



CONSUMER ATTORNEYS OF CALIFORNIA

SEEKING JUSTICE FOR ALL

CAOC announces 2022 award finalists

Consumer Attorney of the Year, Street Fighter of the Year to be honored

SACRAMENTO (Aug. 19, 2022) – Consumer Attorneys of California president Craig M. Peters 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.

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, 2021 and May 15, 2022, 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 Directors. The winners will be chosen by secret ballot of CAOC board members after presentations about each case at the board meeting on September 15. The winners will be announced November 19 at the Annual Installation and Awards Dinner during CAOC’s 61st Annual Convention.

Here are the 2022 finalists:

CONSUMER ATTORNEY OF THE YEAR

Aguirre v. Nissan North America, Inc.

Roger A. Dreyer, Robert B. Bale and Noemi Nuñez Esparza

A TEN-YEAR FIGHT TO PROVE A DANGEROUS VEHICLE DEFECT

Jose Aguirre came to America seeking a better life. Though undocumented, he worked two jobs, paid taxes for a decade, and supported his fiancée and children, aged 11 months to 9 years. In August 2012, he was driving his 2001 Xterra SUV at 15 mph across his employer’s parking lot when, without warning, it suddenly accelerated. Jose’s efforts to brake the Xterra failed; it hit a concrete ramp, vaulted over a ramp, and submarined under a parked semi-tractor. The impact crushed through the A-pillar and firewall, leaving Jose a quadriplegic at age 28. Past medical costs exceeded \$5 million and future medical costs were over \$10 million. After spending \$1 million on expert investigations, the attorneys found a defect in the gas pedal and adjacent parking brake bracket that could cause the gas pedal arm to entrap on the brake bracket, inducing sudden unintended acceleration. Nissan documented dozens of reports of such accelerations, but because the pedal arm dislodged once the driver pushed the gas pedal, Nissan missed the defect, ignored the reports, and blamed the operators, including Jose. Despite

Nissan's parade of experts and \$5 million in defense costs, the trial court found Nissan liable under Consumer Expectation, Risk Benefit, and negligence. The attorneys fought Nissan's losing appeals for another three years before Nissan paid the verdict. The attorneys were especially motivated by Nissan's attempts to limit Jose's economic damages to what his income and medical costs would be in Mexico, his native country. Bob Bale raised the issue to Asm. Lorena Gonzalez at a CAOC board meeting regarding a proposed new evidence code excluding this ancient, unfair practice. CAOC took on this fight and sponsored legislation, and Noemi Esparza championed the code by testifying before the Legislature to support the bill that Gonzalez authored. Evidence Code Section 351.2 became law on January 1, 2017, to the future benefit of literally millions of California residents.

Bolger v. Amazon.com, Inc.

Jeremy K. Robinson

HOLDING ONLINE MARKETPLACES RESPONSIBLE FOR THE PRODUCTS THEY SELL

We don't expect laptop batteries purchased from Amazon to explode in our lap and cause awful burns to our bodies – but that is exactly what happened to Angela Bolger. Yet, when told of Bolger's horrible burn injuries from one of its products, Amazon denied responsibility, arguing the true seller was a third-party located overseas. Robinson and his team sued Amazon, believing it was fundamentally unfair for Amazon to profit as a retailer while avoiding the responsibilities placed on brick-and-mortar sellers. At the time the case was filed, though, Amazon had never lost a case seeking to hold it responsible for products sold on its website and had won several across the country. These decisions swayed the trial court, but Robinson appealed the order granting Amazon summary judgment, believing an appellate court would reject Amazon's efforts to game the system. The Fourth District Court of Appeal did just that, issuing a landmark opinion holding that Amazon could be held strictly liable for third-party products on its website. The court found that Amazon was liable as a direct link in the chain of distribution between the third-party seller and the consumer. The court also rejected Amazon's attempt to hide behind Section 230 of the Communications Decency Act. This was the first state appellate decision of its kind in the nation and received international press coverage for its holding. The California Supreme Court denied Amazon's petition for review, and the case resolved in a confidential settlement. The case is hugely influential, as it involves the intersection of two vital and hotly debated issues: whether online marketplaces should be strictly liable for products sold by third parties on their marketplaces, and the scope of immunity under Section 230. The ruling in this case protects California consumers by forcing online marketplaces like Amazon to ensure the products they offer are safe.

Rehal v. Harvey Weinstein, The Weinstein Company, et al.

Jane Doe v. Harvey Weinstein, The Weinstein Company, et al.

Genie E. Harrison

FIGHTING FOR VICTIMS OF SEXUAL MISCONDUCT BY HARVEY WEINSTEIN

Harrison represented several victims of horrific sexual battery, harassment and retaliation by famed movie producer Harvey Weinstein. Sandeep Rehal, Weinstein's former personal assistant, suffered almost two years of sexual, physical, and psychological abuse by Weinstein. Her tasks included arranging Weinstein's sexual liaisons and procuring the medication for his erectile dysfunction. She would sometimes deliver the medication to hotels and elsewhere before his meetings with women.

Weinstein would press his body against Rehal's, frequently dictated emails to Rehal while he was naked, used sexist and derogatory language, and threatened to have her younger sister kicked out of college. Rehal and Harrison worked closely with Jodi Kantor of the New York Times as sources for the newspaper's explosive 2017 articles that brought Weinstein's horrific behavior against many women to light and sparked the #MeToo movement regarding workplace sexual harassment. Rehal's was the only employment case filed against Harvey Weinstein or his studio, The Weinstein Company. Her case served as important leverage in the effort to get compensation for all of Weinstein's victims. In recognition of the case's importance, Harrison represented Rehal as a member of the Unsecured Creditors' Committee when The Weinstein Company filed for bankruptcy. Rehal's case and Harrison's work was integral to achieving a settlement for all of Weinstein's victims, despite The Weinstein Company's bankruptcy. Those victims included a "Jane Doe" represented by Harrison, an actress who was subjected to sexual battery, including forced oral copulation and repeated unwanted touching, by Weinstein, who also threatened to ruin her career. Harrison also represented four other actresses and writers with similar claims who did not file suit but were part of the settlement. Harrison directly assisted in formulating the claims administration process and assisted the Claims Administrator in preparing a trauma-informed approach toward that process.

Rice and Donahue v. City of Roy and Johnson
Christopher B. Dolan and Jeremy M. Jessup

JUSTICE IN THE NICK OF TIME FOR TWO MEN SHOT IN A POLICE AMBUSH

It snowed heavily in the city of Roy, a one-stoplight town in rural Washington State, when David Rice and his nephew Seth Donahue decided to "tear it up" in their unlicensed, enclosed cab (UTV) during an afternoon of drinking in February 2019. After dark, they went to a few more bars and took the railroad tracks into Roy, drifting through stop signs past officer Chris Johnson. He turned on his lights and chased Rice and Donahue for a few laps because they were unaware of the pursuit, since the UTV has no mirrors and engine noise. They got back onto the tracks where officer Johnson couldn't follow, but Johnson managed to race down to a parallel road, turned off his lights and hid behind a tree on an intersecting street. When Rice and Donahue arrived, officer Johnson ambushed them by activating his spotlight, drew his weapon and pointed directly in front of the UTV to stop it. Blinded by the light, Rice and Donahue couldn't see or hear officer Johnson. Johnson, claiming he was in fear for his life, fired two shots at close range through a windshield into Rice's shoulder and groin, and two more shots through the passenger window, injuring Donahue's wrist. Four days before trial, Dolan and Jessup both agreed to step in and try the case in a federal court in Tacoma. Upon arrival, they were shocked to learn that plaintiffs', defendants' and experts' depositions were not ordered. As depositions trickled in, they worked around the clock for three weeks, winning the excessive use of force claim and achieving the highest non-fatal police shooting verdict in Washington State, along with a commitment to provide training and enforcement to protect citizens from excessive force.

Southern California Gas Leak Cases

Brian J. Panish, Raymond P. Boucher, Jesse Creed, R. Rex Parris, Gary A. Praglin, Frank M. Pitre, Michael Louis Kelly, Kelly Winter Weil, Mariana Aroditis McConnell, Paul R. Kiesel, Patricia M. Oliver, Devin Bolton, Evan Zucker, Lindsey Bayman and Roland K. Tellis

COMPENSATION FOR 35,000 CALIFORNIANS SICKENED BY A MASSIVE OIL AND GAS LEAK

On October 23, 2015, the largest natural gas leak in U.S. history and one of the largest environmental disasters in California history occurred at one of the natural gas wells located at Southern California Gas Co. and Sempra Energy's Aliso Canyon Storage Facility near Porter Ranch. Approximately 100,000 tons of toxic chemicals were released into the atmosphere over 118 days, impacting residents, businesses, and properties in the surrounding communities. The smell of the gas could be picked up for miles, with an oily mist falling on neighborhoods. Noxious fumes spilled into the homes of Porter Ranch, making thousands sick with headaches, nosebleeds, dizziness, respiratory problems, and nausea, and SoCalGas had no plan for what to do in the event of such an emergency. Los Angeles County's health department ordered SoCalGas to relocate residents within five miles of the facility and relocate public schools in the neighborhood. More than 8,000 families were forced to evacuate their homes and thousands of students their schools. Tens of thousands of residents and students filed lawsuits, alleging personal injuries from exposure and property damage. The attorneys argued that the blowout was the culmination of decades of mismanagement and failure to maintain proper facility maintenance and operational procedures. In addition to their dereliction of their duty to prevent the blowout, SoCalGas also bungled several efforts to stop the leak, thereby causing the impact of the blowout to last for significantly longer and be more severe than necessary. After nearly \$6 million in discovery sanctions against the defendants and their counsel for willfully violating discovery orders and withholding over 180,000 documents from plaintiffs, and after 585 days of depositions of 470 witnesses, SoCalGas and Sempra agreed to settle claims of approximately 35,000 residents six years into the litigation in what is believed to be the largest settlement ever for a natural gas release, with SoCalGas promising it would not pass the cost of the settlement on to its customers.

Yaeger v. Ronald Reagan UCLA Medical Center, The Regents of the University of California
William D. Shapiro and Brian D. Shapiro

CHANGING HOSPITAL PROCEDURES AFTER A WOMAN'S BRAIN DAMAGE

Jackie Yaeger, a young attorney just starting her career, began experiencing tooth pain that soon became debilitating. An MRI revealed that she had a malformation in her brain involving a tangle of abnormal blood vessels that disrupted the normal brain blood flow, which could burst like a ticking time bomb. She had to undergo a very high-risk surgery for which she was warned could result in brain damage. During surgery, she suffered a massive bleed that resulted in significant brain damage, remaining at risk for another bleed. Weeks after coming out of a coma, the brain damage left her unable to walk, talk or move voluntarily, yet she began to show signs of improvement and appeared to progress in her recovery faster than doctors predicted. Still on an IV blood thinner, her surgeon recorded he planned to switch her to a pill-form blood thinner, but due to miscommunication, a nurse gave her a pill blood thinner while she was still on an IV thinner. Several hours later, she had another brain bleed, after which her improvement tapered off. She was left with major residuals from the brain injuries. The attorneys argued

the lack of improvement and great majority of the catastrophic brain injuries were the result of the second bleed, arguing the double dose of thinners was the cause. Defendants denied the second bleed was caused by the thinners, contending that her brain injuries were the result of the first bleed, which she and her family had been warned was an absolute risk. The attorneys also argued the pharmacy should have never given a patient two different blood thinners simultaneously. Within weeks of trial, a substantial settlement was reached. The case demonstrated various levels of negligence at UCLA Health, resulting in some re-evaluation of nursing practices, as well as the failures of communication regarding medications and the lack of monitoring of the pharmacy.

STREET FIGHTER OF THE YEAR

Alarcio v. Los Angeles County Sheriff's Department

M. Lawrence Lallande, Arnaldo Casillas and Karina N. Lallande

EXPOSING JAIL PRACTICES THAT LED TO AN INMATE'S MURDER

After suffering a mental-health crisis, Wesley Alarcio was arrested and processed into the mental health unit at the Los Angeles County Twin Towers Correctional Facility. Twin Towers is the world's largest jail and the nation's largest mental health facility. Upon returning to the jail after a court appearance, Alarcio was erroneously placed in a cell with a severely mentally ill inmate who, at the time of the assault, should have been transferred and not have been cohabitating with other inmates. In the several hours the two men were in the same cell, deputies conducted 17 safety checks and two full inventories, but failed to notice or correct the housing error. As a result, a mentally ill man with serious psychiatric issues that made him dangerous to other inmates savagely beat Alarcio, who suffered catastrophic injuries that left him in a permanent vegetative state until his death more than three years later. Alarcio's family claimed the Los Angeles County Sheriff's Department failed to protect Alarcio from a known violent and severely mentally ill inmate. Claims based on inmate-on-inmate violence are vigorously defended and are notoriously difficult and very expensive to prosecute. The attorneys showed that the safety checks were superficial, that no meaningful attention was given to the inmates' medical conditions, and that information about obvious problems with individual inmate-patients was not being conveyed to incoming staff at shift-change. The more information that was uncovered in this case, the more apparent it became that a lack of policies and procedure and the systemic failures in both the custodial and mental health aspects of Los Angeles County jails created a dangerous situation that left mentally ill inmates like Wesley Alarcio vulnerable to inmate-on-inmate violence. The attorneys proved that Alarcio's tragic death was caused by the systemic failure of the county's mental health staff in their policies and procedures regarding the monitoring of mentally ill inmates, resulting in the largest jail-death-related settlement ever against the Los Angeles County Sheriff's Department.

Hindawi v. Value Cars, Inc.

Angel J. Carrasco and Christopher L. Holm

A LONG ROAD TO JUSTICE FOR A MAN INJURED ON THE JOB

Car salesman Abdel "Alex" Hindawi was asked to move a high-performance motorcycle at his dealership. When he started the motorcycle, it suddenly took off and slammed head-on into a concrete wall at a high rate of speed. The motorcycle's front end was demolished, leaving bare the

front forks; Hindawi bounced off the wall and was impaled on one of the forks, causing major spinal and internal injuries. He was in an induced coma for more than two months. He tested positive for methamphetamine at the hospital, and as a result the workers' compensation insurance company denied his case. The chance of obtaining lifetime medical care and monetary benefits seemed almost impossible. Numerous attorneys rejected the case before Carrazco and Holm decided to take it and start what turned out to be a lengthy path to justice. First, they were able to strike the report of a doctor who opined that Hindawi was under the influence of meth at the time of the crash. Then a toxicologist, who had been agreed to by defense attorneys, determined that Hindawi was not impaired, and a motorcycle accident reconstruction expert found the crash was caused by Hindawi's inexperience in driving a high-performance motorcycle, not impairment. The case finally went to trial more than nine years after the crash, and the court ruled that Hindawi was injured in the course of his employment and that the defense had not established that his injuries were caused by impairment. The defense made multiple attempts to overturn that decision, going all the way to the California Supreme Court, but all were denied. After 10 long years, during which Hindawi experienced homelessness, went through a divorce and was unable to receive appropriate medical care, Carrazco and Holm were able to negotiate a settlement that finally compensated Hindawi for his on-the-job injuries.

Summer J. v. United States Baseball Federation

Steven B. Stevens, Thomas M. Dempsey and Daniel E. Selarz

CHANGING A CENTURY-OLD DECISION TO PROTECT BASEBALL SPECTATORS

In August 2013, 12-year-old Summer Johnson was struck in the head by a line-drive foul ball while attending a baseball game with her family at Blair Field, located at California State University, Long Beach and hosted by United States Baseball Federation. Summer was sitting along the third baseline, in an area unprotected by safety netting. The incident caused severe injuries, including permanent loss of vision in her left eye. Summer contended that, despite U.S. Baseball's awareness of the dangers of being struck by a line drive, U.S. Baseball did not install proper protections or provide any warnings to fans of the enhanced risk of harm that existed at this particular stadium. U.S. Baseball argued that there is no legal duty to eliminate the inherent risk of being hit by a foul ball while watching a baseball game. The trial court dismissed the case, citing to the "Baseball Rule," created in 1913, which absolves stadium operators of most liability for foul ball injuries during baseball games, as a matter of law. The Second District Court of Appeals reversed, redefining the standard for spectator safety, by imposing a duty upon stadium owners and sponsors "to take reasonable measures that would increase safety and minimize those risks without altering the nature of the game." Ultimately, following a total of seven years of litigation, including the three-year appellate process, the attorneys negotiated a policy limits settlement. As a result, stadiums throughout the country, including Blair Field, have increased protective netting for spectators, saving lives and preventing catastrophic injuries. The case has been cited more than 60 times on Westlaw and discussed in several publications, including the Los Angeles Times, Sports Illustrated and Ballpark Digest. Notably, *Summer J.* is now supporting authority for California Jury Instruction (BAJI) 4.71.