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PUBLIC JUSTICE®

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New U.S. Supreme Court Rulings Jam the Courthouse Doors for Consumers, Employees, Others Seeking Access to Justice

The U.S. Supreme Court has just highlighted and increased the need for Public Justice's Access to Justice Campaign. In three disturbing decisions in the last two months, five members of the Court continued changing the law to benefit corporations and limit or eliminate consumers' and workers' rights.

In *AT&T v. Concepcion*, the five-member majority held that the Federal Arbitration Act of 1925 preempts—i.e., wipes out—a California Supreme Court rule barring corporations from using consumer contracts to ban class actions in cases charging companies with cheating large numbers of people out of individually small amounts of money. Public Justice is now leading the battle to prove —and educate others about—the limitations of the decision. (*See* article below.)

In *Wal-Mart v. Dukes*, the same members of the Court—Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas, Samuel Alito, and Anthony Kennedy—precluded current and former women employees of the country's largest retailer from pursuing a national class action against the company for sex discrimination in promotion and pay. In so doing, they announced new rules of law that could make it much more difficult for victims of employment discrimination—and many others—to hold corporations accountable in court. (*See* article on Page 3).

In *Pliva, Inc. v. Mensing*, again by a 5-to-4 vote, the Court declared that generic drug manufacturers cannot be sued for failing to warn patients or doctors of their drugs' dangers—even though the Court held two years ago in *Wyeth v. Levine* that name-brand drug manufacturers can be sued for failing to warn patients and doctors of their drugs' dangers. As a result, when pharmacists fill prescriptions by substituting generic drugs for name-brand drugs, as most states require them to do, consumers will be losing their rights in the process. (*See* article on Page 3.)

The United States aspires to the words inscribed on the front of the U.S Supreme Court: "Equal Justice Under Law." Public Justice is determined to preserve access to justice for all. ■

U.S. Pays $1.95 Million to Family of Late, Medically Neglected Immigration Detainee

The United States has paid $1.95 million to the daughter and estate of Francisco Castaneda, an immigration detainee who died from penile cancer that federal authorities had refused to diagnose or treat during his nearly 11 months in their custody. Castaneda died in February 2008, one year after his penis was amputated in an attempt to stop the cancer from spreading.

The payment settled a federal lawsuit alleging that Castaneda died as a result of the government's medical negligence, health care policies for immigration detainees that failed to meet correctional industry standards, and intentional disregard of Castaneda's serious medical needs. Trial had been scheduled to begin in April.

Public Justice Managing Attorney Adele Kimmel said not only does the settlement in the federal case "represent vin-

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Public Justice Leads Battle to Show Limits of *Concepcion* Ruling

The U.S. Supreme Court dealt a crushing blow to class action litigation in its April decision in *AT&T Mobility v. Concepcion,* but Public Justice and other plaintiffs' attorneys say there are limits to the ruling's reach.

According to the Court, the Federal Arbitration Act of 1925 (FAA) preempts California's *Discover Bank* rule, which, it said, would invalidate a class action ban in an arbitration clause—and could force defendants into class arbitration without their consent—even if claims brought on an individual basis would be "most likely to go unresolved." Prohibiting arbitration of a broad category of claims and

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PRESIDENT'S REPORT

Why Public Justice?

Harry Deitzler

For all of history, much of humanity has struggled against injustice, merely to survive. Over 5,000 years ago, under claim of divine entitlement, a privileged and powerful few individuals conscripted the masses to build pyramid monuments. Are we a significantly better world today?

Over the past four decades, inflation has effectively cut the minimum wage worker's buying power in half. Corporations have used bankruptcy protection to enrich their CEOs and dissolve worker pension funds. Fewer and fewer working families are provided with health insurance.

Courts abdicate their power in favor of dubious arbitration. Governments allow private companies to imprison and mistreat citizens. Class action bans in small cases prevent corporate accountability for thousands of individual wrongs.

Are we winning or losing the fight against injustice?

In 1982, Public Justice began its first major battle against injustice. As Trial Lawyers for Public Justice, we filed the case of *Anderson v W.R. Grace*, a landmark toxic tort case on behalf of eight families in Woburn, MA, whose children contracted leukemia from toxic chemicals dumped in the town's drinking water (later the subject of the bestselling book and movie, "A Civil Action").

Twenty-nine years later, with your support and assistance, we are still fighting, and winning, battle after battle in the public's interest.

There will always be a wall of injustice to overcome. Five thousand years of privileged entitlement mentality will not evaporate in our lifetimes. The seductive temptation of money and power will not suddenly disappear like the Berlin Wall. As we remove bricks from one part of the wall, those who are tempted will add bricks elsewhere.

Public Justice advocacy effectively provides judicial and public enlightenment to prevent the exploitation of power. Absent effective public interest litigation, privileged attorneys and judges in positions of power will quickly overlook the struggles of citizens in our midst. Injustice lurks in the shadows, waiting to strike whenever illumination fails.

Now more than ever, it is critically important to ensure that individuals retain the right to be heard in a meaningful forum. Without access to justice through our courts, no other safeguard protects the less fortunate among us in today's society.

Thanks to your participation and support, Public Justice will always carry the torch of enlightenment to those in power who care enough to listen and act. Public Justice matters. ■

EXECUTIVE DIRECTOR'S REPORT

The Supreme Injustice

Arthur H. Bryant

The law, as Justice Oliver Wendell Holmes said, "is not a brooding omnipresence in the sky." People create, refine, and develop it with justice as the goal. The law affects how people act and what happens to them.

That is why the U.S. Supreme Court's recent 5-to-4 decisions are so alarming. Their real-world consequences are extremely grave.

In *AT&T Mobility v. Concepcion*, the Court made it much easier for corporations to use form consumer and employer contracts to bar customers and workers from bringing class actions against them—and much harder for concerned States and attorneys to overturn class action bans and preserve access to justice. Unscrupulous corporations will be more free to—and will—cheat consumers and workers and walk away with the money. Millions, even billions, of dollars will be transferred illegally from consumers and workers to corporate wrongdoers, and few people will be able to do anything about it.

In *Wal-Mart v. Dukes*, the five-member majority essentially made it impossible for the company to be held accountable nationwide for sex discrimination against its female employees. The Court also made it much more difficult to prevent and deter corporations throughout the country from mistreating workers and discriminating against men and women on the basis of their gender, age, disability, religion, political beliefs or sexual orientation. The law will be broken, people will suffer, and companies will not be held accountable.

The practical effect of *PLIVA v. Mensing* is the most far-reaching of all. The decision endangers almost everyone in America. When generic drugs are available, over 90% of patients use them. Now, no matter what manufacturers know or when they know it, they will have little financial incentive to warn consumers of their drugs' dangers—and no obligation to compensate the people their products harm. Pharmacists substituting generic drugs for name-brand drugs will be eliminating patients' rights in the process. People will be injured and killed.

This is not the way our legal system is supposed to work. Each member of the Supreme Court is called "Justice." That is what we want them to do. In these cases, they inflicted Supreme Injustice instead. ■

U.S. Supreme Court Rules that Generic Drug Manufacturers Cannot Be Sued for Failing to Warn of Their Drugs' Dangers

In a blow to consumer claims, the U.S. Supreme Court ruled in late June that generic drug manufacturers cannot be sued for failing to provide adequate warnings of their drugs' risks.

The Court held that state failure-to-warn claims against generic manufacturers are preempted by federal law. Public Justice and the Center for Constitutional Litigation (CCL) were appellate counsel for the plaintiff, Gladys Mensing. CCL's Louis Bograd argued the case in March.

The Supreme Court decided *Pliva, Inc. v. Mensing* by a 5-to-4 vote. The majority, led by Justice Thomas, held that even though the generic drug manufacturers could have sought approval from the Food and Drug Administration (FDA) for a stronger warning label—and, indeed, were required to seek such approval—generic manufacturers' inability to unilaterally change their drugs' labels in advance of FDA approval meant that it was "impossible" for them to comply with both federal and state law.

The decision reverses the Eighth Circuit Court of Appeals, which had rejected the generic manufacturers' preemption defense. The Fifth and Ninth Circuits had also held that failure-to-warn claims against generic manufacturers were not preempted.

Joined by Justices Ginsburg, Breyer and Kagan, Justice Sotomayor wrote a dissent in *Mensing*, noting the Court's 2009 holding in *Wyeth v. Levine* that failure-to-warn claims against brand-name drug makers are not preempted.

The opposite results reached in *Mensing* and *Levine* mean that "a drug consumer's right to compensation for inadequate warnings now turns on the happenstance of whether her pharmacist filled her prescription with a brand-name drug or a generic," said the dissent. It described that and other consequences of the majority opinion as "absurd" and not what Congress intended.

For three years, Gladys Mensing took the generic drug metoclopramide to treat gastroesophageal reflux. Her physician had prescribed Reglan, the brand name version of the drug, but in accordance with Minnesota law, her pharmacy filled the prescription with the generic form.

Mensing's long-term use caused her to develop tardive dyskinesia, a disabling, Parkinson's Disease-like disorder.

The Supreme Court's decision does not address whether plaintiffs like Mensing may be able to recover from the makers of their drugs' brand-name versions. Some courts have held that plaintiffs who are given generics have viable claims against the brand-name manufacturers, although other courts (including the Eighth Circuit in *Mensing* itself) have rejected such claims.

Public Justice's Claire Prestel and Leslie Brueckner were Mensing's co-counsel with CCL. Co-counsel in the Supreme Court also included Michael Johnson and Lucia McLaren of Goldenberg & Johnson, P.L.L.C. in Minneapolis and Daniel McGlynn of McGlynn, Glisson & Mouton in Baton Rouge, LA. In a second case that combined with *Mensing* before the Court, the plaintiff was represented by Richard Tonry, II, Raymond Binson, Brian Glorioso and Kristine Sims, all of Tonry, Brison & Glorioso, L.L.C. in Slidell, LA. ■

High Court Blocks Class Certification in Wal-Mart Bias Case

The U.S. Supreme Court dealt a stunning blow to employment discrimination class actions in June, rejecting class certification for a group of more than 1 million female workers who alleged gender discrimination by Wal-Mart, the nation's largest employer.

An *amici* brief by Public Justice, the National Association of Consumer Advocates, and the National Consumers League supported the women.

Writing for a 5-4 majority, Justice Antonin Scalia said that the plaintiffs had failed to offer "'significant proof' that Wal-Mart 'operated under a general policy of discrimination,'" which he said was necessary in discrimination cases to satisfy the "commonality" requirement for class certification under federal rules governing civil procedure.

Justice Scalia stated that the plaintiffs' evidence of Wal-Mart giving discretion to local supervisors over employment matters was "[o]n its face . . . just the opposite of a uniform employment practice that would provide the commonality needed for a class action; it is a policy against having uniform employment practices."

All three female justices—Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan—along with Justice Stephen Breyer dissented from that part of the opinion. Justice Ginsburg wrote that the plaintiffs' evidence showed that "gender bias suffused Wal-Mart's company culture." Justice Ginsburg noted that due to people's unconscious biases, "[t]he practice of delegating to supervisors large discretion to make personnel decisions, uncontrolled by formal standards, has long been known to have the potential to produce disparate effects."

But the Court held unanimously that the plaintiffs' "claims for back pay were improperly certified under Federal Rule of Civil Procedure 23(b)(2)." The Court explained that Rule 23(b)(2) "does not authorize class certification when each class member would be entitled to an individualized award of monetary damages."

Public Justice's brief before the Court had argued that a restrictive interpretation of Rule 23 would effectively strip the ability of many workers and consumers to seek redress for corporate wrongdoing.

Monique Olivier of Duckworth Peters Lebowitz Olivier LLP in San Francisco, CA authored Public Justice's brief, with input from Public Justice Senior Attorneys Victoria Ni and Paul Bland, and Executive Director Arthur Bryant. Co-counsel on the brief were James Sturdevant of San Francisco, CA, and Tracy Rezvani and Karen Marcus of Finkelstein Thompson, LLP in Washington, DC. ■

Justices Unanimously Overturn Fifth Circuit's Rulings Limiting Court Access in Securities and Civil Rights Cases

Despite announcing key decisions this term that strip or limit plaintiffs' access to the courts, the U.S. Supreme Court issued two unanimous decisions in early June overturning Fifth Circuit decisions limiting securities and civil rights plaintiffs' access to the courts, as Public Justice *amicus* briefs urged.

In *Erica P. John Fund v. Halliburton*, investors alleged that the energy conglomerate had misrepresented its earnings to inflate its stock price. When the company corrected the misstatements, its stock price dropped. Investors brought a securities fraud class action and moved for class certification.

Both the district court and the Fifth Circuit Court of Appeals denied class certification on the grounds that plaintiffs had to show that Halliburton's misrepresentations caused their loss at the certification stage—even though no other circuit requires that until summary judgment or trial. The Supreme Court overturned the Fifth Circuit's ruling, removing a nearly insurmountable burden for plaintiffs at the class certification stage.

In another Fifth Circuit case, Ricky Fox, a candidate for police chief of Vinton, LA, sued the incumbent chief for allegedly launching an intimidation campaign against him. When Fox voluntarily dismissed his federal civil rights claim, the defendant sought attorneys' fees on the ground that the claim was frivolous. The Fifth Circuit granted the entire amount of the defense fees incurred in *Fox v. Vice*.

Public Justice and other public interest groups argued that the Fifth Circuit's rule would profoundly affect plaintiffs' ability to vindicate their federal civil rights. The Supreme Court held that when a civil rights plaintiff's suit involves both non-frivolous and frivolous claims, a court may only award attorneys' fees to a prevailing defendant to the extent the fees requested would not have accrued "but for" the frivolous claims. The Court's opinion, written by Justice Kagan, explained that the Fifth Circuit's ruling would grant a windfall to those defendants facing a frivolous claim intertwined with meritorious ones.

In *Halliburton*, Charles Pearsall Goodwin of Berger & Montague, P.C., in Philadelphia, was the lead author of Public Justice's *amicus* brief, with assistance from Yael May, also of Berger & Montague, P.C.; Lisa M. Mezzetti and S. Douglas Bunch of Cohen Milstein Sellers & Toll, PLLC, in Washington, DC; Public Justice Brayton-Thornton Attorney Melanie Hirsch; and Public Justice Executive Director Arthur Bryant.

The *Fox amici* brief was written by Andrew G. Celli, Jr., O. Andrew F. Wilson, and Debra L. Greenberger of Emery Celli Brinckerhoff & Abady LLP, in New York, NY, on behalf of a coalition of groups including Public Justice, American Civil Liberties Union, Americans United for Separation of Church and State, Impact Fund, Lawyers' Committee for Civil Rights Under Law, The Legal Aid Society, National Employment Lawyers Association, National Fair Housing Alliance, and People For the American Way. Public Justice's Senior Attorney Vicky Ni and Hirsch provided input on the brief. ■

State Claims Still Possibility after Climate Change Ruling

A potentially blockbuster climate change case in the U.S. Supreme Court turned out to be a loss for environmentalists without being a big win for industry.

Several states and land trusts had filed suit against five major power plants to limit carbon dioxide emissions, relying on federal and state common law on public nuisance. Those power plants collectively account for 10% of the United States' carbon dioxide emissions.

In June, the Supreme Court held in *American Electric Power Co. v. Connecticut* that the Clean Air Act—and the Environmental Protection Agency's (EPA) authority to regulate greenhouse gas emissions under that Act—displaces the states and land trusts' federal common-law claims. The district court had dismissed the case on the grounds that it presented a political question that was up to Congress to resolve, not the courts. The Second Circuit reversed and had allowed the case to proceed.

To support the plaintiffs, Public Justice had filed an *amicus* brief on behalf of some of the nation's leading climate scientists to show that, if the Court followed its decision in *Massachusetts v. EPA*—which held that the Clean Air Act covers greenhouse gas emissions and allows states to challenge EPA's refusal to regulate greenhouse gas emissions—it would find that the plaintiffs had the kind of injuries needed to give them standing to bring the case.

The Court affirmed, by an equally divided court, that the plaintiffs have standing to pursue their claims—a finding urged by Public Justice's *amicus* brief. Had Justice Sotomayor not recused herself from the case (she had heard oral argument while on the Second Circuit), there likely would have been a 5-4 majority opinion holding that at least some of the plaintiffs have standing to bring common-law nuisance claims.

If Congress were to prevent EPA from carrying out its Clean Air Act mandate, the plaintiffs could potentially reinstate their federal common-law claims.

Moreover, the Court's decision does not rule out future global warming lawsuits based upon state claims. Though the plaintiffs cannot continue to bring their federal nuisance claims, the Court did not dismiss their state nuisance claims. As in tobacco litigation, the challenge remains to find a claim that will bring to justice the companies that put profits before people and, in this instance, the planet. ■

Public Justice Challenges Banks' Preemption Argument

In two new cases, *De la Cruz v. Wachovia Dealer Services* and *Epps v. JPMorgan Chase Bank*, Public Justice is continuing its challenge to national banks' argument that they are exempt from compliance with state consumer protection laws.

In both cases—*Epps* in the U.S. Court of Appeals for the Fourth Circuit and *De la Cruz* in the California Court of Appeal—consumers purchased vehicles from car dealerships under retail installment contracts. Shortly after the sale, the dealerships assigned the consumers' contracts to national banks. When the consumers became unable to make payments and defaulted, the banks repossessed.

But the banks' post-repossession notices failed to comply with state laws that provide crucial protections to consumers when a creditor is trying to collect its debt. In both cases, after consumers brought suits on behalf of a putative class, the banks argued that they did not need to comply with these debt collection laws because the National Bank Act (NBA) and a regulation from the Office of the Comptroller of the Currency (OCC) preempt such state laws.

Public Justice contends that preemption is not warranted in either case, for two key reasons. First, the lenders in both cases contractually agreed to comply with state law when they purchased the consumer contracts from the dealerships, and federal law does not preempt a party's voluntarily assumed contractual obligations. In essence, the banks seek to collect deficiency judgments from consumers—a right created by state law—without having to meet the obligations on which that right is conditioned.

Second, the banks' preemption arguments fail to recognize that the NBA and the OCC regulation govern only a bank's ability to *lend;* under both the OCC regulation and more than a century of Supreme Court precedent, state *debt-collection laws*, like the ones at issue in *Epps* and *De la Cruz*, are not preempted.

Epps and *De la Cruz* are the most recent efforts in Public Justice's fight against banking preemption, which began in 2007 with *De la Cruz v. WFS Financial*—in which the lender agreed to forgive over $34 million in debts after Public Justice successfully sought review by the California Supreme Court—and continued with *Aguayo v. U.S. Bank*, argued in the Ninth Circuit in February 2011.

In *Epps*, Public Justice Senior Attorney Paul Bland and Brayton-Thornton Attorney Melanie Hirsch are counsel, along with Scott C. Borison of the Legg Law Firm, LLC, in Frederick, MD; Peter Holland of the Holland Law Firm, P.C., in Annapolis, MD; and Jane Santoni of Williams & Santoni, LLP, in Towson, MD.

Hirsch is also counsel for the plaintiffs in *De la Cruz*, along with Public Justice Staff Attorney Claire Prestel; Andrew J. Ogilvie and Carol McLean Brewer of Anderson, Ogilvie & Brewer LLC, in San Francisco; and Michael E. Lindsay in San Diego. ■

Concepcion

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imposing class-wide arbitration against the parties' consent was inconsistent with—and thus preempted by—the FAA, said the Court.

In the wake of *Concepcion*, corporate defendants have asked many courts to reexamine their prior decisions invalidating class action bans, arguing that *Concepcion* requires the enforcement of any contract term banning class actions, no matter what the evidence in the case would show or what state law is at issue.

But the Court did not hold that the FAA requires a court to enforce a class action ban in an arbitration clause where the factual record proves that the term would effectively preclude consumers or employees from vindicating their statutory rights. Indeed, in order to so hold, the Supreme Court would have had to overrule decades of its own precedent making clear that arbitration clauses are only enforceable so long as the parties can effectively vindicate their rights.

Public Justice has argued in a number of cases that courts should harmonize *Concepcion* with the Supreme Court's extensive case law on vindication of rights by leaving in place state laws that limit class action bans in particular circumstances where the evidence shows such an effect.

In addition, the Court did not hold that corporations can ban all class actions brought under federal law. *Concepcion* addressed whether the FAA preempts particular rules of state law; the FAA does not preempt other federal laws. That is significant because several federal courts have held that class action bans violate the FAA when, for example, the costs or claims involved—like antitrust claims that would require expensive and complex expert testimony—preclude individual litigation.

Furthermore, Public Justice attorneys say there are strong arguments that *Concepcion's* holding should not apply in state court. Justice Thomas, who provided the critical fifth vote in the decision, has maintained in five separate cases that the FAA does not apply to cases in state court. Observers say that if *Concepcion* had come to the Supreme Court from state court, Justice Thomas would likely have voted against preemption—and at least one federal district court has already recognized that *Concepcion's* preemption holding is likely limited to cases which, like *Concepcion* itself, arise in federal court.

Since the ruling, Public Justice has joined a nationwide effort to decipher the implications of *Concepcion*. A variety of resources, including a memorandum about those legal arguments and links to briefs and decisions filed since *Concepcion*, can be accessed on the Public Justice website, www.publicjustice.net.

Public Justice had filed an *amicus* brief in *Concepcion* opposing federal preemption. The brief was authored by Staff Attorney Leslie Bailey with input from Senior Attorney Paul Bland, Budd-Kazan Attorney Matt Wessler, Brayton-Thornton Attorney Melanie Hirsch, and Executive Director Arthur Bryant. ■

Public Justice Urges Arizona Supreme Court to Protect Class Members from Statute of Limitations When Class Action Pending

As part of its fight to preserve class actions, Public Justice has filed an *amicus* brief urging the Arizona Supreme Court to adopt a crucial protection for absent class members.

Under federal rules governing class actions, as explained by the U.S. Supreme Court in *American Pipe & Construction Co. v. Utah*, the filing of a class complaint tolls the statute of limitations for absent class members until class certification is denied. Essentially, *American Pipe* means that absent class members do not lose their ability to bring a lawsuit due to a statute of limitations while a putative class action is pending.

In *Albano v. Shea Homes Limited Partnership*, the Arizona Supreme Court is now deciding whether it should adopt the *American Pipe* rule. Public Justice argues in its brief that without such a rule, the promise of the class action device is thwarted because individuals will be forced to file separate suits to preserve their rights.

In 2003, in a separate case called *Hoffman v. Shea Homes Limited Partnership*, a number of homeowners in an Arizona subdivision brought a class action against the developer for defective construction. The plaintiffs filed an untimely motion for class certification more than two years later; the trial court denied that motion as well as a motion to add 86 new plaintiffs who sought to intervene.

Alfred Albano, along with numerous other individuals who had been denied the right to intervene in *Hoffman*, brought their own suit in November 2007, which the defendants removed to federal court. In its ruling, the federal district court applied a modified version of *American Pipe*: it held that because of the delay in filing for class certification in *Hoffman*, Arizona's eight-year statute of repose for real-estate developers should only be tolled beginning from the date the *Hoffman* plaintiffs filed their motion for class certification, not the date they filed the class complaint. As a result, the *Albano* complaint—which would have been timely if the statute of repose was tolled starting from the filing of the complaint—was deemed untimely, through no fault of the *Albano* plaintiffs.

On appeal, the *Albano* plaintiffs argued that the district court had erred in failing to toll the statute of repose for the entire pendency of the *Hoffman* litigation. The Ninth Circuit certified to the Arizona Supreme Court the question of whether and how Arizona would follow *American Pipe*.

Public Justice's brief was written by Francis J. Balint, Jr., and Kevin R. Hanger of Bonnett, Fairbourn, Friedman & Balint, P.C. in Phoenix, AZ. Public Justice's Brayton-Thornton Attorney Melanie Hirsch and Senior Attorney Paul Bland provided assistance. ■

Ohio Whistleblower's Claims Not Precluded by Decision in *Ashcroft v. Iqbal*, Argues Public Justice Sixth Circuit Appeal

A whistleblower who says he was fired after objecting to employment discrimination at an Ohio shipping company is entitled to have his federal claims heard, argues an appellate brief filed by Public Justice as part of its *Iqbal* Project.

Eugene Rhodes, an experienced management executive at Ohio-based R+L Carriers and its sister companies, was fired after only eight months on the job, despite his highly rated performance and 34 years in the industry.

In a lawsuit filed in federal district court last year, Rhodes said he witnessed discrimination against R+L employees, but when he objected, was told by upper management that R+L would not change because the company "had never had to write a big enough check" to make complying with anti-discrimination laws worth the trouble.

The district court dismissed Rhodes's claims before discovery, holding that they failed to meet the pleading standard announced by the U.S. Supreme Court in *Ashcroft v. Iqbal*.

In its appeal to the Sixth Circuit, Public Justice argues that Rhodes's complaint met the pleading requirements of the Federal Rules of Civil Procedure because it gave the defendants fair notice of his claims and is supported by well-pleaded factual allegations that make the claims plausible on their face. The brief also argues that Rhodes cannot be required to plead facts obtainable only through discovery or more facts than are necessary to state a plausible claim.

Rhodes's appeal has won *amicus* support from other groups committed to ensuring that employment discrimination and retaliation plaintiffs still have access to justice. The National Employment Lawyers Association and AARP have asked the Sixth Circuit for permission to participate as *amici curiae* in the case, and the Equal Employment Opportunity Commission also filed a friend-of-the-court brief urging the Sixth Circuit to reverse the dismissal of Rhodes's claims.

Public Justice Staff Attorney Claire Prestel, Senior Attorney Paul Bland, and Brayton-Thornton Attorney Melanie Hirsch are lead counsel on the appeal; Jon Allison and Randy Freking of Cincinnati's Freking & Betz, LLC are lead trial counsel. ■

Public Justice Joins Suit on Behalf of Former Immigration Detainee Severely Brain Damaged from Medical Neglect

Public Justice recently joined another lawsuit to protect immigration detainees' right to receive adequate medical care while in custody. Prathees Murugesapillai, a 28-year-old native of Sri Lanka, suffered severe brain damage and can no longer care for himself, as a result of receiving grossly inadequate medical care for meningitis at both the detention facility where he was held and at a hospital where he was provided treatment.

The lawsuit, originally filed in 2009, asserts civil rights and medical negligence claims against those responsible for Murugesapillai's catastrophic injury—including the United States; the Los Angeles County Sheriff's Department (Sheriff's Department) and a county medical provider; Antelope Valley Hospital (AVH); a physician who treated Mr. Murugesapillai at AVH; and the physician's employer.

Mr. Murugesapillai came to the United States in 2007 seeking political asylum and to escape persecution and torture by the Singhalese majority in Sri Lanka; he is an ethnic minority of Tamil descent. Immediately upon entering the United States, Immigration and Customs Enforcement (ICE) detained him and placed him in custody at the Mira Loma Detention Facility in Lancaster, CA.

The Sheriff's Department operates Mira Loma pursuant to an agreement with the federal government and provides only limited medical services to detainees. There is no doctor at the facility. And the nurses are not allowed direct contact with patients during sick call. Instead, they provide care through a bank teller-type window that prevents them from physically examining patients and taking their vital signs. This, of course, makes it very difficult to diagnose meningitis—a potentially deadly illness that is common in a custodial setting.

To make matters worse, the facility is severely understaffed. On the date that Mr. Murugesapillai began to complain about an unremitting headache and body aches, a single nurse saw between 100 and 165 detainees in a three-hour period. Despite his going to sick call five times in a two-week period to complain about his condition—which had not responded to the Motrin and cold medicines that had been dispensed to him—no one ever checked his vital signs or performed any tests to rule out meningitis.

On March 4, 2008, the day after his last visit to "sick call," Mr. Murugesapillai suffered a seizure and was sent to the emergency room at AVH. He was treated for meningitis and a brain abscess at the hospital, but, according to AVH's own medical expert—a very prominent neurosurgeon—Mr. Murugesapillai's treatment fell below the accepted standard of care. The day after he arrived at AVH, Mr. Murugesapillai suffered a brain herniation, underwent a craniotomy, and suffered permanent brain injuries.

After several weeks at AVH, Mr. Murugesapillai was transferred to a rehabilitation hospital, had to endure further brain surgery at yet another hospital, and was then transferred to a federal detention facility in Florida. On March 11, 2011, ICE released Mr. Murgesapillai from detention, dropping him at a homeless shelter in New Jersey. His brother, Ramesh—a legal resident—removed him from the homeless shelter and became his primary caregiver.

Mr. Murugesapillai requires 24-hour-a-day care now and takes six different types of prescription medicine each day to survive. He was completely healthy when he entered the United States and was taken into custody.

Mr. Murugesapillai is represented by Conal Doyle of Willoughby Doyle LLP in Beverly Hills, CA, lead counsel; Thomas M. Dempsey of the Law Offices of Thomas M. Dempsey in Beverly Hills, CA, co-counsel; and Public Justice Managing Attorney Adele Kimmel, co-counsel. ■

Neglected Detainee

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dication for the Castaneda family," but the Castaneda case helped shed light on serious problems regarding the medical treatment of immigration detainees.

To settle a class action lawsuit by detainees, the U.S. government agreed in December 2010 to specific improvements in medical care at the San Diego Correctional Facility, where Castaneda had been detained for eight months. Since then, the government has changed the policies nationwide so that all detainees will get better care.

"Mr. Castaneda had hoped that his case would lead to better health care for immigration detainees," said Kimmel, co-lead counsel for the Castanedas. "His family is taking some comfort in knowing that his ordeal has made a difference."

The settlement in *Castaneda v. United States* was approved by the federal district court in Los Angeles and resolved the Castanedas' claims against the United States and federal employee George Molinar, who was the Immigration and Customs Enforcement officer-in-charge at one of the federal detention facilities where Mr. Castaneda was held.

"This historic settlement is recognition by our government that every human life has value," said Conal Doyle, co-lead counsel for the Castaneda family. "Mr. Castaneda's story has been a catalyst for the reform of immigration detainee healthcare and has therefore impacted the human rights of people worldwide."

Though the settlement brings an end to a four-year pursuit of justice from the United States, the Castanedas continue to seek justice for the grossly inadequate medical care Mr. Castaneda received while in California's custody. Last November, a Los Angeles jury awarded $1.73 million to Castaneda's daughter and estate in a wrongful death claim against the State of California. That verdict is currently on appeal. The Castanedas also have a federal case pending against California medical personnel, which is on hold until the state court appeal is resolved. ■

Auto Window Safety Preemption Victory, Battle Continues

In two separate cases, Public Justice is fighting to make it easier for personal injury victims to hold car makers accountable when they fail to use the safest type of window materials in the side windows of passenger vehicles.

In *Bernal v. Daewoo*, an Arizona federal district court in June rejected a car maker's argument that federal law preempts tort claims alleging that a car was defective because its side windows were made of tempered glass, which shatters on impact, rather than laminated glass, which holds together in the event of a crash, thereby preventing passenger ejections.

This ruling signals a potentially major shift in the law of auto safety preemption. A host of courts have disagreed about whether window-glazing claims are preempted, but the tide may have turned when the U.S. Supreme Court decided *Williamson v. Mazda* this spring, a seminal ruling that rejected federal preemption in a case involving a different—but similar—auto safety standard.

Public Justice contends that *Williamson* removes any doubt that window-glazing claims are not preempted by federal law, and the Bernal court agreed, signaling that the law in this area will increasingly favor auto-injury victims.

In a second case, Public Justice recently filed an opening brief in a products liability lawsuit by the mother of James Priester, a South Carolina man who was killed in 2002 after being ejected from the window of a 1997 Ford F-150.

Ford had chosen not to install laminated glass, the safest window material, because it was more expensive, but then argued that Mary Priester's state law tort claim is preempted by Federal Motor Vehicles Standard 205, which gives car manufacturers the choice of tempered or laminated glass. To encourage optimal safety, however, the government has extolled the benefits of laminated glass; but Ford still chose tempered for the F-150.

The state Supreme Court had ruled in 2010 that federal standards preempted Ms. Priester's state claims, but at Public Justice's urging, the U.S. Supreme Court reviewed the decision and, last winter, ruled against preemption.

Senior Attorney Leslie Brueckner and Budd-Kazan Attorney Matthew Wessler have led Public Justice's efforts on both cases. Julio Zapato of Phoenix, AZ, is lead trial counsel in *Bernal*. Mary Priester's South Carolina trial counsel are Darrell Johnson, Jr., and James Richardson, Jr. ■

CASE UPDATES

Here are the latest developments in other Public Justice cases:

CIVIL RIGHTS

Argueta v. U.S. Immigration and Customs Enforcement (NJ)
In an *amici* brief filed in the Third Circuit Court of Appeals, Public Justice joined other civil rights groups in arguing that the plaintiffs, whose homes were raided by ICE, adequately alleged constitutional claims against high-ranking ICE officials. **On June 14, 2011, the Third Circuit held that the plaintiffs' claims against the high-ranking defendants should have been dismissed.** Professor Alex Reinert of the Benjamin N. Cardozo School of Law in NY authored the *amici* brief on behalf of Public Justice, The Pennsylvania Institutional Law Project, and the Prisoners' Rights Project of the Legal Aid Society of the City of New York.

Banderas v. United States (CA)
This is a Federal Tort Claims Act case on behalf of a former federal immigration detainee who received such grossly inadequate medical care for a diabetic foot wound that doctors recommended amputating his right leg to save his life. **Trial is scheduled to begin on July 12, 2011.** Conal Doyle in Beverly Hills, CA, is lead counsel; Public Justice's Adele Kimmel and Goldberg Attorney Amy Radon are co-counsel.

Browning v. Angelfish Swim School, Inc. (FL)
In this case before Florida's Third District Court of Appeal, Public Justice filed an *amici* brief opposing the defendant's proposed rule for determining the adequacy of a class representative, which would require class plaintiffs to demonstrate their ability to finance the entire cost of class litigation, rather than merely a pro rata share. This rule, Public Justice argued, would limit class actions to the wealthy, who have the least need of them. On April 6, the appeals court **reversed the trial court's order certifying the class**, on the grounds that the class representative was inadequate. Public Justice's brief was authored primarily by Brian W. Warwick and Janet R. Varnell in The Villages, FL, with assistance from Public Justice Brayton-Thornton Attorney Melanie Hirsch.

Turner v. Association of American Medical Colleges (CA)
In an *amici* brief, Public Justice joined a coalition of public interest groups urging the California Court of Appeal to affirm the trial court's refusal to grant the prevailing defendant's request for a $1.6 million attorneys' fee that would have been financially ruinous for the plaintiffs. On March 24, the court—as we had urged—**affirmed the trial court's decision rejecting the defendant's request for attorneys' fees**. The *amici* brief was written by Paula Pearlman of the Disability Rights Legal Center and Peter Roan and Jade Chien of Locke Lord Bissell & Liddell LLP, on behalf of Public Justice, the Disability Rights Legal Center, the Disability Rights Education and Defense Fund, Inc., and the Legal Aid Society-Employment Law Center.

CONSUMER RIGHTS

Betts v. McKenzie (FL)
This is a putative class action alleging that a payday lender violated Florida law by charging usurious rates. In January,

Continued to opposite page.

Continued from opposite page.

Florida's Fourth District Court of Appeal affirmed the trial court's ruling that the defendants' class action ban and mandatory arbitration clause were unenforceable under Florida law. **The Florida Supreme Court has accepted the case for review**. Public Justice's Paul Bland and Goldberg Attorney Amy Radon are taking the lead in briefing the appeal. Co-counsel are Clay Yates in Fort Pierce, FL.; Ted Leopold and Diana Martin in West Palm Beach, FL; Chris Casper in Tampa, FL.; and Richard Fisher in Cleveland, TN.

Cárdenas v. AmeriCredit Financial Services, Inc. (CA)
In this appeal in the Ninth Circuit, an automobile finance company argues that Juan and Florencia Cárdenas can be forced to arbitrate their claims for injunctive relief, even though two longstanding decisions of the California Supreme Court provide that claims for "public injunctions" are not arbitrable. Public Justice argues that the lender waived its argument that the Federal Arbitration Act preempts these cases and that the FAA does not mandate the enforcement of arbitration agreements that strip plaintiffs of their rights under generally applicable state law. On May 20, **AmeriCredit moved for summary reversal following the Supreme Court's decision in *Concepcion***. Senior Attorney Paul Bland is lead counsel on the appeal, along with Brayton-Thornton Attorney Melanie Hirsch and Andrew J. Ogilvie and Carol M. Brewer in San Francisco.

CGI v. Rose (WA)
In this ERISA subrogation case, Public Justice represents an injured employee who has been sued by her employer-funded health insurance plan for 100% reimbursement of the medical expenses the Plan advanced in the aftermath of a car accident. The Plan claims that it is entitled to all of its money back despite the fact that Ms. Rose only recovered for a fraction of her damages. The district court held that the Plan could obtain 100% reimbursement against Ms. Rose, but that it could not prevent Ms. Rose's attorney from first deducting the costs of collection from this amount. **The parties have cross-appealed and the case is currently pending in the Ninth Circuit**. Public Justice's Matt Wessler and Leslie Brueckner are lead counsel; Seattle attorneys Mike Nelson, Paul Stritmatter, and Mike Withey, and Washington, DC attorney Caitlin Palacios are all co-counsel.

Coneff v. AT&T (WA)
This class action lawsuit charges that millions of cell phone users were misled and overcharged when Cingular merged with AT&T Wireless in 2004. The U.S. District Court for the District of Washington ruled that this case could proceed and struck down AT&T's class action ban, holding that the vast majority of AT&T's customers would never obtain justice. Public Justice attorneys Leslie Bailey and Paul Bland have taken the lead on the arbitration issue. **AT&T has appealed to the U.S. Court of Appeals for the Ninth Circuit, and the parties will shortly be briefing whether the appeal is governed by the Supreme Court's *Concepcion* decision**. Co-counsel are Kevin Coluccio in Seattle; Harvey Rosenfield of California's Consumer Watchdog; Bruce Simon and Esther Klisura in San Francisco; Paul Stritmatter in Hoquiam, WA; and other nationally recognized consumer advocates and law firms.

Cruz v. Cingular Wireless (FL)
The plaintiffs in this putative class action on behalf of Florida consumers allege that Cingular, now AT&T Mobility (ATTM), violated the state's Unfair Trade Practices Act when it imposed monthly charges for a purportedly "optional" Roadside Assistance service that the plaintiffs had never requested or enrolled in. Cingular moved to compel individual arbitration pursuant to an arbitration clause that bans class actions, and the U.S. District Court for the Middle District of Florida granted the motion. On appeal, Public Justice argues that the question of whether Cingular's class action ban violates Florida law is a controlling, unresolved state-law question that should be certified to the Supreme Court of Florida and that, if the Court does not certify the question, it should strike ATTM's class action ban as unenforceable under Florida law. **ATTM has asked the Court to dismiss the appeal, arguing that it is governed by the Supreme Court's *Concepcion* decision, and Public Justice is opposing this claim**. Public Justice's Paul Bland, Amy Radon, and Leslie Bailey are lead counsel on the appeal. Co-counsel are Scott Weinstein and Andrew Meyer in Fort Myers, FL.

Felts v. Paycheck Today (NM)
This is a putative class action challenging a payday lender's practice of violating New Mexico law by making payday loans without licenses. The payday lender moved to compel arbitration pursuant to an arbitration clause that bans class actions. The trial court denied the motion and the lender appealed. The New Mexico Court of Appeals affirmed the trial court's decision. **The New Mexico Supreme Court has granted the lender's petition for certiorari, and the case will now proceed in the state's high court**. Public Justice's Paul Bland and Goldberg Attorney Amy Radon are lead counsel on appeal. Co-counsel are Rob Treinen in Albuquerque, and Douglas Micko and Richard Fuller in Minneapolis.

Homa v. American Express (NY)
This is a class action by borrowers alleging that a credit card issuer violated New Jersey's consumer protection laws by failing to pay rebates in the manner promised in its promotional materials and contract. In 2009, the U.S. Court of Appeals for the Third Circuit held that the Federal Arbitration Act does not preempt state laws protecting consumers from abusive contract terms. **Although the case had been proceeding in the trial court for the last two years, American Express has asked the district court to hold that the Third Circuit's decision has been overturned by the U.S. Supreme Court's decision in *Concepcion*, and Public Justice is opposing**. Public Justice's Paul Bland and Matt Wessler are taking the lead in briefing the issue. Co-counsel are Gary Graifman in Chestnut Ridge, NY, and Howard Longman in New York City and Los Angeles.

Cases Updates, continued on page 10.

Case Updates, Continued from page 9.

Jenkins v. Haverford at Potomac (MD)
In this mandatory arbitration case, Public Justice represents homeowners whose newly constructed home was infested with mold that made the homeowners sick and that the builder failed adequately to remediate. The builder appealed after the trial court denied its motion to compel arbitration and, in 2010, the Maryland Court of Special Appeals granted our motion to dismiss the builder's appeal on the ground that a trial court order denying a motion to compel arbitration is not immediately appealable. **The case has now settled**. Public Justice's Claire Prestel and Paul Bland briefed the case; Prestel argued it. Co-counsel is Jane Santoni in Towson, MD.

Khan v. Dell, Inc. (NJ)
Appeal in the U.S. Court of Appeals for the Third Circuit challenging an arbitration clause as unenforceable because it requires arbitration before the National Arbitration Forum. **Public Justice Senior Attorney Paul Bland argued the case on April 29, 2011**. Bland and Brayton-Thornton Attorney Melanie Hirsch are providing strategic assistance on appeal. Co-counsel are Elizabeth Berney, Eduard Korsinsky, Scott Holleman, and Shannon Hopkins in New York.

Kucan v. Advance America; McQuillan v. Check 'N Go; Hager v. Check Into Cash (NC)
These are class actions against payday lenders who are operating without a proper license in North Carolina and are charging exorbitant interest. The trial court has finally approved a settlement of $18.75 million in *Kucan*, $14 million in *McQuillan*, and $12 million in *Hager*. **The settlements are currently being administered, and tens of millions of dollars have been paid out to the class members.** Counsel in the case are Public Justice's Paul Bland and Leslie Bailey; Jerry Hartzell of Hartzell & Whiteman; Mona Wallace and John Hughes of Wallace and Graham; Mal Maynard of the Financial Protection Law Center, all in North Carolina; Carlene McNulty of the North Carolina Justice Center; and Richard Fisher of Cleveland, TN.

Muhammad v. County Bank (NJ)
This class action against a payday lender and a bank is currently being arbitrated. **The defendants are asking the arbitrator to decertify the class, on the ground that the arbitrators' certification of a case is now rendered illegal by the Supreme Court's *Concepcion* decision.** In 2006, the New Jersey Supreme Court had struck down the defendants' class action ban as unconscionable and unenforceable under New Jersey law. Mike Quirk, formerly a staff attorney at Public Justice and now with Williams, Cuker & Berezofsky, argued the case in the New Jersey Supreme Court. Quirk and Mark Cuker of Williams, Cuker & Berezofsky are lead counsel in the case. Public Justice's Paul Bland was co-counsel.

Pendergast v. Sprint Nextel Corp. (FL)
In this appeal, the U.S. Court of Appeals for the Eleventh Circuit certified to the Florida Supreme Court four crucial questions about the enforceability of class action bans: whether Florida courts must evaluate both procedural and substantive unconscionability at the same time or whether the courts may consider them independently; whether the class action waiver provision in Sprint's contract is procedurally unconscionable under state law; whether the provision is substantively unconscionable under Florida law; and whether the provision is void under state law for any other reason. The Florida Supreme Court heard oral argument in February from lead appellate counsel Doug Eaton of Eaton Wolk in Miami and Public Justice Senior Attorney Paul Bland. **Sprint has subsequently moved for the Eleventh Circuit to rescind the order certifying the case to the Florida Supreme Court, arguing that the Supreme Court's decision in the *Concepcion* case renders Florida law irrelevant, and Public Justice has opposed that motion.** Kazan-Budd Fellow Matt Wessler is co-counsel.

Schnuerle v. Insight Communications Company (KY)
The plaintiffs in this putative class action, Kentucky consumers who allege that a cable internet provider breached its contract and violated state consumer protection laws, are appealing the trial court order enforcing Insight's class action ban and granting the corporation's motion to compel individual arbitration. The Kentucky Supreme Court ruled in Public Justice's favor in December 2010, but **Insight has moved for reconsideration in light of the Supreme Court's *Concepcion* decision**. Public Justice's Paul Bland argued the case for plaintiffs. Public Justice's brief was drafted by Public Justice's Brayton-Thornton Attorney Melanie Hirsch, Staff Attorney Leslie Bailey, Bland, and co-counsel Phillip Grossman and Jennifer Moore in Louisville.

Wallace v. Ganley (OH)
This is a putative class action filed on behalf of car buyers who, in violation of a clear Ohio regulation, were sold cars that had previously been used as rentals without ever being told of the cars' rental history. The trial court granted the defendant auto dealer's motion to compel arbitration, and Public Justice represented the plaintiffs on appeal. **On June 16, the Ohio Court of Appeals affirmed the trial court's ruling enforcing the defendant's arbitration clause and class action ban.** Public Justice's Paul Bland and Claire Prestel were lead counsel on the arbitration issue. Ronald Frederick in Cleveland was co-counsel.

TOXIC TORTS

Williams v. McDonnell Douglas (WA)
In this case, Public Justice is representing a flight attendant who suffered serious harms as a result of inhaling toxic byproducts of engine oil and hydraulic fluid. The case alleges that the aircraft's ventilation system is defectively designed under Washington law because it allows these toxic fumes to enter the cabin air supply; the defendant is arguing that the claim is preempted by the federal law. On June 27, **Brayton-Thornton Attorney Melanie Hirsch argued in opposition to the defendant's preemption motion**. Co-counsel are Alisa Brodkowitz of Seattle, Mike Withey of Seattle, and Public Justice Senior Attorney Leslie Brueckner.

Finalists Named for 2011 Trial Lawyer of the Year Award

Six teams of lawyers have been named finalists for the 2011 Public Justice Trial Lawyer of the Year Award, to be announced at the annual Gala and Awards Dinner on July 12 in New York City.

In alphabetical order by lead counsel's last name, the finalists are below.

In *Klein v. O'Neal, Inc.*, **Art Brender**, of the Law Offices of Art Brender, in Fort Worth, TX, **Dwain Dent** and **Fred Streck**, of the Dent Law Firm, also in Fort Worth, and **David Nix**, of the Nix Law Firm, in Wichita Falls, TX, won $110 million for the surviving recipients of a drug called E-Ferol, which was supposed to prevent vision impairment in premature infants but ultimately killed or injured hundreds of babies.

In *United States ex rel. Eckard v. GlaxoSmithKline*, **Neil Getnick**, **Leslie Ann Skillen**, **Margaret Finerty**, and **Richard Dircks**, of Getnick & Getnick LLP, in New York, NY, **Michael Getnick**, of Getnick, Livingston Atkinson Gigliotti & Priore, LLP, in Utica, NY, and Scott Tucker, of Tucker, Heifetz & Saltzman, LLP, in Boston, MA, argued on behalf of a whistleblower that GSK sold contaminated drugs to Medicare and Medicaid, securing $750 million for the government.

In *Kaiser Foundation Health Plan v. Pfizer*, **Thomas Greene**, of Greene LLP, in Boston, MA, **Tom Sobol** of Hagens, Berman, Sobol, Shapiro LLP, in Cambridge, MA, **Don Barrett** of the Barrett Law Office P.A., in Lexington, MS, **Linda Nussbaum** of Grant of Eisenhofer P.A., in New York, NY, **Ilyas Rona** of Greene LLP, and **Kristen Johnson Parker** of Hagens, Berman, Sobol, Shapiro LLP, won $142 million for Pfizer's fraudulent marketing of an epilepsy drug.

In *Lee v. State of Minnesota*, **Robert Hilliard**, of Hilliard Muñoz Gonzales LLP, in Corpus Christi, TX, and **Brent Schafer**, of the Schafer Law Firm, in Eagan, MN, fought for the release of Koua Fong Lee, an immigrant who was wrongfully imprisoned for a fatal car accident caused by his Toyota Camry's unintended acceleration.

In *Lavender v. Skilled Healthcare Group*, **Timothy Needham**, of Janssen, Malloy, Needham, Morrison, Reinholtsen, Crowley & Griego, LLP, in Eureka, CA, **Michael Thamer**, of the Law Offices of Michael D. Thamer, in Callahan, CA, **Christopher J. Healey**, of Luce, Forward, Hamilton & Scripps, LLP, in San Diego, CA, and **Michael Crowley**, **Patrick Griego**, and **Amelia Burroughs**, of Janssen, Malloy, Needham, Morrison, Reinholtsen, Crowley & Griego LLP, argued that Skilled Healthcare Group's nursing homes in California had failed to provide adequate staffing for residents, finally settling for $50 million and injunctive relief.

In *Keepseagle v. Vilsack*, a team of Washington, DC, lawyers – **Joseph Sellers**, **Christine Webber**, and **Peter Romer-Friedman**, of Cohen Milstein Sellers & Toll PLCC, **David Frantz**, of Colon, Frantz & Phelan, LLP, **Paul Smith**, **Katherine Fallow**, **Michael Brody**, **Jessica Amunson**, and **Carrie Apfel**, of Jenner & Block LLP, **Anurag Varma**, of Patton Boggs LLP, and **Phillip Fraas**, of Stinson Morrison Hecker LLP, as well as **Sarah Vogel**, of Sarah Vogel Law Partners in Bismarck, ND—filed a lawsuit on behalf of Native American farmers who were discriminated against by the USDA, ultimately achieving a $760-million settlement for thousands of farmers around the country. ■

Georgia Law Student Wins 2011 Hogan/Smoger Essay Contest

William R. Gignilliat, a second-year student from the University of Georgia School of Law, has been named winner of the 2011 Hogan/Smoger Access to Justice Essay Contest. His winning essay is titled, "The Gulf Oil Spill: OPA, State Law, and Maritime Preemption."

For his achievement, Gignilliat will receive a $5,000 cash prize; recognition in the *Public Justice* newsletter and on the website; publication of the essay in the Vermont Law School's online *Journal of Environmental Law*; and a free Public Justice Foundation membership for one year.

After almost 40 years, the Roscoe Hogan Environmental Law Essay Contest was renamed and its scope broadened, beginning with the 2011 competition. With additional support from former Public Justice Foundation President Gerson Smoger, the contest is now known as the Hogan/Smoger Access to Justice Essay Contest. The original contest was established in 1970 by the late Roscoe B. Hogan of Birmingham, AL, a prominent environmental lawyer. ■

Spring Phonathon Teams Score Home Runs in Chicago

Public Justice Foundation leaders and supporters converged on Chicago in early May for the annual Super Thursday Phonathon raising more than $300,000 in new and upgraded memberships and special gifts at the day-long event.

Honoring the city's favorite pastime, participants were divided into two teams named after the two professional baseball leagues.

The **National League Team**, captained by Rob Sachs, Chris Nace and Ingrid Evans, took on the **American League Team**, captained by Anne Kearse, Paul Miller and Janet Varnell, to see which team could recruit the most Foundation members and money by dialing for dollars throughout the day.

While all callers made a significant contribution by raising funds to support Public Justice's precedent-setting work, the **National League** emerged victorious, after raising the most money. Past Foundation President Al Brayton took home the Silver Phone Award for recruiting the most new and lapsed members during the Phonathon.

The Public Justice Foundation thanks all of the following Super Thursday Phonathon participants:

Michael Armitage
Al Brayton
Arthur Bryant
Joan Claybrook
Eric Cramer
Harry Deitzler
Tom Dempsey
Jeff Eisenberg
Ingrid Evans
Troy Giatras
Jeff Goldberg
Gary Gold-Moritz
William E. Hopkins, Jr.
Jack Landskroner
Ted Leopold
Christina Mancuso
Stan Marks
David Marshall
Vince Moccio
Brad Moore
Chris Nace
Stuart Ollanik
Tony Romanucci
Fred Schwartz
Tara Sutton
Richard Webster

Participated Remotely:
Vicky Ni
Rob Sachs
Rhon Jones
Steve Fineman

New and Upgraded Memberships Boost Foundation

The following Public Justice Foundation members joined us or upgraded their annual membership dues between February 16 and June 13. Members who recruited new members or upgrades are listed in italics. We are grateful for their support and extend a heartfelt thanks to them all.

Patron ($12,000)
Leonard A. Bennett (Upgrade) – *Janet Varnell*
Wolf Haldenstein Adler Freeman & Herz, LLP – *Roger Mandel*

Benefactor ($6,000)
Early, Lucarelli, Sweeney & Strauss, LLC (Upgrade)
Gwilliam, Ivary, Chiosso, Cavalli & Brewer (Upgrade)
Janet, Jenner & Suggs, LLC (Upgrade)
Mary Alexander & Associates, PC
Pitt, McGehee, Palmer, Rivers & Golden, PC (Upgrade)
Stritmatter Kessler Whelan Coluccio (Upgrade) – *Brad Moore*
The Jacob D. Fuchsberg Law Firm, LLP (Upgrade)
Whatley Drake & Kallas, LLC (Upgrade)

Sustaining Member ($1,200)
Patrick M. Ardis (Upgrade)
Howard C. Coker (Upgrade) – *Wayne Hogan*
John T. Donovan – *Rob Sachs*
J. Kent Emison (Upgrade) – *Stuart Ollanik*
Robert Langdon (Upgrade) – *Stuart Ollanik*
Timothy W. Monsees (Upgrade)
Wayne D. Parsons (Upgrade) – *Maggie Barr*
Robert L. Pottroff (Upgrade)
Edward Zebersky – *Harry Deitzler*

Supporting Member ($600)
Jason Adkins
Brent Barton (Upgrade)
Kathryn R. Bayless (Upgrade)
Michael W. Bien (Upgrade)
Michael Bogdanow
Arthur J. Bender (Upgrade)
Dwain Dent (Upgrade)
Neil V. Getnick (Upgrade)
Richard S. Gordon (Upgrade)
Laurel Halbany (Upgrade) – *Michael Armitage*
William E. Hopkins – *Rhon Jones*
Carl E. Hostler – *Troy Giatras*
Arnold Levin (Upgrade)
Christina E. Mancuso (Upgrade) – *Christina Mancuso*
Virginia Adams Marentette (Upgrade)
Gary E. Mason (Upgrade)
David A. Rosen (Upgrade) – *Al Brayton*
San Francisco Trial Lawyers Association (Upgrade)
Justin Swartz (Upgrade)
Adam G. Taub (Upgrade)
Jeanmarie Whalen (Upgrade) – *Rob Sachs*
John D. Winer (Upgrade)
Kirk Jerome Wolden

Member ($300)
Andrew A. Agard – *Wayne Parsons*
Robert Barrow – *Al Brayton*
Robert Bennett – *Vince Moccio*
Philip C. Bourdette
Daria D. Carlson – *Fred Schwartz*
Christopher Casper – *Ted Leopold*
Christopher Coffin – *Andrew Lemmon*
Vincent DeSimone
Michelle Douek – *Gary Gold-Moritz*
Jordan Elias
Cory S. Fein
Vicki L. Gilliam
Elliott A. Glicksman – *Stan Marks*
John Gsanger – *Stuart Ollanik*
Thomas L. Hamlin – *Vince Moccio*
Genie Harrison
David E. Haynes – *Christopher Nace*
Brian D. Holmberg (Upgrade) – *Al Brayton*
Richard Honaker – *Jeff Eisenberg*
Joy Howell – *Joan Claybrook*
Franklin Julian – *Fred Schultz*
Daniel M. Kopfman
Scott G. Leonard
Armand Leone
Gerald Marcus
David Markun – *Jeff Fazio*
Scott Marshall – *Stuart Ollanik*
Wallace B. McCall – *Ted Leopold*
Scott A. McGee (Upgrade)
Heather M. McKeon
Melissa Meeker Harnett
Larry G. Moore – *Jeff Eisenberg*
Simon Morrison
Edwin H. Pancake – *Harry Deitzler*
Bryan A. Pfleeger – *Michael Hingle*
Alfred Ricciardi – *Stan Marks*
Linda Fermoyle Rice
Stewart E. Richlin
Stephen Roche
Peter Rukin
Ben Salango – *Troy Giatras*
Ravi K. Sangisetty – *Christina Mancuso*
Robert L. Seegers – *Christina Mancuso*
Amy Semmel
Franklin Solomon
Rod Squires
Kevin Sturtevant
Bruce E. Thompson
Jason Tucker – *Rob Sachs*
Courtney A. Van Winkle
Jarom A. Whitehead – *Jeff Eisenberg*
John A. Yanchunis – *Andy Friedman*
Kil Huh & Jenny R. Yang – *Vicky Ni*

Associate Member ($120)
Lisa Watts Baskin – *Jeff Eisenberg*
Sarah Bendon – *Al Brayton*
Justin Berger – *Vicky Ni*
Nelson Boyle – *Jim Leventhal*
Gilbert Bradshaw – *Darrin Zabriskie*
Charley Gee (Upgrade)
Michael D. Levinson – *Al Brayton*
Christopher R. Light – *Al Brayton*
Phyra McCandless – *Al Brayton*
Briana McCarthy – *Al Brayton*
Kimberly Meyer – *Al Brayton*
Michael Miller – *Al Brayton*
Emma Nelson-Munson – *Al Brayton*
Negar Pirzadeh – *Al Brayton*
Franta Siechao – *Al Brayton*
Mona Tashroudian – *Al Brayton*

Public Interest Lawyer ($60)
Arthur Bryant
Benjamin G. Kelsen
Victoria Ni
Amy Radon

Consumer ($60)
Michelle Freudenberger – *Esther Berezofsky*
Robin Giangrande
Harvey and Gail Gold – *Gary Gold-Moritz*
Michael Gold – *Gary Gold-Moritz*
Jennifer Gotti – *Al Brayton*
Lori Longo-Mianulli – *Injury Board*
Risa H. Lower
John Scranton
Leslie B. Tate – *Christina Mancuso*

Student ($25)
Stephen Hylton
David Kurtz – *Brad Moore*
Cory Morris – *Adele Kimmel*
John Nicodemo – *Adele Kimmel*

Cy Pres Awards to Public Justice Foundation Support Key Work

Last year was a banner year in *cy pres* awards to the Public Justice Foundation, and 2011 is on the fast track toward another fruitful year. By June 15, the Foundation had received $852,053 in *cy pres* awards.

By furthering the public interest work of Public Justice, these *cy pres* distributions will support the Foundation's critical work in keeping the courthouse doors open to all.

Thanks to Board member Mona Lisa Wallace of Wallace & Graham, the Public Justice Foundation received a *cy pres* award of $499,935 in *Mills v. Hendrick Automotive Group, Inc.*

For a *cy pres* of $330,000 in *Bachow v. Swank Energy Income Advisors*, we thank Mark C. Rifkin and Board member Roger Mandel. Rifkin is with Wolf Haldenstein Adler Freeman & Herz, LLP and Mandel is with Lackey Hersham, LLP.

John W. Barrett and Board member Ben Bailey, both of Bailey & Glasser, were responsible for the Public Justice Foundation receiving $12,000 of a *cy pres* fund in *Shonk Land Company v. SG Sales Company, Inc.*

Most recently, thanks to David L. Grubb of The Grubb Law Group, we were awarded a $10,000 *cy pres* in *Spartan Class*.

Our heart-felt thanks go to all these attorneys. If you would like to find out more, please visit www.publicjustice.net and click on the button that reads "*Cy Pres* Awards," located on the right side of the page. If you are interested in designating the Public Justice Foundation as a *cy pres* award recipient, please contact Development Director Kevin Sturtevant at (202) 797-8600 or via e-mail at ksturtevant@publicjustice.net. ■

Mona Lisa Wallace

Mark C. Rifkin

Roger Mandel

John W. Barrett

Ben Bailey

David L. Grubb

Special Gifts Help Fill Critical Needs in Key Practice Areas, Fellowship Program and Foundation Projects

Public Justice and the Public Justice Foundation thank generous supporters below, who made special gift contributions since last October and on or before June 13. Their willingness to support our various projects makes a huge difference in our work.

$10,000
Edith M. Kallas (CAPP)

$5,000
Alfred M. Rotondaro (AJC)

$2,500
Kenneth Klapacz (AJC)
Jeffrey Krinsk (CAPP)
Vince J. Moccio (AJC)

$1,000
David J. Marshall (AJC)
Thomas M. Sobol (AJC)
Tara D. Sutton (AJC)

Other
MediVisuals, Inc. (AJC)
David Paris (AJC)
Joseph Shlaferman and Judith Zins (AJC)
Carl E. Hostler (AJC)
Michael L. Armitage (AJC)
Owen Solomon (AJC)
Gary E. Cantor (CAPP)
Cathy Lesser Mansfield (AJC)
Mark Baller (AJC)
John N. Ukegbu (CAPP)

Key:
AJC = Access to Justice Campaign
CAPP = Class Action Preservation Project

Make a Planned Gift to the Public Justice Foundation

A bequest is the simplest and most common form of planned giving. It's easy to include the Public Justice Foundation in your will. No matter the amount, you can trust that your legacy will generate future income—sustaining the work of the Public Justice Foundation and continuing the fight for justice for all generations. Other planned giving alternatives are also available. For more information, contact Kevin Sturtevant at (202) 797-8600 or ksturtevant@publicjustice.net. ■

State Coordinators Facilitate Involvement, Outreach

Most states have a Public Justice Foundation State Coordinator who serves as a liaison to the national board and staff. State Coordinators help us develop and seek out potential cases, recruit and involve Foundation members, and educate the public interest community about our work.

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Staff Updates

Kevin Sturtevant joined the Public Justice Foundation as Development Director at the end of March. Kevin is an experienced manager and strategist in the development arena. Prior to coming to Public Justice, he was Vice President of Development at the World Food Program USA. Before that, Kevin was Senior Vice President at Ketchum, Inc., one of the country's top development consulting firms.

Filling a new position at Public Justice, **Norma Sapp** began work as Office Manager in the DC headquarters. Norma has spent much of her career managing office operations for both non-profit organizations and for-profit companies in the Washington, D.C. area.

Legal Assistant **Yvonne Stewart** joined the Public Justice staff on March 1, bringing more than 25 years of legal experience to bear upon the law firm's docket. Previously, Yvonne worked for Williams & Connolly, the United Mine Works Health & Retirement Funds, and as a legal secretary at the recently dissolved Howrey, LLP. ■

Kevin Sturtevant

Norma Sapp

Yvonne Stewart

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National Headquarters Staff/ Public Justice

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Jim Hecker, Environmental Enforcement Director
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PUBLIC JUSTICE

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