



**AITKEN • AITKEN • COHN**  
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# INSURANCE BAD FAITH: *Preserving the duty to act in good faith and fair dealing*

At **Aitken ♦ Aitken ♦ Cohn**, our practice involves helping injured people pursue justice through our civil court system. This requires us to be experienced in handling cases that cross into several areas of the law, including insurance contract law. For instance, when representing clients injured in a motor vehicle accident, disputes can arise between the client and their automobile insurance company over the coverage provided by their automobile insurance policy. These contractual disputes are influenced by the desire of the automobile insurance company to pay as little as possible to people they insure. Though automobile insurance companies issue policies to protect you in case you unintentionally harm another, one must remember that automobile insurance companies are still for-profit businesses and thus are still acting in their own interests.

The public, otherwise known as the "insured," rarely has the luxury of a team of lawyers to represent them in disputes with their insurance companies. At **Aitken ♦ Aitken ♦ Cohn**,

however, our lawyers have gained the expertise to handle these cases and achieve amazing results.

Generally, contract law provides that all contracts are subject to an implied duty that each party must act with "good faith and fair dealing." When an insurance company does not act with "good faith and fair dealing," they are acting in bad faith, hence the term "insurance bad faith."

If you are injured in an motor vehicle accident and it is due to the fault of another, it is the at-fault party's automobile insurance company that you will likely be seeking recovery from, at least in part, to compensate your damages. If the at-fault party's insurance company fails to act in "good faith and fair dealing" when handling claims, they could subject their insured to personal liability; you may be able to pursue an

action directly against the at-fault party's insurance company after a judgment has been taken. In addition, if your home is damaged by an accidental fire, and your claim for damages from your homeowner's insurance company is denied

or handled improperly, you may also have a cause of action against your homeowner's insurance company.

The Neal case is controlling precedential law

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**Free Consultation • No Recovery, No Fee**

# Who, what... AT AITKEN ♦ AITKEN ♦ COHN



♦ **Wylie Aitken** was named one of the *Daily Journal* “**Top 100 Lawyers in California**” and was named as one of the “**Irish Legal 100**” attorneys in the United States.

♦ **Darren Aitken** was selected for inclusion in the inaugural edition of the *2011 Super Lawyers Business Edition*, a list of business litigation lawyers.

♦ **Darren, Chris, and Casey** were selected by AVVO to the Annual List of “**Top Attorneys—Personal Injury**” and featured in the *OC Metro* magazine.

♦ **Vivian Hartjes** recently joined the firm as the Executive Personal Secretary to Wylie. She has more than 10 years of experience as a personal secretary. Her education includes three years at UCI, majoring in biology.

♦ Congratulations to **Ashleigh!** The Orange County Bar Association elected her as the new OCBA Secretary.

## FRIENDS OF THE FIRM!

### **After battling leukemia, Boyd back in the game**

**John Boyd**, a Canyon High School football player, was diagnosed with leukemia in December 2006. As one can imagine, Boyd didn't enjoy the side effects of the chemotherapy treatments, but he did not complain. A group, “Stand Strong for John,” was formed to raise money for John. For three months, food was provided by loving friends and neighbors. The Aitken team adopted the Boyd family as a Christmas project and worked together to provide a memorable Christmas for the entire family.

In December 2010, the doctors told him he was “cancer-free” and that he could play football again.

In September 2011, Boyd ran onto the Santa Ana Stadium field for his first competitive play since 2006 at Canyon High, playing for Santa Ana College. He is still 25–30 pounds below optimal linebacker weight. His coach, Geoff Jones, said, “He made a nice block on the biggest kickoff return we've had this year.”

**GO, JOHN!**

### **Life is what happens**

**John Chavez** did it again! The “Makapo” team, consisting of John and his blind teammates, participated in the 2011 Kona Race and finished the race to a swell of cheers and cries of support from the crowd waiting for them to cross the finish line.

In 2006, when John first conveyed his idea to put a blind team in the Kona Race, John said, “Billy told me I was crazy.” John called the first team “The Blind-Siders,” and the two goals that year were “to finish the race and not to huli” (the Hawaiian term for flipping the canoe, which John had done with a sighted team the year before). They finished the race under their own steam, with two people left on the beach when they arrived. It was enough to make John's vision a reality—he'd become part of the first blind outrigger team to ever compete.

**NOTE:** In 1984, 24-year-old John Chavez's life was turned upside down when he suffered a cardiac arrest during a routine surgery, which left him without his sight. Twenty-seven years later, with his dogged determination, he is a co-owner of a medical supply business, and his OC Makapo Aquatics Project has expanded to three full crews—two adult teams and a youth team. For more information on this inspiring story, go to [www.ocmap.org](http://www.ocmap.org) and click on “Kona 2011 Trip Report—Part 3.”



## SEMINARS

**October 14, 2011**

Association of Business Trial  
Lawyers

38th Annual Seminar

**Panel:** “*Strategies in Presenting Damages and Damage Theories*”

**Wylie**

**November 10, 2011**

CAOC Women's Caucus

**Topic:** “*Litigation Skills and Career Strategies*”

**Ashleigh**

**November 11, 2011**

CAOC 50th Annual Convention

**Theme:** “*Proving Personal Injury Damages—By the Masters*”

**Speaking Topic:** “*Catastrophic Injuries*”

**Wylie**

**Theme:** “*A Practitioner's Guide to Understanding the Injury, Proving the Injury, and Adequately Assessing the Damages*”

**Speaking Topic:** “*Preparing Your Presentation of the Damages for Mediation and Trial*”

**Darren**

**November 29, 2011**

CAOC

**Topic:** “*Video Storytelling for Mediation and Trial*”

**Wylie**

# 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](http://www.aitkenlaw.com) for further details in regard to each of these practice areas and for descriptions of other representative matters.



## HAZING AND BULLYING: *A curable epidemic*

Although bullying and hazing are not new to our schools, recent events have generated a great deal of new and sophisticated discussion regarding cause and prevention of this hateful and harmful behavior. While such behavior is always morally reprehensible, when bullying and hazing turn physical (as is often the case) there are also complex legal ramifications for all involved.

The California Constitution guarantees students the right to attend safe, secure, and peaceful schools. Recently, California also passed "Seth's Law," which is set to go into effect in July of 2012, and which is aimed at giving public schools the tools necessary to prevent and address bullying through mandatory policies, systems to discourage bullying, and track incidents when they occur. Schools will be required to post anti-bullying policies, provide simple and easy complaint forms on their Web sites, and promptly investigate/resolve complaints. All complaints of bullying are to be taken seriously and addressed promptly under the new law. Further, the California Education Code prohibits bullying and hazing, and provides for punishment such as suspension or expulsion for those who perpetrate such acts, as well as criminal punishment for acts of hazing.

Bullying can take on many forms: verbal name calling and teasing; social exclusion from peer groups or manipulation to break up friendships by spreading rumors or otherwise; cyberbullying by using cell phones or the Internet to embarrass or humiliate the targeted individual; and physical hitting, shoving, and other intimidating behavior. Hazing is an activity that produces mental or

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## Case RESULTS

### ↳ **Truck vs. Auto**

Plaintiff's claim for wrongful death of her husband and daughter when a tractor-trailer, transporting vehicles, lost its braking power, careened down a steep highway at a very high rate of speed, and collided with the plaintiff's vehicle. Claims against the defendants alleged negligent design of the highway in that it did not provide a runaway ramp, and the defendant driver's negligence in failing to maintain his tractor-trailer truck. **SETTLEMENT: \$3,150,000**

### ↳ **Train Accident**

Plaintiffs made a claim for the wrongful deaths of three of their loved ones (all passengers on a commuter train) against the defendants, including a private foreign billion-dollar corporation's management, for failure to correct prior complaints by coworkers about texting and the senseless acts of an irresponsible train engineer. **SETTLEMENT: \$5,175,000**

### ↳ **Shooting**

Heirs claim for the wrongful death of their husband and father when the defendant, an employee of the defendant company, negligently shot and killed him. **SETTLEMENT: \$950,000**

### ↳ **Boating Accident**

Plaintiff, an invited guest on a yacht, was asked to assist the captain in the mooring process. Defendant's inexperienced first mate's negligence in the mooring process caused the messenger line to tighten and trapped the plaintiff's hand; her inability to remove her hand from the line caused her hand to twist with such force that several of her fingers were torn off. **SETTLEMENT: \$550,000**

### ↳ **Boating Accident**

Plaintiff, father of two adult children, was a passenger in a dingy when the defendant driver negligently and recklessly operated his dingy at a high rate of speed, causing it to collide with a moored sailboat, resulting in serious injuries to the plaintiff, including skull fractures, brain injury, and blindness. **SETTLEMENT: \$500,000**





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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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The information included in this newsletter is not intended as a substitute for professional legal advice. For your specific situation, please consult the appropriate legal professional.

## INSURANCE BAD FAITH: Preserving the duty to act in good faith and fair dealing

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that must be followed by all trial courts in this state. Thanks to Wylie and his advocacy for his client, an insurer may be found liable for acting in bad faith for failing to promptly pay undisputed claims. See also *Boicourt v. Amex Assurance Company* (2000) 78 Cal.App. 4th 1390. (Wylie A. Aitken and Darren O. Aitken convinced the court that a formal settlement offer was not an absolute prerequisite to the injured party's bad faith action when the injured party made a request for policy limits and the automobile insurance company refused to contact the policyholder about the request.)

Over the years, the attorneys of Aitken ♦ Aitken ♦ Cohn have ardently prosecuted on behalf of clients not treated fairly by insurance companies. If you or someone you know is involved in a dispute arising out of homeowner's insurance, life insurance, disability insurance, and/or automobile insurance, the attorneys at Aitken ♦ Aitken ♦ Cohn have the needed experience and proven results to handle the case.

## HAZING AND BULLYING:

### A curable epidemic (continued from page 3)

physical discomfort, embarrassment, harassment, or ridicule involving an initiation practice into a group (such as a team or a fraternity). All experts agree that these behaviors can only be prevented through the implementation of a culture that tolerates no form of bullying or hazing in the school environment, and that the teaching of these lessons starts with parents at home.

A recent case that was aggressively and successfully pursued by Aitken ♦ Aitken ♦ Cohn demonstrates that everyone loses when hazing or bullying activities occur. The case involved the wrongful death of a college student who was "pledging" to become a member of a fraternity group. Despite knowledge of anti-hazing laws, the fraternity had a "tradition" requiring all new pledges to participate in a full-contact tackle football game with the pledges playing against the existing fraternity members. The "game," however, was nothing more than a hazing activity disguised as a sporting activity—with the pledges outnumbered 40 to 9, late hits, intentional gang tackles, and no protective equipment. Tragically, one of the pledges received a fatal head injury during the game. Aitken ♦ Aitken ♦ Cohn sued the fraternity, but it had no insurance. So Aitken ♦ Aitken ♦ Cohn sued each and every individual fraternity brother on a co-conspiracy theory of liability that made each fraternity member responsible for the consequences of their collective foreseeably harmful conduct. Each fraternity member's parents' homeowner's insurance coverage was therefore implicated. The result was a \$1.7 million settlement with contribution from virtually all members of the fraternity and with involvement of all of their parents/families.

The case received significant attention from local and national media and has helped shape and direct discussion regarding prevention of future bullying and hazing tragedies. Aitken ♦ Aitken ♦ Cohn is committed to playing a continuing role in fighting against those who perpetrate harmful acts of bullying and hazing. Additionally, Aitken ♦ Aitken ♦ Cohn applauds the California legislature for its recent actions in furthering this discussion and moving our state one step closer to curing the epidemic of hateful conduct.