



CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

CAOC announces 2019 award finalists

Consumer Attorney of the Year and Street Fighter of the Year will be revealed Nov. 16 in San Francisco

SACRAMENTO (Aug. 14, 2019) – Consumer Attorneys of California president Mike Arias today announced this year’s finalists for the organization’s two major member awards, Consumer Attorney of the Year and Street Fighter of the Year. The winners will be revealed at CAOC’s Annual Installation and Awards Dinner Nov. 16, to be held in conjunction with [CAOC’s Annual Convention](#) at the Palace Hotel in San Francisco.

Consumer Attorney of the Year is awarded to a CAOC member or members who significantly advanced the rights or safety of California consumers by achieving a noteworthy result in a case. Eligibility for Street Fighter of the Year is limited to CAOC members who have practiced law for no more than ten years or work in a firm with no more than five attorneys. To be considered for either award the case must have finally resolved between May 15, 2019 and May 15, 2019, with no further legal work to occur, including appeals.

The finalists for these awards were selected by a committee consisting of members of CAOC’s Executive Committee; representatives of the attorney groups that won these awards in each of the last three years; and six randomly-selected members of CAOC’s Board of Governors.

Here are the 2019 finalists:

CONSUMER ATTORNEY OF THE YEAR

WYLIE A. AITKEN, MEGAN G. DEMSHKI, JOHN C. ADAMS III AND WILLIAM J. KOPENY

Sumrall v. Modern Alloys, Inc.

CLARIFYING CALIFORNIA LAW WHEN EMPLOYEES ARE ON A “BUSINESS ERRAND”

Juan Campos, a cement/mason finisher for Modern Alloys, didn’t begin his paid workday until he arrived at the job site at 9:00 p.m., yet he was expected first to go to the company’s stockyard by 8:00 p.m. to take out a company vehicle and transport coworkers and materials to the jobsite. One evening, when he was turning into the stockyard in his personal vehicle, he caused a crash with motorcyclist Michael Sumrall. Sumrall suffered permanent injuries and sued Modern Alloys, under the theory that Campos was on the road because Modern Alloys required him to be, even though Campos wasn’t on the clock. In California, employers are generally not liable for their employees during their commute to and from work. As a result, an Orange County Superior Court judge ruled in favor of Modern Alloys without a trial. But Sumrall’s attorneys

appealed, and the Fourth District Court of Appeal reversed the Superior Court decision in a unanimous published opinion. If the stockyard was Campos' workplace, Modern Alloys would not have been responsible for his being on the road to get there, but the appellate court found there was a question of fact if Campos was on a "business errand" at the time of the crash. The company was benefiting from his early arrival at the stockyard so that he could transport colleagues and materials to the actual workplace. The appellate decision language later led to a settlement that compensated Sumrall and dramatically improved the chances of compensation for injured Californians.

MARY E. ALEXANDER, JOSEPH W. COTCHETT AND JUSTIN T. BERGER
County of Santa Clara, et al., v. Atlantic Richfield Co., et al.

HOLDING PAINT MANUFACTURERS RESPONSIBLE FOR REMOVING LEAD PAINT

A 19-year quest to hold lead paint manufacturers accountable for the damage caused by their products came to a dramatic conclusion this year, when three companies agreed to pay \$305 million to remove toxic lead paint from homes in 10 California cities and counties. Manufacturers knew for many years their products were hazardous to children, but sold them anyway. The companies' internal documents going all the way back to 1904 acknowledge that lead paint was "poisonous to a large degree." The companies stopped selling lead paint when it was banned nationally in 1978, but hundreds of thousands of homes across California still have the paint on walls, windowsills and exteriors. The legal battle began in 2000. By 2003 all claims had been dismissed by Santa Clara County Superior Court judges, but in 2006 the Sixth District Court of Appeal allowed the case to proceed as a public nuisance claim and, after a six-week trial, in 2014 a Santa Clara County Superior Court judge ordered Sherwin-Williams, ConAgra and NL Industries to pay into a fund to inspect for and abate lead paint. This was the first win against lead paint manufacturers anywhere in the country and recognized manufacturers must pay to clean up the hazard they created in homes. The paint companies then threatened to mount a ballot initiative that would have let them off the hook and shifted all cleanup costs to California consumers, but dropped the initiative after pushback from the state Legislature. In 2018 the United States Supreme Court refused to hear an appeal, leading to a settlement. The money will be used to remove lead paint in homes built before 1980 in the 10 cities and counties.

CHRISTOPHER J. KEANE, JENNIFER J. LOTHERT AND ANDREW N. CHANG
Miller v. Sutter Amador Hospital, et al.

PROTECTING A VICTIM OF CHILD ABUSE WHOSE INJURIES WERE UNREPORTED BY MEDICAL PROVIDERS

When Cree Miller was seven weeks old, he was brought to the emergency room of Sutter Amador Hospital by his teenage parents and maternal grandmother, with a reported history of a mouthful of blood, damage to his eye and bruising on his face. There were clear indications of child abuse, and under California law, a nurse, two nurse practitioners and a doctor who saw Cree were required to make a report to Child Protective Services. A former Calaveras County child protective services worker testified at trial that, if a report had been made at that time, Cree

would have been taken into protective custody. No report was made, however, and Cree remained in the custody of his parents. Three weeks later, Cree was returned to the emergency department at the hospital with a spinal cord injury that left him permanently paralyzed, as well as a broken clavicle, two broken ribs and extensive bruising over much of his body. Cree was removed from his parents' custody and placed in foster care, and he was later adopted by his foster mother. The medical providers who first saw Cree could have prevented this tragedy but failed to report reasonably suspected child abuse as required by California law, and the hospital and emergency medical corporation failed to comply with California law requiring that they provide employees with a copy of the child abuse reporting law. A jury in Amador County, a conservative venue, awarded Cree the largest verdict in county history as compensation for his lifelong injuries, and the case settled while on appeal.

RAHUL RAVIPUDI, ROBERT S. GLASSMAN AND SCOTT A. LILJEGREN
Pierce v. Murrieta Valley Unified School District

REQUIRING A SCHOOL DISTRICT TO PROTECT STUDENTS IN THE WAKE OF A TRAGEDY

Thirteen-year-old Alex Pierce drowned in a school swimming pool during a year-end swim party for band and choir students while under the supervision of Murrieta Valley Unified School District staff. Alex was at the bottom of the pool for nearly two minutes before he was retrieved by his classmates, with no rescue efforts by student lifeguards or school district personnel. When he was brought to the pool's surface, lifeguards did not remove him from the pool or perform CPR, instead placing him on a floating backboard, where he remained without oxygen for nine minutes. Keith Good, a certified lifeguard and lifeguard instructor who was supervising students at the time, told police he did not rescue Alex because he was "not on the clock" and knew his insurance would not cover him for getting involved, but district staff members said Good was on duty at the time. Alex was in a coma and on life support for more than a month before being declared brain dead. The attorneys reached a settlement with the school district that not only compensated Alex's family but requires the school district to provide mandatory CPR training to all faculty and hire outside experts to evaluate the safety systems at the school and recommend additional safety measures, with the report to be available for other California school districts to study and hopefully implement similar safety measures. The attorneys are also leading the effort to pass bipartisan legislation by working closely with Asm. Melissa Melendez (R-Lake Elsinore) on Assembly Bill 1214, referred to as "Alex's Law," requiring schools offering interscholastic athletic programs to have CPR-trained personnel at athletic events at all times and requiring school districts to offer CPR training to their employees.

DAVE RING AND LOUANNE MASRY
Felicia M. v. County of Los Angeles, et al.

DEMANDING ACCOUNTABILITY FOR A COUNTY'S NEGLECT OF CHILD ABUSE

A young girl, referred to in court documents as Felicia M. to protect her identity, endured horrific sexual abuse in her El Monte home for years, beginning when she was just seven years old. Two Los Angeles County Department of Children and Family Services social workers

discovered that Felicia was sharing a bedroom with a 30-year-old man who was a friend of her mother's and who they later discovered had a criminal history of sexual battery against a minor. When they learned about the man's criminal background, the social workers determined that Felicia was at high risk for sexual abuse and requested that the man leave the home, but they did not follow up to ensure that he actually left, which he did not. Despite their suspicions that abuse was taking place, and despite being mandated reporters under the law, the social workers did not report to the police, and Felicia continued to be sexually abused by the man. Felicia's mother, who was a drug abuser, also permitted other men who were felons and sex offenders to live in the home and commit abuse against Felicia, who finally was able to disclose to police that she had been sexually abused by several adult men and her mother. A Los Angeles County jury returned a substantial verdict against the County and the DCFS that highlighted how egregiously the county failed its duty to protect a vulnerable child from sexual abuse. Had the county lived up to its duty, Felicia would have been spared years of additional horror. The verdict sent a message that the DCFS' broken policies and procedures must be fixed so that other young victims do not suffer the same horrific abuse as Felicia.

TIMOTHY G. TIETJEN

Rowe v. Pacific Gas & Electric Company, et al.

OVERCOMING IMMUNITIES TO ESTABLISH LIABILITY FOR IMPROPERLY MAINTAINED CAMPGROUNDS AND POWER LINES

Twelve-year-old Zachary Rowe was camping with his family in a designated campground in San Mateo County Memorial Park when a rotten 72-foot-tall tanoak tree fell onto his tent while he was sleeping, crushing him. Zachary's right leg was amputated at the hip, and after necrosis spread further into his body, his right pelvis and buttock were also amputated so that he could survive. The tree that fell was rotten to the core and had been for years. It was 37 feet from PG&E's adjacent power line, and would have struck that line had it fallen in that direction. Zachary filed suit against San Mateo County, alleging a dangerous condition of public property, and against PG&E and its vegetation management contractor, for negligence in failing to maintain the area around its power lines in a safe condition. Both defendants claimed they were immune from suits under different statutes. The case resulted in two significant published opinions in the First District Court of Appeal. In the first case, the court ruled that triable issues of fact existed as to whether artificial changes the county made to the area surrounding the tree increased its dangerousness. In the second case, the court found that PG&E had a duty to remove hazardous trees within striking distance of its facilities to protect not only its electrical facilities but also people nearby. These appellate cases established groundbreaking decisions protecting recreational users and consumers in California. After these rulings, a record-breaking settlement was reached to compensate Zachary for his preventable injuries and lifetime of pain and disfigurement.

STREET FIGHTER OF THE YEAR

MARTIN I. AARONS AND SHANNON H.P. WARD

Meadowcroft and Brown v. Silverton Partners, Inc., et al.

FIGHTING FOR VICTIMS OF WORKPLACE SEXUAL HARASSMENT AND RETALIATION

After Carlos Pineiro was hired as general manager of a winery in Temecula, he made numerous inappropriate and unwelcome sexual comments to employee Amber Brown, screamed at her, threatened to harm her if she complained about him, and caused her to fall down some stairs when he grabbed her by the wrist. Pineiro also made many sexually explicit comments to employee Megan Meadowcroft, touched her rear and vagina when she was bending forward to collect dishes, pushed her against a wall in a shed with his body, and told her that he would make her a manager if she had sex with him. Pineiro nearly hit Meadowcroft with a winery vehicle and called Meadowcroft numerous times that same night; she feared for her life and safety and the safety of her children. Both Brown and Meadowcroft complained about Pineiro to the owners and managers of the winery, and he was fired after working there for two weeks, but Meadowcroft was not scheduled to work after her complaints. Two months after he was fired, Pineiro was re-hired based on promises to bring in more money for the winery. Brown complained again to management. When her complaints were ignored, Brown obtained a restraining order against Pineiro. Then, she was told by management that she had “voluntarily resigned.” Brown suffers from panic disorder and post-traumatic stress disorder, and Meadowcroft had symptoms consistent with post-traumatic stress disorder. After the women filed a complaint alleging sexual harassment and retaliation, a jury found in their favor and awarded them both damages, including punitive damages, holding the winery’s owners and managers accountable for the actions of a man they hired and then re-hired even after being notified of his behavior.

SEVY W. FISHER, GREYSON M. GOODY AND JEFFREY I. EHRLICH
Pebley v. Santa Clara Organics, et al.

GIVING INJURED CALIFORNIANS A CHOICE IN THEIR MEDICAL TREATMENT

Dave Pebley was a passenger in a motor home that had a flat tire on a Ventura County freeway on the side of the road when it was struck from behind by a big rig driven by an employee of Santa Clara Organics. Pebley suffered numerous injuries in the crash. He had health insurance but chose to treat outside his insurer’s network. He put forth evidence of past and future medical expenses based on out of network costs. A jury awarded Pebley compensation for both his past and future medical expenses based on these out of network costs, but Santa Clara Organics appealed, arguing that under a 2011 California appeals court decision (*Howell v. Hamilton Meats & Provisions, Inc.*), it would be liable only for what Pebley would have paid had he seen a provider in his network, and that that amount would be much less than what Pebley actually paid. Pebley claimed he had the right to make medical treatment decisions without regard to his insurance. The Second District Court of Appeal ruled that the party that causes the injuries cannot force an injured person to use his or her insurance to obtain medical treatment for those injuries, and thus compensation is not limited to what would be paid under the insurance plan. Pebley had the right to seek the best care available. As a result of this ruling, Californians who are injured through no fault of their own get to choose the doctor they prefer to treat their injuries, even if that doctor is not part of their insurance plan.

KATHRYN A. STEBNER, KARMAN GUADAGNI, ANOUSH LANCASTER, KIRSTEN M. FISH AND MICHAEL D. THAMER

Minson, et al. v. Oakmont Senior Living, LLC, et al.

GAINING PROTECTIONS FOR SENIORS DURING DISASTERS

During the devastating Tubbs Fire in October 2017 in Northern California's wine country, the Villa Capri residential care facility for the elderly (RCFE) in Santa Rosa burned to the ground in mere hours. All of the residents escaped with their lives, thanks to the efforts of family members and first responders who risked their own lives to come to their aid. More than 20 elderly residents, many of whom used wheelchairs or walkers, some of whom had dementia, would have died without that assistance. Only four employees, all of whom had been working there for less than a year, were at the facility that night, caring for some 60 residents. The facility had no backup generator, leaving residents to evacuate in the dark without use of an elevator. Four family members, along with first responders, led the evacuation when it became clear that Oakmont was not going to evacuate all the residents. Given the ages and physical condition of the plaintiffs, the attorneys had to work quickly to put together their case. The night before trial was scheduled to begin, they reached a confidential settlement that included measures to benefit the residents in all the senior care facilities owned by Villa Capri's owner. The case inspired Senate Bill 314 by Sen. Bill Dodd (D-Napa), sponsored by Consumer Attorneys of California and signed into law by Gov. Newsom earlier this year. The bill clarifies existing law to add "abandonment" to the enhanced remedies section of the Elder Abuse Act, to help ensure that the abandonment of RCFE residents during a fire or other disaster never occurs again and, if it should, its victims are properly compensated.

Consumer Attorneys of California is a professional organization of plaintiffs' attorneys representing consumers seeking accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.

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