

**PUBLIC JUSTICE FOUNDATION
REPORT TO BOARD OF DIRECTORS
SUMMER 2017**

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TAB I
Welcome and Board Meeting Agenda

**TO: PUBLIC JUSTICE FOUNDATION BOARD OF DIRECTORS &
ALL NOMINEES FOR THE 2017-2018 BOARD OF DIRECTORS**

FROM: PRESIDENT ANNE MCGINNESS KEARSE

DATE: JUNE 30, 2017

**RE: PUBLIC JUSTICE-RELATED ACTIVITIES DURING AAJ'S 2017 ANNUAL
CONVENTION IN BOSTON, JULY 23-25**

As we prepare to gather together in Boston, my tenure as President of Public Justice is also coming to a close. It truly has been a pleasure and an honor to work alongside each of you, and to lead this incredible team of such passionate advocates.

Please read this memo thoroughly, and make plans now to participate in our upcoming activities. If you have not already let staff know your plans for our meetings and events, please do so ASAP. We count on your feedback and participation to help maximize our annual events, visibility, and support at the AAJ Annual Convention. The complete meeting schedule is set forth below, but I want to specifically highlight some activities everyone needs to know about.

When you check in at the Convention, please remember to stop by Public Justice's booth in the Exhibit Hall at the Convention Center to pick up membership materials and purchase a ticket to the Gala if you have not done so already. If you have already reserved your own ticket, consider buying one for a friend, and introduce them to Public Justice. Our annual Gala – which showcases the work we do year-round – is one of the best ways to spread the word about this terrific organization. In addition to the Gala, I also hope you will each make time to arrange a few in-person meetings with prospective members while you're in Boston. If you need any help identifying or recruiting potential new supporters and members, contact Membership Manager, Maggie Barr, at 202-861-5234 or mbarr@publicjustice.net.

On Sunday, July 23, our meetings kick off with the **Executive Committee Meeting** at 10:45 am, followed by the **Class Action Preservation Project Committee Meeting & Lunch**. Both these meetings are by invitation-only. Most of our other committee meetings will take place on Monday, July 24. The **Development, Case Development, Board Development & Nominations and Members Committees**, along with those attending the **New Board Member Orientation**, will meet on Monday morning and into the early afternoon.

Our Annual Gala & Awards Dinner will take place Monday evening, July 24, at the Fairmont Copley Plaza Hotel starting at 6:30 pm. Transportation will not be provided, but the hotel is very close to the other AAJ convention hotels. We hope to have a packed house again this year. As always, we will be honoring the 2017 Trial Lawyer of the Year finalists and announcing this year's winner. We will also be honoring former Congressman Barney Frank with the Champion of Justice Award and presenting the Illuminating Injustice Award to Jessica Simpkins. Presiding over this event will be my next-to-last official duty as your President, and it is an honor to be part of this, our 35th Anniversary dinner. I hope you and your colleagues will join us for this very special event before I pass the Public Justice gavel to a good friend, Incoming President Tara Sutton, on Tuesday.

If you haven't already done so, I urge you to sponsor the Gala by completing the following form and sending it back to the DC office right away. You may also complete your sponsorship online at www.publicjustice.net. For more information on sponsorships and tickets, contact Meetings & Events Manager Susan Gombert, at 202-861-5235 or sgombert@publicjustice.net.

On Tuesday, July 25, the Annual Meeting, Election and Summer Board Meeting will begin promptly at 8:45 am. There will be coffee and a light breakfast available! The Annual Meeting and Election are first on our agenda. If you are a Board or Executive Committee nominee, please make every best effort to join us on time for the election. The Board meeting will begin as soon as the Annual Meeting and Election have concluded.

Thank you for your ongoing support of Public Justice. With your help, we can ensure that, even as our country faces immense challenges in the years ahead, this amazing organization has the resources, strategy and leadership it needs to continue making a real difference in the lives of real people.

I look forward to seeing you in Boston!

Schedule of Events

(Except where noted, all meetings will take place at the Boston Sheraton)

<u>Date</u>	<u>Meeting</u>	<u>Time</u>	<u>Location</u>
Sunday, July 23	Executive Committee*	10:45am – 12:00 pm	Hampton
	Class Action Preservation Project* <i>(lunch served)</i>	12:00 – 2:00 pm	Abe & Louie's 793 Boylston Street
Monday, July 24	Development Committee	8:30 – 9:30 am	Berkeley
	Case Development/Special Projects Committee	9:30 – 10:30 am	Berkeley
	Board Development & Nominations Committee*	10:30 – 11:30 am	Berkeley
	Orientation for New Board Members	11:30 am – 12:30 pm	Berkeley
	Membership Committee Meeting	12:30 – 1:30 pm	Berkeley
	Annual Gala & Awards Dinner	6:30 pm	Fairmont Copley Plaza Hotel 138 Saint James Avenue
Tuesday, July 25	Annual Meeting/Election & Board of Directors Meeting <i>(light breakfast served)</i>	8:45 am – 12:00 pm	Commonwealth

*By invitation only.

Annual Gala Sponsors

As of June 29, 2017

\$25,000

Robins Kaplan, LLP

\$10,000

Carella Byrne Cecchi Olstein Brody & Agnello, PC

Citi Private Bank

Conal Doyle

Epiq

GCG, Inc.

Golberg Persky & White, P.C. – Bruce Mattock

Grant & Eisenhofer, PA

Lieff Cabraser Heimann & Bernstein, LLP

Motley Rice, LLC

Varnell & Warwick, PA

Whistleblowers International

\$7,500

Angeion Group

Bailey & Glasser, LLP

Berger & Montague, PC

Emery Celli Brinckerhoff & Abady LLP

First Green Bank

Goldstein, Borgen, Dardarian & Ho and Schneider Wallace Cottrell

Outten & Golden, LLP

Rochon Genova, LLP

Rust Consulting & Kinsella Media

Terrell Marshall Law Group

Whitfield Bryson & Mason, LLP

\$5,000

Bernstein Litowitz Berger & Grossman, LLP

Cotchett, Pitre & McCarthy, LLP

Golkow Technologies, Inc.

Koskoff, Koskoff & Bieder, PC

Lisa Mezzetti

Seeger Weiss, LLP

Sokolove Law, LLC

\$2,500

Landskroner Grieco Merriman, LLC

Synergy Settlement Services

\$1,000

Bruce Braley – Leventhal & Puga, PC

CPT Group

Harry & Kathe Deitzler

eDiscovery CoCounsel, PLLC

Stephen J. Herman

TSG Reporting, Inc.



PUBLIC JUSTICE
IMPACT. CHANGE.

35th Annual Gala & Awards Dinner

The Fairmont Copley Plaza
Boston, Massachusetts
July 24, 2017

In honor of the exceptional work of Public Justice, please include me as a sponsor of the Public Justice Foundation's 35th Annual Gala & Awards Dinner:

Sponsorship Opportunities

- Titanium** - \$25,000 *includes three tables for 10, full-page ad in program book*
- Gold** - \$10,000 *includes one table for 10, full-page ad in program book*
- Silver** - \$7,500 *includes one table for 10, half-page ad in program book*
- Bronze** - \$5,000 *includes five tickets*
- Brass** - \$2,500 *includes two tickets*
- Copper** - \$1,000 *includes one ticket*
- Table Captain** - \$3,500 *includes one table for 10*

- Individual Tickets** - _____ at \$350/ticket

Program Book Ads

- \$2,500 – full-page ad (9 x 7 inches)
- \$1,000 – half-page ad (4.5 x 7 inches)

For additional sponsorship opportunities please contact Susan Gombert, Meetings & Events Manager at 202-861-5235 or sgombert@publicjustice.net. Sponsorships are tax deductible except for the fair market value of the meal, estimated at \$100 each.

Please indicate below how your sponsorship should be listed:

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Please make your check payable to the Public Justice Foundation and return to 1620 L Street, NW, Suite 630, Washington, DC 20036 or fax credit card information to 202-232-7203.

For payment using MasterCard, Visa, Discover or American Express:

CC#: _____ Exp. Date: _____

Signature: _____ Sec. Code: _____

THANK YOU!

Public Justice is a project of the Public Justice Foundation, a publicly-supported organization exempt from taxation under 501(c)(3) of the Internal Revenue Code.

**PUBLIC JUSTICE FOUNDATION
SUMMER 2017
ANNUAL MEMBERSHIP MEETING
and
BOARD OF DIRECTORS MEETING**

**Commonwealth Room
Boston Sheraton Hotel
39 Dalton Street
Boston, MA 02199
Tuesday, July 25, 2017
8:45 a.m. to 12:00 p.m. Eastern**

AGENDA

ANNUAL MEMBERSHIP MEETING

- I. Election of Officers and Executive Committee Members** – Board Development & Nominating Committee Chair Brad Moore
- II. Election of Board Members** – Board Development & Nominating Committee Chair Brad Moore

BOARD OF DIRECTORS MEETING

- I. WELCOME & INTRODUCTIONS** – President Anne McGinness Kearse (15 min.)
(See Tab I)
- II. APPROVAL OF MINUTES** – Secretary Beth Terrell (2 min.)
(See Tab II)
- III. EXECUTIVE DIRECTOR’S REPORT** – Executive Director F. Paul Bland, Jr. (10 min.)
- IV. VISIONING PRESENTATION** – Consultant Joan Garry, President Anne McGinness Kearse, and Communications Director Steve Ralls (90 min.)
- V. CASE DOCKET AND POLICY REPORT** – Executive Director F. Paul Bland, Jr. and other Public Justice attorneys (30 min.)
(See Tab III)
- VI. FINANCES AND FUNDRAISING**
 - A. Financial Report** – Executive Director F. Paul Bland, Jr. (10 min.)
(See Tab IV.A)
 - B. Development Report** – Membership Manager Maggie Barr (5 min.)
(See Tabs IV.B)
 - C. 35th Anniversary Campaign Update** – Chairman Arthur Bryant (5 min.)
 - D. Membership, Outreach & Diversity Committee** – Chair Preston Tisdale (5 min.)
(See Tab IV.C)

- VII. COMMUNICATIONS REPORT** – Communications Director Steve Ralls (5 min.)
(See Tab V)
- VIII. COMMITTEE ASSIGNMENT PREFERENCES** – President-Elect Tara Sutton (1 min.)
See the Appendix to the Board package (Tab 2) for current committee assignments. You may indicate which committees you’d like to join in the 2017-18 term by going to the members-only section of the Public Justice website, clicking on the title “Public Justice Committee Information,” and filling out the online sign-up sheet. (We are using our event software to collect this information, so you will be asked to “RSVP” for committees.) Or, email Development Program Assistant Tommy Wrenn at twrenn@publicjustice.net with your committee preferences.
- IX. RECOGNITION OF DEPARTING BOARD MEMBERS** – Senior Attorney Adele Kimmel and Chairman Arthur Bryant (5 min.)
- X. NEW BUSINESS**
- XI. CLOSING REMARKS** – President Anne McGinness Kearse and President-Elect Tara Sutton (5 min.)

TAB II
Minutes of Board and Executive Committee Meetings

**PUBLIC JUSTICE FOUNDATION
EXECUTIVE COMMITTEE MEETING**

Motley Rice, LLC
401 9th Street, NW, Suite 1001
Washington, DC 20004
Wednesday, April 19, 2017
4:00 p.m. Eastern

Dial: 1-888-450-5996; Passcode: 705090#

MINUTES

Committee members in attendance: Anne Kearse (Chair); Esther Berezofsky (by phone); Robin Greenwald; Roger Mandel; Paul Miller (by phone); Brad Moore; Michael Pitt (by phone); Bill Rossbach; Tara Sutton; Beth Terrell; and Preston Tisdale.

Staff in attendance: Paul Bland, Jaye Lopez, Vicky Ni, Steve Ralls, and Dave Seabrook.

President Anne Kearse called the meeting to order at 4:07 p.m.

I. Report on Advocacy Developments

A. Litigation Updates

Executive Director Paul Bland explained that he wanted to give updates on cases that he would likely not mention in the upcoming Board or committee meetings.

Paul said our case alleging that fracking activities in Oklahoma caused earthquakes was dismissed on abstention grounds. After careful consideration and consultation with the clients and co-counsel, we decided not to appeal. However, we do think that our lawsuit made a difference. Before we filed the case, the State of Oklahoma was not meaningfully regulating the disposal of wastes from fracking. After we filed, the State implemented some rules, and the companies implemented some voluntary changes. The frequency of earthquakes is no longer on the rise at the same remarkable rate it had been increasing at the time we filed the case. So while the court's decision is frustrating, and we still think that more can be done, we feel we made some impact. If the companies start increasing the amount of waste water they inject into the ground, we will consider re-filing the case.

Anne suggested that Paul report on the case at the Board meeting so Board members are aware of how this important case ended.

Paul reported that in a case called *Roe v. SFBSC*, for which we handled a Ninth Circuit appeal on arbitration issues, the parties have reached a settlement. However, an attorney who filed a copycat case has objected to the settlement. We believe our settlement will withstand that challenge.

We filed an amicus brief in the U.S. Supreme Court in *Bristol-Meyers Squibb Co.*, a case about personal jurisdiction over corporations doing business nationwide. Lou Bograd of Anne's firm played big role in writing that brief.

In litigation pending in a district court in Michigan, we are assisting on arbitration issues in a set of cases alleging that companies involved in the manufacture, sale, and distribution of spark plugs and oxygen sensors have engaged in anti-competitive behavior. Some of the companies' contracts had arbitration clause, while others did not. The ones who did not tried to invoke the arbitration clause of other companies. Yesterday, the district court enforced the arbitration clause at the request of the nonsignatories. If it's an appealable decision, we would like to handle the Sixth Circuit appeal. The law regarding nonsignatories had been trending favorably for consumers over the last several years, although the Fifth Circuit recently handed down a bad decision.

We handled two appeals in cases where class members allege that the manufacturer of eye drops deliberately designed their dropper to dispense more medication than is needed: *Cottrell v. Alcon Labs., Inc.*, pending in the Third Circuit, and *Eike v. Allergan, Inc.* in the Seventh Circuit. Both cases present a question of standing. Judge Posner in the Seventh Circuit recently issued a strange opinion to hold that the class representatives had no standing, analogizing our clients to cat breeders who purchased cats with finicky needs. The decision was picked up in the press, not because of the ruling itself, but because of its extended discussion about cat owners. Our petition for rehearing was also denied. We are still awaiting a decision of the Third Circuit, where class certification issues are intertwined with the standing issue. Leah Nicholls handled both appeals.

In *Cain v. Midland Funding, LLC*, we argued an unlicensed debt buyer that litigated in court before invoking its arbitration clause had waived any right to arbitration. In Maryland's highest court, we defeated the defendant's effort to force the dispute into arbitration. Importantly, the court held that our client did not have to show that the company's actions prejudiced or harmed him in order to succeed on his waiver argument (in contrast to most federal courts and several other state high courts). The defendants may well argue that the decision exacerbated a circuit split, and so there is some possibility of a *cert.* petition. While we await a potential petition, we are also exploring the possibility of a resolution.

At the suggestion of Board members Jason Lichtman and Amy Keller, Paul has been investigating whether Public Justice can fill any gaps in the fight to protect voting rights. He has talked to several people and groups who are familiar with the very large amount of work being done by other actors already (both in and out of the nonprofit sector), and so far only one possible gap in coverage has been suggested to us: county and municipal elections where college students are kept from voting. He does not think that this area is likely to lead to important impact litigation for Public Justice.

Paul mentioned two other new areas that we have been exploring. First, Paul said we have been investigating a potential debtors' prison case that Janet Varnell brought to our attention. Beth Terrell indicated that her partner Toby Marshall would be a good resource. Second, Paul said that through our experience in the *Escamilla* case (for a prisoner who was beaten to death by

jailors), we're interested in taking on some more appeals in the qualified immunity cases. Roger Mandel suggested that we speak with Tony Romanucci and the Civil Rights Section of AAJ.

B. Permission to Oppose Candice Jackson to Serve as Acting Assistant Secretary or to be Nominated as Assistant Secretary of the Office for Civil Rights

Communications Director Steve Ralls explained that he is seeking permission for Public Justice to express publicly its displeasure at the appointment of Candice Jackson as the acting head (known as the acting Assistant Secretary) of the Office for Civil Rights of the U.S. Department of Education (OCR), or, should she be nominated, to oppose her nomination as OCR's permanent head. Steve explained that the appointment of Jackson as "acting" director does not require Senate confirmation. The appointment lasts for 210 days, and she can be reappointed as "acting" director, but cannot remain "acting" indefinitely. If she were to be nominated as the permanent director, she would not have an easy confirmation process. Jackson represented a number of women who accused President Bill Clinton of sexual harassment, and then claimed that the female accusers of candidate Trump as a harasser were "fake victims." She has written books and articles advancing controversial positions, including that sexual harassment law and policies fail to acknowledge that it's difficult to define "unwanted" sexual advances, and that "college women who insist on banding together by gender to fight for their rights are moving backwards, not forwards." She claimed that, while in college, she was the victim of reverse discrimination because she is white. As head of OCR, she provides guidance on how the office will handle Title IX complaints. Our coalition partners in the Title IX arena have made public their strong objections to this appointment, and we wish to join them in these public statements.

Tara Sutton moved to permit Public Justice staff to oppose publicly the appointment of Candice Jackson as the acting Assistant Secretary of OCR, or, should she be nominated, to oppose publicly her nomination as Assistant Secretary of OCR. Beth seconded the motion.

Anne asked why it was important for staff to have this authorization when we could not affect her appointment as acting director. Steve explained that Senior Attorney Adele Kimmel is often asked in press interviews how the change in leadership in OCR will affect OCR investigation and Title IX enforcement. It's important for us to make our views known here. Robin Greenwald noted that Jackson has, in the past, thrown her support behind those critical of the Civil Rights Act.

A voice vote was taken and **the motion passed unanimously.**

Tara asked if we were going to take a position on the nomination of Carlos Muñiz for the position of General Counsel at the Department of Education. Steve explained that we were not ready to recommend that we oppose his nomination publicly. Muñiz, as a lawyer in McGuireWoods LLP, represented Florida State University in a lawsuit accusing the school's former star quarterback of raping a woman. Paul explained that he did not feel that the fact a lawyer represented a bad actor in a lawsuit was a sufficient basis upon which to oppose the lawyer's nomination. There was general agreement.

Managing Attorney Vicky Ni explained that we would be lobbying within the definition of IRS rules only where we try to influence the views of Senators on a particular nomination. We are tracking lobbying activity and the staff underwent a two-hour training on the law in this area. Vicky offered to circulate to the Committee the advice letter we received from counsel and a PowerPoint presentation from the trainer.

II. Report on Finances

Paul explained that the phonathon results and membership updates would be announced at the Board meeting.

He said that at the end of the first quarter, we have already received about \$450,000 in attorneys' fees, compared to the \$750,000 goal for the year. We have reason to think that we may receive a total of \$1.3 M in fees by the end of the year. We settled the *Escamilla* case and expect approximately \$83,000 in fees in that case. In *Aguayo*, we obtained injunctive relief for the class worth over \$30 M and the team is petitioning for \$2.5 M in fees. Public Justice's lodestar in that case was \$500,000. Environmental Enforcement Project Director Jim Hecker's *Stillhouse* victory against coal pollution is likely to produce \$250,000 in fees. Finally, in our *N&M Dairy* case, we expect to receive \$200,000 in attorneys' fees.

In the category of revenue from *cy pres* awards, we are already at 50% of our annual target. We are waiting on several big awards, and the awards in the pipeline are never guaranteed, but we seem to be on track for reaching the budgeted goal.

Paul indicated that if 2017 turns out to be a good financial year, he has been thinking about setting up special reserve accounts designated for a single purpose to reduce our future budgeted expenses. Currently, we only have a cash reserve and a Board-controlled investment reserve. There was discussion about how foundations and donors view large reserves and the extent to which a new reserve account would require Board approval. Depending upon developments, he may return with a specific proposal.

III. Visioning for the Next Four Years

Anne reported that we have hired a facilitator who specializes in working with nonprofits to help us with goal-setting, messaging, and reaching new audiences. She explained that after the November election, the Board came together in Charleston, SC, in shock, but also resolving to fight back. Soon thereafter, the Management Team asked her for permission to assemble a small group of Board members—including several Executive Committee members—to work with a facilitator on planning and visioning for the Trump term. They wanted to capitalize on the new energy and resolve in the Board and in the country to protect our country and our rights. This is a working group, to report with some recommendations to the Board.

The small group met for a day-long retreat in Washington, D.C. at the end of March, and we worked to answer questions posed by the facilitator, such as "If Public Justice did not exist, what would fill the void?" We hope to be able to report on our activities and offer some recommendations at the July Board meeting.

Paul explained that this visioning work builds on and fleshes out the mission statement created by the Strategic Planning and Structural Analysis (SPSA) Committee. Both Paul and Anne explained that Foundations, in particular, are looking for a summary document that sets out who we are and what we do. We think this visioning process will help us develop such a document.

Vicky noted that the March retreat has already led to some changes. The phonathon script was re-written to try out some of the themes surfaced during the retreat. She said staff would like to hear feedback on that script, and would like to hear if phonathon donors had positive or negative reactions to it.

IV. Update on Champion of Justice Award

Steve reported that we offered the Champion of Justice Award to a public figure, and the person is excited to accept the award absent a scheduling conflict. We should have confirmation in a few weeks. The Gala will be held on Monday, July 24.

Tomorrow, the Communications Committee will choose among the nominations for the Illuminating Injustice Award. We are pleased to have three strong nominations this year.

V. Update on Grants Officer Hiring

Development Director Jaye Lopez Van Soest reported that, after a 75-day search, we hired a new Grants Officer: June Yang, who is currently the Assistant Director for Institutional Giving at Washington Performing Arts. Previously, she was the Associate Director of Development at the University of Virginia School of Architecture Foundation. She has 15 years of grant writing experience and impressed all staff who met her during the interview process. We are thrilled she will be joining us on May 16. She will work remotely from home in Charlottesville, VA, but will visit the DC Office regularly. She will join us for the summer Public Justice events in Boston.

VI. Membership, Outreach & Diversity Committee Recommendation re Member Discount Partnership with the Alameda-Contra Costa Trial Lawyer Association

Jaye explained that the Membership, Outreach & Diversity Committee voted to recommend that the **Public Justice Foundation enter into a member discount partnership with the Alameda-Contra Costa Trial Lawyer Association (ACCTLA) for the period of one year.** Under the proposal, Public Justice and ACCTLA would offer new members the option to join each other's organizations at the following discounted rates:

ACCTLA

0-4 years in practice: \$50 (normally \$100, 50% discount)

5+ years in practice: \$95 (normally \$150, 37% discount)

Public Justice

0-4.9999 years in practice: \$30 (normally \$60, 50% discount)

5+ years in practice: \$200 (normally \$300, 33% discount)

Tara moved to adopt the Membership, Outreach & Diversity Committee's recommendation. Bill Rossbach seconded the motion.

A voice vote was taken and **the motion passed unanimously.**

Roger asked whether we had entered into such an arrangement with other bar associations, and Paul indicated that we had tried something similar with the Florida Justice Association a few years ago.

VII. Personnel Issue

The Committee then moved into Executive Session to discuss a personnel issue.

The Committee moved out of Executive Session.

Brad Moore made the following motion.

RESOLVED: The Chairman will focus exclusively on fundraising and promotion of the organization as a spokesperson under the direction of the Executive Director. The Executive Committee directs the Executive Director to develop and implement a job description for the Chairman position consistent with this resolution.

Beth seconded the motion.

A voice vote was taken and **the motion passed unanimously.**

The meeting was adjourned at 5:45 p.m. Eastern.

Respectfully submitted,
Beth Terrell
Secretary

PUBLIC JUSTICE FOUNDATION
BOARD OF DIRECTORS MEETING
Spring 2017

Scott Room
Westin Georgetown
2350 M Street, NW
Washington, DC 20037
Friday, April 21, 2017
1:30 p.m. Eastern

MINUTES

Board members present: Anne McGinness Kearse (President), Benjamin Bailey, Esther Berezofsky, Arthur Bryant, Daniel Bryson, Joan Claybrook, Jeffrey Goldberg, Robin Greenwald, Rodney Gregory, J.D. Hays, Wayne Hogan, Jim Humphreys, Jack Landskroner, Roger Mandel, Brad Moore, Chris Nace, Gale Pearson, Tom Sobol, Tara Sutton, Beth Terrell, and Janet Varnell.

Staff present: Paul Bland, Arthur Bryant, Karla Gilbride, Susan Gombert, Jim Hecker, Adele Kimmel, Jaye Lopez Van Soest, David Muraskin, Vicky Ni, Leah Nicholls, Aidan O’Shea, Steve Ralls, David Seabrook, Kyra Taylor, and Dani Zylberberg.

Guests present: Dana Gold, Rayna Kessler, Gary Mason, and David Selby.

I. WELCOME

President Anne McGinness Kearse called the meeting to order at 1:36 p.m. and welcomed everyone. Anne asked everyone to introduce themselves, and to answer briefly the question: “In four years, what do you hope Public Justice will accomplish?”

II. APPROVAL OF MINUTES

Beth Terrell made a motion to approve the minutes of the Board meeting on February 13, 2017, and the Executive Committee meetings on February 12, 2017, March 9, 2017, and April 6, 2017. The motion was seconded and **unanimously approved.**

III. EXECUTIVE DIRECTOR’S REPORT

Executive Director Paul Bland began his report by reminding everyone that, despite the seemingly endless series of bad decisions by the Trump Administration, Public Justice is not going to adopt a completely reactive stance. Instead of defining ourselves in the negative—i.e., just opposing whatever comes from the Administration—we are defined by affirmative principles that we care about and have cared about for many years. We are going to continue to stand up for what we believe in, in the areas in which we’ve staked ground, and fight for what’s right in those areas.

In the area of sustainability, Environmental Enforcement Project Director Jim Hecker recently won one of the biggest appellate victories of his career. Jim will address the Board in a moment. We are looking to fill the big shoes of Richard Webster, who recently left our environmental project to work at Hudson Valley Riverkeeper. We are continuing to move forward in our clean water cases against factory farms, with some positive developments. We want to thank Robin Greenwald for helping us develop similar cases.

As a sign of the impact of our manure runoff cases, Congressman Newhouse of Washington state has proposed legislation that would put a stop to those cases by making sure that manure cannot be regulated by the Resource Conservation and Recovery Act (RCRA). Our attorneys are meeting with legislators to lobby against this bill. Meanwhile, we socialized press stories about an incident where there was a substantial leak of waste from manure lagoons that actually flooded into the valley in Newhouse's district. We also had success publicizing another example of this kind of major failure, when some months ago there had been heavy storms in North Carolina that caused manure lagoons to flood and contaminate nearby streams.

In the area of civil rights, we had been working with Obama-led agencies to enforce the laws. But now, the enforcement gap that our Title IX work must fill is enormous. Senior Attorney Adele Kimmel has become a thought leader in this country to speak to what the law says and where it should be headed. More than 50% of the press coverage we attract with regard to all of the work of Public Justice is due to Adele's work and expertise.

In the area of economic injustice, we continue to fight court secrecy, forced arbitration, and preemption. We recently secured at least three victories in our cases challenging arbitration agreements. This quarter, Cartwright-Baron Staff Attorney Karla Gilbride beat back a *cert.* petition seeking to overturn a favorable Fifth Circuit decision on arbitration, secured an Eleventh Circuit victory, and won a case in Maryland's high court. In the Maryland case, she persuaded the court to hold that a dirty debt collector that brought thousands of lawsuits in Maryland court against debtors could not push a dispute with one of those debtors into arbitration.

We also defeated a manufacturer's argument that tort claims asserted by a worker injured by on-the-job exposure to benzene were not preempted by the Federal Hazardous Substances Act.

And in the court secrecy area, we are appealing a district court ruling in a car defect case that did not unseal enough documents under the standard articulated by the Ninth Circuit in an earlier appellate victory in the same case. Senior Attorney Leslie Brueckner is also working on a new court secrecy case with Beth Terrell.

Paul reported that our Communications and Development Departments are having a great year. Those reports will follow. He specially thanked all phonathon participants and the staff who made the phonathon possible. He also thanked Mike Thornton for partially sponsoring Dani Zylberberg's fellowship, and Hassan Zavareei for partially funding Kyra Taylor's fellowship with Public Justice.

IV. CASE DOCKET REPORT

Karla Gilbride gave a report on an appeal that challenges The Container Store's arbitration clause. She explained that one of most successful ways to defeat an arbitration clause is to show that no contract had ever been formed in the first place. It is especially successful where corporations try to sneak clauses by consumers. We've handled a number of cases that challenge arbitration clauses on the basis that the clauses were not presented in a way that made meaningful consent possible, like *Sgouros v. TransUnion* and *Dang v. Samsung*. In *National Federation of the Blind v. The Container Store*, plaintiffs are alleging that the retail chain's point of sale device has a flat screen that is inaccessible to blind consumers. This is illegal under California law—such devices must have a tactile keypad or voice direction—and a federal agency guidance says it also violates the Americans with Disabilities Act. But after the plaintiffs brought a lawsuit, The Container Store invoked its arbitration clause—which clause could be read only on the point of sale device that was inaccessible to the plaintiffs. The trial court refused to enforce the arbitration clause. We are handling the plaintiffs' briefing on appeal before the First Circuit. Thornton Fellow Dani Zylberberg helped Karla with the brief. Karla said she hopes the case will help us build partnerships with disability advocates and lead to other cases fighting for disability rights.

Staff Attorney Leah Nicholls said that the Food Project is taking on a new challenge: going after misleading statements in advertising for food products on grocery shelves. We hope that these lawsuits will impact the way products are developed. In our case against Hormel, we argue that the company's "Natural Choice" line of luncheon meats is not "natural" at all within the understanding of a reasonable consumer. In fact, the animals used for the products were raised in the same factory farms, and with the same antibiotics that are used for meat in other Hormel products, including "Spam." Obviously, few Americans paying for "natural" products think they are getting something as plainly artificial as "Spam." Although we cannot challenge the label of the "Natural Choice" products, due to federal preemption of such claims, we can challenge advertising for the products as misleading. We filed the case in DC court under a consumer-friendly statute, and we beat back the company's efforts to have the case heard in federal court. In a written opinion granting our motion for remand, the judge indicated she understood that we are challenging advertising, and not labeling.

We intend to bring more cases like this. Right now, we are working with Robin Greenwald to develop cases that will expose and highlight pesticide residues in food—especially baby food. Under President Obama, the Environmental Protection Agency (EPA) was poised to ban chlorpyrifos, an organophosphate insecticide that has been shown to be a neurotoxin that lowers IQ in developing brains and is associated with ADHD. But the new EPA chief in the Trump Administration, Scott Pruitt, reversed course. This is one example where Pruitt's EPA has failed to protect people, and we will seek to fill that gap. We are conducting careful investigation, and depending upon the results of our investigation, we may bring a series of new cases to protect consumers and workers from chemicals in food.

Food Project Attorney David Muraskin reported that we are increasing our role in challenging so-called state "Ag-gag" laws, or laws banning whistleblower activity in the agricultural sector.

Our early success in challenging the constitutionality of such a law in Idaho informed other state legislatures, which then revised their laws to fix constitutional flaws. But we, too, are evolving our legal challenges, and we reframe our argument as needed to challenge each state's law.

In our challenge to North Carolina's Ag-gag law, for example, we lead a coalition of 10 organizations with a variety of perspectives, including whistleblower groups and press groups. Dave explained that we plan to start challenging state statutes that protect farms from nuisance lawsuits, and to continue to work in coalitions to do so.

Senior Attorney Adele Kimmel said that our work to enforce Title IX is more important than ever now that the Trump Administration has eviscerated enforcement of that law. We are representing the family of Fatima Larios, once a star athlete at Chadron State College in Nebraska. She was found dead about 3 months after team members had warned the college that Fatima was being beaten by her boyfriend, also a Chadron student. The school's Title IX coordinator didn't investigate, but instead sent a generic letter to Fatima regarding the school's grievance system. (This kind of letter can often exacerbate situations involving domestic violence if, for example, the abuser finds the letter.) School Resident Assistants who heard fights between Fatima and her boyfriend did not intervene. School officials failed her at every turn. We filed a complaint with the U.S. Department of Education's Office of Civil Rights, but because of the changing politics in the agency, we also recently filed a lawsuit. Tony Romanucci's firm is helping us with this case. The lawsuit presents at least two cutting-edge legal issues. First, what is the school's obligation to investigate where the victim herself does not report the abuse? And second, is dating violence a form of sex discrimination?

Adele is also regularly working with coalition partners in this area. She will soon attend a conference in Stanford, CA, called "The Way Forward: Title IX Advocacy in the Trump Era." Title IX attorneys, advocates, grassroots organizers will meet there to discuss strategies and tactics. Adele will chair the litigation group discussion. Our time working on this conference, among other things, is funded by a \$30,000 grant from the Dolan Foundation.

Jim Hecker explained that one of Trump's first acts as President to stop the so-called "war on coal" was to secure reversal of the Obama-era Stream Protection Rule by way of the Congressional Review Act. While we felt that the rule should have been much stronger, it is still very troubling that it was repealed. In any case, Public Justice has a long history of fighting pollution from coal mining regardless of whether a Democrat or a Republican is in the White House. And we recently scored a big victory for the environment. After we identified the biggest coal polluters in the country through a review of environmental impact statements, we sued the companies under the Clean Water Act to enforce the narrative portion of their permits. We won on this legal theory four times in district court, and, just recently, the Fourth Circuit validated our legal theory. We're now starting to see attorneys' fees from these victories—about \$500,000 so far. Now that the companies have been found liable, they face huge clean up costs. Indeed, use of reverse osmosis to clean up pollution at issue in one case could cost up to \$3.5 million. The impact of our work can be seen in the form of this new enforcement theory under the Clean Water Act that can be used by advocates around the country.

Jim reported that he recently attended a conference of anti-coal activists, and said that there is some hope that the U.S. can meet Paris Agreement goals regardless of the Trump Administration's policies because coal production is still in decline, coal-fired power plants are still closing, and sulfur dioxide emissions have fallen by 74% in the last 10 years.

Anne asked how, in our messaging, we address the loss of coal industry jobs. Jim said that there are three times more job opportunities in renewable energy. Paul explained that Sierra Club dominates the messaging in this area. There was more discussion regarding how to bring more attention to our work fighting coal pollution.

Paul reported that an important case would be heard on Tuesday by the U.S. Supreme Court—*Bristol-Meyers Squibb Co. v. Superior Court*. The question presented is whether California courts have personal jurisdiction over a company that has \$1 billion in sales in California where the plaintiff's claims don't arise from the defendant's activities in the California. We filed a terrific amicus brief in the case with the help of Lou Bograd and Senior Attorney Leslie Brueckner.

V. ADVOCACY REPORT

Paul briefly touched on a bill that, if passed into law, could wipe out most class actions. The bill was discussed at length in our Class Action Preservation Project meeting. We gathered—and are still gathering—stories of class actions that secured justice and we wrote a series of blogs on such stories that got a lot of attention on social media. He encouraged everyone to share our blog posts. We will publish our best stories when the Senate takes up the bill.

Paul said that the House was calling next week “Lawsuit Abuse Reduction Week.” Among the bills scheduled to be voted on will be H.R. 1215, which would cap noneconomic damages for all medical malpractice lawsuits. We published two blogs on this terrible bill. First, Leah Nicholls wrote a blog making the point that the bill interferes with states' rights, hoping to influence Republicans who sincerely care about states' rights. Second, Staff Attorney Leslie Bailey wrote a blog focusing on how the bill caps noneconomic damages in nursing homes, even in cases involving intentional torts. We have handled cases involving rape and beatings of nursing home residents, so we described the facts of those cases and how the bill would limit damages in such cases. We do not know whether this bill will move.

Paul said that in addition to fighting a federal bill that would mean that massive amounts of animal waste could not be considered pollution, our Food Project attorneys also fought off a California bill that would have shielded farmers from nuisance claims so long as they provided bottled water to neighboring residents. The bill was written in response to our case against N&M Dairy in California for polluting groundwater. Food Project Attorney Jessica Culpepper helped prepare a witness who testified before a legislative committee, and the bill was pulled from consideration right after that testimony.

Finally, Paul explained that we are carefully targeting our messaging on bills to particular audiences. For example, we put policy-oriented pieces like Leah's states' rights blog in *The Hill*, a publication read by every Capitol Hill staffer. In progressive media outlets we tried to

highlight issues that hadn't been picked up widely in those circles and made the issue relevant to progressive audiences. A blog that we wrote for *DailyKos* about a class action over defective drywall from China was shared 2300 times on the first day it was posted.

Joan Claybrook recommended that we aim for placement in *Politico*, which is one of the first responders when news breaks on Capitol Hill. Communications Director Steve Ralls said that *Politico* covered our Ag-gag cases. Joan also suggested that if you mention a Representative's name, that will ensure that the Representative sees the piece.

Steve urged anyone who had press contacts—even in local papers—to share them with him. Chairman Arthur Bryant said he was interested in such contacts to find opportunities to publish opinion pieces. His quarterly column in *The National Law Journal* was dropped because *The National Law Journal* has become a monthly magazine.

VI. COMMUNICATIONS REPORT

Steve Ralls thanked Robin Greenwald for promoting our environmental work through her contact, Erin Brockovich. Erin posted on her Facebook page our blog post about the flooding of Yakima, WA, with cow manure, and the blog was shared over 4,000 times.

Steve said we are working hard to raise our visibility among new audiences, and to be visible in the context of coalitions. On the issue of transgender rights, we are embarking on a three-pronged campaign. First, we want to make schools aware that their responsibilities to protect students did not change even after the Trump Administration rescinded the Obama-era guidance that said Title IX protected the right of transgender students to use the bathrooms that matched their gender identities. Adele wrote a letter explaining our views on how Title IX protects transgender students, regardless of agency guidance, and that letter will be sent to the Title IX point person in every state's department of education. The letter will be signed by a large coalition of LGBTQ advocacy groups, led by us, the National Women's Law Center, and the ACLU. This will be big news.

Second, when we send the letter, we will simultaneously launch a grassroots campaign to get people to go online to send a letter about this issue get to their state representative. And when they enter their information to get the form letter, we will capture their contact, giving us a new group of people we can later target with our messaging.

Third, we are optimistic that we will be able to secure placement of an op-ed about transgender rights in a prominent paper co-authored by Adele and the former director of the U.S. Department of Education's Office of Civil Rights under President Obama.

Steve also reported that we will soon see publication of a multi-prong AP piece that we have been working on for months. We cultivated our relationship with an AP reporter for months, and she eventually became interested in trying to educate parents on schools' obligations under Title IX. She wrote a national wire story featuring Adele, and they shot film footage of an interview of Adele to share with local television stations. The AP Facebook page will also feature a video

of Adele's advice to parents and link to Public Justice's website, which will have a webpage on Title IX designed just for parents.

Finally, Steve read aloud an email from an AP editor who was very complimentary of Adele's on camera performance.

VII. VISIONING FOR THE NEXT FOUR YEARS

Anne explained that a small working group of Board members has been working with Paul, the Management Team, and a facilitator to develop a vision for the next four years. After the Board meeting in Charleston, SC, right after the election, the Board voiced its resolve to work together to protect our country and our democracy, while staying true to our core identity. So the Management Team asked Anne for permission to convene a working group to figure out our next steps and build on the work of another hard-working Board committee, the Strategic Planning & Structural Analysis Committee. Anne said that we need to be able to articulate, for anyone who wants to invest in us, who we are, where we're going and how we're going to get there.

Our facilitator, Joan Garry, is an expert in nonprofit organizations. She is pushing us to finish our work quickly because our country's situation demands action. She pushed us to answer hard questions, like "what would happen if Public Justice didn't exist?"

Robin Greenwald said she's had experience running two nonprofits and observed that some of the challenges we face—such as how to diversify our revenue and how to message around all the different things we do under one umbrella—are the same challenges that other nonprofits face. The state of this country now is both a challenge and an opportunity for us. She said the single most important thing that might come out of this work is if we can find the thread that ties all of our work together. Something like: we are an impact litigation group that helps people without a voice. Robin said that she was impressed with Joan's facilitation and liked how she challenged our thinking.

Paul said that we're hoping this work will flesh out the mission statement we adopted. Most organizations have a document that sets forth some version of a strategic plan, and many foundations expect to see that sort of document. With the facilitator's help, we'll be thinking about how we might pivot to work on some new issues, and ways that we might evolve. After the working group does its work, we'll set forth some recommendations for the Board to consider.

Steve explained that the working group will also examine our internal systems to make sure we are attracting and retaining the best people, and to make sure we have what we need to go from being a fantastic organization to an even stronger organization. He said he had worked with Joan before at past jobs, and said she helped organizations move to new levels even during challenging financial times. She is transformative.

VIII. FINANCES AND FUNDRAISING

Director of Finance and Administration David Seabrook referred the Board to the written financial report on our overall financial health through February 2017. In the first two months of the year, we brought in 20% of our annual projected revenue. We are on track for a financially good year, which would be the third good year in a row.

Development Director Jaye Lopez Van Soest reported on our revenue through March 31, 2017. Membership/Contributions/Events/Foundation (MCEF) revenue is at 136% of the first quarter's goal. If *cy pres* revenue is included, then we are at 169% of goal. April is also shaping up to be a good month on the revenue side, thanks to the phonathon.

Jaye said we hired a new Grants Officer who will be joining us on May 16. She is a great writer, and she impressed everyone during the interview process. At her current job, she manages a grants portfolio of \$1 million. She is coming to Public Justice to help us make a difference.

We are thrilled that our 35th Anniversary Roadmap to Change (R2C) Campaign has raised so far \$1.261 million in pledges and cash from just under 50 donors. Our webpage on the campaign is live, and lists donors who contributed \$5000 and up to the campaign. She offered to provide solicitation materials to any interested Board members.

Tom Sobol reminded everyone of the resolution for every Board member to participate generously in the R2C Campaign, and said that he and Arthur would be checking on the Board's participation.

Arthur thanked Tom for becoming, at yesterday's phonathon, the 6th individual to pledge \$100,000 to the R2C Campaign. Tom also convinced Wexler Wallace LLP to pledge \$100,000. Arthur also thanked Ben Bailey and Hassan Zavareei, whose firms each pledged \$35,000.

Jaye thanked the phonathon team captains: Dan Bryson, Preston Tisdale, Ellen Presby, Robin Greenwald, and J.D. Hays. The phonathon raised over \$1.5 million. Over the coming weeks, as donors return calls, that number will likely increase. The Development Department will work hard to collect that money. She thanked everyone who participated in the phonathon, including those who participated remotely.

The Gala will be held on Monday, July 24, 2017, at the Fairmont Copley Plaza Hotel in Boston. This year, the staff and Gala Committee decided that we should hold a live auction with only one or two extraordinary items, and that we will not have a silent auction. Jaye encouraged Board members to contact Events Manager Sue Gombert if they had ideas for the auction.

There was a discussion about the advantages and disadvantages of a silent auction. Joan Claybrook expressed the view that the silent auction has popular appeal. Janet Varnell said that the Board should defer to the judgment of the Gala Committee. Sue said that the reception is shorter now, leaving less time for bidding, and that income from the auction has been dropping in the past few years. Paul said that organizing the auction takes a lot of staff time, and that staff

recommends we use that time to pursue other sources of income given the silent auction's declining income.

IX. BOARD NOMINATIONS REPORT

Managing Attorney Vicky Ni reminded everyone that the deadline to submit nominations for open Board seats or Executive Committee seats was May 1, 2017.

X. NEW BUSINESS

Paul remarked that the last three days with the Board and members was amazing. He said he was grateful for everyone's work dialing for dollars, for their input on cases, for the opportunity to work with them as co-counsel, and for their support. He said—to borrow a phrase—we are stronger together.

Anne thanked the Board and staff for their contributions.

The meeting was adjourned at 3:57 p.m.

Respectfully submitted,

Beth Terrell
Secretary

**PUBLIC JUSTICE FOUNDATION
EXECUTIVE COMMITTEE MEETING**

**Friday, June 2, 2017
2:30 p.m. Eastern/11:30 a.m. Pacific
By Conference Call**

MINUTES

Committee members in attendance: Anne Kearse (Chair), Esther Berezofsky, Robin Greenwald, Roger Mandel, Brad Moore, Michael Pitt, Bill Rossbach, Tara Sutton, Beth Terrell, and Preston Tisdale.

Staff in attendance: Paul Bland, Jaye Lopez Van Soest, Vicky Ni, Steve Ralls, and Dave Seabrook.

President Anne Kearse called the meeting to order at 2:30 p.m. Eastern. After some technical difficulties with the conference line, the meeting resumed at 2:40 p.m. Eastern.

I. Report on Advocacy Developments

A. Litigation

Executive Director Paul Bland reported on some recent litigation victories. In one of our cases against a West Virginia coal mining company—which we know as the “Monoc” case—Environmental Enforcement Project Director Jim Hecker and his co-counsel just won a big Clean Water Act victory. A district court found the company liable for polluting two more streams. The decision is particularly significant because we used a new, more sensitive method to measure environmental impact, and the court accepted the extensive scientific supporting our new approach.

We also defeated a dangerous petition for *cert.* review in the *TAMKO Building Products* case. In this case the defendant was trying to enforce an arbitration clause printed on the outside packaging of roofing shingles. The Supreme Court did not take action on the petition for six months. Our inference was that the Court was holding *TAMKO* while it considered another case, *Kindred Nursing Centers*, posing an issue which *TAMKO* claimed was related to an issue raised in its petition. While we disagreed, we had been concerned the Court would remand this issue to the Missouri state court for reconsideration in light of *Kindred*. Paul Clement, who represents *TAMKO*, filed a supplemental brief to argue that the *Kindred* case required that result. Staff Attorney Leslie Bailey filed a responsive brief within 24 hours. We just learned on Monday that the Court denied *cert.* outright. We are very pleased with the result.

In addition, we successfully unsealed documents in a case against DirecTV led by Senior Attorney Leslie Brueckner, where Beth Terrell got us involved. In addition, Staff Attorney Jennifer Bennett just won a First Circuit victory involving a complicated question about whether

contracts with certain kinds of transportation workers are exempt from the Federal Arbitration Act.

Finally, we are successfully settling a case against a Florida payday lender in litigation that has been pending since 1998. Although the only people in the case who will receive any compensation in the settlement are people who did not sign a contract with an arbitration clause, the case is so old that there are still several thousand people who fall into that category.

B. Other Advocacy

Paul reported that we continue to be hopeful that the Consumer Financial Protection Bureau (CFPB) will soon issue its rule prohibiting class action bans in lenders' arbitration clauses. So we are gearing up to be one of the leading voices to support that rule. Also, possibly on June 9, we expect the House to pass the so-called "CHOICE Act" to overturn most of the protections in the Dodd-Frank Act. Its provisions would, among other things, eliminate the CFPB's ability to regulate arbitration clauses (or class action bans), as well as the agency's ability to regulate payday lenders.

Communications Director Steve Ralls reported that Leslie Bailey supervised the creation of a comprehensive report documenting the relationships between payday lenders and Native American tribes, which report was funded by the Silicon Valley Community Foundation. The report is over 200 pages long and is the first of its kind. We will post the report on our website and be working to promote visibility on that report soon.

C. Opposing State Damages Caps and Related Legislation

Steve explained that we are giving the 2017 Illuminating Injustice Award (IIA) to a woman in Ohio who was sexually assaulted by the pastor of her church. She filed a lawsuit against the church, which knew of the pastor's history of sexual predation, and a jury awarded her \$3.6 M. However, Ohio's cap on damages limited her recovery to \$250,000. We plan to do media outreach around her story and the IIA, and we expect to be asked about our position on a pending legislative proposal to eliminate Ohio's cap on damages, as well as on other similar bills pending throughout the country in state legislatures. Therefore, we would like the Committee's permission to publicly support the bill in Ohio specifically, and generally to oppose state damage caps around the country.

Roger Mandel made a motion to allow Public Justice staff to support publicly a proposed bill in Ohio to eliminate damage caps, and to oppose publicly state law damage caps in general. Tara Sutton seconded the motion.

Anne asked whether we will take a position on pending federal legislation on the same topic, and Paul explained that we already obtained Committee approval on that federal bill—H.R. 1215. Brad Moore asked about how we will message about damage caps and described a Washington state case finding such caps unconstitutional under the state constitution. Paul explained that while we have never been asked to litigate over such caps, we have been arguing in the media that the caps are unfair, and, in the case of the federal bill, interfering with states' rights.

A voice vote was taken, and **the motion passed unanimously.**

D. Opposing a House Bill to Limit Damages Under FCRA

Paul explained that the Fair Credit Reporting Act (FCRA) Liability Harmonization Act introduced by Representative Loudermilk attacks damages under FCRA. (The text of the bill was circulated to the Committee prior to the meeting.) With respect to class actions, the bill would limit total class damages to \$500,000. It would also eliminate the availability of punitive damages under the Act, which previously had been awarded in individual cases involving egregiously bad behavior by credit reporting agencies. Passage of the bill would be a huge blow to the privacy bar.

Roger made a motion to allow Public Justice staff to oppose publicly the FCRA Liability Harmonization Act. Tara seconded the motion.

A voice vote was taken, and **the motion passed unanimously.**

E. Opposing a Bill to Provide Civil Immunity to Police Officers

Paul explained that a proposed bill (S. 1134/H.R. 2437) would make it virtually impossible to sue a police officer, essentially immunizing them from civil liability even for egregious intentional conduct. (The text of the Senate bill and a *Washington Post* article about the bills was circulated to the Committee prior to the meeting.) Paul believes the bill is rooted a backlash to progressive causes and racism. Excessive force cases against the police are already hard to prove because of qualified immunity. We want to expand our work in police misconduct case, and this bill, if passed, would prevent us from doing so.

Preston Tisdale moved to allow Public Justice staff to oppose publicly S. 1134 and H.R. 2437. Brad seconded the motion.

Anne asked whether we were close to exceeding our limits on lobbying, and Managing Attorney Vicky Ni explained that we monitor our activity and we are not close to the limits.

A voice vote was taken, and **the motion passed unanimously.**

II. Report on Finances

Paul reported that our financial news is very positive. We had an extraordinarily successful phonathon in the spring. Our talented new Grants Officer June Yang just started work at Public Justice, and she brings an incredible energy to the team. The staff at the anonymous foundation that funded Food Project Attorney Dave Muraskin's position has signaled strongly that it likely will be willing to continue to fund Dave's salary and renew its grant.

It has been a long time since we've earned over \$1 M in attorneys' fees in a single year, and for several years we've fallen short of attorneys' fees projections. But this year, if we look only at the settlements achieved or court-ordered fees so far, we are on track to earning close to \$1.45 M

in attorneys' fees, or nearly two times our budgeted annual goal of \$750,000. Of course, this does not tell us anything about potential fees for 2018.

Since our last Board meeting, we've received a significant *cy pres* award: a \$150,000 award in a case handled by Steve Skalet. In addition, in the near future, we expect to receive an \$87,000 award in a case handled by Gretchen Nelson, \$430,000 in a case handled by Abbas Kazerounian, and \$60,000 in another Kazerounian case. There are other good possibilities in our pipeline in the longer term. So we have already received about \$300,000 over our year-to-date goal for *cy pres* awards, and are on track to receiving more than \$1 M by the end of the year.

Because of our strong finances, Paul has been thinking about what we should do with this year's surplus. Last month, we invested another \$250,000 in the Board-controlled investment reserve, and thus have replenished it so that it can cover a year's worth of operating expenses. To even out the impact of income volatility (in attorneys' fees or *cy pres* awards) on our budget Paul is investigating ways to put aside money for future fixed expenses, like rent. This could have the effect of lowering our operating costs in the short term future.

Anne asked how surpluses and large reserves affect the willingness of funders to give us money. Paul explained that he and Director of Finance and Administration Dave Seabrook are seeking advice from other public interest groups, our visioning consultant, auditors, and outside counsel to develop a new plan to deal with the surplus responsibly. He hopes to be able to make a formal proposal at an upcoming Board meeting and will try to give a preview of the plan to the Executive Committee and other Board members as soon as possible. Paul said he liked how another group put money aside in special reserves, earmarked for specific kinds of expenses.

Paul explained that his proposal will likely require a full Board vote, and that it might require an exception to the Board's "20% rule" (prohibiting a budgeted deficit of more than 20% of current assets, which includes the Board-controlled investment reserve). He noted that it was too early to tell if the 2018 budget would be presented as a deficit budget, but that setting up special reserves might nonetheless help us weather future financial storms.

III. Report on Fundraising

Development Director Jaye Lopez Van Soest reported on our fundraising progress so far this year. As of May 31, 2017, our Membership/Contribution/Events/Foundation (MCEF) income was 126% above year-to-date goals, totaling \$1.97 M compared to a budgeted year-to-date goal of \$1.56 M. This success can be attributed to extraordinary results in both the phonathon and our 35th Anniversary Campaign. Our May development numbers have not yet been reconciled with accounting records, but when they are, we will prepare a dashboard and circulate it to both the Development Committee and this Committee.

Jaye highlighted three areas of fundraising:

- 1) Spring Phonathon – We raised \$1.7 M, smashing all prior records. Fifty-seven percent of the funds raised, or \$965,000, was unrestricted; \$128,000 was restricted funding for the Class Action Preservation Project and fellowship; \$210,000 supported our events; and \$377,000 was membership revenue.

- 2) 35th Anniversary Campaign – As of yesterday, we’ve raised \$1.3 M in cash and pledges from 56 donors. We have updated the roster of campaign contributors on our website. In accordance with a Board resolution that pledged 100% participation by Board members in the Campaign, we are actively soliciting Board members. We hope to have 100% participation by the time of the summer gala. A mailing to the membership about the Campaign will be sent out in August or September 2017.
- 3) Gala – We have raised \$227,000 in sponsorships, program ads, and ticket sales. Jaye thanked Committee members for their prompt responses to Meeting & Events Manager Sue Gombert’s requests for approval of vendor sponsorships.

Finally, Jaye noted that the Development Department continues to explore ways to diversify our revenue streams. She said that Grants Officer June Yang is extraordinarily motivated to collaborate with the attorneys. Board members will have an opportunity to meet June in Boston.

Anne asked whether we were on track for selling tables and tickets for the Gala. Jaye explained that invitations have not yet been mailed, but that sales will pick up once they do.

IV. Update on Gala Program

Steve explained that since we’ve raised \$227,000 from the Gala so far, we are well on our way to meeting our overall budget goal of \$383,000.

Steve also reported that the first person we reached out to regarding our Champion of Justice Award had a scheduling conflict with our Gala. So we have reached out to someone else and are hopeful that will work out.

We will be honoring our IIA recipient and the TLOY finalists at the Gala, all of whom are featured in short videos to be shown during the Gala program. We will start to publicize these honorees early next week. At the same time, we will also be launching a GoFundMe campaign to supplement the \$25,000 cash award we will give the IIA recipient. We hope Board members will help us spread the word about this campaign, which will help us bring grassroots donors into the Public Justice orbit.

Steve said that if anyone is interested in sponsoring the Gala, and to be mentioned in the invitation, we must hear from you by this Sunday at noon Eastern. The deadline for sponsors to be included in the Gala program is Monday, June 10, and all ads will be due by June 30. Please contact Sue about sponsorships.

The 35th Anniversary video we created to showcase Public Justice’s work—previously screened at the Presidents’ Party during the AAJ Winter Convention—will be shown at the Gala.

V. WCO Lease

Vicky reported that the search for office space for the West Coast Office is ongoing. Since her last report to the Committee, the market has gotten even tighter, and none of the options available then are available now. However, we are waiting on a counteroffer for an Oakland

space, and are trying to get the landlord to accept a 7-year lease term rather than a 10-year term. We will also investigate a sublease opportunity with about 4 years remaining on the lease. As a backup, and if all else fails, we will move into shared office space leased by companies that lease out single offices to renters who share reception, kitchen, and conference room space.

VI. New Business

Steve said that the electronic invitation to Public Justice events in Boston will be sent out early next week. He gave an overview of the schedule:

Sunday, July 23	
10:45 – 11:45 a.m.	Executive Committee Meeting
12:00 – 2:00 p.m.	Class Action Preservation Project Luncheon
Monday, July 24	
8:30 – 11:30 a.m.	Committee meetings (for Development Committee, Case Development/Special Projects Committee, and Board Development & Nominating Committee)
6:30 – 10:00 p.m.	Gala
Tuesday, July 25	
9:00 a.m. – 12:00 p.m.	Board of Directors Meeting

Anne asked whether we would feature a Boston connection at either the Gala or Board meeting, and offered to brainstorm with staff on this. Tara suggested that we invite Congressman Joe Kennedy, who has spoken out against the ObamaCare repeal, to speak at our Board meeting. There was a discussion as to who might have a connection to Kennedy. Steve explained that at the Gala, we will be giving recognition to the New England Home for Veterans (NEHV), a nonprofit which provides services to veterans and their families. Tom Sobol previously served on the group's board and introduced us. The centerpieces on the Gala tables will be blankets, which will be donated to the group, and we will invite a family helped by NEHV to help us acknowledge the group's work.

The meeting was adjourned at 3:37 p.m. Eastern.

Respectfully submitted,

Beth Terrell
Secretary

**PUBLIC JUSTICE FOUNDATION
EXECUTIVE COMMITTEE MEETING**

Conference Call
Dial-in: 1-888-566-8440; Passcode: 506228150#

**July 6, 2017
4:00 p.m. Eastern/1:00 p.m. Pacific**

MINUTES

Committee members in attendance: Chair, Anne McGinness Kearse; Esther Berezofsky; Eric Cramer; Robin Greenwald; Roger Mandel; Michael Pitt; Bill Rossbach; Tara Sutton; Beth Terrell; Preston Tisdale; and Janet Varnell.

Guests in attendance: Daniel Bryson, Stephen Herman, Joan Garry (consultant), Ellen Presby, and Don Slavik.

Staff members in attendance: Paul Bland, Kathy Morris (for roll call only), and Steve Ralls (after close of executive session).

President Anne McGinness Kearse called the meeting to order at 4:00 p.m. Eastern.

The Committee moved into Executive Session to hear from organizational consultant Joan Garry. The only staff member present was Executive Director Paul Bland.

The Committee moved out of Executive Session, and invited Communications Director Steve Ralls to join the call.

Proposal to Hire a Grassroots Organizer

Steve Ralls spoke regarding a staff proposal to add a grassroots organizer to the communications staff. This position would identify coalition communities who are impacted by, or are interested in, the areas in which Public Justice is active. For example, we could do outreach in the LGBTQ community around our anti-bullying work, and to the African American community in North Carolina where there are factory farms. The goal would be to mobilize the grassroots for school board meetings and press events, and then cultivate them into donors. The grassroots organizer would build the grassroots coalition members, communicate with them, give them action items, and notice about events, etc. The salary would be between about \$55,000 to \$63,000.

Tara Sutton asked how long it would take to fill the position. Steve explained that it would not be too difficult to find someone, and that we already have one strong candidate.

Paul addressed the potential impact of such a hire on the budget. Public Justice is expecting a \$430,000 *cy pres* award on Monday, and a number of other awards are in the pipeline. Public Justice is already above the *cy pres* budget line for the year. We are also expecting strong

attorneys' fees this year. Public Justice is in a very strong financial condition. The grassroots organizer will allow Public Justice to grow and diversify its sources of fundraising down the road.

Preston Tisdale raised a philosophical issue: Should we look at the NAACP as a historical example of the tension that can exist when one non-profit seeks to do both community organizing and litigation? Preston noted that the NAACP Legal Defense Fund had to eventually split from NAACP because of those tensions. Steve acknowledged the potential tension but noted that the organizing and litigation pieces will be very tied together, with our litigation work informing how and where we organize grassroots communities.

Dan Bryson spoke in support of these efforts and cautioned that this is a long term commitment that will take some years to get traction.

Anne asked whether creating this position would assist our grantseeking work. Steve explained that it would, and said, for example, that some funders really care about organizing in the LGBTQ community. Lots of foundations like what Public Justice does, but don't fund litigation. Paul offered the example of the Silicon Valley Community Foundation that supports our payday lending work—of all of its grant recipients, only Public Justice does not have a grassroots presence.

Tara made a motion to approve the hiring of a grassroots organizer, and Dan seconded the motion. **The motion passed unanimously** by a voice vote.

Joan Gary offered some final words: She said she enjoyed her work for Public Justice, and felt very proud to be part of an organization that is investing its time and resources into looking at how to make Public Justice stronger and more impactful.

The meeting was adjourned at 4:58 p.m. Eastern.

Respectfully submitted,
Beth Terrell
Secretary

TAB III
Case Docket and Advocacy Report

TAB III.A



Attorney Advocacy Report June 29, 2017

In the three months since our last report, we achieved significant victories in cases involving workers' rights, court secrecy, fighting forced arbitration, civil rights, environmental protection, and our food project. We filed a new APA lawsuit to challenge the legality of U.S. Department of Agriculture regulations that reclassify imported beef and pork as "domestic products," thus confusing consumers and harming domestic producers. We fought against a state bill that would have immunized farmers from nuisance lawsuits so long as they provided replacement water to neighboring residents. And we advocated against a federal bill that would make it extremely difficult for federal agencies to issue any major regulations to protect consumers or the environment.

This report first summarizes the major developments of our programmatic work since our last report to the Board, and, starting on page 4, gets into more details about litigation developments.

HIGHLIGHTS

Workers' Rights:

- **Victory** in *Oliveira v. New Prime Inc.* In a groundbreaking decision, the First Circuit held on May 15, 2017, that **transportation companies cannot force their workers to arbitrate wage and hour disputes**, simply by misclassifying their workers as independent contractors. This is the first federal appeals court decision to address the issue, and it wholly accepted our argument that an exemption in federal arbitration law for transportation workers applies to independent contractors as well as employees. See [blog post](#). A nationwide class of drivers who argue that a trucking company illegally failed to pay them minimum wage will now have a chance to press their claims in court. Congratulations to **Staff Attorney Jennifer Bennett**, who briefed and argued the appeal.
- The Case Evaluation Committee (CEC) approved our involvement in two new cases in this area: *Van Dusen v. Swift Transportation Co., Inc.* (9th Cir.) (amicus brief to address the issue presented in *Oliveira*—the statutory interpretation of the arbitration law exemption for transportation workers); and *XPO Cartage, Inc. v. Avalos* (CA) (appeal seeking to expand adoption of the *Oliveira* court's analysis and a ruling that the trucking company waived any right to arbitrate).

Court Secrecy:

- **Victory** in *Perez v. Lantern Light Corp.* (W.D. Wash.). We **successfully unsealed summary judgment exhibits** in a settled case that contained evidence that satellite television giant **DirectTV should be held liable for overtime wages** to satellite television installers as a "joint employer" of these installers. See [blog post](#). The documents—unsealed on May 17, 2017—will now help workers in similar subcontracting situations recover the wages they are due. Many thanks to **Board member Beth Terrell** for bringing this case to our attention and serving as our lead cooperating counsel.
- The CEC approved two new cases in this area: *Haeger v. Goodyear* (AZ) (challenge to secrecy of discovery documents and court records in fraud case against tire manufacturer alleging that the company

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has for years covered up a deadly safety defect in a line of RV tires); and *Center for Food Safety v. Murphy Brown* (E.D.N.C.) (possible challenge to the sealing of court records in several consolidated federal nuisance cases against a giant hog producer whose sewage management practices are destroying the lives of the residents in the adjacent, predominantly African-American community; our filing on hold at the moment).

Mandatory Arbitration:

- **Victory** in *TAMKO Building Products v. Hobbs* (U.S. Supreme Court). Representing property owners who successfully argued in state court that they could not be bound by a roofing shingle company's arbitration agreement merely by having the allegedly defective shingles installed, **we successfully opposed a petition for certiorari** challenging the favorable decision in the U.S. Supreme Court. **The company had tried to enforce an arbitration clause printed on the packaging of the shingle bundles**, but lost its final attempt to do so when the U.S. Supreme Court denied the company's petition for *certiorari* review on May 22, 2017. The consumer class action will now proceed in Missouri state court. Special thanks to **Board member Dan Bryson** for giving us the opportunity to work on this case, and congratulations to **Staff Attorney Leslie Bailey**, who handled the briefing in the Supreme Court.
- The CEC approved three new cases in this area: *Parm v. Bluestem Brands, Inc.* (8th Cir.) (appeal challenging the scope of an arbitration clause in consumer class action over hidden finance charges for consumers buying goods on credit); *Goodwin v. Branch Banking and Trust Company* (4th Cir.) (appeal testing enforceability of arbitration agreement in consumer class action over allegedly illegal foreclosure practices); and *TruGreen v. Stevens-Bratton* (U.S. S.Ct.) (opposing *cert.* review of a case presenting questions about how contract interpretation doctrines should be applied to arbitration provisions in expired contracts).

Anti Bullying Campaign & Civil Rights:

- **Victory** in *Escamilla v. Cavazos* (S.D. Tex). On April 3, 2017, we secured a settlement of one million dollars (which was the full amount of the County's insurance policy limits) for the family of a pretrial detainee who was allegedly beaten and suffocated to death by Texas jailers. Special thanks to **Board member Ronald Rodriguez**, who was lead trial counsel in this case, and to **Board member Janet Varnell**, who joined the trial team as co-counsel.
- On May 1-2, 2017, **Senior Attorneys Adele Kimmel and Leslie Brueckner** attended a conference in Stanford, CA, called "**The Way Forward: Title IX Advocacy in the Trump Era.**" Title IX attorneys, advocates, and grassroots organizers met to discuss strategies and tactics in a time when Title IX enforcement is no longer a priority for the federal government. Adele chaired the litigation group discussion. Our time working on this conference was funded by a \$30,000 grant from the Dolan Family Foundation.
- On May 22, 2017, Public Justice joined over three dozen national and local civil rights organizations in a letter spearheaded by the Anti-Defamation League to a Massachusetts charter school and the Massachusetts Board of Elementary and Secondary Education **demanding changes to the charter school's discriminatory hair and make-up policy**. The policy and its enforcement resulted in suspensions of black girls for having braids with extensions, and discipline of a Muslim student for having henna on her hands (in adherence with religious tradition).

Environmental Enforcement:

• **Victory** in *Ohio Valley Environmental Coalition v. Fola Coal Co. (Monoc)* (S.D. W. Va.). On May 30, 2017, the trial court found Fola Coal Company—a **West Virginian coal mining company** which we have sued repeatedly—**liable under the Clean Water Act for discharging high levels of dissolved salts** into two neighboring streams in a way that increased their conductivity and killed wildlife. The decision is particularly significant because we used a new, more precise method to measure the environmental impact of Fola’s pollution, and the court found that the new method was superior to the old method (under which the conductivity pollution looked less damaging). With this latest victory, we have now won liability decisions for illegal conductivity pollution in four trials, and negotiated one consent decree, covering four mines owned by Alpha Natural Resources and five mines owned by Fola Coal Company. We are in the remedy phase for the five Fola mines, and a special master is overseeing that work.

Food Project:

• **Victory** in *Ranchers-Cattlemen Action Legal Fund v. Vilsack* (D. Mont.). On June 21, 2017, the district court sided with domestic independent farmers and entered a preliminary injunction against the **Beef Checkoff program** in Montana. The Beef Checkoff is a federal program that taxes beef producers—supposedly to fund beef advertisements, but half the money actually goes to private councils dominated by multinational meat companies and even help fund lobbyists for industrial meat production. Adopting our legal arguments, the court wrote: **“The Government violates the First Amendment when it compels a citizen to subsidize the private speech of a private entity without first obtaining the citizen’s ‘affirmative consent.’”** The court has, for now, barred the Montana Beef Council from keeping any of the checkoff money unless it first obtains payers’ consent. Congratulations to **Food Safety & Health Attorney David Muraskin**, who briefed and argued the case, and thanks to **Board member William A. Rossbach** for his assistance as co-counsel in the case.

• On May 5, 2017, Food Project Attorney David Muraskin argued before the Tenth Circuit in *Western Watersheds Project v. Michael*, our **federal constitutional challenge to two newly-enacted Wyoming statutes (the “Data Laws”) designed to stop members of the public from gathering “resource data” on public or private land.** Resource data is defined to only include precisely the type of information state and federal environmental agencies require from the public to support regulatory comments.

• On June 19, 2017, we filed a new lawsuit on behalf of independent beef producers to **challenge the legality of U.S. Department of Agriculture (USDA) regulations that reclassify imported beef and pork as “domestic products.”** See [AP national wire story](#). The regulations allow meat companies to label foreign and domestic meat identically (indeed, USDA allows both to be called “Product of USA”), confusing consumers and harming domestic producers. In *Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America v. U.S. Department of Agriculture* (E.D. Wash.), we argue that the regulations cannot stand because they directly conflict with the text of the governing statute.

• On April 4, 2017, a harmful California bill known as **AB 1605 was dropped from consideration**, after Public Justice and member firm Simmons Hanley Conroy worked with the Center for Food Safety (CFS) and Consumer Attorneys of California to draft comments in opposition to the bill, and CFS testified against the bill in a judicial committee hearing. The bill was a direct response to our lawsuit against N&M Dairy in California, and **would have immunized farmers from all tort lawsuits based on nitrate contamination so long as they offered to provide replacement water to neighboring residents or contribute to a fund for replacement water.**

Access to Justice:

• With permission from the Executive Committee, we joined in a coalition letter to Senators, sent on May 16, 2017, **opposing S. 951, known as the Regulatory Accountability Act of 2017 (RAA)**. RAA, if passed, would amend the Administrative Procedure Act to make it extremely difficult for federal agencies to issue any major regulations to protect consumers or the environment.

Awards:

• **The Pound Civil Justice Institute has awarded its 2017 Appellate Advocacy Award to Executive Director Paul Bland** for his work in *Chen v. Allstate Insurance Co.*, a case in which he persuaded the Ninth Circuit to reject a defendant’s attempt to avoid legal liability to a class of thousands by settling with the named representative—a strategy known in class action circles as “picking off” a plaintiff. The award, given annually, recognizes attorneys who have been instrumental in securing a final appellate court decision with significant impact on issues such as the right to trial by jury, public health and safety, consumer rights, civil rights, and access to justice in civil cases. Paul will accept the award at the Pound Fellows reception at 5:30 p.m. on July 23, 2017 at the Sheraton Boston Hotel during the annual AAJ summer convention. We proudly congratulate Paul for this outstanding honor.

* * *

For more details about developments in our docket, please see the following sections.

ACCESS TO JUSTICE

Bristol-Meyers Squibb Co. v. Superior Court
(U.S. Supreme Court)

In this case, we submitted an amicus brief to the U.S. Supreme Court to protect plaintiffs’ ability to seek access to justice in the forum of their choosing. Defendant Bristol-Myers Squibb Company (BMS) argued that California courts lack jurisdiction over claims made by non-resident plaintiffs in a mass tort proceeding, where both residents and non-residents allege a prescription antiplatelet drug, Plavix (used to inhibit blood clots), caused personal injury to them. A majority of the California Supreme Court held on August 29, 2016, that California state courts had jurisdiction to hear the lawsuit because the corporate defendant—though headquartered and incorporated elsewhere—had sufficient California activities that were related to the lawsuit to justify the court’s exercise of jurisdiction.

Status: We filed our amicus brief to the U.S. Supreme Court on April 7, 2017. On June 19, 2017, the Court held, 8 to 1, that there was no personal jurisdiction over BMS in a nationwide class action brought by non-California residents pending in California over Plavix.

Attorneys: Co-counsel were Public Justice’s Leslie Brueckner and Louis M. Bograd of Motley Rice, LLC, who was the principal author of the brief.

CalPERS v. ANZ Securities, Inc.
(U.S. Supreme Court)

We submitted an amicus brief to the U.S. Supreme Court in this high-profile securities case alleging massive fraud on the part of Lehman Brothers in issuing numerous debt offerings in 2008 just prior to its collapse. The question to be decided by the Supreme Court was the extent to which the statute of limitations on individual

plaintiffs' securities claims would be tolled during the pendency of a putative class action. We joined in a brief principally authored by Public Citizen arguing that a rule to allow tolling would violate the Rules Enabling Act.

Status: On June 26, 2017, the Court held, 8 to 1, that individual claims brought under Section 13 of the Securities Act would not be tolled during the pendency of a putative class action.

Attorneys: Scott Nelson of Public Citizen was the lead author on the brief, and Paul Bland was co-counsel.

ANTI-BULLYING CAMPAIGN & CIVIL RIGHTS

Escamilla v. Cavazos (U.S.D.C., S.D. Texas)

This was a wrongful death lawsuit on behalf of the family of Rafael Edgardo Solis, Sr., a pre-trial detainee at the Webb County Jail in Texas who died of asphyxiation allegedly caused by the jailers' use of excessive force against him. The county coroner ruled that Mr. Solis's death was a homicide. In addition, a Texas Rangers report concluded that bruising on Mr. Solis's chest was consistent with impact from the laces of the jailers' boots. See [op-ed](#) in *The Guardian*. The district court refused to grant summary judgment to the jailers on the excessive force claim, and the Fifth Circuit dismissed the jailers' appeal, holding that it lacked jurisdiction. The case was sent back to the district court.

Status: Two weeks before trial, on April 3, 2017, the parties reached agreement on a settlement, in which the County agreed to pay Rafael's family one million dollars (the limit of its insurance policy). We are awaiting court approval of the settlement.

Fees: Any fees recovered will be distributed among attorneys on a pro rata basis based on lodestar, except that in no event will Public Justice receive less than 25% of the total attorneys' fees recovered.

Attorneys: Co-counsel were Public Justice's Jennifer Bennett, Adele Kimmel, and Paul Bland; Ronald Rodriguez of the Law Office of Ronald Rodriguez, P.C.; and Janet Varnell of Varnell & Warwick.

G.G. v. Gloucester County School Board (U.S.C.A., Fourth Circuit)

We joined an amici brief to the Fourth Circuit in a lawsuit brought by Gavin Grimm, a transgender boy challenging his Virginia high school's bathroom policy, which bars transgender students from communal restrooms and forces them to use separate, single-stall bathrooms. The case presents the question of whether such a policy violates Title IX's prohibition against sex discrimination. We previously joined an amicus brief to the U.S. Supreme Court in this case, but the Court remanded the case to the Fourth Circuit, after the Trump administration rescinded guidance issued during the Obama administration that construed Title IX as requiring schools to allow transgender students to use the bathrooms of their choice.

Status: We filed our amicus brief to the Fourth Circuit on May 15, 2017. We await a decision.

Attorneys: Co-counsel were Public Justice's Adele Kimmel; Fatima Goss Graves, Neena Chaudhry and Alexandra Brodsky of the National Women's Law Center; and Charles Rothfeld of Mayer Brown LLP.

H.L. v. Monongalia County Board of Education

(West Virginia)

This is a first-of-its-kind lawsuit in West Virginia against a school district and sheriff's department on behalf of a biracial high school student assaulted with a blade after the school district ignored repeated reports of racial cyberbullying and threats by her attacker, a white female student with a history of violence. Our client, H.L., a sixteen-year-old girl, was so traumatized by the bullying and her school's victim-blaming response to her complaints that she dropped out of the school and required in-patient psychiatric treatment. This is the first racial bullying case filed against a school district under West Virginia's Human Rights Act. The case also seeks to set precedent on schools' obligations to address cyberbullying—an area of law in a nascent stage of development. H.L. also filed a Title VI complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"), which is being investigated.

Status: The Monongalia County Sheriff's Department moved to dismiss the plaintiff's civil rights claim and under the West Virginia's Human Rights Act and her negligent infliction of emotional distress claim. We filed a motion for sanctions, based on the on the frivolity of both the motion to dismiss and many affirmative defenses in the Sheriff's Answer. We will be filing our opposition to the motion to dismiss in July. A hearing on the pending motions is set for July 17, 2017.

OCR informed us that it working on a Voluntary Resolution Agreement with the school district, and that the district has until July 26, 2017, to finalize the Agreement. The Agreement would require global changes to policies, procedures, and training to resolve H.L.'s civil rights complaint, and would include monitoring by OCR to ensure implementation of the Agreement.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar, but in no event would Public Justice receive less than 15% of fees recovered at the trial court level. If fees are recovered after an appeal, then Public Justice would receive no less than 20% of the fees recovered.

Attorneys: Co-counsel are Public Justice's Adele Kimmel and Sean Cook of Meyer Ford & Glasser, PLLC.

CLASS ACTION PRESERVATION

Eike v. Allergan, Inc.

(U.S.C.A., Seventh Circuit)

We were lead counsel in this Rule 23(f) appeal of class certification in a case alleging that the defendant pharmaceutical companies violated various state consumer protection statutes by purposely packaging their prescription eye drops in droppers that emitted a far larger drop than is therapeutically necessary. The defendants contended that the district court improperly certified the class by failing to conduct a sufficiently rigorous analysis with regard to commonality and predominance; erring in finding that the class satisfied the superiority requirement; erring in finding typicality; and by improperly approving an averages-based damages model. The defendants also argued that the plaintiffs lack standing to bring their claims.

Status: On April 7, 2017, the Seventh Circuit denied our petition for rehearing *en banc*, refusing to reconsider a panel's decision that ruled the plaintiffs lacked standing to bring their claims. We continue to wait for a ruling from the Third Circuit in a similar case called *Cottrell v. Alcon Labs., Inc.*

Fees: No fees are available.

Attorneys: Co-counsel were Public Justice's Leah Nicholls, and Richard S. Cornfeld of the Law Office of Richard S. Cornfeld.

Romero v. Department Stores National Bank

(U.S.C.A., Ninth Circuit)

In this appeal, we argue that a plaintiff who received nearly 300 robocalls from the banks that issue Macy’s credit cards, despite repeatedly telling them not to call her, has standing—that is, suffered a sufficient injury—to sue the banks in federal court. In this case and others, we seek to shape courts’ interpretation of the U.S. Supreme Court’s 2016 decision in *Spokeo, Inc. v. Robins*, which addressed—somewhat confusingly—the issue of when plaintiffs bringing claims for statutory damages (damages that are set by statute) are injured and have standing. In this appeal, in addition to the standing issue, we also argue that debt collectors cannot “cure” a violation of California’s fair debt collection law (and therefore avoid having to pay damages for violating consumers’ rights) simply by promising to stop their illegal behavior once sued, and that calling someone hundreds of times without their consent is an invasion of privacy.

Status: Briefing to the Ninth Circuit was completed on April 21, 2017. A date for oral argument has not yet been set.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s Jennifer Bennett and Paul Bland; Ronald Wilcox of Wilcox Law Firm, P.C.; Ivan Miguel Lopez Ventura; and Andre Verdun of Crowley Law Group.

COURT SECRECY

Center for Food Safety v. Murphy Brown

(U.S.D.C., E.D. of North Carolina)

We seek to unseal court records in consolidated federal nuisance cases pending in North Carolina against a giant hog producer whose sewage management practices are destroying the lives of the residents in the adjacent, predominantly African-American community. We represent several nonprofit groups with a strong interest in exposing the truth about the hog industry’s impact on the people and environment of North Carolina. They believe that the records in this lawsuit contain important information that will shed light on this important matter of public interest.

Status: Because this case is in the midst of hotly contested litigation, new motions are being filed every day and the secrecy issue is a moving target. We have decided to hold off filing at least until the court resolves several pending motions for partial summary judgment. At that point we will assess our best options for moving forward.

Fees: No fees are available.

Attorneys: Co-counsel are Public Justice’s Leslie Brueckner and Jessica Culpepper and Daniel Bryson of Whitfield, Bryson & Mason.

Perez v. Lantern Light Corp.

(U.S.D.C., W.D. of Washington)

We challenged the sealing of summary judgment exhibits in a now-settled case that alleged satellite television service provider DirecTV should be held liable for overtime wages to satellite television installers. The case, filed by the U.S. Department of Labor (“DoL”), alleged that DirecTV was a “joint employer” of these installers—who were ostensibly employed by a now-bankrupt subcontractor of DirecTV—and should be jointly liable for unpaid wages. The court documents under seal contain evidence in support of DirecTV’s status as a joint employer, and were sealed without the requisite showing of compelling need for secrecy. Our client, a public interest

organization dedicated to helping low wage workers—the Washington Wage Claim Project—sought to obtain public access to this evidence.

Status: On May 17, 2017, the district court granted our motion to unseal in its entirety. See [blog post](#).

Fees: No fees are available.

Attorneys: Co-counsel were Public Justice’s Leslie Brueckner and Beth Terrell and Brittany Madderra of Terrell Marshall Law Group PLLC.

ENVIRONMENTAL ENFORCEMENT PROJECT

Citizens Coal Council v. Matt Canestrone Contracting, Inc. (LaBelle)

(U.S.D.C., W.D. of Pennsylvania)

We filed a citizen suit against a cleanup contractor to impose restrictions on coal ash minefill operations in Luzerne Township, Pennsylvania and to force cleanup of the existing pollution. The coal ash—containing toxins like antimony, arsenic, chromium, and lead—blows onto nearby residents’ properties and pollutes drinking water and local streams.

Status: Ever since we defeated two motions to dismiss several years ago, the parties have been engaging in intermittent settlement discussions. In 2016, the case was stayed to allow the parties to discuss settlement, and, under a court-approved agreement, new coal ash was prohibited from coming to the site for a year. On June 29, 2017, the court signed another interim agreement that prevents coal ash from coming to the site for another year, requires the company to suppress dust and engage in some clean up, and pay us some attorneys’ fees.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s Jim Hecker and Richard Webster (serving as Of Counsel) and Jennifer Duggan of the Environmental Integrity Project.

Ohio Valley Environmental Coalition v. Fola Coal Co. (Leatherwood)

(U.S.D.C., S.D. of West Virginia)

This is one case in a series of Clean Water Act (CWA) citizen suits we filed against mining companies to enforce a pollution permit’s narrative water quality standard for aquatic life protection. In this case, a West Virginia mining company’s operations discharged high levels of dissolved salts in a way that increased the conductivity and impaired the aquatic ecosystem of a neighboring stream. In August 2015, after a four-day trial on liability, the trial court ruled that the plaintiffs had established a CWA violation for two of the three mines at issue. In June 2016, after a two-day trial, the court granted injunctive relief. The specific remedy will be recommended by a special master after additional site monitoring is conducted. In February 2017, the company dismissed its appeal, and we asked the trial court to award interim attorneys’ fees and expenses.

Status: On May 2, 2017, the trial court awarded Public Justice \$240,048.88 in interim attorneys’ fees and expenses.

Fees: Statutory fee-shifting is available if we are successful, and any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s Jim Hecker and Joseph M. Lovett and Michael Becher of Appalachian Mountain Advocates.

Ohio Valley Environmental Coalition v. Fola Coal Co. (Monoc)

(U.S.D.C., S.D. of West Virginia)

This is one case in a series of Clean Water Act (CWA) citizen suits we filed against mining companies to enforce a pollution permit's narrative water quality standard for aquatic life protection. In this case, a West Virginia mining company's operations discharged high levels of dissolved salts in a way that increased the conductivity and impaired the aquatic ecosystem of a neighboring stream. We won summary judgment on the general causation issue (based on a legal victory against the mine in a different case), and had a two-day trial in March 2017 on the remaining specific causation issue.

Status: On May 30, 2017, the district court found the company liable for polluting two more streams. The decision is particularly significant because we used a new, more precise method to measure environmental impact, and the court found that the new method was superior to the old method (under which the pollution looked less damaging). With this latest victory, we have now won liability decisions for illegal conductivity pollution in four trials, and negotiated one consent decree, covering four mines owned by Alpha Natural Resources and five mines owned by Fola Coal Company. We are in the remedy phase for the five Fola mines, and a special master is overseeing that work.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice's Jim Hecker and Joseph M. Lovett and Michael Becher of Appalachian Mountain Advocates.

Sierra Club v. Chesapeake Operating LLC

(U.S.D.C., W.D. of Oklahoma)

On behalf of the Sierra Club, we alleged that the fracking and oil production activities of four energy companies have caused or contributed to an increase in the frequency and severity of earthquakes in Oklahoma and violate RCRA. In February 2016, we filed suit against three of the four energy companies, and added a fourth defendant in April 2016.

Status: As a result of our lawsuit, the state legislature strengthened the powers of a state agency to regulate earthquake risk. The trial court then granted the defendants' motion to dismiss in April 2017 on the grounds of primary jurisdiction and judicial abstention, deferring to the regulatory powers of the state agency. We decided not to appeal this decision, but will consider filing a new lawsuit if the companies start increasing the amount of waste water they inject into the ground.

Fees: No fees are available.

Attorneys: Co-counsel were Public Justice's Richard Webster; Robin L. Greenwald of Weitz & Luxenberg P.C.; Scott Poynter of the Poynter Law Group, and Bill Federman of Federman & Sherwood.

FOOD PROJECT

Animal Legal Defense Fund v. C.L. Butch Otter

(U.S.C.A., Ninth Circuit))

This is a constitutional challenge to an Idaho statute criminalizing whistleblowing activity at factory farms and other industrial agricultural facilities. A coalition of public interest groups argued that the so-called "ag-gag" statute violates the First Amendment by suppressing speech that criticizes factory farms, and violates the Equal Protection Clause because it was motivated by unconstitutional animus against animal advocates. In a landmark

ruling, the district court struck down Idaho’s “ag-gag” statute on federal constitutional grounds, holding that it violates the First Amendment and the Equal Protection Clause. See [blog post](#). The case is on appeal.

Status: Oral argument before the Ninth Circuit was held on May 12, 2017.

Fees: The legal team sought prevailing party fees from the defendant under federal civil rights law, and the district court awarded the team approximately \$250,000 in May 2016. Fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s Leslie Brueckner; Maria Andrade; Richard Eppink of ACLU of Idaho Foundation; Matthew Liebman of Animal Legal Defense Fund; Justin Marceau of the University of Denver Law School; Matthew Strugar of People for the Ethical Treatment of Animals, Inc.; and Paige Tomaselli of the Center for Food Safety.

People for the Ethical Treatment of Animals v. Cooper (North Carolina Ag-Gag)
(U.S.D.C., M.D. of North Carolina)

We are lead counsel on behalf of a coalition of public interest groups in a constitutional challenge to North Carolina’s “Anti-Sunshine” law, a statute that, like ag-gag laws in other states, creates a civil cause of action for employers and property owners against employees who conduct undercover investigations of their workplace. Under the law, organizations and journalists who conduct undercover investigations, and individuals who expose improper or criminal conduct by North Carolina employers, are susceptible to suit and substantial damages if they make such evidence available to the public or the press. The law’s text and legislative history confirm that the statute’s primary objective is to stop undercover investigations by what the legislature termed “private special-interest organizations,” particularly those focused on animal agriculture and food health and safety. See Executive Director Paul Bland’s [blog post](#) on the *Daily Kos*.

Status: On May 2, 2017, the trial court granted the defendant’s motion to dismiss on the ground that the plaintiffs lacked standing to challenge the statute. We have appealed the decision to the Fourth Circuit.

Fees: Statutory fee-shifting is available if we are successful, and any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s David Muraskin and Leslie Brueckner; Daniel K. Bryson and Jeremy Williams of Whitfield, Bryson & Mason LLP; Matthew Strugar of the PETA Foundation; Matthew Liebman of the Animal Legal Defense Fund; Cristina R. Stella and Paige Tomaselli of the Center for Food Safety; Scott Edwards of Food and Water Watch; Sarah L. Nash of the Government Accountability Project; Justin Marceau of the University of Denver-Sturm College of Law acting as of counsel to the Animal Legal Defense Fund; Michael McFadden of Farm Forward; and Jennifer Chin and Robert Hensley of the ASPCA.

Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America
v. U.S. Department of Agriculture (COOL regulations)
(U.S.D.C., Eastern District of Washington)

On behalf of independent beef producers, we filed this lawsuit to challenge the legality of U.S. Department of Agriculture regulations that reclassify imported beef and pork as “domestic products,” arguing that the regulations directly conflict with the text of the governing statute. The regulations allow meat companies to label foreign and domestic meat identically (as “Products of USA”), confusing consumers and harming domestic producers. The case will help align our Food Project with rural communities and farmers, and with campaigns of the “good food movement” to increase transparency and competition in food production.

Status: On June 19, 2017, we filed the complaint. See [AP national wire story](#).

Fees: Should we prevail, the Equal Access to Justice Act provides for the recovery of fees and costs. Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s David Muraskin, and Beth Terrell and Blythe Chandler of Terrell Marshall Law Group PLLC.

Ranchers-Cattlemen Action Legal Fund v. Vilsack
(U.S.D.C., D. of Montana)

Representing the Ranchers-Cattlemen Action Legal Fund (R-CALF USA), we filed a lawsuit against the U.S. Department of Agriculture (USDA), alleging that the USDA’s “Beef Checkoff” tax—which collected more than \$80 million in 2015—is being unconstitutionally handed over to private entities and used to promote the interest of multinational beef packers to the detriment of U.S. beef products and producers. R-CALF USA, whose members are independent cattle producers across the United States, says that while its members must pay a \$1-per-head tax to the Checkoff program, funds from that tax are used to convince consumers that beef from R-CALF USA members’ cattle—raised domestically and in compliance with domestic standards concerning safety, treatment and quality—is no different than beef produced under far less stringent procedures abroad. The cutting-edge lawsuit alleges that the USDA’s allocation of Checkoff funds violates the First Amendment by compelling R-CALF USA members to finance this advertising by the private Montana Beef Council.

Status: On June 22, 2017, the district court comprehensively adopted the findings and recommendation of the magistrate judge granting a preliminary injunction to prohibit the Montana Beef Council from retaining producers’ funds and denying all of the government’s motions. Adopting our legal arguments, the judge wrote: “The USDA does not control how the Montana Beef Council spends the money that it obtains from the federal Beef Checkoff Program. The Government violates the First Amendment when it compels a citizen to subsidize the private speech of a private entity without first obtaining the citizen’s ‘affirmative consent.’” This is a huge initial win for independent farmers against the large corporate interests that have dominated the marketing (and market), and provides a foundation to push for reform in the Beef Checkoff program nationwide.

Fees: Our client has agreed to provide Public Justice with a \$6,000 retainer. Should we prevail, the Equal Access to Justice Act provides for the recovery of fees and costs. Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s David Muraskin; William A. Rossbach; and J. Dudley Butler of the Butler Farm and Ranch Law Group.

Western Watersheds Project v. Michael
(U.S.C.A., Tenth Circuit)

This is a federal constitutional challenge to two newly-enacted Wyoming statutes (the “Data Laws”) designed to stop members of the public from gathering “resource data” on public or private land in Wyoming. The statutes define “resource data” to mean precisely the type of data federal and state environmental agencies require from the public to support comments to proposed regulations or changes to regulations. Indeed, the Data Laws were enacted for the explicit purpose of preventing an Idaho nonprofit, the Western Watersheds Project (WWP), from collecting water samples needed to prove that overgrazing of the land by the cattle industry is polluting the water supply, and thereby demand greater regulation. We represent WWP, who is challenging these laws along with a coalition of environmental and journalist groups. On July 6, 2016, the trial court granted the State’s motion to dismiss, concluding that the law was constitutional because it prevented trespass. We were asked to take over the case on appeal.

Status: On May 8, 2017, David Muraskin argued on behalf of the plaintiffs before the Tenth Circuit.

Fees: Statutory fee-shifting is available if we are successful, and any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s David Muraskin and Leslie Brueckner; Justin R. Pidot and Justin F. Marceau of the University of Denver Sturm College of Law; Matthew Strugar of the PETA Foundation; Michael E. Wall and Margaret Hsieh of the National Resources Defense Council; Deepak Gupta of Gupta Wessler PLLC; Paige M. Tomaselli and Cristina R. Stella of the Center for Food Safety; and Reed Zars.

MANDATORY ARBITRATION

In re Automotive Parts Antitrust Litigation

(U.S.D.C., E.D. of Mich.)

In this antitrust case against corporations involved in the manufacture, sale and distribution of spark plugs and oxygen sensors for automobiles, we seek to block the ability of the defendants who are not party to arbitration agreements with the plaintiffs from forcing the case into arbitration. We will argue that the plaintiffs never agreed to arbitrate with these defendants, and that no exception to the normal rules of contract formation apply. We have taken on a series of cases presenting this issue in order to promote good law upholding the principle that arbitration is a matter of consent, and where there is no consent, arbitration cannot be compelled.

Status: On April 18, 2017, the trial court granted the defendants’ motion to compel arbitration. We sought permission from the court to appeal that decision to the Sixth Circuit.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s Paul Bland; David H. Fink and Darryl Bressack of Fink + Associates Law; Joseph C. Kohn, William E. Hoese, and Douglas A. Abrahams of Kohn, Swift & Graf, P.C.; Gregory P. Hansel, Randall B. Weill, Michael S. Smith of Preti, Flaherty, Beliveau & Pachios LLP; Steven A. Kanner, William H. London, and Michael E. Moskovitz of Freed Kanner London & Millen LLC; Eugene A. Spector, William G. Caldes, Jonathan M. Jagher, Jeffrey L. Spector of Spector Roseman Kodroff & Willis, P.C.; M. John Dominguez, David A. Young, and Matthew W. Ruan of Cohen Milstein Sellers & Toll PLLC; Solomon B. Cera of Cera LLP; Aubrey H. Tobin; Carl E. Person; Linda P. Nussbaum and Susan R. Schwaiger of Nussbaum Law Group, P.C.; Irwin B. Levin of Cohen & Malad, LLP; and Warren Rubin of the Law Offices of Bernard M. Gross, P.C.

Breazeale v. Victim Services, Inc.

(U.S.C.A., Ninth Circuit)

In this consumer class action, the plaintiffs allege that Victim Services, Inc., a private debt collector hired by retailers and collection agencies, masqueraded as a district attorney and illegally threatened people who had bounced checks with criminal prosecution if they didn’t pay it hundreds of dollars in “fees.” When consumers sued the debt collector, the company tried to force the dispute into arbitration—based on a fine-print arbitration clause buried in a document most consumers would have no reason to read. We think the company’s arbitration clause is unenforceable, both because most consumers wouldn’t have even seen it and because, even if they had, an “agreement” to arbitration extracted under threat of criminal prosecution is not valid consent. We filed an amicus brief in the case to prevent this predatory practice—a particularly egregious example of enlisting the criminal justice system in aid of private debt collection—from evading judicial review.

Status: Our amicus brief was filed on April 27, 2017. The defendant opposed our motion to file an amicus brief, making several false accusations, so we filed a responsive brief on May 30, 2017.

Attorneys: Co-counsel are Public Justice's Jennifer Bennett and Brian Hardingham; and David Seligman of Towards Justice.

Hurst v. Monitronics International

(U.S.C.A., Eleventh Circuit)

We were lead appellate counsel before the Eleventh Circuit defending the ability of a Georgia woman to keep in court her putative class action against a home security company over harassing robocalls. The company, Monitronics International, sought to push the dispute into arbitration. But the trial court found the company had waived its right to arbitration, that the company's arbitration clause was unconscionable and unenforceable, and that it could not show that its corporate predecessor had assigned to it the right to arbitrate. In March 2017, the Eleventh Circuit upheld the district court's ruling refusing to compel arbitration.

Status: On May 8, 2017, the Eleventh Circuit refused to reconsider its March 2017 decision.

Fees: Public Justice will receive 15% of any fee recovery, or 20% of any fee recovery if this case is appealed to the U.S. Supreme Court.

Attorneys: Co-counsel are Public Justice's Karla Gilbride and Paul Bland; Alex Burke of the Burke Law Offices; and Justin Holcomb of Skaar and Feagle.

Khan v. Taylor Cadillac

(Ohio)

In this case, Ohio resident Fawad Khan accuses a car dealership of using predatory and deceptive tactics to pressure him to buy a car he could not afford. We represent Mr. Khan in this state court appeal to challenge the enforceability of an arbitration agreement that accompanied his auto purchase and financing agreements. Among other things, we argue that the arbitration agreement is unconscionable both on its face and based on the high-pressure circumstances under which it was signed, and, in any event, that an evidentiary hearing should have been held to explore the circumstances of the agreement's formation.

Status: Briefing to the Sixth District Ohio Court of Appeals was completed on June 1, 2017.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice's Karla Gilbride, and Gregory Reichenbach of Reichenbach Law Office. Former Bridge Fellow Kyra Taylor also worked on the case.

Rodriguez v. Experian Services Corp.

(U.S.C.A., Ninth Circuit)

We are lead counsel in this appeal to the Ninth Circuit to challenge an arbitration agreement on behalf of a putative class of consumers, each tricked into paying thousands, if not tens of thousands, of dollars for worthless credit repair services. The putative class alleges that Experian used its prestige and reputation as one of the "big three" credit reporting agencies to steer consumers with poor credit to its affiliate company, LowerMyBills, Inc., which in turn promised to connect them with third party credit repair companies that would help them reduce their debts and improve their credit scores. But at least one of those credit repair companies, called Credit Alliance Group, collected substantial fees from consumers without doing anything in return, leaving consumers in worse debt and with worse credit scores than before. After the plaintiffs sued in court, the defendants successfully moved to compel arbitration based on an arbitration clause found in the "terms of service" which was only available through an inconspicuous hyperlink on the LowerMyBills website.

Status: After briefing to the Ninth Circuit was complete, the parties reached a settlement. A class action settlement providing for \$2.75 million was preliminarily approved by the trial court on May 25, 2017. A final fairness hearing will be held on September 18, 2017.

Fees: Public Justice will receive 10% of any fees recovered, up to a cap of \$100,000.

Attorneys: Co-counsel are Public Justice's Cartwright-Baron Staff Attorney Karla Gilbride, Andrew J. Schwaba of the Schwaba Law Firm and Edward H. Nicholson Jr. of the Nicholson Law Firm.

Roe v. SFBSC Management, LLC
(U.S.C.A., Ninth Circuit)

In this case, a putative class of exotic dancers allege that they were misclassified as independent contractors and successfully argued in the trial court that they could not be sent to arbitration pursuant to an unfair arbitration agreement. We handled the appeal in which the Ninth Circuit held that the company providing management services for the nightclubs could not compel arbitration of wage and hour disputes with the dancers because it was not a party to the arbitration agreements between the clubs and the dancers, and could not establish any right to enforce the arbitration agreements as a third party.

Status: On April 14, 2017, the trial court granted preliminary approval of a class action settlement in the case despite an objection filed by an attorney with a competing lawsuit to challenge the fairness of the settlement. The settlement would provide up to \$4 million for direct payments to class members as well as changes to the nightclub's business practices that are estimated to confer benefits on class members of over \$1 million. A final fairness hearing will be held on September 14, 2017.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice's Paul Bland and Cartwright-Baron Staff Attorney Karla Gilbride, and Steve Tidrick and Joel Young of The Tidrick Law Firm.

TAMKO Building Products v. Hobbs
(U.S. Supreme Court)

TAMKO manufactures roofing shingles that are sold throughout the U.S. Property owners whose shingles warped, cracked, failed and leaked brought a statewide consumer class action alleging that TAMKO had misrepresented the quality of the shingles. But TAMKO moved to compel arbitration, arguing that the plaintiffs had agreed to an arbitration clause printed on the packaging of the shingle bundles by keeping and using the product. Both the trial court and the Missouri Court of Appeals found that the plaintiffs had never agreed to arbitrate their claims because they were not given sufficient notice that they would become bound by an arbitration clause by keeping and installing the shingles they had purchased. We represented the putative class in opposing the defendant's petition for *certiorari* review by the U.S. Supreme Court, led by none other than former Solicitor General Paul Clement. The case continued our work aimed at preventing corporations from stripping people of their constitutional rights through boilerplate "fine print" contracts with little or no indicia of consent.

Status: *Certiorari* review was denied on May 22, 2017, after a flurry of supplemental briefing on the import on the case of the U.S. Supreme Court's recent decision in *Kindred Nursing Centers L.P. v. Clark*.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice's Leslie Bailey; Dan Bryson, Gary Mason, and Scott Harris of Whitfield Bryson & Mason LLP; Christopher Coffin of Pendley, Baudin & Coffin, L.L.P.; Seth

Crompton and Eric Holland of the Holland Law Firm; and Jordan Chaikin of the Chaikin Law Firm PLLC.

TruGreen v. Stevens-Bratton

(U.S. Supreme Court)

We are lead counsel opposing *certiorari* review by the U.S. Supreme Court in a consumer class action case presenting various questions of contract interpretation with regard to a cancelled contract containing a class action ban within an arbitration clause.

Status: Our opposition to *certiorari* review was filed on June 29, 2017.

Attorneys: Co-counsel are Public Justice’s Karla Gilbride, Beth Terrell of Marshall Law Group PLLC, and Adam Gonnelli of Sultzer Law Group PC. Kazan-Budd Attorney Brian Hardingham also assisted with research and writing of the opposition brief.

WORKERS’ RIGHTS

Oliveira v. New Prime Inc.

(U.S.C.A., First Circuit)

This is a proposed nationwide class action against a trucking company that has allegedly misclassified thousands of its drivers as independent contractors—and then failed to pay them minimum wage. The company unsuccessfully tried to force its workers’ claims into arbitration. We represented the workers in the First Circuit appeal, and argued that the company cannot subject workers who are otherwise exempt from the Federal Arbitration Act—Section 1 of the FAA excludes “contracts of employment” of transportation workers—simply by misclassifying them as independent contractors. Case law favorable to workers on this question will have dramatic effects on the trucking industry, where misclassification is rampant.

Status: In a groundbreaking decision, the First Circuit held on May 15, 2017, that transportation companies cannot force their workers to arbitrate wage and hour disputes, simply by misclassifying their workers as independent contractors. This is the first federal appeals court decision to address the issue, and it wholly accepted our argument that an exemption in arbitration law for transportation workers applies to independent contractors as well as employees. See [blog post](#). On June 27, 2017, the First Circuit denied the trucking company’s petition for rehearing *en banc*.

Fees: Any fees recovered will be distributed among attorneys on a *pro rata* basis based on lodestar.

Attorneys: Co-counsel are Public Justice’s Jennifer Bennett, Andy Schmidt of Andrew Schmidt Law PLLC, and Hillary Schwab of Fair Work P.C.

Pacific 9 Transportation, Inc. v. Labor Commissioner (Aguilar)

(California)

Hundreds of port truck drivers in California have filed claims with the state Labor Commissioner, alleging that the hauling companies they work for should have treated them as employees instead of independent contractors, and should have paid them more. But Pacific 9 Transportation, Inc. (Pac 9) tried to force its drivers into arbitration, by filing petitions to compel arbitration in California state court. In this case, we represented more than two dozen drivers in court to preserve the remedies available to them from the Labor Commissioner. As in our other cases defending port truck drivers, we argued that the Federal Arbitration Act expressly exempts transportation workers from its coverage. In December 2015, we successfully opposed Pac 9’s motion to compel arbitration in trial court, and, shortly thereafter, nearly 40 Pac 9 drivers were awarded judgments by the Labor

Commissioner for wage theft totaling \$6.9 million. Pac 9 appealed the order denying its motion to compel arbitration to the California Court of Appeal, and, shortly thereafter, filed for bankruptcy.

Status: On May 12, 2017, the Court of Appeal canceled the oral argument set for May 22 due to a settlement reached between the drivers and Pac 9 in bankruptcy court.

Fees: No fees are available.

Attorneys: Co-counsel were Public Justice's Jennifer Bennett and Victoria Ni, and Kazan-Budd Attorney Brian Hardingham; and Jean Choi of LAANE.

-END-

TAB III.B



**Confidential Case Development Report
June 29, 2017**

A. SPECIFIC CASES UNDER INVESTIGATION (outside of the Environmental Enforcement Project)

Arbitration - Criminal Justice System (Venue undetermined)

Potential case(s) challenging arbitration agreements in the contracts of private companies involved in the criminal justice system, such as private probation companies, private alternatives to incarceration, and private debt collectors that threaten to criminally prosecute consumers who have bounced checks. These corporations are now starting to include arbitration agreements in their contracts—contracts that people often have no choice but to agree to (on threat of prosecution or incarceration). Jennifer Bennett is investigating.

Arbitration – Sexual Assault by RideShare Driver (California)

Potential involvement in case against rideshare company arising from the sexual assault of a passenger by a driver. The company has moved to compel arbitration. Leslie Bailey is assisting the plaintiffs' counsel in opposing that motion and is also exploring potential involvement as co-counsel, either in trial court or in a possible appeal.

Civil Rights - False Arrest (Arkansas)

Potential involvement in a pending § 1983 and negligence case against Arkansas prosecutors, municipal government, and a merchant, arising from a warrant being issued for the wrong suspect in a criminal investigation involving a returned check. The case raises several issues related to government immunity under state and federal law that are related to our other work on debtors' prison issues and district-attorney-sponsored bad check diversion programs. Brian Hardingham is investigating. Public Justice Foundation Board member J.D. Hays is local counsel on the case.

Debtors' Prison (Arkansas)

Potential class action on behalf of individuals, many of whom are non-English speakers, who were incarcerated after being held in civil contempt for failure to pay civil debts to private companies, including car dealers and a credit union, without sufficient notice or legal representation. Leslie Bailey and Brian Hardingham are investigating with Public Justice Foundation Board member Janet Varnell.

Debtors' Prison and Private Probation (Venues undetermined)

Potential case(s) on behalf of debtors who have been arrested and/or incarcerated for failure to pay civil debts to private parties, and/or on behalf of individuals victimized by private probation companies that are hired by local governments. Leslie Bailey is investigating.

Disability Rights - Inaccessible Public Benefits Information (Washington, DC)

Potential class action on behalf of DC residents seeking to require the District to provide blind recipients of public assistance benefits with notices about their benefits in accessible formats such as Braille and large print. Karla Gilbride is investigating with Public Justice Foundation Board member Linda Correia.

Food Project/Workers' Safety – Animal Processing Hazards (Missouri)

Potential case, outside of the workers' compensation regime, to enjoin unsafe working conditions in animal processing plants in order to highlight the well-documented dangerous conditions in those plants. David Muraskin, Dani Zylberberg, and Vicky Ni are investigating.

Food Project – Dairy Pollution (Michigan)

Potential cases, on behalf of Sierra Club, targeting dairy facilities in south-central Michigan for Clean Water Act violations. The dairies are a major source of pollution into the Maumee River, a major pollution source in the Lake Erie watershed. The area's permits are not being enforced and the local government has stated that it does not perform onsite inspections to ensure compliance with the law. Jessica Culpepper is investigating with BlueRiver Law, and the Michigan chapter of the Sierra Club. The Great Lakes Environmental Law Center has agreed to act as local counsel.

Food Project – Dairy Pollution (Wisconsin)

Potential case against a dairy or dairies for massive groundwater contamination in Kewaunee County, home to 20,000 residents who are almost entirely reliant on groundwater sources of drinking water. Sampling performed by the State in 2016 revealed rotavirus and salmonella in the drinking water, in addition to high levels of nitrates and e. coli in 60% of the private drinking wells. Two separate research projects by U.S. Department of Agriculture and the Lincoln Township mapping the flow of groundwater and pairing it with manure application events have determined that dairies are one of the major causes of contamination. Jessica Culpepper is investigating with Public Justice Foundation Board members Beth Terrell and Robin Greenwald.

Food Project – Factory Farm Pollution (Ohio)

Potential litigation against several factory farms in Grand Lake St. Mary's, where the lake is the most contaminated in the state. The area also has the highest concentration of animal production in the state. The town must use the lake water for drinking water, and the town has spent millions of dollars treating the water contaminated by factory farms. The facilities are too small to require a Clean Water Act permit, but we are considering environmental actions on behalf of a

citizen group, whose members have property by the polluted lake in danger of groundwater contamination. Jessica Culpepper and David Muraskin are investigating.

Food Project – Hog Pollution (Arkansas)

Potential Clean Water Act litigation against C&H Farms, a 6,000 head swine concentrated animal feeding operation (CAFO), along the Buffalo River, America’s First National River. The facility is under contract with the Brazilian integrator JBS. The operation creates more than 2.3 million gallons of liquid animal sewage, which is discharging into the Big Creek, a major tributary of the Buffalo River. Jim Hecker and Jessica Culpepper are investigating with Sam Ledbetter at McCath Woods.

Food Project – Chemical Contamination Litigation (District of Columbia)

Potential litigation against manufacturers of food products that use and/or contain alarming quantities of chemicals known to be harmful. We are considering injunctive suits to protect workers, false advertising claims and/or claims for breach of the warranty of merchantability. David Muraskin and Leah Nicholls are investigating.

Food Project – Hog Production Pollution (North Carolina)

Potential cases against North Carolina hog “integrators” (corporations that own and control all aspects of hog production in factory farming) to comprehensively address the environmental justice issues in eastern North Carolina. The factory farms are located in the poorest counties with the highest percentage of African-American residents and have caused a number of serious environmental threats to their health, property values, and ability to enjoy their lives. We, along with a coalition of groups in a “Hog Roundtable,” have already sent a 60-day notice letters under the Clean Water Act to two major integrators. Jessica Culpepper and David Muraskin are investigating.

Food Project – Right to Farm Challenges (Venue undetermined)

Possible state constitutional challenges to right to farm statutes, statutes that prohibit neighbors from seeking certain tort damages against farms regardless of the farm’s size or impact. Jessica Culpepper and David Muraskin are investigating.

Food Project – Nuisance Damages Cap (North Carolina)

Possible state constitutional challenge to new North Carolina law that caps the amount of damages neighbors can receive from agricultural nuisances. David Muraskin and Jessica Culpepper are investigating.

Payday Lending – Tribal Court Jurisdiction, Arbitration, and Tribal Immunity (California)

Potential class action against lender charging over 1,500% interest on short-term online loans, where lender claims tribal ownership and affiliation, and contract purports to require that all

disputes be resolved by arbitration or in tribal court according to tribal law. Leslie Bailey is investigating.

Payday Lending – Tribal Immunity (Oklahoma)

Potential involvement – either as co-counsel or amicus – in pending putative class action against lender claiming tribal ownership and affiliation. Leslie Bailey is investigating and assisting plaintiffs’ counsel.

Race-Based Harassment (South Carolina)

Potential representation of a black high school student in South Carolina, who was threatened and eventually assaulted at school by several white classmates who regularly used racial epithets at school, wore clothing emblazoned with confederate flag emblems, and drove trucks adorned with the confederate flag. The student and his family reported the threats to school officials for a month and warned them of imminent danger just days before the assault, but the school took no action and even blamed the student for his demise. Adele Kimmel is investigating with Rob Turkewitz and Zoe Sanders.

Sexual Assault of Student (Indiana)

Potential representation of a high school student in rural Indiana raped by two classmates on a school’s football team. The student reported the rapes to the police and her school. The criminal investigation is ongoing, and the school is refusing to take any action to investigate the incident or accommodate the victim while the criminal investigation is pending. Because she had classes with her attacker and was being harassed by him and his friends at school after the rapes, with no intervention by school officials, she left the school and began taking online courses from home. The Department of Education’s Office for Civil Rights is investigating a Title IX complaint the family filed. Adele Kimmel is investigating.

Sexual Assault of Student (Utah)

Potential representation of a college student raped at a Utah State University fraternity by a fraternity member with a known history of sexual harassment and violence. Public Justice Foundation Board member Jeffrey Eisenberg filed a federal lawsuit against the university, school officials, and the fraternity in November 2016, asserting federal civil rights and state-law claims. He has asked Public Justice to consider joining the suit as co-counsel. Adele Kimmel is investigating.

Sexual Assault of Student (Virginia)

Potential representation of Fairfax County high school student sexually assaulted by another student on a bus, while on a school band trip. Although at least two school employees learned about the assault while on the trip, they took no action to help the victim, advise her of her rights, or investigate what happened. After returning from the trip, school officials conducted a slipshod investigation, never informing the victim’s parents that she had reported a sexual assault and instead telling them that the school was considering whether to discipline the victim for engaging

in sexual activity (though the school ultimately did not punish her). Three years ago, Fairfax County Public Schools entered into a Voluntary Resolution Agreement with the U.S. Department of Education's Office for Civil Rights to resolve a complaint alleging that the district was violating Title IX in the manner it addressed student-on-student sexual harassment. The district continues to violate this agreement and Title IX. Adele Kimmel is investigating.

Workers' Rights – Subminimum Wages (Venue undetermined)

Possible challenge to systems in which workers with disabilities are paid less than the federal minimum wage under an exemption to the Fair Labor Standards Act that permits subminimum wages for people considered ineligible for competitive employment. Karla Gilbride is investigating.

Workers' Rights – Inaccessible Job Applications (Venue undetermined)

Possible challenge to system of online job applications for entry-level positions at retail stores that are inaccessible to people with intellectual disabilities because they ask confusing questions about personality traits that are not related to the tasks of the job, and where applicants are penalized for how long it takes them to respond. Karla Gilbride is investigating.

B. CASE INVESTIGATION OF THE ENVIRONMENTAL ENFORCEMENT PROJECT

Former Public Justice attorney Richard Webster has referred a potential case in New York to Melissa Sims and Public Justice Foundation Board member Gale Pearson using a new theory of municipal liability, in which cities, working with private attorneys, can impose civil fines against facilities that are contaminating property within the city limits in violation of public nuisance ordinances. Compared to private tort suits, this theory offers a simpler and more direct method of recovering fines for harm to the environment.

We are monitoring plans by First Energy to use a minefill in West Virginia to dispose of coal ash from its Bruce Mansfield power plant, a very large power plant in Pennsylvania. If stream monitoring shows that the disposal increases downstream conductivity, it would be another case to use our winning theory in the *Stillhouse* case.

We are working with Sam Ledbetter, an attorney in Little Rock, Arkansas, on a potential case against a large concentrated animal feeding operation that is polluting the Buffalo River, an important scenic river in the state.

C. POTENTIAL CASES INVESTIGATED AND REJECTED

Challenge to Damages Limitation Provision in New Mexico's Unfair Practices Act (New Mexico)

Potential amicus brief in New Mexico case challenging the provision of New Mexico's Unfair Practices Act that limits the damages available in a class action to actual (rather than statutory)

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damages. Jennifer Bennett investigated and rejected after determining that the constitutional theory underlying the challenge was unlikely to succeed.

In addition to the foregoing, since our last report about three months ago, we received and rejected written requests for representation or participation in approximately 46 cases.

-END-

TAB IV
Finances & Fundraising

TAB IV.A



Financial Report

Five Months Ended May 31, 2017

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Financial Report

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July 5, 2017

To: Executive Committee
Board of Directors
Public Justice Foundation

From: Paul Bland and David Seabrook

RE: **Financial Report**

<u>1. YTD May 31, 2017 Combined P&L Highlights</u>	<u>YTD Actual</u> (000's)	<u>YTD Budget</u> (000's)
Revenues:		
MCE Revenue	\$ 1,713	\$1,280
Foundations	258	280
Cy Pres	550	120
Case Costs Reimbursements	16	17
Attorneys' Fees	460	313
Investment Income	<u>182</u>	<u>83</u>
Total Revenues	3,179	2,093
Expenses	<u>2,179</u>	<u>2,198</u>
Net Income (Loss)	<u>\$ 1,000</u>	<u>\$ (105)</u>

For the five months ended May 31, 2017, total actual revenues have exceeded year-to-date (YTD) goals by 52%, and stand at 60% of our total annual revenue goal. Our YTD expenses are controlled and are at about 1% under YTD budget goals.

2. Working Capital (as of May 31, 2017)

Operating Cash	\$1.2M
Board Investment Reserve Account	5.5M

On May 3, 2017, Management transferred an additional \$250K from Operating Cash to the Board Investment Reserve Account. Our Board Investment Reserve Account can now cover 12 months of our operating expenses.

3. Attorneys' Fees

Anticipated Still to Be Received in 2017:

N&M Dairy	\$217K	
Aguayo	500K	
Escamilla	80K	
Leatherwood	<u>240K</u>	
Total Still to Be Received		\$1,037K
Total Received to Date		<u>460K</u>
Expected Total Attorneys' Fees 2017		<u>\$1,497K</u>
2017 Approved Annual Budget		<u>\$ 750K</u>

We are currently projecting that our anticipated Attorneys' Fees for the year will be \$747K higher than the approved 2017 budget line.

4. Cy Pres Awards

Anticipated Still to Be Received in 2017:

Couser v. Comenity Bank (Abbas Kazerounian and Jason Ibey)	430K	Approved, not yet received
Total Received (thru 6-28-17)	<u>637K</u>	
Expected Total Cy Pres 2017	<u>\$1,067K</u>	
2017 Approved Annual Budget	<u>\$ 785K</u>	

We are currently projecting that our anticipated Cy Pres revenue for the year will be \$282K higher than the approved 2017 budget line. We have included in our projection the award above that we believe will be received in 2017. We are conservatively not counting any other possibilities in our pipeline at this point.

**Public Justice
Combined Income Statements**



	(A) YTD May 31, 2017 Actual	(B) YTD May 31, 2016 Actual	(C) YTD May 31, 2017 Budget	(A) - (C) Over (Under) 2017 Budget	Annual 2017 Budget	Notes
Operating Revenue:						
Membership Dues	\$ 815,145	\$ 607,425	\$ 665,000	\$ 150,145	\$ 1,642,000	
Contributions	752,191	213,962	413,000	339,191	1,000,000	
Events	145,927	129,261	202,500	(56,573)	452,000	1
Foundations	257,500	185,000	280,000	(22,500)	430,000	1
Cy Pres	549,941	726,296	120,000	429,941	785,092	
Reimbursement for Case Costs	16,259	7,884	16,667	(408)	40,000	1
Attorney Fees	460,989	260,598	312,500	148,489	750,000	
Total Operating Revenue	2,997,952	2,130,426	2,009,667	988,285	5,099,092	
Operation Expense						
Salaries	1,162,364	1,090,555	1,183,138	(20,774)	2,839,533	
Benefits and Payroll Taxes	264,762	229,926	272,120	(7,358)	653,093	
Consultants	91,559	64,534	78,787	12,772	216,690	
Staff Development	3,401	5,260	5,894	(2,493)	13,545	
Communications	8,361	9,428	15,427	(7,066)	37,025	
Events Expense	57,425	79,610	-	57,425	317,275	2
Printing & Mailshop	9,151	27,204	22,855	(13,704)	54,854	
Case Costs	42,132	50,651	76,180	(34,048)	182,834	
Awards	2,453	1,087	20,464	(18,011)	49,115	
Office Systems	43,297	59,600	45,832	(2,535)	110,000	
Computers	9,439	10,035	15,997	(6,558)	38,395	
Office Supplies	6,400	24,940	10,833	(4,433)	26,000	
Rent	223,512	262,515	230,674	(7,162)	491,126	
Insurance	30,834	29,173	25,833	5,001	62,000	
Professional Fees	92,825	69,801	88,749	4,076	153,200	
Publications and Memberships	20,757	10,626	13,631	7,126	30,314	
Travel/Meetings	53,144	35,095	57,783	(4,639)	139,430	
Taxes and Licenses	1,572	2,098	4,165	(2,593)	10,000	
Capital Expense	39,243	44,788	29,500	9,743	70,800	
Total Operating Expense	2,162,631	2,106,926	2,197,862	(35,231)	5,495,228	
Operating Net Income (Loss)	835,321	23,500	(188,195)	1,023,516	(396,136)	
Other revenue (expense):						
Interest Expense	-	(2,100)	-	-	-	
Uncollectible Pledges/Bad Debts	(16,833)	(15,000)	-	(16,833)	-	
Net Investment Income	181,744	83,964	83,333	98,411	200,000	
Total Other revenue (expense)	164,911	66,864	83,333	81,578	200,000	
Net Income (Loss)	\$ 1,000,232	\$ 90,364	\$ (104,862)	\$ 1,105,094	\$ (196,136)	

Notes

- 1 We believe that these variances are primarily due to timing, and that we will make budget by the end of the year.
- 2 Event Expense under budget, due to timing of receipt of invoices, not a permanent savings.

**Public Justice Foundation
Income Statements**



	(A) YTD May 31, 2017 Actual	(B) YTD May 31, 2016 Actual	(C) YTD May 31, 2017 Budget	(A) - (C) Over (Under) 2017 Budget	Annual 2017 Budget
Operating Revenue:					
Membership Dues	\$ 815,145	\$ 607,425	\$ 665,000	\$ 150,145	\$ 1,642,000
Contributions	752,191	213,962	413,000	339,191	1,000,000
Events	145,927	129,261	202,500	(56,573)	452,000
Foundations	257,500	185,000	280,000	(22,500)	430,000
Cy Pres	549,941	726,296	120,000	429,941	785,092
Reimbursement for Case Costs	-	-	-	-	-
Attorney Fees	-	-	-	-	-
Total Operating Revenue	2,520,704	1,861,944	1,680,500	840,204	4,309,092
Operation Expense					
Salaries	429,949	492,765	556,754	(126,805)	1,336,211
Benefits and Payroll Taxes	102,697	111,420	128,052	(25,355)	307,328
Consultants	56,782	31,957	41,500	15,282	124,000
Staff Development	2,489	3,636	2,407	82	5,495
Communications	8,361	9,428	15,427	(7,066)	37,025
Events Expense	57,425	79,610	-	57,425	317,275
Printing & Mailshop	9,151	27,162	22,855	(13,704)	54,854
Case Costs	-	-	-	-	-
Awards	2,453	1,087	20,464	(18,011)	49,115
Office Systems	21,948	29,885	22,520	(572)	54,049
Computers	7,945	7,506	11,965	(4,020)	28,716
Office Supplies	2,619	11,691	4,811	(2,192)	11,547
Rent	97,892	121,219	102,318	(4,426)	245,563
Insurance	19,447	13,328	11,595	7,852	27,828
Professional Fees	71,410	60,634	62,104	9,306	110,450
Publications and Memberships	9,284	3,620	6,930	2,354	14,231
Travel/Meetings	48,968	33,855	57,783	(8,815)	139,332
Taxes and Licenses	1,497	1,612	3,105	(1,608)	7,454
Capital Expense	32,071	31,880	15,000	17,071	36,000
Total Operating Expense	982,388	1,072,295	1,085,590	(103,202)	2,906,473
Operating Net Income (Loss)	1,538,316	789,649	594,910	943,406	1,402,619
Other revenue (expense):					
Interest Expense	-	(2,100)	-	-	-
Uncollectible Pledges/Bad Debts	(16,833)	(15,000)	-	(16,833)	-
Grants to Public Justice, P.C.	(735,000)	(700,000)	(775,520)	40,520	(1,798,755)
Net Investment Income	181,744	83,964	83,333	98,411	200,000
Total Other revenue (expense)	(570,089)	(633,136)	(692,187)	122,098	(1,598,755)
Net Income (Loss)	\$ 968,227	\$ 156,513	\$ (97,277)	\$ 1,065,504	\$ (196,136)

**Public Justice, P. C.
Income Statements**



	(A) YTD May 31, 2017 Actual	(B) YTD May 31, 2016 Actual	(C) YTD May 31, 2017 Budget	(A) - (C) Over (Under) 2017 Budget	Annual 2017 Budget
Operating Revenue:					
Membership Dues	\$ -	\$ -	\$ -	\$ -	\$ -
Contributions	-	-	-	-	-
Events	-	-	-	-	-
Foundations	-	-	-	-	-
Cy Pres	-	-	-	-	-
Reimbursement for Case Costs	16,259	7,884	16,667	(408)	40,000
Attorney Fees	460,989	260,598	312,500	148,489	750,000
Total Operating Revenue	477,248	268,482	329,167	148,081	790,000
Operation Expense					
Salaries	732,415	597,790	626,384	106,031	1,503,322
Benefits and Payroll Taxes	162,065	118,506	144,068	17,997	345,764
Consultants	34,777	32,577	37,287	(2,510)	92,690
Staff Development	912	1,624	3,487	(2,575)	8,050
Communications	-	-	-	-	-
Events Expense	-	-	-	-	-
Printing & Mailshop	-	42	-	-	-
Case Costs	42,132	50,651	76,180	(34,048)	182,834
Awards	-	-	-	-	-
Office Systems	21,349	29,715	23,312	(1,963)	55,951
Computers	1,494	2,529	4,032	(2,538)	9,679
Office Supplies	3,781	13,249	6,022	(2,241)	14,453
Rent	125,620	141,296	128,356	(2,736)	245,563
Insurance	11,387	15,845	14,238	(2,851)	34,172
Professional Fees	21,415	9,167	26,645	(5,230)	42,750
Publications and Memberships	11,473	7,006	6,701	4,772	16,083
Travel/Meetings	4,176	1,240	-	4,176	98
Taxes and Licenses	75	486	1,060	(985)	2,546
Capital Expense	7,172	12,908	14,500	(7,328)	34,800
Total Operating Expense	1,180,243	1,034,631	1,112,272	67,971	2,588,755
Operating Net Income (Loss)	(702,995)	(766,149)	(783,105)	80,110	(1,798,755)
Other revenue (expense):					
Interest Expense	-	-	-	-	-
Uncollectible Pledges/Bad Debts	-	-	-	-	-
Grants from Public Justice Fdn	735,000	700,000	775,520	(40,520)	1,798,755
Net Investment Income	-	-	-	-	-
Total Other revenue (expense)	735,000	700,000	775,520	(40,520)	1,798,755
Net Income (Loss)	\$ 32,005	\$ (66,149)	\$ (7,585)	\$ 39,590	\$ -

Public Justice Foundation Balance Sheets



PUBLIC JUSTICE
IMPACT CHANGE

	May 31, 2017 <u>(Unaudited)</u>	May 31, 2016 <u>(Unaudited)</u>
Assets		
Current Assets:		
Cash and cash equivalents	\$ 1,152,131	\$ 640,267
Investments	5,511,558	3,938,327
Pledges receivables - current portion	409,603	511,940
Loan Receivable - PC	514,062	514,062
Prepaid expenses and other	58,945	173,256
Due from Public Justice	215,981	42,547
Total Current Assets	<u>7,862,280</u>	<u>5,820,399</u>
Furniture and Equipment, net	<u>569,632</u>	<u>631,254</u>
Other Assets		
Security deposits	32,575	65,150
Pledges receivable - non current portion	-	-
Total Other Assets	<u>32,575</u>	<u>65,150</u>
Total Assets	<u>\$ 8,464,487</u>	<u>\$ 6,516,803</u>
Liabilities and Net Assets		
Current Liabilities:		
Accounts payable	\$ (27,629)	\$ 66,896
Payroll liabilities	12,762	5,201
Accrued expenses	39,700	29,776
Deferred revenue	-	15,000
Deferred rent	409,331	55,502
Due to Public Justice	324,058	172,783
Total Current Liabilities	<u>758,222</u>	<u>345,158</u>
Long Term Liabilities:		
Tenant Improvement Allowance	<u>617,380</u>	<u>616,751</u>
Net Assets:		
Unrestricted	5,346,377	3,812,386
Board designated - unrestricted	853,762	853,762
Temporarily restricted	888,746	888,746
Total Net Assets	<u>7,088,885</u>	<u>5,554,894</u>
Total Liabilities and Stockholders' Equity	<u>\$ 8,464,487</u>	<u>\$ 6,516,803</u>

Public Justice, P.C.
Balance Sheets



PUBLIC JUSTICE
 IMPACT CHANGE

	May 31, 2017 <u>(Unaudited)</u>	May 31, 2016 <u>(Unaudited)</u>
Assets		
Current Assets:		
Cash and cash equivalents	\$ 38,649	\$ 73,253
Prepaid expenses and other	13,800	11,382
Accounts Receivable	-	-
Due from Public Justice Foundation	<u>332,648</u>	<u>172,784</u>
Total Current Assets	385,097	257,419
Furniture and Equipment, net	111,784	109,435
Other Assets - Security deposits	<u>14,309</u>	<u>14,309</u>
Total Assets	<u>\$ 511,190</u>	<u>\$ 381,163</u>
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable	\$ (42,670)	\$ (1,537)
Accrued expenses	79,707	83,864
Loan payable to PJ Foundation	514,062	514,062
Due to Public Justice Foundation	<u>215,981</u>	<u>42,547</u>
Total Current Liabilities	<u>767,080</u>	<u>638,936</u>
Long-Term Liabilities:		
Deferred rent	21,217	155,440
Security Deposit Held	<u>1,324</u>	<u>1,324</u>
Total Long-Term Liabilities	<u>22,541</u>	<u>156,764</u>
Total Liabilities	<u>789,621</u>	<u>795,700</u>
Stockholders' Equity:		
Capital Stock	3	3
Additional paid-in capital	17,792,211	17,792,211
Accumulated deficit	<u>(18,070,645)</u>	<u>(18,206,751)</u>
Total Stockholders' Equity	<u>(278,431)</u>	<u>(414,537)</u>
Total Liabilities and Stockholders' Equity	<u>\$ 511,190</u>	<u>\$ 381,163</u>

TAB IV.B

TO: PUBLIC JUSTICE FOUNDATION BOARD OF DIRECTORS

FROM: DEVELOPMENT DEPARTMENT

DATE: July 12, 2017

SUBJECT: DEVELOPMENT REPORT

Introduction

Included with this report is the dashboard for June 2017. As you will see from the report, our YTD actuals for MCEF revenue are \$2,285,315 which is 118% of the YTD goal of \$1,933,000. When reviewing the dashboard, you will notice that the Membership and Contribution lines are ahead of goal at 118% and 175%, respectively, thanks to strong performance in Benefactor and Above categories and the *35th Anniversary: Roadmap to Change Campaign*. With regards to Membership, we have seen a 15% increase in Benefactor and higher (\$6,000+) members since January 1st, going from 114 to 133 as of July 1st. This represents \$180,000 in new revenue annually (assuming they consistently renew).

We already surpassed our 2017 budgeted incoming from *cy pres* thanks to nine *cy pres* awards. (see *Cy Pres* section of this report for details). The Events line lagged a bit due to fewer than expected sponsors for the Presidents' Party in Austin, as well as timing issues relating to Annual Gala sponsorships, though Gala sponsorships have now picked up significantly, and we expect to meet, or surpass, our income projects for this year's event. Foundation funding is also slightly below goal due the non-renewal of a long-time funder.

Your help in achieving our goals is much appreciated, as always.

Membership

As you know, the annual Phonathon was a tremendous success exceeding its goals for the 3rd year in a row. We brought over \$1.672 M smashing by more than 68% the previous record of \$996,900 raised in 2015! Thanks once again to everyone who participated. For more information about the Phonathon and our current membership activities, please see the Membership Report by **Membership Manager Maggie Barr**.

Contributions

Our *35th Anniversary: Roadmap to Change Campaign* launched officially in February 2017 at our Winter Board Meeting in Austin, Texas. Pledges and gifts to the campaign currently total just over \$1.45M. The roster of major donors as of July 10th includes:

Thank you to our generous 35th Anniversary: Roadmap to Change supporters.

\$100,000 and above

Russell Budd – Baron & Budd, PC
James Ferraro – The Ferraro Law Firm, PA
Steve Herman – Herman, Herman & Katz, LLC
Kazan, McClain, Satterly & Greenwood, PLC
Lieff Cabraser Heimann & Bernstein, LLP
Thomas and Meredith Sobol — Hagens
Berman Sobol Shapiro, LLP
Wexler Wallace LLP – Kenneth A. Wexler,
Edward A. Wallace

\$70,000-\$99,999

Lance A. Cooper – The Cooper Firm
Cotchett, Pitre & McCarthy, LLP – Joseph
W. Cotchett

\$35,000-\$69,999

Benjamin Bailey – Bailey & Glasser, LLP
Christopher L. Coffin
Eric L. Cramer – Berger & Montague, PC
James R. Dugan
Jeffrey D. Eisenberg
J. Gary Gwilliam – Gwilliam Ivary Chiosso
Cavalli & Brewer, PC
Hausfeld, LLP
Mehri & Skalet
The McIntosh Foundation
Michael & Peggy Pitt
Tara D. Sutton – Robins Kaplan, LLP
Tycko & Zavareei, LLP

\$20,000-\$34,999

Mark I. Bronson
Mark A. Griffin – Keller Rohrback L.L.P.
Gretchen M. Nelson – Nelson & Fraenkel,
LLP
Vic and Lee Sher

\$10,000-\$19,999

Lauren Guth Barnes
Robert M. Bramson
John Driscoll
Kristen A. Johnson
David S. Nalven
Linda Nussbaum – Nussbaum Law Group,
PC
Don Slavik- Slavik Law
Paul & Mary Elizabeth Stritmatter
David F. Sugerman
Christopher P. Thorman – Thorman Petrov
Group Co., LPA

\$5,000-\$9,999

Alexander Burke – Burke Law Offices, LLC
Cuneo Gilbert & LaDuca, LLP
Deepak Gupta – Gupta Wessler, PLLC
John (Jack) H. Hickey
Stuart Ollanik – Ollanik Law LLC
Phoenix Class Action Administrators
Ellen A. Presby

If you see or work with any of these generous donors, please take a moment to thank them on behalf of the Board. We continue to solicit actively contributions. If you can assist in any way or have suggestions for additional prospects, please let **Development Committee Chair, Tom Sobol** or Development Staffer Tommy Wrenn know. Please also consider how you can also participate in the *35th Anniversary: Roadmap to Change Campaign*.

Events

The Annual Gala in Boston on July 24th at the Fairmont Copley Place is just around the corner. If you have not made your plans to attend yet, please do so! Sponsorship opportunities and ticketing information is available on the Public Justice website, or you may contact **Meetings & Events Manager Susan Gombert** at (202) 861-5235 or sgombert@publicjustice.net. Revenue as of July 1st stands at \$301,000 on a goal of \$383,000. Please see the Communications report for a complete update on the Gala.

Foundations

We are pleased to share that we have a **new Grants Officer, June Yang**. Joining Public Justice in mid-May, June brings substantial experience in grant writing and resource development for nonprofits ranging from arts institutions to advocacy organizations to healthcare providers. Please see the Staff Update memo for details on June's career to date. With her strong commitment to social justice and a background as well in journalism, we are confident that June will build on the robust foundation so capably established by our former Grants Officer Caitlin Burnett.

Caitlin's continued role as a consultant for Public Justice has been greatly appreciated. This quarter has thus been marked by the seamless continuation of our ongoing foundation activities, which include timely reporting and stewarding of existing funders, identifying and cultivating new prospects, and leveraging and exploring other resources and approaches to maximize support.

In the second quarter of 2017, our activities included the following:

- We are still awaiting a decision on our request for renewed support we submitted in January to the 11th Hour Project (\$25,000) for the Food Project. We expect a decision any day now.
- We previously reported on submitting requests in late January/early February to the Arca Foundation (\$30,000) for the Food Project and to the Clarence E. Heller Charitable Foundation (\$20,000), also for the Food Project. In both cases, our requests were unfortunately declined. While the Heller Charitable Foundation suggested that we were applying in a highly competitive field, we received word from the Arca Foundation in May that their grantmaking had been greatly reduced in recent years after suffering significant losses. We will reconsider our approach for each of these foundations and share updates about any new submissions.

- We submitted a request in early February for renewed annual grant support (\$35,000) from the Mertz Gilmore Foundation for our Coal Ash and Climate Change Litigation Project. Unfortunately, it was not renewed. We continue to have a healthy balance in our Revolving Fund, also supported by the Mertz Gilmore Foundation for use toward expert and case costs and extended through 2021.
- In April, we submitted a letter of inquiry (LOI) to the Joyce Foundation (\$50,000) for the Food Project. We were unfortunately not invited to submit a full proposal.
- In May, we submitted a letter of inquiry (LOI) to the Wallace Global Fund (\$20,000) for general operating support. We are awaiting a decision.
- In June, we submitted multiple reports: our interim report to the Silicon Valley Community Foundation (\$50,000) for our Anti-Payday Lending Initiative, our combined final and annual report to the Mertz Gilmore Foundation (\$35,000 Annual Grant, \$200,000 Revolving Fund) for our Coal Ash and Climate Change Litigation Project, and our quarterly report to a foundation that wishes to remain anonymous in its support of our Food Project (third year of a three-year grant; \$150,000 per year).
- We are especially pleased to share that the anonymous foundation invited us to submit a request for renewed support three months ahead of schedule. At the express invitation of our program officer at the Foundation, we plan to provide a combined final report and proposal in August instead of November.

In sum, we are thrilled to have commitments from existing and new funders totaling \$257,500 through the first quarter on a fiscal-year goal of \$430,000, or a year-to-date goal of \$280,000. We have four new funders in the pipeline, with LOIs and proposals to be submitted in the third quarter totaling approximately \$150,000.

Cy Pres

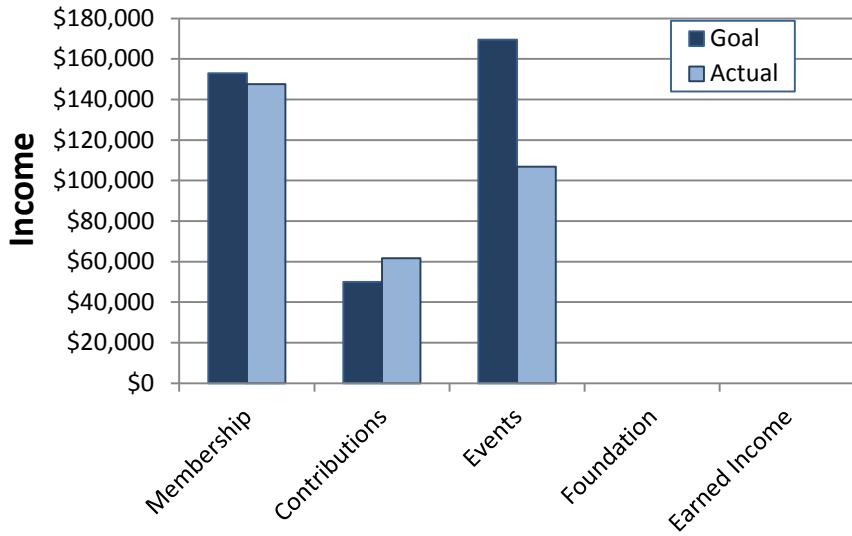
To date, we have received \$1,073,225.92 in *cy pres* awards in 2017, surpassing our annual budget goal of \$785,092. Special thanks go to Board member Gretchen Nelson, long-time supporter Steve Skalet, member Kenneth Behrend, and Thomas G. Shapiro. We also recently received a \$435,000 *cy pres* award (from a TCPA case involving Comenity Bank), thanks to Abbas Kazerounian, Jason Ibey and Noah Schubert. Board member Gerson Smoger would like to propose us for a *cy pres* award in a wage and hour case in California. Our pipeline for other *cy pres* nominations remains strong. In late August, we plan on reaching out to 2,300 class action attorneys with a letter and insert describing our work and asking to be considered as a *cy pres* recipient. Because of our wide-ranging docket, Public Justice is an excellent steward of *cy pres* awards. To recommend Public Justice for a *cy pres* award, please contact **Executive Director, Paul Bland** at (202) 797-8600 or pbland@publicjustice.net.

Cy Pres Awards YTD as of July 3, 2017

In Re Mannkind Corp. Securities Litigation	Casey Sadler	1/20/2017	\$6,909.02
In re Empire State Realty Trust, Inc. Investor Litigation	Nicholas E. Chimicles	2/10/2017	\$167,884.86

Gordon Noble, Et al. v. Greenberg Traurig, LLP, et al.	Andrew S. Friedman, Mark Chavez	3/9/2017	\$67,734.03
In re: Higher One Account Marketing and Sales Practice Litigation	Hassan Zavareei and Jeffrey Kalief	3/28/2017	\$151,754.40
Ogrizovich v. CUNA Mutual Group	Kenneth R. Behrend	4/24/2017	\$2,300.00
Enerson v. Verizon	Steve Skalet	5/12/2017	\$150,000.00
Thomas G Shapiro	Thomas G Shapiro	5/22/2017	\$3,358.55
Hansult v. Telebrands Corporation	Gretchen M. Nelson and Gabe Barenfeld	6/12/2017	\$87,683.95
Couser v. Comenity Bank	Abbas Kazerounian and Jason Ibey	7/3/2017	\$435,601.11
Total			\$1,073,225.92

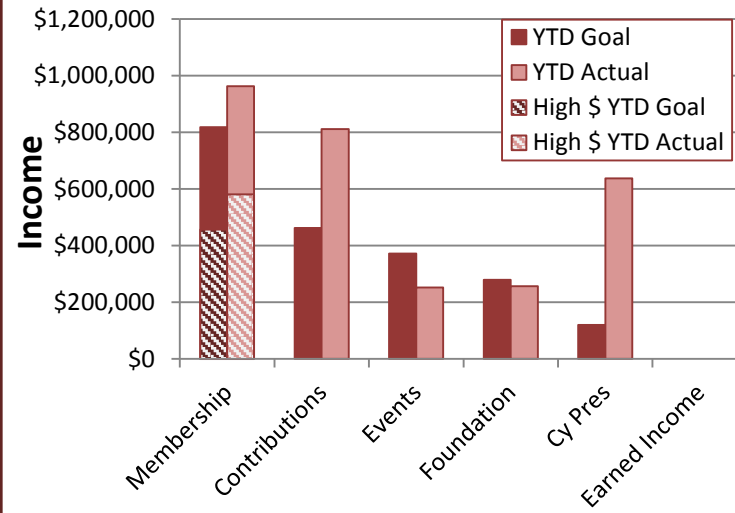
June Goal vs. Income



June Income: \$316,156.65 *
June Goal: \$372,500.00

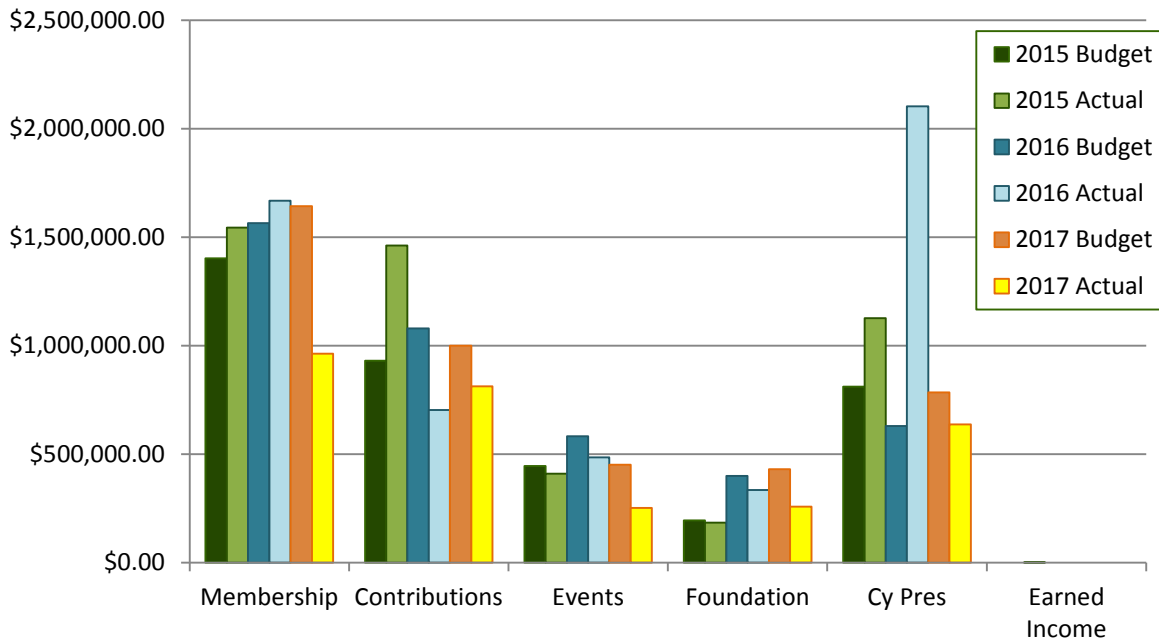
*Totals do not include cy pres awards

Year to Date Goal vs. Income

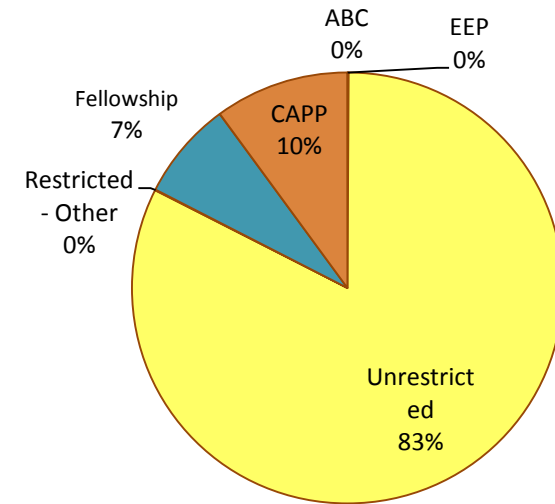


YTD Income: \$2,922,940
YTD Goal: \$2,053,000

2015-17 Annual Budget Goals vs. YTD Income



Year-to-Date Contributions: \$812,286.94



TAB IV.C

TO: PUBLIC JUSTICE FOUNDATION BOARD OF DIRECTORS

FROM: MAGGIE BARR, MEMBERSHIP MANAGER

DATE: JUNE 28, 2017

SUBJECT: MEMBERSHIP REPORT

Membership

Halfway through 2017, we have recruited or reactivated 293 members, which represents 59% of our overall goal of 500 members. While this is great news, we continue to focus on renewing more lapsed members, as well as on bringing in new members. We are on the right path to achieve our 2017 membership goal: our overall membership total as of May 2017 stood at 2,694 members, or 140 members higher than May 2016. The two main reasons for the improvement in membership recruiting are a higher renewal rate in 2017, and exceptionally successful recruiting of new High \$ (\$6,000+) members. Thanks so much to everyone who has helped bring in members this year!

Our focus on membership was aided during the 2017 Spring Phonathon, where we provided solicitors with lists of lapsed members they had solicited in the past. In addition, current members who were up for renewal were contacted by their assigned solicitor or someone who had previously reached out to them. Our concentration on contacting these donors paid off—we renewed 210 members.

In addition, during our February meeting in Boca Raton, FL, we launched a special initiative aimed at increasing the diversity of our membership base. Known as the “Caucus Initiative,” it allows members of the members of the AAJ Women Trial Lawyers Caucus, Minority Caucus, New Lawyers Division or LGBT Caucus to join at the rate of \$60 year/\$5 monthly for their first year of membership. This initiative has a goal of recruiting 30 members, and as of May 31st we’ve brought in 7. We hope to reach our goal by recruiting additional members during the AAJ Convention in Los Angeles in July.

In a continued effort to positively impact our retention rates, a list of all members who joined in 2017 was sent to the Membership Committee so these new members can be welcomed in person in Boston.

In late 2016 we launched the option—both online and on paper invoices—for donors to cover the 3% processing fee Public Justice is charged for credit card donations. Since its launch, \$2,307 in processing fees has been mitigated by 134 generous donors. Thanks so much to everyone who has made this additional donation!

Spring Phonathon

The Spring Phonathon took place on April 20, 2017, in Washington DC, and saw the Bloggers and the Tweeters bring in \$1,671,594, blowing our goal of \$475,000 completely out of the water and setting a new Phonathon record! Out of this incredible amount, \$376,844 was raised towards Membership, \$1,094,250 in special gifts, and \$200,500 towards our Annual Gala. Not only did we exceed our overall goal for the phonathon, we also surpassed the individual category goals for membership, special gifts, and events.

During the Phonathon, we brought in 365 new, lapsed and renewed members, exceeding our overall goal of 300. Out of the 365, 210 were lapsed and renewed members, which meant we also exceeded our twin goals of recruiting 100 new members, and 200 new and lapsed members. Included in the 365 members renewed or recruited are 129 members who pay on a monthly basis, increasing our overall number of monthly members to 562, the highest number of monthly members to date.

Congratulations to the Tweeters for bringing in the most money raised (\$923,961), and to Dan Bryson, Tweeter Team Captain, for winning the Silver Phone Award for the 5th year in a row. Dan recruited and renewed 79 members to emerge victorious once again!

As of June 19th, we have received payment on \$191,220 of the \$376,844 in membership pledges, with an additional \$16,500 scheduled to come in as monthly payments over the next 12 months. As of today, we have brought in 40% of the overall total pledged for 2017. We still have 76 phonathon pledges totaling \$546,903 to collect; \$36,155 of this amount comes from 42 membership pledges. **We ask solicitors to help ensure these pledges are fulfilled**, as we are counting on these members to help us reach our 2017 membership budget goal of \$1,642,000. A list of solicitors with outstanding pledges and the number of pledges (as of June 19, 2017) is below.

Anne Kearse (1)	J.D. Hays (1)
Ben Bailey (1)	Mike Swanson (1)
Beth Terrell (1)	Preston Tisdale (1)
Brad Moore (2)	Rod Gregory (1)
Dan Bryson (20)	Roger Mandel (1)
David Selby (2)	Steve Fineman (2)
Gale Pearson (4)	Tara Sutton (4)
Gary Mason (2)	Tom Sobol (8)
Janet Varnell (3)	

Acquisition

Our goal is to recruit 15 new or lapsed members during the 2017 AAJ Summer Convention in Boston. The convention is a key opportunity for us to disseminate information about the organization and encourage people to join. And you, our leadership, are key components of this recruitment push. **Please consider giving us at least 30 minutes of your time during the convention to volunteer at the Public Justice Booth!**

As part of our continued efforts to diversify our membership base, we are again offering a special membership rate to members of the AAJ's Women Trial Lawyers Caucus, Minority Caucus, New Lawyers Division and LGBT Caucus. AAJ members in these designated caucuses are invited to join at the rate of \$60/\$5 monthly for their first year of membership. Please encourage your colleagues in these caucuses to join us in membership, and be sure to invite them to the Gala!

We are offering a **special bonus** to individuals who join or renew (lapsed members only) during the convention—those who sign up at the \$1,200 Sustaining level will receive one ticket to the Gala. Those who sign up at the \$3,000 Advocate level or higher will receive 2 tickets to the Gala. Sorry, no refunds to those who have already purchased tickets; their ticket(s) may be offered to someone who they think should have the opportunity to get to know Public Justice better!

High Level Membership

As of June 19, we have 22 more Benefactor and higher members (\$6,000+) than we did at this time in 2016, bringing our total number to 131. If you know of any firms or individuals who may be interested in joining or upgrading to any of the \$6,000 or above levels, please let us know. Members at these levels receive additional benefits, including extra recognition opportunities on our website and on signage.

Three of our Benefactor and higher members are past due at this point. Their names/firm names are listed below:

- Grant & Eisenhofer, PA – Guardian membership expired in January, though the firm has generously supported our work as a \$10,000 sponsor of this year's Gala.
- Parks & Crump – cancelled their monthly Benefactor membership on May 30th.
- Saveri & Saveri, Inc. – Patron membership expired on May 21st.

If you have contacts at these firms, and are willing to help us contact them about their membership, please let us know.

TAB V
Communications Report

Summer 2017 Communications Report

To: Board of Directors, Public Justice Foundation
From: Steve Ralls, Communications Director
Date: June 27, 2017

Public Justice has garnered significant national media attention since the Board's Spring 2017 meeting in Washington. Most notably, the organization has received national television news coverage of its work, as well as coverage on the national news wire that reached numerous media markets around the country. The Environmental Enforcement Project's recent victories in West Virginia coal cases also made headlines, as did our policy advocacy on various legislative issues.

In addition to earned media, we have supplemented that coverage with placement of blogs and op-eds in strategic outlets that are helping the organization reach policymakers, grassroots advocates and non-attorney audiences in new and important ways.

Traditional Media

Public Justice received national attention when the *CBS Evening News* featured Executive Director Paul Bland as part of a segment highlighting AT&T's price bundling promotions, and consumer complaints about the company's pricing policies. CBS correspondent Anna Werner interviewed Paul about the company's use of forced arbitration clauses to avoid consumer lawsuits. Following the segment's airing, Public Justice received numerous emails, phone calls and social media messages from consumers across the country who learned about our work as a result of the segment.

The organization's work around Title IX sexual assault issues also received prominent coverage as part of a month-long series on the topic from the *Associated Press*. Public Justice Senior Attorney Adele Kimmel was featured in several key *AP* pieces that were distributed to newspapers and television stations across the country. Specifically, Adele was quoted in two national *AP* wire stories – reaching both large and small markets across the country – and was interviewed for an accompanying television segment on the same topic. *AP* also featured a social media video interview with Adele on the wire's online platforms. Coverage included placements in large outlets such as *The Washington Post*, *New York Times* and *ABC News* as well as pick-up in markets as diverse as Orlando, San Francisco, New Orleans and smaller outlets in places such as Mississippi, Wyoming and Utah, among others.

Our Food Project also received national coverage for the recently filed lawsuit regarding Country of Origin Labeling (COOL) regulations for meat labels. In addition to a national

wire story from the *Associated Press* that appeared in *The Washington Post*, *San Francisco Chronicle* and *New York Times* – among many other outlets – the case was also covered by *Politico*, *Food Safety News* and numerous trade publications focused on the beef industry.

Other media specifically mentioning Public Justice’s work since the board last met has included:

- Coverage of Jim Hecker’s Fola Coal cases in the *West Virginia Record* and *Reckley (WV) Register-Herald*;
- Stories related to the CFPB and/or arbitration issues in *Bloomberg BNA*, *WFMY News (NC)* and *Inside Counsel*;
- Coverage of Public Justice’s work on the North Carolina Ag-Gag challenge in *Agri-Pulse*; and
- Coverage of our Wyoming Ag-Gag/Data Trespass law in *Courthouse News Service*, and *Tri-State Livestock News*.

Public Justice Blogs & Op-Eds

As we mentioned at the board’s last in-person meeting, we’ve gotten much more strategic in targeting specific audiences, with curated messages for each, through the use of various blogging and op-ed sites. This has allowed us to effectively supplement our media outreach and identify certain audiences (progressive votes, Hill staffers, etc.) with messages that resonate directly with them.

As Public Justice’s legislative advocacy has steadily increased following the November elections, these platforms have proven especially valuable in reaching audiences with important advocacy messages. Since the board last met in Washington, we’ve continued these strategic placements.

In May, Paul and Food Project Attorney Jessica Culpeper co-authored [an op-ed in *The Hill*](#), calling on Congress to follow the lead of state lawmakers in California, who recently abandoned proposed legislation that would have prohibited RCRA-related lawsuits against the agricultural industry.

We’ve also posted several widely read pieces on our platform at *Daily Kos* on various topics, including:

- A widely read July 4th piece about our Country of Original Labeling (COOL) lawsuit [1735 shares]
- A post on the House hearing on the [Telephone Communications Privacy Act \(TCPA\)](#) [246 shares];

- A piece on the use of high-impact litigation to spur [environmental enforcement](#) at a time when the EPA budget – and staff – are both shrinking [192 shares]; and
- [A call to action](#) around the Trump Administration’s proposal to rollback the CMS arbitration rule [316 shares].

(*Note:* Plug-in functionality issues on the *Kos* website have made it difficult to track shares with 100% accuracy. Numbers listed above are based on data from *Kos* as well as our imperfect social media searches for the cited posts. We believe actual shares on each piece were much larger than these numbers reflect, but because of issues at the host site, we are unable to offer a complete count of readership or traffic.)

In addition to these blogs, we have also continued to post on the Public Justice organizational blog as well. Recent posts on the site have included:

- An [action alert on H.R. 1215](#), which would cap non-economic damages for medical malpractice, nursing home and pharmaceutical suits;
- A widely-read piece by Chairman Arthur Bryant, announcing the finalists for this year’s [Trial Lawyer of the Year Award](#);
- A blog by Staff Attorney Leah Nicholls looking at the impact of [Fintech charters](#) on the payday lending industry;
- [A blog by Arthur](#), outlining President Trump’s various statements about executive branch authority;
- Senior Attorney Leslie Brueckner’s blog about our [court secrecy victory](#) vs. DirecTV; and
- A post by Staff Attorney Jennifer Bennett regarding the [First Circuit’s ruling](#) in favor of port truck drivers fighting unfair arbitration clauses.

By reaching different audiences with targeted messages, we are able to more effectively rally our allies at the grassroots level and reach lawmakers and Hill staffers with more policy-centric arguments around specific legislation.

Social Media

We continue to have a robust, and growing, presence on social media. As our visibility has grown through coverage of our cases and advocacy, we have continued to develop our social media presence. We currently have almost 4,000 followers on Twitter and over 3,400 on Facebook, but through targeted outreach, we have also seen success in reaching people who may not have previously been familiar with Public Justice’s work.

We continued to effectively use low-cost paid promotions of social media posts, which have in recent months resulted in some of our farthest-reaching tweets and Facebook posts. That, combined with social media traffic generated by Public Justice cases and campaigns, has helped our online visibility to continually grow. (For example, in touting our clean water victory in West Virginia, we reached over 13,000 people on Twitter, our most successful organic reach in more than a year.)

We will continue to target followers of specific organizations and people involved in certain advocacy areas, which not only draws new constituents to read about our cases and victories, but also grows our base of followers online.

Annual Gala & Awards Dinner

2017 marks the first year that Public Justice's Gala will be produced by the communications department, following Events Manager Susan Gombert's transition from development to communications. Plans are well underway for this year's event, and we're pleased to report that as of June 20th, we have already raised over \$285,000 through sponsorships and ad purchases. This does not include any tickets purchases or auction money. Our overall revenue goal for the gala is \$383,000.

If you have not yet sponsored or purchased tickets to the gala, please go to our website at publicjustice.net or contact Susan at sgombert@publicjustice.net or 202-861-5235.

This year we are thrilled to be honoring former Congressman Barney Frank with the Champion of Justice Award for his many years of exceptional leadership and advocacy on economic justice and civil rights issues. We will also be presenting the Illuminating Injustice Award to Jessica Simpkins, a young woman from Ohio who was awarded \$3.6 million following a sexual assault by her minister, but collected only a fraction of that amount because of Ohio's cap on non-economic damages.

There are also four teams nominated for the Trial Lawyer of the Year (TLOY) Award which include landmark cases dealing with inmates' rights, employment discrimination, debt collection, disability rights and the importance of class action litigation. As in past years, Public Justice will be producing short documentary videos about each case, and those video shoots have been coordinated by Aidan O'Shea in the communications department, who has also served as primary liaison to each TLOY finalist team.

This year's gala will also include a live auction (in lieu of the silent auction from past years), which will feature 2 – 3 high-dollar items, including a sailing trip to the Bahamas that has been generously donated by Public Justice Board Member Janet Varnell. And for this year's event, instead of the usual floral centerpieces, we will feature fleece blankets on each table, which will be donated to the New England Center and Home for Veterans, a local Boston charity. (We'd like to thank Tom Sobol for identifying such a wonderful and deserving organization. We plan to have someone from the Center, along with a veteran client, at the Gala.)

For more information on this year's Gala, visit <https://www.publicjustice.net/annual-gala/>.

TAB VI
Board of Directors/Operations Issues

TAB VI.A

TO: PUBLIC JUSTICE FOUNDATION BOARD OF DIRECTORS
FROM: SUSAN GOMBERT, MEETINGS & EVENTS MANAGER
DATE: JUNE 30, 2017
RE: BOARD MEETING SCHEDULE

2017 – 2018 MEETING SCHEDULE

The Board of Directors' meetings, related committee meetings, and events for the Public Justice Foundation for the remainder of 2017 - 2018 are currently scheduled to take place on the following dates:

July 23 – 25, 2017, Boston, MA, Summer Board & Committee Meetings and Annual Gala ICW AAJ Summer Convention

October/November, 2017, Minneapolis, MN, Fall Board & Committee Meetings

February 3 – 6, 2018, Maui, HI, Winter Board & Committee Meetings ICW AAJ Winter Convention

April/May, 2018, Washington, DC, Spring Board & Committee Meetings and Super Thursday Phonathon

TAB VI.B

TO: PUBLIC JUSTICE FOUNDATION BOARD OF DIRECTORS
FROM: VICKY NI
DATE: JUNE 29, 2017
RE: STAFF UPDATE

We are pleased to share that our new **Grants Officer, June Yang**, joined Public Justice in mid-May. June brings substantial experience in grant writing and resource development for nonprofits, ranging from arts institutions to advocacy organizations to healthcare providers. Most recently, she served as Assistant Director for Institutional Giving at Washington Performing Arts, where she led grant strategy and significantly increased revenue from foundation, government, and corporate sources. Prior to that, she served as Associate Director of Development for the University of Virginia School of Architecture Foundation, spearheading corporate and foundation relations, managing annual giving, and securing leadership and major gifts. She also served as a Grants Consultant and then as a Content Director at Hanover Grants, advising clients nationwide in higher education, healthcare, and other sectors. With her strong commitment to social justice and a background in journalism, we are confident that June will build on the robust foundation so capably established by our former Grants Officer Caitlin Burnett.

We are also delighted to welcome to the Public Justice team a returning intern (now a law fellow), three new summer legal interns, and a summer intern for the Communications Department:

- **Lauren Kelleher** rejoined our team on May 30 as a short-term fellow **sponsored by Tycko & Zavareei**, having already worked for a summer as an intern in the DC Office (DCO) in 2015. After graduating *cum laude* from the Georgetown University Law Center in 2016, she worked at Tycko & Zavareei. Starting in the fall, Lauren will begin a clerkship for the Honorable Terrence Berg of the United States District Court for the Eastern District of Michigan.
- **Carson Riley** is a 3L from UC Hastings who joined the West Coast Office on May 19 as an intern. Carson has honed his legal research and writing skills by working in the UC Hastings Moot Court Department, where he drafted moot court and writing assignments for law students in collaboration with professors. He was also honored to be invited to be a member of the UC Hastings Jessup Moot Court team. Before law school, he was a research analyst working for an economic consulting firm specializing in expert testimony in complex litigation.
- **Kasie Durkit** also joined us as an intern on May 30 in the DCO. Kasie is a rising 3L at Georgetown Law, where she is part of the Public Interest Law Fellow Program, and participating in Georgetown's *Pro Bono* Pledge. She volunteered with D.C. Survivors and Advocates for Empowerment auditing domestic violence cases for the D.C. Superior Court, and was a student litigator in Georgetown's International Women's Human Rights, working in sub-Saharan Africa on impact litigation challenging discriminatory laws that deprive women and girls of basic human rights.

- **Joyce Dela Peña**, who will join the DCO on July 10 as an intern, is a rising 3L and a Public Interest Law Scholar at Georgetown Law. Prior to law school, she was a litigation assistant at the Prison Law Office where she assisted with class action litigation advocating for prisoners to receive adequate medical care and disability accommodations. Last summer, she honed her legal skills as an intern at the Bronx Defenders, and by drafting part of a brief in a death penalty case as a research assistant for Professor Aderson Francois. This summer, she will work for Relman, Dane & Colfax LLC in DC prior to joining Public Justice.
- **Noah Habenstreit**, a student journalist at the University of Wisconsin – Madison, has served as Public Justice’s Communications Intern since the end of May. Noah has been critical to the success of that department in its busiest time of year, taking on much-needed website content and social media projects.

Now Hiring!

We are now conducting a nationwide search to fill the position left vacant by our long-time **Environmental Enforcement Project Attorney** Richard Webster. Please see our [job announcement](#) for details and circulate to any interested candidates.

We are also looking for an exceptional candidate to fill our open **Development Director** position. Please see this [job announcement](#) for details and share it widely.

Staff Contact Information

Contact information for all Public Justice and Public Justice Foundation staff, including phone extensions and e-mail addresses, is listed in the Appendix to the Board package and is available online.