respond! Remind people that this risk is already being borne by the plaintiff. Remind that person of the importance of a fair public policy on these issues that really affect the lives of our clients and their families!

Meanwhile, let's remember in California, we had a very successful election of officials who believe in the civil justice system, and support the rights of our citizens. I suggest you read the excellent article written by Lea-Ann Tratten in last month's Advocate for a thorough analysis of the election and the results.

Ms. Tratten highlights why many Democrats sat out this election. However, we had many wins in our California state Legislature with CAOC-backed candidates such as Robert Garcia in District 50 and Sade Elhawary in District 57. She also acknowledges the excellent showing of our own Kipp Mueller; even though he came up short in the vote total, I believe Kipp is in this race for the long haul and eventually will become a California Senator.

Finally, I want to acknowledge all the wonderful supportive notes, emails, and texts sent to me at least in part based on my decision to have Browne Greene swear in the executive committee and the CAOC board for 2025. I know Browne really enjoyed the moment and I feel like it gave all our members a reminder of the battles and sacrifices made by all of the past presidents and members of this association! As we navigate the way forward this year, let's keep the values of honor, civility, and decency that we hold dear as an organization. ■

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CAOC Code of Professional Conduct

In the representation of clients and otherwise in the practice of the profession as trial attorneys, CAOC members shall abide by the following principles:

1. Zealously represent the best interests of their clients within the framework of all applicable Rules of Professional Responsibility and with the highest ethical standards of the profession.
2. Not prosecute or counsel any action, or assert any claim or defense, which is false, frivolous, or wholly insubstantial.
3. Engage only in advertising that fully complies with the rules of the jurisdictions in which the member is admitted or where the advertising is placed, and not engage in any form of false, misleading, or deceptive advertising.
4. Not initiate personal contact with any injured party or aggrieved survivor, either personally or through a representative, without a specific request or for the sole purpose of attracting cases.
5. Not initiate press contact following a disaster or incident that resulted in injury or death for the sole purpose of attracting cases.
6. Not knowingly accept referral of a case that has been the subject of conduct that violates the provisions of this Code or other applicable rule.
7. Disclose and explain the fee to be charged to the client and how it is calculated; the handling of costs while the case is pending and on resolution; and, if contingent upon recovery, memorialize the fee clearly in a written fee agreement.
8. To the extent consistent with state law or Rules of Professional Conduct, ensure that all decisions to arbitrate disputes arising from contracts with clients are voluntary and that a client's judicial rights and remedies are not waived under coercion; include no pre-dispute mandatory binding arbitration clauses in agreements with clients.
9. Accept only cases and legal matters for which the attorney or co-counsel possesses the requisite knowledge, skill, time and resources to prosecute diligently and competently.
10. Disclose to clients the intention to refer their case to another attorney or to engage the services of another attorney to represent their interests.
11. Communicate promptly, frankly, and fully with clients when they inquire about their cases and at other times as appropriate to keep them informed about the progress and status of their cases.