

# California LAWYER

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## CALIFORNIA LAWYER MAGAZINE ANNOUNCES 2012 CLAY AWARD WINNERS

SAN FRANCISCO, February 15 — *California Lawyer* magazine has named 56 attorneys around the state to receive the 16th annual California Lawyer Attorneys of the Year Awards. Their achievements had a significant impact in 2011. The awards recognize 26 accomplishments in 20 areas of legal practice.

The honored attorneys include government lawyers, sole practitioners, and attorneys from international law firms. The recipients of the CLAY Awards will be featured in the March 2012 issue of *California Lawyer*.

The attorneys and their achievements are briefly described below:

**ERIC M. ACKER, Morrison & Foerster, San Diego**

**STERLING A. BRENNAN, Workman Nydegger, Irvine**

**MICHAEL A. JACOBS, Morrison & Foerster, San Francisco**

### **Category: INTELLECTUAL PROPERTY**

ACKER, BRENNAN, and JACOBS won a jury verdict in 2010 that secured for their client Novell, the copyright ownership of early versions of the Unix computer operating system. Rival SCO claimed that the open-source operating system Linux improperly contained some Unix commercial code and sought hundreds of millions of dollars from Novel. ACKER and JACOBS handled the appeal, prevailing in August 2011 when the Tenth Circuit unanimously upheld the jury verdict.

**B. ROBERT ALLARD, Corsiglia, McMahon & Allard, San Jose**

### **Category: Public Interest**

ALLARD filed a series of lawsuits revealing the pervasive sexual abuse of young athletes by coaches in the sport of swimming, securing an undisclosed settlement for a 15-year-old girl in one. In the wake of his litigation, more than 75 coaches have been accused or convicted of sexual abuse. His advocacy prompted the U.S. Olympic Committee to implement its first-ever guidelines aimed at addressing abuse and molestation by coaches.

**RICK ATWOOD JR., Robbins Geller Rudman & Dowd, San Diego**

**RANDALL J. BARON, Robbins Geller Rudman & Dowd, San Diego**

### **Category: Securities**

BARON and ATWOOD secured an \$89 million settlement for shareholders of Del Monte Corporation in one of the largest shareholder lawsuit settlements in recent years. Del Monte

shareholders challenged last year's \$5.3 billion buyout of the food company, charging that Del Monte adviser Barclays Capital was also financing the buyers—a practice known as “staple financing,” where the seller's bank steers the acquisition by lending money to a favored buyer to obtain buy-side financing fees. Barclays admitted no wrongdoing but will contribute \$24 million to the settlement while Del Monte pays shareholders \$65 million.

**JUSTIN T. BERGER, Cotchett, Pitre & McCarthy, Burlingame**

**NIALL McCARTHY, Cotchett, Pitre & McCarthy, Burlingame**

**VINCENT DiCARLO, California Attorney General's Office, Sacramento**

**DENNIS FENWICK (retired), California Attorney General's Office, Sacramento**

**Category: False Claims**

McCARTHY, lead lawyer for a whistleblower, co-counsel BERGER, and Deputy AG DiCARLO secured the largest False Claims Act recovery in California history: a \$241 million settlement from the biggest providers of medical laboratory testing for the state's Medi-Cal program. Before the state's litigation began in 2008, Deputy AG FENWICK spent more than two years investigating the allegations.

**THEODORE J. BOUTROUS JR., Gibson, Dunn & Crutcher, Los Angeles**

**Category: Appellate**

BOUTROUS won a unanimous ruling from the U.S. Supreme Court last March for his client Wal-Mart, denying class certification to 1.5 million women employees who said they were discriminated against. The long-awaited decision makes it easier for large companies to defeat class certification. (*Wal-Mart Stores, Inc. v. Dukes*, 131 St. Ct. 2541 (201).)

**DEBORAH BRAZIL, Los Angeles County District Attorney's Office**

**DAVID B. WALGREN, Los Angeles County District Attorney's Office**

**Category: Criminal Law**

After a 23-day trial spread over six weeks, BRAZIL and WALGREN scored a major prosecution victory when a jury convicted Dr. Conrad Murray of involuntary manslaughter in the drug death of pop star Michael Jackson. First chair WALGREN did the opening and closing arguments as well as examined most of the prosecution's witnesses. Second chair BRAZIL presented witnesses and helped devise the legal strategy.

**MICHAEL BROWN, Sole practitioner, San Francisco**

**ERNEST GALVAN, Rosen, Bien & Galvan, San Francisco**

**Category: Government**

BROWN and GALVAN won a decision from the California Supreme Court that “vested benefits” can stem from implied agreements (such as past practices) just as much as from a specific contract or ordinance approved by a government agency. As a direct result of BROWN and GALVAN's victory on behalf of retirees in Orange County, others can now argue authoritatively that they are entitled to continuing benefits as a result of consistent practices by their public entity employers.

**DION BREGMAN, Morgan, Lewis & Bockius, Palo Alto**  
**MICHAEL LYONS, Morgan, Lewis & Bockius, Palo Alto**  
**DANIEL JOHNSON JR., Morgan, Lewis & Bockius, Palo Alto/San Francisco**

**Category: Intellectual Property**

BREGMAN, LYONS, and JOHNSON won one of the largest patent damage awards in the nation last year when they convinced a Virginia jury that Verizon violated their client ActiveVideo Network's patents, which dealt with on-demand video and other interactive TV services. JOHNSON was lead counsel, handling opening and closing arguments and BREGMAN and LYONS handled the electrical patent side.

**SB201**

**W. DERRICK BRITT, Doty Barlow Britt & Thomas, Palo Alto**  
**R. TODD JOHNSON, Jones Day, Palo Alto**  
**SUSAN MAC CORMAC, Morrison & Foerster, San Francisco**

**AB 361**

**JOHN MONTGOMERY, Montgomery & Hansen, Menlo Park**  
**DONALD SIMON, Wendel Rosen Black & Dean, Oakland**  
**JONATHAN STORPER, Hanson Bridgett, San Francisco**

**Category: Legislation**

As a result of these six lawyers' hard work, two sister bills, Flexible Purpose Corporations (SB201) and Benefit Corporations (AB361) make it possible for California businesses to fold goals of sustainability and social morality into their missions. BRITT, JOHNSON, and MAC CORMAC chaired the working group that drafted SB 201, and MONTGOMERY, SIMON, and STORPER led the effort for AB 361. Previously, companies in the Golden State were required to consider only profits and shareholder returns. But now—with the approval of shareholders—businesses registered under these two bills can follow a new paradigm of profit meets conscience.

**MARTIN N. BUCHANAN, Law Offices of Martin N. Buchanan, San Diego**

**Category: APPELLATE LAW**

In his first appearance before the U.S. Supreme Court, BUCHANAN won a unanimous decision holding that a seatbelt defect claim under state common law was not preempted by federal motor vehicle safety regulations (*Williamson v. Mazda Motor of America, Inc.* 131 S. Ct. 1131 (2011)).

**JULIA COWLES, Davis Polk & Wardwell, Menlo Park**  
**DANIEL KELLY, Davis Polk & Wardwell, Menlo Park**  
**KEITH FLAUM, Dewey & LeBoeuf, East Palo Alto**  
**JANE ROSS, Dewey & LeBoeuf, East Palo Alto**  
**JOHN SAVVA, Sullivan & Cromwell, Palo Alto**

**Category: TRANSACTIONAL LAW**

Ebay's \$2.4 billion acquisition of GSI Commerce Inc. was one of last year's ten biggest transactions led by California lawyers. The complicated acquisition involved the divestiture of

all of GSI's sports merchandising business and 70 percent of its retail sites and their sale to GSI's founder/CEO with \$475 million financing from eBay. The deal yielded a 51 percent premium for GSI Commerce shareholders while boosting eBay's distribution capabilities. FLAUM and ROSS represented eBay, KELLY and COWLES, a special committee of GSI directors, and SAVVA, GSI founder and CEO Michael Rubin.

**JOSEPH CREITZ, Law Office of Joseph Creitz, San Francisco**  
**JOSEPH GAROFOLO, Garofolo Law Group, San Francisco**

**Category: Employee Benefits**

CREITZ and GAROFOLO won a key decision from the Ninth Circuit that insurance companies who underwrite employee benefit plans are indeed proper parties in ERISA litigation, thus making the path to benefits smoother for beneficiaries wrongfully denied their due. (*Cyr v. Reliance Standard Life Ins. Co.*, 642 F.3d 1202 (9th Cir. 2011).)

**CONAL F. DOYLE, Willoughby Doyle, Beverly Hills**

**Category: Human Rights**

In a case that drew national attention to the substandard medical care provided at immigration detention centers, DOYLE in April settled a tort claim with the federal government for nearly two million on behalf of the family of a Salvadorian national who died of cancer in 2008. This follows on the heels of a parallel state case in which DOYLE won a \$1.73 million jury verdict.

**MORGAN GILHULY, Barg Coffin & Trapp, San Francisco**

**Category: Environmental Law**

In June GILHULY secured a Ninth U.S. Circuit Court of Appeals ruling that limits the exposure of property owners who are not directly involved in the violation. His clients, BNSF Railway Company and Union Pacific Railway Company, had been sued by the Redevelopment Agency of the City of Stockton to recover some of its costs after petroleum contamination was discovered on a site adjacent to land formerly maintained by the two companies.

**TAMERLIN J. GODLEY, Munger, Tolles & Olson, Los Angeles**

**JOHN W. SPIEGEL, Munger, Tolles & Olson, Los Angeles**

**Category: Entertainment Law**

GODLEY and SPIEGEL represented Warner Bros. in its dispute with actor Charlie Sheen when he sued the studio for \$100 million in federal court alleging he was improperly terminated from the sitcom *Two and a Half Men*. The lawyers quickly moved to enforce the arbitration provisions in his contract and Sheen and the studio settled the matter.

**TODD A. GOLUBA, Atkinson, Andelson, Loya, Ruud & Romo, Pleasanton**

**Category: Education Law**

As chief labor negotiator for the Lucia Mar Unified School District, GOLUBA helped forge a groundbreaking agreement between the district and its teachers union to implement a new system using student achievement gains to help determine year-end teaching bonuses. The comprehensive plan includes measures designed to improve training, conditions, and careers for teachers.

**JAN L. HANDZLIK, Venable, Los Angeles**  
**JANET LEVINE, Crowell & Moring, Los Angeles**

**Category: Criminal Law**

HANDZLIK and LEVINE won a stunning reversal for their clients, Lindsey Manufacturing, company president Keith Lindsey and CFO Steven Lee, in the first trial and conviction of a corporation in a Foreign Corrupt Practices Act case. The federal judge in the case found a pattern of serious prosecutorial misconduct in the case, agreeing with 8 of the lawyers' 15 allegations of misconduct, and threw out Lee's and Lindsey's convictions before sentencing. The judge also dismissed the Lindsey indictment with prejudice. HANDZLIK represented Lindsey and the company and LEVINE represented Lee.

**ROBERT T. HASLAM, Covington & Burling, Redwood Shores**

**Category: Intellectual Property**

HASLAM represented Huawei Technologies when tech giant Motorola Solutions Inc. alleged that its former partner Huawei conspired to give Motorola's trade secrets to wireless network rival Lemko Corp. Then when Motorola planned to sell its wireless networks business to Nokia Siemens Networks, Huawei won a preliminary injunction to block the transfer of Huawei's proprietary information to Nokia. Motorola and Huawei settled their dispute and the deal closed.

**ANNETTE L. HURST, Orrick, Herrington & Sutcliffe, San Francisco**  
**JENNIFER L. KELLER, Keller Rackauckas, Irvine**  
**THOMAS S. MCCONVILLE, Orrick, Herrington & Sutcliffe, Irvine**  
**DENISE M. MINGRONE, Orrick, Herrington & Sutcliffe, Menlo Park**  
**WILLIAM A. MOLINSKI, Orrick, Herrington & Sutcliffe, Los Angeles**  
**ALLISON H. SHALINSKY, Keller Rackauckas, Irvine**

**Category: LITIGATION**

This team of lawyers first persuaded a federal jury to reject Mattel's copyright infringement and trade secrets claim against MGA Entertainment in the long-running battle over the Bratz doll line—and then convinced jurors that Mattel was the party that engaged in corporate espionage against MGA, stealing its trade secrets at toy fair meetings. The jury handed down a sweeping judgment, including \$88 million in damages. Although district court Judge David O. Carr shaved that amount to \$85 million, he also doubled it by awarding punitive damages. With legal fees, the total award was nearly \$310 million.

**RUTH D. KAHN, Steptoe & Johnson, Los Angeles**

**Category: Pro Bono**

KAHN helped more than 30 Holocaust survivors win reparations from the German government as part of the Holocaust Survivors' Project initiated by Bet Tzedek Legal Services in Los Angeles. Her elderly clients, ranging in age from 75 to 92, had been forced by the Third Reich during World War II to leave their homes and work without compensation for German soldiers.

**LAUREL G. KAUFER, sole practitioner, Calabasas**  
**DOUGLAS E. NOLL, sole practitioner, Clovis**

**Category: Pro Bono**

KAUFER and NOLL devised Prison of Peace, a twelve-week curriculum to teach communication, mediation, and peacemaking skills to inmates at Valley State Prison in Chowchilla, reputed to be the most violent maximum-security prison for women in the world. They return weekly to train and supervise and to monitor results. Since training began, more than 200 inmates have participated and some inmates have gone on to learn mediation skills and become trainer/inmates.

**ERIC MacMICHAEL & DANIEL E. PURCELL, Keker & Van Nest, San Francisco**

**Category: Pro Bono**

MacMICHAEL and PURCELL and their legal team dedicated 900 hours over five years to exonerate Caramad Conley, a man who was wrongfully convicted of a double homicide and spend 18 years in prison. PURCELL was able to prove that homicide investigators had been paying a key witness before, during, and after their client's trial. The evidence persuaded the judge to overturn the conviction.

**RONALD W. MAKAREM, Makarem & Associates, Los Angeles**

**Category: Alternative Dispute Resolution**

Makarem won perhaps the ADR case of the year when the California Supreme Court ruled that the doctrine of "mediation confidentiality" protects all statements made during a mediated settlement discussion – even comments made by a lawyer who allegedly is in the process of committing malpractice. The ruling makes clear that "what is said during mediation stays in mediation." A malpractice victim still has a remedy, although the proof of malpractice must consist of statements other than those uttered during mediation

**SHAWN A. McMILLAN, Law Office of Shawn A. McMillan, San Diego**

**SONDRA S. SUTHERLAND, Sole practitioner, Escondido**

**Category: Family Law**

McMILLAN and SUTHERLAND reunited a mother and her two daughters when the U.S. Supreme Court let stand the underlying judgment in their favor. The case alleged that Orange County and its works violated Deanna Fogarty-Harwick's constitutional right to familial association by bullying her and falsifying evidence that led to the termination of her custody rights.

**GENE J. STONEBARGER, Stonebarger Law, Folsom**

**Category: Consumer Rights**

STONEBARGER persuaded the California Supreme Court that a merchant's collection of zip code data at the cash register violates state privacy laws. The February ruling, which involved retailer Williams-Sonoma, spawned several class actions and even prompted the Legislature to enact a statute allowing such data to be collected at the gas pump to prevent fraud.

**ROBERT F. TYSON JR., Tyson & Mendes, La Jolla**

**Category: Personal Injury**

## 2012 CALIFORNIA LAWYER ATTORNEYS OF THE YEAR AWARD

TYSON won a landmark ruling that accident victims are only allowed to claim medical expenses actually paid to providers, as opposed to the amounts billed. Whether his victory results in lower insurance premiums for Californians remains to be seen, but suffice to say that his advocacy produced perhaps the most significant personal injury case since California ushered in the era of comparative fault over 35 years ago.

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