CONSUMER ATTORNEYS OF CALIFORNIA is a statewide organization of lawyers representing clients seeking accountability from wrongdoers. Our mission is to seek justice for all, preserve the right of consumers to a trial by jury and uphold the dignity of the legal profession through the highest standards of ethical conduct and integrity. Consumer Attorneys of California supports the civil justice system as a fundamental check on abuses of power and opposes efforts in the Capitol to limit the legal rights of California citizens.

Members of Consumer Attorneys of California stand up for victims, whether they’ve been harmed by corporations that put profits ahead of people and employers who don’t follow the labor laws or cheated by companies that sacrifice consumer safety to improve their bottom line.

Those who play by the rules deserve protection – that’s what the 7th Amendment to the United States Constitution is all about. The purest form of democracy is the dutiful work of 12 ordinary people in a jury box, checked by a judge trained in the law.

As businesspeople ourselves, we support and defend the legal rights of businesses and business owners – both big and small. All we ask is that corporations play by the rules – the laws that govern our state and nation – and that they are held accountable when they don’t.

Our Advocates

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Problem. Drivers want to know they will be protected in case they are injured in an automobile accident. That’s why we buy auto insurance, including both financial responsibility coverage to ensure other drivers are protected and underinsured motorist insurance (UIM) to protect ourselves and the people we love. Unfortunately, our financial responsibility limits- which were set in 1967 and have never been adjusted- are dangerously low with California among the bottom three states with the lowest limits in the nation.

Further, California drivers who purchase UIM insurance are not receiving the protection they are paying for.

Financial Responsibility Limits Are Out of Date Leaving Drivers Unprotected.

California lawmakers took steps half a century ago to mandate minimum auto insurance liability coverage that protects innocent victims injured or killed by negligent drivers. 55 years ago California set our mandatory auto insurance liability minimums at $15,000 for a single injury or death; $30,000 for injury to, or death of, more than one person; and $5,000 for property damage, in any one collision. Costs for vehicle repairs, medical services, and emergency services have increased considerably over the last 55 years while minimum required insurance limits haven’t been touched.

Many drivers today, unaware of the serious economic consequences of an accident, are under the false impression that simply carrying “full coverage” (technically just the minimum auto limits) is enough. Minimum auto limits should ensure that an injured party is made whole again after an accident, but with California’s current minimum coverage levels, this is not possible. California must be proactive and ensure motorists are properly covered.

Underinsured Motorist Coverage Does Not Provide as Much Protection as Drivers Expect.

UIM is coverage you have to protect yourself if you are injured by an uninsured driver. If a driver does not carry enough liability insurance to fully cover the harm they cause and hurts you, your own UIM coverage is supposed to help cover your damages.

Unfortunately, contrary to what a reasonable person would believe, your policy only provides coverage if UIM coverage exceeds the liability coverage of the at-fault driver. So, if you buy minimum coverage and the at-fault driver also has minimum coverage, your maximum recovery is only $15,000.

EXAMPLE: 23 year old Samantha purchased $30,000 in UIM insurance to protect herself from an underinsured driver. However, when she was hit and killed by an illegal speed racer with a minimum $15,000 policy, her insurance company pointed to California law and refused to give her family her $30,000 policy limit. Instead they reduced that $30,000 by the $15,000 from the at fault driver.
OTHER STATES: Nineteen other states would have allowed Samantha’s family to recover fully from her policy. Forty-seven other statues would’ve required the at-fault driver to carry higher minimum levels of insurance. (See full chart below.)

California law must change to ensure California law protects its drivers.
CONSUMER ATTORNEYS

COVID-19 CRISIS IN THE COURTS: CALIFORNIA MUST OVERCOME ROADBLOCKS TO JUSTICE

The COVID-19 pandemic has peeled back the curtain on California’s struggle to ensure everyone has access to equal justice. Each county created its own set of jurisdictional rules in response to the pandemic; a lack of uniformity that now has California’s civil justice system on the brink of a total meltdown.

The root of this crisis can be traced back to 1849, when the first California constitution gave the state’s far-flung counties a high level of autonomy – including operation of the local courthouse. What may have made political sense then has become a catastrophic civil justice crisis as COVID-19 exposes counties’ uneven response.

Californians who have already suffered through months-long delays in civil cases deserve their day in court. It’s their right. As the courts begin to reopen and tackle the backlog caused by the COVID-19 pandemic, civil litigants could be shut out of trial for an entire year or more – forced to wait until late 2021 and beyond to see justice served. This is unacceptable, especially given the stakes for aggrieved individuals and businesses suffering prolonged financial uncertainty.

The “justice delayed is justice denied” axiom rings truer than ever under the current circumstances. California courts must find a way to ensure that justice for civil litigants does not grind to a halt. Courts need specificity and guidance from the legislature to establish a uniform baseline throughout the state to ensure a fair balance of access to justice for civil cases.

- COVID-19 Backlog: Rescheduling of Civil Jury Trials

Civil litigants who have lost their jobs, face crushing medical bills, have a family crisis, or are suffering other hardships must have their day in court without having to wait months or even years. As criminal courts reopen, a reasonable number of civil courtrooms must reopen too, because California must not send a signal that justice in criminal cases is more important than justice in civil cases. Therefore, we need statewide guidelines that govern California’s approach to reducing both criminal and civil court backlogs – including civil rights, elder abuse, business, torts, family and juvenile dependency cases – to make sure no one gets left behind.
As with any crisis, there are some who look for opportunity to weaken laws that mandate responsible and non-negligent behavior. For example, last session we saw a slew of bills seeking to grant broad legal immunity relating to COVID-19 exposure and liability, including in the education field. Consumer Attorneys of California opposes granting immunities that remove the incentive to act reasonably and believe such a policy would place our most vulnerable Californians at risk.

Immunities from the law remove incentives to make nursing homes, workplaces, and schools safe, leaving workers, children, and the elderly unprotected. Parents should have confidence that they are sending their children to a safe place when they go to school. Likewise workers need to feel safe in their work environments and the elderly who are the most at risk for COVID-19 deserve the utmost protections. When our state begins to safely reopen, frontline workers should not have to worry about their rights and safety being undercut.

The threat of liability is very overblown. There are four essential elements of negligence: (1) the defendant owes the plaintiff a duty of care; (2) the defendant’s conduct fell below that standard of care; (3) the defendant’s failure to meet the standard of care was the cause of the plaintiff’s harm; and (4) the plaintiff was actually harmed. Another way of understanding the standard here is: duty, breach, causation, and damages—and all four elements are required for a negligence claim to survive. Proving up a duty-breach situation would be difficult, and proving up causation. COVID-19 transmission is exceedingly unlikely.

All entities are already protected under the law if they act reasonably. If they have a policy that is consistent with guidance and regulation, and they follow it, then they will have generally met the standard of care under current law. Only unreasonable or negligent conduct gives rise to liability. That’s why immunity for adhering to public health guidance is unnecessary, because reasonable care sets a clear standard that already protects from liability. Stated a different way: if schools, businesses, and nursing homes provide reasonable care under the circumstances as current liability laws require (e.g. establishing best-practice protections for workers, students, and nursing home residents) – they have immunity from lawsuits.

Even when a business is negligent, under the law, the plaintiff must prove that the negligence legally caused the injury or death. In order to establish liability, one must prove that but for the businesses unreasonable conduct or negligence, the person would not have contracted COVID-19. The gap of three to 11 days between infection and illness, the difficulty of recalling all of one’s contacts during that interval, the chances of exposure from multiple sources, and limited testing for the virus present formidable obstacles to establishing causation for civil liability.

Our focus should not be about liability but rather about what steps we all need to take to control the virus and help avoid outbreaks.
For millions of Californians, purchasing a vehicle is a serious financial commitment and sometimes is the largest transaction they will ever make. So, when a vehicle turns out to be unreliable and defective – otherwise known as a “lemon” – it can devastate family budgets; and faulty vehicles put lemon owners (and other drivers sharing the road with them) at risk.

Until California’s “Lemon Law” (the Song-Beverly Consumer Warranty Act) was passed in 1970, auto manufacturers routinely refused to honor the terms of the warranties they sold to consumers. At the time, warranties were little more than sales gimmicks – empty promises from automakers to fix defective vehicles; and consumers wouldn’t realize, until it was too late, that manufacturers could simply refuse to honor warranty agreements without consequence.

Today, with the Lemon Law in place, California consumers enjoy considerable protections from getting stuck with a defective vehicle. State law requires automakers to either replace or buy-back defective vehicles if they are not fixed within a reasonable number of repair attempts. Ever since the Lemon Law was implemented, vehicle reliability has improved, largely because of the accountability the law demands of auto manufacturers. On those uncommon occasions when consumers are sold vehicles that are unreliable, they rely on California’s strong Lemon Law to make things right.

“Shortly after I purchased a used car under warranty, I starting having problems with the battery. I repeatedly took the car to the dealer to get it repaired but the problem kept persisting. This was incredibly inconvenient and frankly, I was sick and tired of taking my car in for repairs. Thanks to the California Lemon Law, I finally feel safe driving again. I was able to return my car and get back what I paid for it with no out of pocket costs. I highly recommend to anyone who finds themselves in a similar situation to fight for their rights.”

- Maria L., Los Angeles

Instead of simply complying with the law, auto manufacturers constantly seek to weaken consumer protections. Regardless, CAOC and our consumer allies will keep fighting to make sure California’s laws are strong, and keep car buyers protected.
Senior citizens are among our most vulnerable population. Too often they are victims of financial fraud or negligent nursing home care that can lead to degrading conditions, injury or even death.

Regulatory agencies often lack the resources to adequately protect seniors’ safety. In many cases only the civil justice system can hold nursing home operators accountable for meeting state requirements. And when harm or death occurs, only the civil justice system can provide some measure of compensation for victims and their families.

The biggest problems faced by many nursing home residents are caused by the lack of staff on hand when facilities fail to meet state-mandated minimums. Call lights go unanswered; soiled diapers go unchanged; patients aren’t turned as needed in their beds, which can quickly lead to deadly pressure sores. Regulatory agencies can issue citations for inadequate staffing, but those penalties are a mere slap on the wrist for multi-million-dollar, for-profit nursing home chains.

That’s when our civil justice system can help. When consumer attorneys in Humboldt County won a verdict holding one nursing home chain accountable for failing to provide minimum staffing on more than 500 days, they insisted the company boost staffing and pay for a court-appointed monitor to ensure compliance. The civil justice system accomplished what state regulators could not.

The recent fires in California showed us another example of how residential care facilities, in particular, lack necessary emergency preparedness response criteria, as some facilities abandoned their seniors during emergency evacuations. For example, in 2018 the Department of Social Services placed two large assisted living facilities in Santa Rosa on probation after investigations found that they abandoned large numbers of residents during a firestorm. At least 20 frail, elderly residents would have died had family members and emergency responders not arrived to rescue them before one of the facilities burned to the ground. This is simply unacceptable.

When our parents and grandparents are victimized by unscrupulous financial dealings, and when they don’t receive the level of care they are guaranteed by state law or are abandoned during emergencies, and when aging Californians are abused and mistreated in nursing homes — consumer attorneys are here to stand up for California’s aging population.
Some of the biggest news stories of recent years have involved the civil justice system.

- Hundreds were killed when car ignitions unexpectedly shut off, airbags exploded, or vehicles accelerated out of control.
- Defective artificial hips implanted in patients, hurting instead of healing them.
- The tobacco industry’s ongoing duplicity and retargeting of a new generation of smokers through e-cigarettes.

Regulatory agencies do their best, but often find themselves overwhelmed, with ever-growing caseloads and ever-diminishing resources. After the election of Donald Trump, federal regulatory agencies have taken an increasingly hands off approach, and many state laws are being preempted by federal laws. As a result, agencies can’t always provide the oversight needed to keep consumers safe.

Consumer attorneys help fill that void, pressuring corporations and employers to improve product and workplace safety by hitting them where it hurts: Their bottom line. Through their investigations and litigation, consumer attorneys illuminate safety issues, remove dangerous products from the market, force corporations to make safety improvements, and deter manufacturers from cutting corners that put Californians at risk.

The public dividends have been substantial. Consumer attorneys forced the recall of defective body armor issued to law enforcement officers and soldiers. The civil justice system has brought about safer medications, tires, pajamas, tampons, and a long list of other products. Consumer attorneys have promoted safer playgrounds and roads. It took lawsuits to rein in the tobacco industry, and to bring to light that manufacturers long had hid knowledge of the dangers of asbestos.
Forced arbitration denies your constitutional right to a trial by jury. It’s like a virus in the U.S. marketplace – hard to spot, but spreading fast. Clauses requiring consumers to take their disputes to arbitration instead of the civil justice system can be found in just about every contract a consumer signs these days – tucked stealthily into online software agreements, hidden in boilerplate cell phone and credit card deals, indecipherable in the blizzard of paperwork you sign to start a job.

Quietly, such forced arbitration clauses have put rank-and-file consumers at a disadvantage, making them surrender the right to bring their case before a judge and jury. Instead, these provisions require disputes be settled by arbitrators, who are often beholden to the wrongdoing company that hires them. Often, the arbitrator’s decision is not subject to any established rules of court or existing law and cannot be appealed for legal or factual errors.

These clauses are presented in “take-it-or-leave-it” fashion with no chance to opt out. And to actually bring their case to an arbitrator, consumers who have been harmed often have to pay fees that are higher than the amount in dispute. Consumers are not entitled to the same discovery as they would in a court room. Arbitration proceedings are held behind closed doors and in secret. Bad practices are shielded from public scrutiny. Some arbitration clauses even allow the business to pick the arbitrator without any input from the consumer.

A U.S. Supreme Court ruling in 2011 condoned the practice, giving Big Business the green light to avoid accountability in class-action lawsuits when they cheat large groups of customers out of relatively small amounts each. With these provisions, consumers are left to fend for themselves in an arbitration process that is stacked against them.

In 2017 the #MeToo movement showed how forced arbitration has been used by employers and powerful men, including President Trump, to silence women who are sexually harassed. Even our civil rights laws are not spared from the black hole of forced arbitration.

Consumer attorneys believe it is important to protect the right to trial by jury as established in the Seventh Amendment to the U.S. Constitution. No corporation or individual should have free rein to deceive or harm another person with no prospect of being held accountable for their actions.

Wells Fargo and Weinstein

They’re poster boys for what’s wrong with forced arbitration.

Wells Fargo was able to use forced arbitration provisions in its bank and credit card contracts to shroud for years its massive fraud against its own clients. When those clients balked, they were forced into secretive arbitration instead of a court of law, allowing Wells Fargo’s crimes to go undetected far longer than they might have otherwise.

The same sort of duplicity helped Harvey Weinstein use forced arbitration and non-disclosure provisions to conceal his practice of sexual assault and harassment involving scores of Hollywood actresses for decades. With victims muzzled and lacking a fair legal outlet to challenge Weinstein, the movie mogul became a serial sexual predator.
It’s a staggering statistic: Each year, as many as 440,000 Americans die because of preventable medical errors, making it the third leading cause of death in America. The civil justice system has often stood as the last line of defense for patients who have been harmed instead of healed. But in California, where physicians enjoy protections from accountability that eclipse nearly every other state, there are limits to what consumer attorneys can accomplish.

It’s because of California’s MICRA law. That’s the acronym for the Medical Injury Compensation Reform Act, a 1975 law that capped non-economic (human suffering) damages at $250,000 with no provision for adjusting the dollar amount along with inflation. To enjoy the equivalent buying power that $250,000 gave you in 1975, you’d need more than $1.3 million today. But the MICRA cap remains unchanged.

Consumer attorneys oppose the arbitrary $250,000 cap on non-economic damages because it places an undue hardship on stay-at-home parents, low-wage earners, elderly Californians, and disabled children. That is because these populations are unlikely to have significant economic damages (lost wages etc.) when they are injured.

CAOC has also helped in the fight to protect patients by waging a multi-year campaign to stem the epidemic of prescription drug abuse. In 2016, CAOC along with patient protection advocate Bob Pack and Shatterproof, a nationwide Rx drug abuse prevention nonprofit, pushed through legislation that requires physicians and other prescribers to check the state’s online prescription database to ensure addictive opioids don’t fall into the hands of “doctor-shopper” narcotics addicts. By ensuring that doctors check the database, the tide of illicitly obtained drugs and destructive abuse will be stemmed. In one recent year, more than 4,000 Californians lost their lives because of prescription drug abuse. Working with our allies, CAOC helped address this big problem -- and to save lives.
Enacted in 2004, the purpose of the Private Attorneys General Act (“PAGA”) was to increase enforcement of the Labor Code by “deputizing” citizens to act as private attorneys general and allowing them to pursue civil penalties on behalf of the state for Labor Code violations. This private enforcement mechanism was meant to help address the reality that labor enforcement agencies could not keep up with the growth of the labor market and the number of Labor Code violations occurring in workplaces.

**PAGA fights wage theft when the state is unable or unwilling to step in**
PAGA has been a useful tool for low wage workers to enforce their labor rights by filing lawsuits on behalf of a group or “class” of employees who have suffered Labor Code violations, such as unpaid wages, missed meal and rest breaks, non-compliant wage statements, and overtime violations.

**PAGA preserves employees’ rights in the wake of forced arbitration**
Since its enactment, PAGA has been under constant attack by corporate interests. PAGA actions are unique because they are protected from forced arbitration, a fact that has made PAGA more vulnerable to attack by corporate interests. Consumer attorneys, labor unions and low-income worker groups have worked to defend PAGA and the important protections it provides for low-wage workers in our state.

**PAGA has very strict requirements in place to avoid abuse**
In order to bring a valid PAGA claim, the employee must meet the formal notice and waiting requirements specified under Labor Code section 2698, et seq. The employee must submit a PAGA claim notice to the Labor and Workforce Development Agency (“LWDA”) and give the agency time to review the notice and decide whether it wishes to investigate the claim. If, and only if, the LWDA chooses not to investigate, or does not otherwise respond to the claim notice within a specified period of time, the employee is then entitled to bring a PAGA lawsuit in court.

Once the case proceeds to court (again because the LWDA is unable or unwilling to take the case), any civil penalties recovered from an employer in a PAGA action are divided with the LWDA, with the state receiving 75 percent and the aggrieved employees receiving 25 percent. Attorney fees can also be recovered for successful PAGA claims.

For more information on PAGA, please see the UCLA Labor Center report “California’s Hero Labor Law” at https://www.labor.ucla.edu/publication/paga/.

**CONSUMER ATTORNEYS**
**PRESERVING THE PRIVATE ATTORNEYS GENERAL ACT FOR LABOR CODE VIOLATIONS**
Consumer Attorneys has worked in the state Capitol to ensure polluters are held accountable.

CAOC led a fight in 2018 to stop an effort in the statehouse by manufacturers of poisonous lead-based paint to reverse a legal ruling and avoid accountability for thousands of children who had ingested the paint and were suffering neurological problems and other health issues.

In 2016, consumer attorneys stepped up to help Aliso Canyon/Porter Ranch residents attempting to hold Southern California Gas Co. and Sempra Energy accountable for a four-month-long natural gas leak at the massive Aliso Canyon underground gas storage facility in Los Angeles County.

Consumer attorneys also played a key role in exposing and holding Volkswagen accountable for “dieselgate,” the scandal first exposed in 2014 involving the car manufacturer’s scheme to install exhaust “defeat devices” in more than 600,000 diesel vehicles it sold in prior years. Consumer attorneys ultimately forced the company to settle and fix or replace all of the vehicles to ensure a cleaner environment.
A law is only as good as its enforcement. Bills that provide a consumer enforcement remedy (also known as a private right of action) are exponentially more impactful than the vast majority of bills that do not. Bills that provide consumers with their own remedies give Californians an active role in enforcing their rights. Consumer legal rights are essential to ensure the important laws we pass in California are being followed since government enforcement is often limited due to resources.

Strong laws should include consumer enforcement to incentivize protecting consumers. For example, the Confidentiality of Medical Information Act gives consumers the right to enforce their medical privacy rights. Since the act’s enactment we have seen far fewer breaches of our medical information.

The California Supreme Court has held that a violation of a California statute does not automatically give consumers an enforcement mechanism. Instead, the California Legislature must specifically state the intent to create a right to sue under the statute. This is an important component of any strong bill to ensure consumers’ rights will be protected.
As technology and innovation produces new and exciting tools for consumers, it also provides new opportunities for online thieves. Consumers care about the harm that occurs when their personal data is leaked or stolen. Identity theft, financial crime and even fear for their own physical safety (e.g., for victims of domestic violence) are top concerns when personal data—including personally identifying information—is no longer safe. The harm is real.

Current law requires that businesses take measures to protect our information and provide notification of a breach. While some businesses follow the necessary protective steps, many others do not, as evidenced by the many breaches we see today. The biggest data breaches of the 21st century include some of America’s biggest corporate names like Marriot, Facebook, Equifax, Uber, Anthem, eBay, JP Morgan Chase, Home Depot, Yahoo, Target, Adobe, and Sony, just to name a few. These data breaches are often the result of failure by corporations to invest in data security. Even when they know of holes in their data protections, few businesses bother to make correction because they have historically been let off the hook and are not held accountable for big breaches.

By updating the California data breach laws, there will finally be an incentive for companies to take reasonable security measures to protect consumer data. The California Consumer Privacy Act, which went into effect in 2020, provides a legal remedy when a data breach occurs. This is essential to put the onus on big businesses to protect the data it collects and profits from.

The California Consumer Privacy Act is the strongest privacy law in the nation. The law ensures:

- The right of Californians to know what personal information is being collected about them.
- The right of Californians to know whether their personal information is sold or disclosed and to whom.
- The right of Californians to say no to the sale of personal information.
- The right of Californians to access their personal information.
- The right of Californians to equal service and price, even if they exercise their privacy rights.

Americans value their privacy, both in the physical world and online. A recent Pew Research Center study found that 91% of adults agree that consumers have lost control over how personal information is collected and used by companies. Businesses are already working to weaken the law before it takes effect in 2021. California legislators must resist those efforts.
“Tort reform” generally seeks to limit an individual’s right to file a lawsuit, make it more difficult to obtain a trial by jury, and to limit the amount of damages awarded to the injured party. Tort reformers advocate for limiting corporate accountability, and often propose immunities from liability for bad corporate conduct. Immunity takes away the right of the person who is harmed from becoming whole again. Allowing the person to seek redress through the civil justice system is the best option for preserving personal and property rights.

For thirty years, “tort reform” has been the battle cry of corporate America. Major companies like Philip Morris, Dow Chemical, Exxon, General Electric, Aetna, Geico, and State Farm funnel millions of dollars every year into ATRA (American Tort Reform Association), CALA (Citizens Against Lawsuit Abuse) and the Civil Justice Association of California (CJAC), which are just some of the groups bent on undercutting our constitutional civil justice system. These organizations, along with corporate-funded think tanks like the U.S. Chamber of Commerce’s Institute for Legal Reform, have erected an entire rhetoric surrounding the myth of a “litigation crisis” in America in order to support immunities and limited liability.

The “reforms” for which they advocate fly in the face of their own principles including personal accountability and reducing government spending.

**Personal accountability:** By making it difficult or, in some cases, impossible for consumers who have been harmed to take corporations or other wrong-doers to court, or by limiting the amount of compensation harmed consumers can receive if they do go to court, “tort reform” measures strip accountability from the equation. That lack of accountability limits the deterrence of further wrongdoing.

**Reduced government spending:** “Tort reform” that limits fair compensation for harm forces injured consumers to rely on government-funded health and disability programs to get by. Medicare and Medi-Cal (as well as private health plans) end up footing the bill for medical care instead of the person or company that caused the injury.