



FALL 2008

Aitken • Aitken • Cohn

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## New changes to protect U.S. consumer safety

Recent media attention has highlighted numerous recalls of children's toys and other consumer products containing high amounts of lead and other dangerous substances. Many of these products are manufactured in foreign countries such as China and then shipped to the United States for sale. The recent recalls have generated considerable concern and outrage from the public about whether consumers have been adequately protected from such dangerous products.

The Consumer Product Safety Commission (CPSC) was created in 1972 and protects the public against unreasonable risks of injuries involving consumer products. The Commission is an independent federal agency responsible for regulating the sale and manufacture of more than 15,000 different consumer products, from baby toys and cribs to swimming pools. The CPSC protects consumers by setting voluntary and mandatory standards, banning products, issuing recalls, and researching potential hazards. However, after years of staff and budget cuts, the strength of the CPSC has been weakened considerably.

In response to the growing concern among U.S. consumers, the House of Representatives passed the Consumer Product Safety Modernization Act in December 2007. The Senate passed a related version of the bill in March 2008. On August 14, 2008, the Consumer Product Safety Act (CPSA) was signed by President Bush. The new law provides the CPSC with increased funding, personnel, and greater power through higher civil

and criminal penalties, and mandates protection for whistleblowers, testing, tracking labels, reductions in harmful materials, new disclosure rules, and state government enforcement tools.

The new law increases criminal penalties and fines for knowing and willful violations of the CPSA. Corporate directors and employees may be sentenced up to five years in prison for egregious violations. Increased civil penalties under the CPSA range from \$100,000 per violation to \$15,000,000 maximum, plus asset forfeitures. The CPSC will also construct a searchable database for reports of dangerous products, deaths, and injuries. In addition, the new law prohibits corporate retaliation against employees who report product dangers to the Commission. State Attorney Generals may also enforce the CPSA through cease-and-desist orders and by issuing injunctions.

The new law requires third-party safety testing by CPSC-accredited entities for products for children age 12 and under. These children's products must also contain tracking labels to assist with identification in the event of a recall. The CPSA reduces the allowable levels for lead paint on toys and furnishings (from 600 ppm to 90 ppm) and bans phthalates (a plastics softener) from all children's products. Lastly, the law finally makes it illegal for companies to sell or export recalled products.



**The Consumer Product Safety Act will help prevent U.S. consumers from unnecessary injuries caused by dangerous and harmful products.**



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## Who's new?

**Vicki Myers**, *Executive Personal Assistant to Wylie*—Vicki comes to us with more than ten years' experience (executive assistant and legal assistant) and a B.A. in social sciences from California State University, Northridge.

**Diana Khoury**, *Office Services Clerk*—Diana is a recent graduate of UCI with a B.A. in political science. She is fulfilling her duties on a full-time basis while preparing for the LSAT, and at some point will go on to law school.

**Azalia Llinas**, *Legal Assistant to Rich*—We welcomed Azalia back to AAC (previously with the firm for six years). She has returned, armed with her 20 years' experience as a legal assistant, with a medical assistant certificate, to assist Rich.

## CLIENT-ATTORNEY PRIVILEGE

**Q: Who holds the "privilege?"**

**A:** The client. An attorney can release information only with authorization from the client.

**Q: So, clients can trust their attorneys with confidential information?**

**A:** Yes. An attorney may not reveal anything disclosed without client consent.

**Q: Why?**

**A:** Regulations governing evidence and rules of professional conduct require that attorneys maintain all specifics of a client-attorney relationship as strictly confidential.

**Q: Should clients tell their attorneys everything?**

**A:** Yes. It's important to fully disclose all the relevant details of a case to a lawyer—positive and negative—so that counsel can represent the client confidently and appropriately.

**Q: Why is that?**

**A:** A client's failure to be fully candid may adversely affect a case if the attorney is surprised or blindsided by critical information coming from anyone but the client at any time in the case. If there are problems with conflicts of interest or ethics issues, the attorney will advise a client immediately.



## Course and scope of employment

As indicated in the Summer 2008 article "Injured at Work?," one of the ways that **Aitken ★ Aitken ★ Cohn** has distinguished itself as a nationally recognized personal injury law firm is to tirelessly exhaust all potential means of recovery to compensate our clients for their injuries and losses. In this issue, we would like to feature finding a recovery source from a civil defendant's employer for the acts of their employees while "on the job."

In California, under the doctrine of "respondeat superior," an employer may be liable for an employee's acts committed within the scope of employment. California public policy recognizes that businesses cannot justly disclaim accidents which may be fairly said to be characteristic of its business activities. A plaintiff, in a personal injury action, must show not only that the civil defendant was an employee/agent of the employer when the accident took place, but also that the employee was acting within the course and scope of his employment. These kinds of inquiries are factual, case-by-case questions that must be carefully examined. If course and scope is indeed found, this may have a dramatic effect on the recovery of a plaintiff, as businesses normally have much greater insurance coverage than a typical civil defendant.

The law surrounding course and scope of employment is often dictated by its "exceptions" rather than its "general rules." For instance, a business is normally not liable for accidents that happen on a lunch break or for commutes that happen at the beginning or end of the work day. On the other hand, if a civil defendant is running an "errand" during this time or is attending

a business "social function," the employer can be found liable. Liability can also be found during these times if the company requires the civil defendant to furnish a vehicle as a condition of employment. What if a civil defendant is discussing a company errand on a cell phone when the accident occurs? Certainly, liability may be found in this instance.

The following are just a few examples of cases that **Aitken ★ Aitken ★ Cohn** has recently handled, assisting employees in obtaining recoveries for incidents that occurred during the course and scope of employment:

- **Aitken ★ Aitken ★ Cohn** achieved a **\$23.5 million trial verdict** for an injured 13-year-old boy who was struck by a regional sales manager who was en route to a work-related physical examination during normal work hours.
- **Aitken ★ Aitken ★ Cohn** achieved a **\$19.5 million settlement** for the surviving spouse and three children of a plaintiff killed by a civil defendant while going home in a vehicle required as a condition of her employment.

**Aitken ★ Aitken ★ Cohn** is proud to provide free case evaluations to ensure all potential avenues of compensation in your personal injury matters. At **Aitken Aitken Cohn**, we pride ourselves on developing a thorough case analysis and investigation to achieve the best results for our clients, including those who have suffered injuries from civil defendants acting within the course and scope of their employment.



# RECENT CASE RESULTS



➔ **Tractor Trailer vs. Auto**—The decedent (husband and father of two children) was operating his prized '62 red Corvette and stopped for a red light when the defendant company's driver, who was operating a tractor trailer filled with a load of sod, crashed into the refurbished Corvette, which burst into a ball of flames and was pushed more than 175 feet through the intersection. The defendant vehicle knocked over a fire hydrant and ended up on top of the refurbished Corvette convertible.

**SETTLEMENT:** \$5,000,000 (following appeal of a trial verdict)

➔ **Auto vs. Auto (Head-on Collision)**—The plaintiff was operating his vehicle when the defendant's leased truck's dual wheels came off a tanker trailer, crossed the median, and struck a GMC Yukon, causing said Yukon to cross the median and crash head-on into the plaintiff's vehicle, causing life-threatening injuries. The

plaintiff was transported to the hospital by a life flight. He received multiple severe injuries, including traumatic brain injury, left-hand full thickness burns requiring surgeries, and continues to need 24-hour care. The plaintiff is married and has two children, ages 4 and 6.

**SETTLEMENT:** \$3,060,000

➔ **Auto vs. Auto**—The plaintiff, a 47-year-old homemaker, was struck in the intersection when the defendant negligently ran a stop sign and crashed into the driver's side of her vehicle, resulting in injuries, including a disabling rotator cuff injury that required three shoulder surgeries.

**SETTLEMENT:** \$550,000

➔ **Auto vs. Bicycle**—A 59-year-old plaintiff was struck at an intersection by a vehicle driven by the defendant, who was acting within the course and scope of his employment. The plaintiff sustained a fracture to his right femur, which ultimately took three major surgeries to repair and left the plaintiff hobbling and dependent on a walker for ambulation for the rest of his life.

**SETTLEMENT:** \$400,000

➔ **Taxi vs. Pedestrian (Hit and Run)**—The defendant taxi company's driver negligently caused his vehicle to go through a lighted crosswalk, striking the plaintiff, severely injuring the plaintiff's right knee, back, neck, right shoulder, and causing multiple related injuries. The defendant driver was cited for "hit and run" for leaving the scene of the accident.

**SETTLEMENT:** \$350,000



## WHAT'S NEW?

Wylie was recently named as one of the "Top 100" Lawyers of 2008 by the *Los Angeles Daily Journal*. This group was drawn from the 161,345 practicing lawyers in the state of California.



Wylie A. Aitken

*Irish America* magazine named Wylie in its inaugural "The Legal 100: A Celebration of Irish Lawyers and Judges." The list is comprised of lawyers from all around the country who share a passion for the law and pride in their heritage.



Casey R. Johnson

Casey is the new Parliamentarian for the Orange County Trial Lawyers Association, which will make him President in 2016.



Darren O. Aitken

Darren will be named **Personal Injury Attorney of the Year**, and Rich will be named **Medical Malpractice Attorney of the Year** at the Orange County Trial Lawyers Association 2008 "Top Gun" award banquet, on Friday, November 21, 2008, at the Orange County Performing Arts Center.

Richard A. Cohn





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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.

## New changes to protect U.S. consumer safety

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In closing, the CPSA provides tougher penalties, greater transparency, and more thorough enforcement powers to a federal agency in great need of them. These positive changes in the law will help prevent U.S. consumers from unnecessary injuries caused by dangerous and harmful products. All of us will benefit from these protections.

## Actor Dennis Quaid sues drug maker

Thousands of babies are injured by health-care providers every year. Sadly, however, distraught parents and families seldom ever know.

The experience of Dennis Quaid and his wife has opened the window just a crack to the harm that many infants and parents suffer.

The Quaid's sued makers of Heparin® after hospital staff injected overdoses of the anticoagulant into their newborn twins. The Quaid's suit alleges the drug manufacturer negligently packaged varying doses ranging from 10–10,000 units in similar-looking containers with identical blue backgrounds. Hospital authorities said the Quaid babies, plus several others, received several doses 2,000 times stronger than prescribed.

The infants appear to have fully recovered.

### Medical errors

One in five Americans says that a medical error has caused either themselves or a family member severe pain, serious loss of time at work, temporary disability, and/or death.

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## Contact us after hours...

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