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Aitken • Aitken • Cohn named as State Liaison Counsel in nationwide Toyota litigation

Since the sudden, unintended acceleration of Toyota vehicles gained national attention, and spurred two separate recalls of Toyota vehicles, numerous lawsuits alleging product defect, personal injury, and economic loss have been filed throughout the country. Many of these cases were filed in the United States (or federal) judicial system, while others were filed in the various state courts.

The lawsuits filed in the federal court system have been consolidated into a single action to be heard in the federal courthouse in Santa Ana, California. After application to the judge overseeing the matter, **Wylie Aitken** was named as one of the State Liaison Counsel between the state-filed and federal-filed actions. **Aitken • Aitken • Cohn's** role will be to coordinate the numerous state-court actions with the federal action in Santa Ana to promote efficiency and fairness in the prosecution of these numerous claims.

Wylie and the firm look forward to serving the federal court, as well as the numerous state and federal plaintiffs, in this exciting and important role.

SPORTS/RECREATION LAW UPDATE:

The assumption-of-risk doctrine

With summer upon us, many will be engaged in sports and other recreational activities that involve inherent risks of injury. In our law practice, we have seen serious injuries arising out of a wide variety of sporting and recreational activities, occurring in both foreseeable and unpredictable ways. When such injuries are caused by the fault of others (such as a negligent co-participant, coach, or instructor, or due to defective equipment used in the activity), the question of whether the injured party can legally recover against the at-fault party under California law has become a very complex issue with very few black-and-white answers.

The most typical defense that arises in the context of injury during sporting/recreational activity is known as "Primary Assumption of the Risk." Under this legal doctrine, if an individual is injured while participating in a sport or recreational activity, even if due to the negligent actions of a co-participant, then there will be no liability against such co-participant—*unless* his actions were entirely outside the risks otherwise ordinarily inherent in the activity, or if the co-participant acted to increase the risk beyond that which is normally inherent in the activity. In other words, the risk of injuries that may occur in the naturally foreseeable course of a sporting/recreational

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Driver alert!

Uninsured motorist danger

The Insurance Research Council (IRC) reports that more Americans than ever, now one in six drivers, have no vehicle insurance whatsoever. This is a depressing result of recessionary times, which lead to increased unemployment, car payment, insurance, and vehicle operating costs.

It is now more important than ever to purchase uninsured motorist (UM) insurance sufficient to fully protect all drivers in your family. UM protection kicks in when another driver at fault in an automobile collision has no insurance coverage. It can cover lost wages, medical costs, and other expenses associated with serious accident injuries.

Talk to your insurance agent about UM and underinsured motorist (UIM) coverage that safeguards you if injured by a negligent driver who has only minimal insurance.

According to the IRC, the average claims payment for accidents involving underinsured drivers averages \$11,000.

As always, please contact us for counsel if you are involved in any auto accident.

Amusement park SAFETY

As more families consider weekday outing “staycations,” they may visit local amusement parks for fresh air, fun foods, and thrill rides.

But don’t let your young children take chances. Although data are sketchy, the U.S. Consumer Product Safety Commission estimates that in 2000, young park visitors suffered more than 10,000 emergency-room-treated injuries from amusement-park rides.

Here’s how your family can have fun and be safe, too:

- ◆ Check the park’s general appearance, lighting, signage, and litter—all indicators of care.
- ◆ Look for adequate security and safety personnel.
- ◆ Know where first aid or EMT service can be obtained.
- ◆ Watch operators’ attention to rides.
- ◆ Observe the operation of rides your child wants to go on.
- ◆ Comply with age, height, or weight restrictions.
- ◆ Ride with youngsters.
- ◆ Buckle safety harnesses and restraints.
- ◆ Tell children to keep hands inside and hold on.
- ◆ Avoid loose-fitting clothing, especially baggy sleeves.

Who’s NEW?

• **Diana Khoury**, Administrative Paralegal—Diana has moved from her position as Office Services Clerk, which she held for nearly two years, to a new position in our office. She still has a strong desire to go to law school.

• **Matt Lee**, Office Services Clerk—Matt is a recent graduate of UCI with a B.A. in criminology, law, and society. He is fulfilling his duties on a full-time basis.

• **Brooke Bove**, Law Clerk—Brooke just completed an internship at **Aitken • Aitken • Cohn**. She will be assisting the firm as a law clerk during the summer months while also attending classes. She is a student at Whittier Law School and expects to obtain her J.D. in the spring of 2011.

RECENT SEMINARS

MAY 12, 2010

Harris Martin Toyota Litigation Conference
Topic: **“What’s Next for Toyota”**
Wylie Aitken

May, 17 2010

Century High School
Orange County Bar Association
Theme: Teenage Legal Survival Skills
Topic: **“General Legal Issues Affecting Teenagers”**
Michael Penn

Preventable childbirth injuries

Every parent wants their child’s birth to be beautiful. Parents also hope their new infants will enjoy natural and normal childhoods.

However, in some cases, negligent birth trauma shatters parents’ dreams and children’s lives. Cerebral palsy and birth injuries that infants needlessly suffer may be preventable through appropriate and timely medical intervention or nursing care.

It often costs millions of dollars to deal with the consequences of preventable birth injuries.

Over the years, **Aitken • Aitken • Cohn** has helped several families cope with the devastating effects of birth injuries.

If your child suffers from a preventable birth injury, please obtain legal assistance.

CASE RESULTS...

➔ **Burns at Nail Salon**—The plaintiff, a 67-year-old avid swimmer and diabetic suffering from neuropathy, received third-degree burns during one of her visits to a nail salon. The plaintiff was a regular customer of one of the employees of the salon; she frequented this salon for all of her salon needs. The employee was well aware of the plaintiff's health issues. The burns resulted in hospitalization for nearly a year for skin grafts, treatment for two heart attacks, dialysis for kidney damage, and a bedsore—all as a result of the burns. She is receiving continual home health care and supervision, with further surgeries due in the future.

SETTLEMENT: \$2,000,000

➔ **Dune Buggy**—The defendant driver, under the influence, was operating a dune buggy at an excessive rate of speed when he decided to veer off a paved road onto an unpaved gravel road. He lost control of the vehicle and negligently struck a manhole, catapulting the dune buggy into a nearby light pole and chain link fence, causing severe and life-changing injuries to the passengers.

SETTLEMENT: \$5,600,000

➔ **Auto vs. Bicycle**—This case involved the wrongful death of a 66-year-old father who was riding his bicycle in the intersection when the defendant driver, in the course of his employment, negligently operated his vehicle, causing it to collide with the decedent.

SETTLEMENT: \$1,250,000

What's wrong with my Toyota?

Our office has received numerous inquiries from consumers wanting to get a better understanding about the problems surrounding their Toyota vehicles. There is a lot of confusion among consumers surrounding the various recalls launched by Toyota. Many question whether their particular vehicle is involved in any of the recall campaigns launched by Toyota. Others want to know the causes behind reports of sudden, unintended acceleration, sticking accelerator pedals, and floor mat entrapment experienced by vehicle drivers and what safety steps they should take to protect themselves and their loved ones. The causes behind reports of sudden, unintended acceleration or runaway acceleration have not been clearly identified by Toyota or the National Highway Traffic Safety Administration (NHTSA). Possible culprits include defective parts, pedal entrapment, pedal misapplication, and electronic problems.

Toyota has published a list of vehicles involved in the recalls on their Web site: www.toyota.com/recall. The list includes 14 different Toyota vehicle models which span production years 1998 to the present. To find out if your vehicle is involved in the recent recalls, you can enter your Vehicle Identification Number on the Toyota Web site. Toyota reports that direct mailings to owners for vehicles involved in the pedal recall are complete, and mailings for the floor mat entrapment recall will be complete by June 2010. Toyota's Web site also posts safety tips

and instructions for dealing with recall-related problems.

If vehicle users experience a sticking accelerator pedal, Toyota instructs drivers to take one or more of the actions listed below:

- To stop immediately, step on the brake pedal with both feet, using firm and steady pressure (do not pump the brake pedal).
- Shift the transmission gear selector to the neutral position, and use the brakes to bring the vehicle to a controlled stop.
- If you cannot put the vehicle in neutral, turn the engine off.
- Depress the engine start/stop button for at least three seconds (do not tap the button) to turn the engine off.
- For conventional key ignition, turn the ignition key to the ACC position to turn off the engine. Do not remove the key from the ignition, as it will lock the steering wheel.

As part of their recall campaigns to address the risk of accelerator pedal entrapment in the floor mat, Toyota dealerships have implemented procedures to reconfigure the shape of the pedal as well as the floor mats. They will also reconfigure the shape of the floor surface underneath the accelerator pedal to increase the space between the accelerator pedal and the floor.

Automotive experts are examining



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www.toyota.com/recall

whether the acceleration problems may be caused by electromagnetic interference (EMI) or electromagnetic compatibility (EMC) surrounding Toyota's electronic throttle control system. Toyota's system replaced the mechanical link between the acceleration pedal and engine with electronic equipment to accomplish the task. The electronic equipment or system may be interfering with other electronic systems or equipment already confined to this same area. In confined spaces, the transfer of electromagnetic energy from one system to another can interfere with proper operations, resulting in electronic systems failures and anomalies. The threats and dangers posed by electromagnetic interference are well known in the aerospace and medical-device industries, where complex electronic devices and equipment are packed tightly together. Verifying the existence of EMI/EMC and finding solutions require extensive research and testing. These findings will need to be incorporated into future vehicle designs and provide solutions for the vehicles currently on the road.



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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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SPORTS/RECREATION LAW UPDATE: *The assumption-of-risk doctrine...* (continued from front page)

activity are *assumed* by those who voluntarily participate in such activities—such that even if a co-participant who causes the injury is clearly negligent, he/she will not be legally liable for the damages that were caused.

This rule of law has been applied in a variety of circumstances and has been criticized because it has produced some seemingly unfair results. Furthermore, there are many different fact-specific cases that have been decided in different appellate districts throughout California over the last decade with seemingly inconsistent results. As such, it becomes very unpredictable whether a person injured due to the fault of another person during a given sporting/recreational activity will be able to legally recover from the at-fault party. The inquiry begins with a very fact-specific analysis of the activity itself, the relationship between the parties, and, most importantly, whether the injury-producing event resulted from an action that was not a part of the risk otherwise "inherent" in the activity. With this vague framework as the starting point, it becomes the task of the attorney for the injured person to prove that the at-fault party's conduct in the specific case falls so totally outside of the actions inherently expected in the activity that the risk of such conduct occurring would not have been reasonably "assumed" by the injured party. Otherwise, the "primary assumption of risk" doctrine will bar liability.

Examples of cases where the doctrine has been held to apply are as follows: no liability for injury arising during a touch football game in which the at-fault party was overly aggressive and pushed the injured person far too hard; no liability for an injured water skier who was pulled too close to shore by the boat driver, who turned too

sharply; no liability for collision of off-road vehicles even when the at-fault driver was clearly negligent in flying over a "blind" rise; no liability for two skiers colliding, even when the negligent skier was out of control. Many persons view some of the above results as unfair to the injured victims, who are hurt due to the clear fault of others, but recover nothing for their injuries and damages.

The primary assumption of the risk doctrine is also criticized in that it produces frequently inconsistent results under seemingly similar sets of facts. Indeed, there are numerous cases that are seemingly quite similar to those described in the prior paragraph, but which hold that the at-fault party can be legally liable: a snowboarder who struck another rider while speeding through a flat rest area *can* be liable; a boat driver pulling a "tube" rider *can* be liable for providing rope that broke; a horseback-riding instructor who caused his own horse to suddenly gallop, knowing that it would cause the other horses in the group to also gallop unexpectedly, *can* be liable for injury caused to a fallen rider.

As can be seen from the above examples, the results in these cases can be inconsistent and unfair. Whether a given case can be handled successfully will depend on the attorney's knowledge of the vast body of applicable case law and his/her ability to effectively argue that the case at hand is more similar to those cases in which liability has been found, as opposed to those cases where the primary assumption of the risk defense has been applied.

