

**FALL
2009**

Aitken ★ Aitken ★ Cohn

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**CIVIL LITIGATION/
PERSONAL INJURY
SPECIALISTS**

- Free consultation
- No recovery, no fee.
- Martindale-Hubbell
AV rating
- "Best Lawyers in America"
- "The Top 100 Influential
California Lawyers"

DRIVING AND CELL PHONES

The last time most people on the road today actually spent any significant time studying and learning the rules of the road was during driver's education class in high school. So how long has it been since then? Ten years? Twenty years? Thirty years? Other than briefly glancing through a California DMV handbook to pass the very brief written examination mailed to you every 8 or 12 years, when was the last time you made a concerted effort to reacquaint yourself with California's driving rules (or learn the new ones)?

Examples are the recent enactments of three California Vehicle Code sections:

- Vehicle Code §23123 makes it illegal for all drivers to use a handheld cellular phone while driving.
- Vehicle Code §23123.5 makes it illegal for all drivers to text-message while driving.
- Vehicle Code §23124 makes it illegal for anyone under the age of 18 to use a cell phone at all while driving (including the use of a hands-free device).

(continued on back page)



Frivolous lawsuits For whom?

Politicians, television commentators, and magazine writers sometimes ask why trial lawyers file "junk" auto accident, medical malpractice, or product liability lawsuits.

Lawsuits are never "frivolous" to people who are seriously injured. Just ask victims of an auto accident how inconsequential their injuries and suffering seem and if their lawyer's services were frivolous.

Were the extensive medical and rehabilitation bills that someone incurred after slipping and falling on a piece of squashed fruit on the floor of a supermarket produce aisle trivial?

Talk to the mother of a child disabled during childbirth because of a hospital's negligence about how insignificant her baby's lifelong care costs and her own emotional pain are.

Injury lawsuits and our strong civil justice system help deserving individuals obtain justice and hold wrongdoers accountable. Civil justice attorneys work to make sure everyone has a fair chance through the legal system—even when it means taking on the most powerful corporations.



Who's new...

Connie Bill, executive personal assistant to Wylie, has more than 20 years' experience assisting high-level executives and working in customer service. She attended California State University, Long Beach.

Upcoming SEMINARS

October 23

Orange County Trial Lawyers &
American Board of Trial Advocates
Panelist, "Jury Selection"
UCI
Wylie Aitken

November 12-15

Consumer Attorneys of California
48th Annual Convention
"Nuts & Bolts & Effectively Litigating Your Case"
Darren Aitken, Moderator
"Developing Trial Skills—Dynamic
Cross-Examination"
Wylie Aitken



"What's my case worth?"

As you can probably guess, no two personal injury cases are alike. Attorneys can't respond to "What's my case worth?" until they do a lot of case homework. Here are some factors we weigh:

1. Nature of injuries
2. Injury treatment needs
3. Treatment cost and amount already paid
4. Future medical treatment costs
5. Types of treatment, from surgery to rehabilitation
6. Where the suit will go to court
7. If you were partially at fault
8. Your prognosis
9. Preexisting medical conditions
10. Wage, benefit, and vacation losses
11. Future wage-earning limitations
12. Third-party insurance coverages
13. Emotional- and mental-stress value
14. Loss of spousal consortium
15. Property-damage deductibles
16. Similar verdicts in local courts
17. Defendant's insurer
18. Judge assigned to case
19. Defendant's counsel

Answers to these questions help build mutual trust between a client and attorney. With mutual trust and credibility, we can strive to earn injury victims fair outcomes.

How injuries can affect us deeply

In representing people who have suffered physical injuries or psychological harm, a key practice goal is to employ our civil justice system to "make them whole again." That may seem hard to understand, until you think about how your own life might change if you were to be injured.

Would you be the same parent, for instance, if you were disabled in an auto accident? Probably not, because your condition might limit your ability to drive your children to school, or wash their clothes, or even hug them.

Would you be the same physical person after a slip-and-fall? Perhaps not, if your spinal injury prevented you from working out at the gym or even walking around the block.

How about your ambitions and dreams? How might loss of independence, for example, increase your financial worries, or darken your normally optimistic outlook that things always work out for the best?

Our legal system provides justice to those injured by the misconduct of others and deters future misconduct by holding wrongdoers accountable. Our civil justice system makes a difference by making us feel "whole again."



RECENT CASE RESULTS

➔ **Auto vs Auto**—Precedent-shattering \$55 million judgment against the U.S. government recently affirmed by the 9th Circuit Court of Appeals. (See insert.)

APPELLATE-AFFIRMED VERDICT: \$55,000,000

➔ **Fraternity Hazing**—Wrongful death of a 19-year-old arising out of a fraternity-hazing ritual that was disguised as a football game.

SETTLEMENT: \$1,741,355

➔ **Medical Malpractice**—The decedent, a 76-year-old female, was admitted to the hospital for treatment of a seizure. The defendant hospital's nurse negligently gave the decedent medications that were not prescribed by the attending physician. Six hours later, the decedent was found unresponsive and not breathing, with acute respiratory failure, requiring code-blue emergency. She was then transferred to the cardiac intensive care unit on a mechanical ventilator, where she expired approximately three days later from respiratory failure.

SETTLEMENT: \$350,000



Our firm's areas of interest

Aitken ★ Aitken ★ Cohn has chosen to specialize its practice in a few precise areas of law. The practice of law has become increasingly complex, and the firm's sophisticated clientele expect and deserve legal representatives fully aware of the nuances of their particular situations. Members of the firm, however, are always willing to adapt to the changing legal environment and explore new opportunities that are consistent with the firm's mission and goals. The following is a brief list of our areas of practice:

- Wrongful death
- Personal injury
- Products liability
- Aviation
- Insurance bad faith
- Commercial vehicle/Trucking liability
- Medical/Legal malpractice
- Commercial torts/Wrongful termination

Please see our Web site at www.aitkenlaw.com for further details in regard to each of these practice areas and for descriptions of other representative matters.

SECRET COURT AGREEMENTS

Negligent corporations that produce dangerous and hazardous products use court-secrecy agreements to avoid accountability and hide potential public-safety issues.

Victims of dangerous products are often forced to sign court-secrecy agreements to settle product liability cases. These agreements have hidden the ongoing dangers of prescription drugs, hazardous toys, deadly tires, and collapsing baby cribs.

Dangerous tires

Upon learning of the tread-separation dangers of Firestone tires, Johnny Bradley changed his truck's tires to the Cooper brand. While being driven cross-country to a new military assignment, Bradley's vehicle left the road and rolled over four times when a Cooper tire tread separated. Bradley's wife, Timica, who was driving, was killed instantly, but the family's baby survived. While recovering from injuries, Bradley was unable to attend Timica's funeral. In the course of litigating Bradley's case, his attorney uncovered documented evidence of Cooper tire-design defects. These documents, which could have saved Timica's life, were kept confidential through protective orders in more than 200 previous lawsuits against Cooper. Before the end of the federal trial, Cooper Tires settled with Bradley but demanded that almost all litigation documents be kept confidential under a broad protective order.





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Referrals

Thanks to all of you who have recommended our firm to your relatives, friends, and neighbors. We appreciate your vote of confidence and pledge to care for these "VIPs" as well as we care for you.

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DRIVING AND CELL PHONES (continued from front page)

Violations of these laws come with a \$20 fine for first-time offenders and a \$50 fine for each subsequent offense. With penalty assessments, processing fees, etc., the actual cost of these citations can be three times or more the amount of the actual fine (\$60 to \$150, or more).

The reasoning behind the hands-free law, and the potential implications of violating this law, go much further than a simple \$20 or \$50 fine. Research has shown that cell-phone drivers' reaction times are reduced by roughly 20 percent and that cell phone drivers are significantly more likely to cause a rear-end collision than someone who is not using their cell phone. These results apply to just talking on a cell phone, whether actually holding the phone or using a hands-free device. This is to say nothing about "texting" while driving, which necessarily requires the text messenger to take their eyes off the road to type out and send a text message.

Even more shocking are researchers' conclusions regarding cell-phone users that show drivers talking on their cellular phones demonstrate a greater level of impairment than someone who is deemed legally drunk (a blood-alcohol level over .08 for someone over the age of 21 in California). This point is worth repeating: **People who talk on their cell phones perform their driving duties worse than individuals who are legally intoxicated.**

From a practical standpoint, following the law not only makes you safer, but could save you a significant amount of money. Any adverse driving event can equate to significant increases in automobile insurance premiums, including being cited for driving while on your cellular phone or being found "at fault" for an automobile collision. Is anything you are talking about on the phone important enough to risk hundreds and thousands of extra payments for future automobile insurance premiums?

Finally, even the most careful of drivers subject themselves to the presumption of carelessness for driving while holding and talking on a cellular phone. Put yourself in the position of a juror in an automobile accident case in which the parties are disputing who is at fault. One person was using their cellular phone at the time of the accident and one of them was not. Without knowing anything else, most people would be immediately inclined to hold the person who was on the cellular phone responsible.

To make sure your driving habits follow the law, check out the California DMV's Web site at www.dmv.ca.gov.

Contact us after hours...

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