



THE
JERE BEASLEY REPORT

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A NATIONAL LAW FIRM LOCATED IN MONTGOMERY, ALABAMA

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I. CAPITOL OBSERVATIONS

THE TRIAL OF THE THORNE CASE

A Montgomery County jury awarded \$4 million in favor of Mrs. Carolyn Thorne against Wal-Mart Corporation in a case our firm tried last month. Our client, who was part owner of a very successful business, was severely injured when her Ford Expedition went out of control and rolled over on Interstate Highway 85 back in 2004. This accident took place shortly after she had her vehicle serviced at a Wal-Mart store in Montgomery. The reason that the vehicle went out of control was because the tread on one of her tires separated. Mrs. Thorne, who is now paralyzed as a result of the accident, was completely without fault in this incident.

The original tires on the Thorne vehicle were made and sold by Continental Tire Corporation. A recall on the tires was issued by Continental on August 19, 2002 because of a design defect. Wal-Mart, a Continental tire dealer, was given official notice of the recall by the manufacturer. Mrs. Thorne regularly had her car serviced at the Wal-Mart facility where the store's tire specialists were supposed to be inspecting the tires under a lifetime service agreement. More will be said on that below.

It was discovered during the preparation for the trial of this lawsuit that Wal-Mart has a policy in place not to disclose recalls on tires unless Wal-Mart actually sold the tires under recall. Continental, which made and sold the tires that had been recalled, knew that they had defective tires on the highways and were trying to get all of those tires off the market. It was undisputed that Wal-Mart received the notice of the recall. A representative for Continental testified at trial that Wal-Mart was a Continental tire dealer and had been notified of the recall in an effort to "remove the defec-

tive tires from vehicles serviced at Wal-Mart." We were shocked to learn that top management at Wal-Mart made a decision not to send the recall notice out to any of the Wal-Mart stores. Instead, they had a "don't ask—don't tell" policy in effect on recalls if the recalled tires weren't actually sold by Wal-Mart.

It was significant that Mrs. Thorne had a lifetime service contract on her tires with Wal-Mart. Her vehicle was serviced on nine different occasions after Wal-Mart had been made aware that the tire was defective and had been recalled. When the Expedition was serviced by Wal-Mart one week before the accident, the service technicians failed to discover that the tire was separating even though the evidence was undisputed that a bulge would have been apparent if the technician had simply looked at the tire. The Wal-Mart employee, who was supposed to inspect the tires, testified at trial that "none of the Wal-Mart technicians were trained to inspect for tire problems." Had the technician done a hands-on inspection as required, the defect would have been apparent and Mrs. Thorne would have been notified of the problem. In that event, the tire would have been replaced and the highway roll-over would never have occurred.

It was without dispute that all of the defendants in the case were at fault: Ford Motor Co. recklessly designed and manufactured a vehicle with a roof structure that was weak and defective; Continental in an effort to reduce costs designed and built a defective tire; Friendly Ford actually had missed the recall when Mrs. Thorne took her vehicle in to find out about the recall; and Wal-Mart failed to adequately train its technicians to properly inspect the tires for defects and performed the inspections done on the tires in a grossly sub-standard manner. All of the wrongdoing by the four defendants combined and concurred, causing Mrs. Thorne's injury and permanent impairment. A life care plan was prepared for

Mrs. Thorne by Kathy Willard, a vocational specialist, and it had a present value of almost \$6 million. We proved at trial that our client is permanently impaired and unable to work. Dr. Amie Jackson, a tremendous doctor, who is with Spain Rehabilitation Hospital in Birmingham, approved the life care plan in its entirety. There were a number of lay witnesses who gave strong testimony relating to Mrs. Thorne's condition.

On the eve of the trial, Mrs. Thorne settled on a pro tanto basis with Continental Tire Company of North America,

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Sonic Automotive (also known as Friendly Ford) and Ford Motor Co. Wal-Mart Corporation, for some unknown reason, refused to resolve the claim against it, and elected to go to trial. As a result, we tried the case solely against that defendant. Since the three pro tanto settlement agreements were put in evidence by Wal-Mart, the jury knew the total amount that had been paid by the settling defendants. The total amount of these settlements was deducted by the jurors from their verdict leaving \$4 million as the net award. It's significant that \$2 million of the award against Wal-Mart was for punitive damages. There will be no appeal of the verdict since a high-low agreement was reached by us with Wal-Mart during the trial. That means the full amount of the verdict will be paid by Wal-Mart to Mrs. Thorne.

It is hoped that this jury award will force Wal-Mart to change its policy of not notifying their customers of recalled tires when it has official notice of a tire recall. In my opinion, Wal-Mart must re-evaluate its policy on tire inspections, as well as its training program. The proper training of the tire technicians who inspect tires is a definite necessity. The don't ask—don't tell policy also has to go. Wal-Mart has misled their customers into thinking that they were receiving tire safety service when in fact they were not. The technicians at Wal-Mart must start to perform proper tire inspections in order to protect customers and the public.

At the request of the three defendants, the pro tanto settlements in this case are now confidential and under seal by virtue of court order. As a result, the amounts can't be revealed. Greg Allen, the lead lawyer on this case, LaBarron Boone, Ben Baker, and I handled the case for Mrs. Thorne. The pre-trial preparation, including intense discovery, was the key to a good result for our client in this case. We are pleased that we were able to help Mrs.

Thorne, a most courageous lady, who badly needed our assistance in her case. Knowing that she will be adequately taken care of for life, makes all of us feel good about our representation of this fine lady. I also want to comment on her family who have been at her side constantly ever since the date of her injury. They have been tremendous!

FIRST SETTLEMENT IN THE AWP CASES

As I have mentioned in prior issues, our firm is currently representing several states in what is referred to as the "AWP litigation." I am pleased to announce our first settlement in one of the cases. We were able to settle with one of the defendants in the AWP case that our firm filed on behalf of the State of Hawaii. In a partial settlement, involving only one defendant, pharmaceutical company Dey agreed to pay more than \$1 million to settle claims it over-charged the state for prescription drugs under the Medicaid program. This was the first settlement made by the firm in one of AWP cases. Like all of the rest, this case dealt with Dey's reporting of the "average wholesale price" of prescription drugs. The asthma drug Albuterol was involved in this settlement. As a matter of interest, the true average wholesale price of Albuterol revealed a market price spread of 838%. In announcing the settlement, Hawaii Attorney General Mark Bennett observed:

The taxpayers are harmed when the state's Medicaid payments are based on published prices that are false or misleading. I hope that other drug manufacturers will see Dey's action as the proper one and join us in eliminating unfair costs to Hawaii's taxpayers.

Dey agreed to provide confidential pricing information to Hawaii's Medicaid program and pay the state \$1.15 million. Although this partial settlement

only involves one of the defendants in the Hawaii case, it's highly significant. Hopefully, there will be more news on the settlement front in this litigation fairly soon. Liability is very clear in all of the cases and the amounts involved are extremely large. This is another example of how greed motivates some in Corporate America to commit wrongs that hurt others. In the AWP cases those hurt are the taxpayers in the several states. We will be trying the first of the nation's AWP cases in Alabama in November of this year. The defendants have unsuccessfully attempted to have the case removed from the federal court on two occasions. Also, they have twice taken an interlocutory appeal to the Alabama Supreme Court, lost one and another one is pending. All of this was in an effort to avoid a trial on the merits. This is a case of clear liability, with the only question being the exact amount of damages. We contend that the defendants intentionally cheated the State of Alabama out of over \$600 million. We are confident that we will be able to prove the full amount at trial.

OTHER AWP CASES

We are currently representing six states in AWP lawsuits. In addition to Alabama and Hawaii, we are now working for the states of Mississippi, South Carolina, Utah and Alaska. We are presently in discussions with the Attorneys General of five other states and hope to be able to file suits for each of them. Dee Miles, Clint Carter, and I are the primary lawyers handling these cases for our firm. We have dedicated sufficient staff personnel to this project so that all of the cases can be properly investigated, prepared, and tried if necessary.

U.S. SENATE RACE IN ALABAMA

It appears that the U.S. Senate race in Alabama will be heating up sooner than

expected because Alabama's junior senator may have picked up a very strong opponent. The word around the halls of the Capital is that Ron Sparks is being encouraged by a number of influential groups to make the race. If that develops, Jeff Sessions, the Republican incumbent, will have a real fight on his hands. Ron is certainly one of the most popular public officials in our state, with a very broad base of support. Nobody can question his performance as Agriculture Commissioner because Ron's record has been outstanding.

In addition to Commissioner Sparks, State Senator Vivian Figures is said to be looking at this race. The Mobile lawmaker has received some very good media coverage recently from her stand calling for a ban on smoking in public places. Of course, Jeff has lots of big money behind him and that's important. On that subject, however, bringing Vice-President Cheney into our state may have been a mistake. Although the event attracted some of the so-called "Big Mules," apparently the involvement of the vice-president didn't go over too well among ordinary folks. In any event, it will be very interesting to see what develops over the next few weeks in this race.

COMMISSIONER BORG TO REPRESENT U.S. STATE SECURITIES REGULATORS

Joseph P. Borg, Director of the Alabama Securities Commission (ASC) and President of the North American Securities Administrators Association, will represent the 53 state securities regulator jurisdictions (including District of Columbia, Puerto Rico and U.S. Virgin Islands) at the 32nd Annual Conference of the International Organization of Securities Commissions (IOSCO) in Mumbai, India this month. This year's international regulators conference is being sponsored by the Securities and Exchange Board of India.

The IOSCO is a prominent and

respected forum for international cooperation among securities regulators, with its stated objectives and principles of securities regulation being the protection of investors, ensuring that markets are fair, efficient and transparent, and the reduction of systematic risk. The organization's annual conference is an important symposium for policy makers and participants in the regulation of the world's capital markets. Commissioner Borg had this to say concerning his participation in the conference:

The elements that make the securities industry so dynamic are constantly changing as our markets become increasingly global. To be able to facilitate and preserve robust capital markets, we must regularly exchange information and ideas, promote and exercise high standards and exercise unwavering diligence to protect investors. The Alabama Securities Commission is honored and pleased that it has been chosen to once again represent the U.S. State Regulators at this international body of regulators.

Conference attendees will have opportunities to work to reaffirm and promote international cooperation and participate in interactive panel discussions on critical developments in the worldwide securities market. The conference will focus on several key issues relevant to the evolution of the international securities industry, including economic factors driving growth, regulatory challenges, and the development of reliable accounting/auditing processes, among others. Additionally, attendees will explore the emergence and regulatory challenges associated with hedge funds and other private equity instruments in maturing markets and new avenues for the financing of small and medium-sized enterprises. Various committees of IOSCO propose

international standards for the operation of the world's markets.

The IOSCO membership is comprised of regulatory agencies with day-to-day responsibility for capital markets operations, securities regulation, oversight of securities transactions, and enforcement against unlawful conduct. Member organizations make up four Regional Standing Committees: Asia-Pacific, Inter-American, Africa-Middle East and Europe. NASAA is an Associate Member of IOSCO's Inter-American Regional Committee. It's good to see that Alabama has such a key role in the work of the IOSCO.

RURAL ALABAMA NEEDS MORE HELP

Throughout his first term, Governor Riley put a special emphasis on addressing the needs of Alabama's rural communities. He has stepped up those efforts in the first months of his second term. There are several areas he is emphasizing. With his ACCESS distance learning program, the governor is bringing more classroom opportunities to students in rural areas. With his Black Belt Action Commission, hundreds of volunteers were brought together to improve the quality of life for citizens in these rural counties. Earlier this year, Governor Riley launched the Rural Alabama Action Commission, taking the successful model used in the Black Belt and extending it throughout the state.

Now, the Governor has proposed a pro-growth tax incentive to create jobs in Alabama's rural communities. This bill will give employers an income tax credit of \$500 per job created in rural counties for the first three years the job exists. This tax credit will create new jobs, bringing down unemployment in rural counties and stimulating economic activity and growth. The tax credit will also help attract new industry to rural Alabama and encourage existing businesses to expand. This strengthens the overall economy, which

results in more funding for schools. I don't believe any of this will hurt public education. In fact, I am convinced that these tax relief and tax incentives will help education funding and be a benefit to public education. You can read a summary of the Rural Jobs Tax Credit and all the other pro-growth tax incentives the Governor has proposed online at: www.governor.alabama.gov/SOS_07.htm.

TOLL-FREE LINE WILL HELP SENIORS WITH LEGAL MATTERS

Alabama seniors now have a place to go where they can get answers to many of the legal questions that they have to deal with. Governor Riley announced last month that the Alabama Department of Senior Services has set up a special telephone center to assist seniors deal with legal matters. The Alabama Elder Law Helpline will help seniors with such things as wills, trusts, and financial counseling. The phone line, which is 1-866-456-3959, is open to individuals 60 and older from 8 a.m. to 8 p.m. weekdays and 9 a.m. until noon Saturdays. The Senior Services agency has joined forces with Legal Services of Alabama to provide the Helpline and staff it with a lawyer and paralegal. A \$300,000 grant from the U.S. Administration on Aging helped fund the project. This is a very good thing for Alabama seniors, and I believe that it's a very good use of tax dollars.

FUNDING FOR ALABAMA FARM AND RANCH LAND PROTECTION IS AVAILABLE

Commissioner Ron Sparks has announced that the Alabama Department of Agriculture and Industries (ADAI) will participate in the United States Department of Agriculture Farm and Ranch Lands Protection Program by providing matching funds of \$550,000 to acquire development rights with conservation easements to keep productive farmland in agricultural usage. This will

be the state Department's second year to participate in the program. It's most unfortunate that thousands of acres of Alabama's farmland are being lost each year to urban sprawl and other non-agricultural uses. The Natural Resources Conservation Service's (NRCS) Farm and Ranchland Protection Program (FRPP) provides funds that are then matched with funding provided by the Alabama Legislature. Private landowners seeking the funds will receive assistance from the ADAI in developing proposals for the program. In fiscal years 2006 and 2007, the Alabama Legislature appropriated \$550,000 for this program. Since the program was implemented in April 2006, Alabama landowners have requested enrollment for more than 3200 acres into the Alabama Farmland Protection Program.

A conservation easement is a legal document through which the landowner sells the property development rights to the state for perpetuity, or forever. In exchange, the state pays the landowner the appraised fair market value of the conservation easement. The landowner can continue to farm the land, but the land can never be used for non-agricultural uses such as development. To qualify for the program, the land must be at least 50% prime farmland and at least 50% cropland, pasture, or hayland. Prime farmland is land that is gently sloping to level, and is highly productive. Applications for this year will be accepted through April 20, 2007 (received or postmarked). Those applications not selected and those received after the deadline will be considered for future appropriation. Persons who are interested in applying for this program should visit the Department of Agriculture and Industries website at www.agi.alabama.gov, Daniel Robinson can be called at 334-240-7221 for more information.

FEDERAL AGENCY INVESTIGATING KARL ROVE'S POLITICAL OPERATIONS

It appears that Karl Rove may finally have to account for his actions as the mastermind of the political operations in the Bush White House. A federal agency, which is responsible for safeguarding federal employees from political coercion, has launched an official investigation into the activities of the man who admittedly is the White House's architect and boss of all political operations. The U.S. Office of Special Counsel is looking into whether Rove and other White House aides violated federal law by making political presentations to government employees in the run-up to last year's midterm elections. Scott Bloch, a Kansas lawyer appointed in 2003 by President Bush to head the agency, is in charge of the investigation. He has confirmed that Rove is a focus of the investigation.

The investigation centers on allegations that officials with the White House political operations improperly made presentations to employees in a number of federal agencies, encouraging them to find ways to support Republican candidates in the midterm elections. The practice came to light when some employees at the General Services Administration complained. The agency is also investigating the use of Republican Party e-mail accounts by administration officials and the controversial firing of a U.S. attorney in New Mexico, now at the center of a congressional investigation. Some e-mails in a GOP account outside of the White House system were not retained, which is rather unusual. It is common knowledge among Washington insiders that Karl Rove has destroyed the lives of a great number of his political enemies over the years, starting with those in the state of Texas. His reputation of being the ultimate master of "dirty tricks" may have gotten him into a situation where he will have to finally account for his deeds.

However, Rove has been sort of like Houdini when it seemed he was in trouble in the past.

Source: CNN

II. A LOOK AT THE NATIONAL POLITICAL PICTURE

I am convinced that neither Rudy Giuliani nor John McCain will be elected president. In fact, neither may wind up being the Republican nominee next year. These two candidates simply don't appeal to the extreme right wing segment of the Republican Party, and the more the two frontrunners are on the campaign trail, the weaker they seem to get with that group. In fact, the more the public sees and hears from these two, the more the Party leadership will have to realize that there has to be a better candidate available for the GOP. In my opinion, the sudden rise of former Tennessee Senator Fred Thompson is attributable to the weakness of the front runners. The television star jumped into third place overnight without even having to make his candidacy official. It will be interesting to see how his appeal grows in the coming weeks and months. It will also be interesting to watch the anticipated decline of Giuliani and McCain.

Another candidate, Mitt Romney, seems to have a major problem. That's because he now has a credibility issue to deal with. The former Massachusetts Governor's history as a hunter—all two times—illustrates how political handlers convince their candidates that "outstanding" in politics is fine and dandy. Most hunters I know at the very least have had a valid hunting license at some point in their life. But Governor Romney has never had one—and that's pretty hard to explain. It makes one wonder whether his other claims are

legitimate.

On the Democratic side of the ledger, I see a three-person race developing. Many are saying that Senators Clinton and Obama will destroy each other if their current attacks on each other continue and intensify. But, it is most apparent that each of the two candidates has the ability to raise big money. I believe that John Edwards, who is still my choice on the Democratic side, has a real chance to win the nomination. Most believe he must do well in the first states that have primaries or caucuses in order to stay within striking distance of the two senators. I still believe John is the only person in the race who says publicly and privately exactly what he believes and what he stands for. That is something that appears to be missing with nearly all of the other candidates. A race between John Edwards—who has been compared to John Kennedy, Jimmy Carter, and Bill Clinton—and Fred Thompson—who has been compared to Ronald Reagan—might just happen. If it does, we just might experience a record voter turn-out.

DEMOCRATS TO HOST PRESIDENTIAL DEBATES

The Democratic National Committee (DNC) will sanction six debates before the early voting contests begin in January of 2008. The debates will take place once a month between July and December. Specific cities haven't been selected, nor have the media details been worked out. The Committee played a similar role in brokering debate requests before the 2004 presidential election. According to DNC officials, four of the six debates are likely to be held in the key early voting states of Iowa, New Hampshire, South Carolina, and Nevada. Debates can offer candidates broad exposure and help those still struggling in the polls to get their message out. Many of the candidates running this year have been concerned about fitting so many debate requests into their sched-

ules, but don't want to alienate the powerful organizations who sponsor the gatherings. Back in February, officials representing Hillary Clinton, Barack Obama, and John Edwards met privately with DNC officials to determine ways to bring order to the process. I believe that public debates, to allow people to see and hear the candidates in person, are extremely important. In fact, I really would like to see more debates—not fewer—in both the primaries and in the general election.

Source: Associated Press

III. LEGISLATIVE HAPPENINGS

SOME STILL BELIEVE ALABAMA NEEDS A NEW CONSTITUTION

My friend Rep. Jack Venable worked for years to rewrite Alabama's Constitution, and his approach was taking one article at a time. As we all know, the effort stalled with the Tallasse Democrat's death in 2005. It now appears that a renewed push for constitutional reform may be in the works since a Republican legislator, Rep. Paul DeMarco of Homewood, has taken up Jack's fight. Rep. DeMarco, who was first elected in a special election in 2005, is sponsoring bills to rewrite the portions of the 1901 Constitution that deal with banking and corporations. Even though it's good to see the renewed interest in reform, I really don't like the piecemeal approach.

Some folks in Alabama still believe we need constitutional reform, and I happen to be one of them. I favor giving a convention—representative in make-up of our state's population—the responsibility to write a new document. Of course, for a convention to work, the big money would have to be kept out of the process. While I would like to see something come out of the current

session, the prospects for any real reform to occur are dim at best. Regardless, I believe that the current movement to take reform section by section is not the way to go. I am not sure allowing certain groups—which could be described as having a special interest—to change just that part of the old constitution that deals with their specific interest is the proper route to take.

Rep. Randy Hinshaw, (D-Meridianville), reports that the House Constitution and Elections Committee will consider a bill to allow Alabama residents to vote on holding a statewide convention to rewrite the constitution. Rep. Hinshaw, who serves as chairman of the committee, should be in a position to know what will come out of his committee and get to the floor. Hopefully, a miracle will occur and constitutional reform will soon become a reality. If reform ever takes place, Alabama will be better for it!

Source: Associated Press

REP. JOHN KNIGHT PROPOSES FURTHER TAX RELIEF

Rep. John Knight, the Montgomery Democrat who pushed through an income tax break for low-income Alabamians a year ago, has another proposal in the works. The powerful lawmaker, in a package of tax reforms for low-income citizens, is pushing to end Alabama taxpayers' federal income tax deduction and eliminate the state's 4% sales tax on groceries. As I understand it, the Knight plan would:

- Remove the 4% state sales tax from groceries. The change would save taxpayers \$300 million annually.
- Expand the standard deduction from \$4,000 to \$10,700 for all couples. This change would save taxpayers \$188 million annually.
- Expand the dependent deduction to \$2,000 for every child. This would

save taxpayers \$68 million each year. The current deduction is \$300, \$500, or \$1,000 per child, depending on income.

- Raise the untaxed earnings threshold from \$12,500 to \$17,700 for a family of four.
- Remove the federal income tax deduction now taken in state returns. The state would gain \$540 million with the change. The top 1% of Alabama taxpayers reap a \$9,425 benefit while the deduction will only lower taxes by \$66 for the “middle fifth” of tax return filers.

It's estimated that elimination of the tax deduction would generate about \$540 million for the state and finance all elements of the tax reform proposals. Presently, Alabama, Iowa, and Louisiana are the only states that give full deductions for federal income taxes. In announcing his plan, Rep. Knight had this to say:

This is a plan that will help working families. This is a plan that will help the very poor in this state. Taxes will go down for low- and middle-income Alabamians, and taxes will go up slightly for the wealthy.

This plan actually offers relief for all Alabamians because it would reduce their food bills. A family that spends about \$100 a week on groceries would save about \$216 a year. It's hard to believe that Alabama is one of only two states that still taxes groceries. It should be noted that removing the federal income tax deduction will still require an amendment to the state constitution. If approved by the Legislature, it would be on the November ballot. Alabama Arise, which is a strong lobby for the weak and powerless among us, is supporting the Knight tax relief plan. I commend them for their stand. Hopefully, other groups will join in this effort

and help get the proposal through the legislature.

Source: Huntsville Times

WEAK TRUCK RULES ARE A BAD IDEA FOR ALABAMA CITIZENS

A bill has been introduced in the Alabama House of Representatives that would exempt commercial vehicles weighing 13 tons or less from federal regulations. Federal officials say that would allow more unsafe vehicles on Alabama highways and could cost the state in lives and federal funding. The House bill, pushed by the Alabama Farmers Federation, has 53 co-sponsors in addition to Rep. Lindsey. The bill hasn't come up for consideration by the full House.

More than 13% of fatal truck crashes in Alabama in 2005 involved vehicles within the range that the Lindsey bill would exempt. I understand that any increase in commercial motor vehicle-related crashes and fatalities will affect the state's federal funding. That's because the data are used to calculate the amount of money the state is eligible to apply for. The funding, about \$4 million last year, is used for personnel and equipment for state troopers to enforce truck safety regulations.

The Federal Motor Carrier Safety Administration defines a commercial motor vehicle as one with a gross vehicle weight of 10,001 pounds or more. The proposed law would exempt trucks weighing 10,001 to 26,001 pounds from safety regulations, including the number of hours the driver may drive and physical exams. Vehicles that fall into this category include light dump trucks and straight or one-piece box trucks operated by businesses to deliver products all over the state. The Lindsey bill would allow drivers to drive unlimited hours and, as I understand it, would allow 16-year-olds to operate commercial vehicles. This is not a bill that affects only pickup trucks, as some

have described it. I don't believe that weaker rules for trucks are a good idea because that would adversely affect highway safety. We should work to improve our ability to make our highways safer—not more dangerous.

Source: *Birmingham News*

IV. COURT WATCH

SUPREME COURT RULES THAT EPA CAN NOW CONTROL CAR EMISSIONS

The United States Supreme Court has ordered the federal government to take a new look at regulating carbon dioxide emissions from cars. This was a sharp rebuke to the Bush Administration's policy on global warming. In a 5-4 decision, the court said the Clean Air Act gives the United States Environmental Protection Agency (EPA) the authority to regulate the emissions of carbon dioxide and other greenhouse gases from cars. Justice John Paul Stevens wrote in his majority opinion that greenhouse gases are air pollutants under the landmark environmental law.

Most scientists believe greenhouse gases, which are flowing into the atmosphere at an unprecedented rate, are causing a warming of the Earth, rising sea levels, and causing other marked ecological changes. The world's leading climate scientists reported in February that global warming is "very likely" caused by man and is so severe that it will "continue for centuries." Business leaders are now saying they are increasingly open to congressional action to reduce greenhouse gases emissions, of which carbon dioxide is the largest. Carbon dioxide is produced when fossil fuels such as oil and natural gas are burned. One way to reduce those emissions is to have more fuel-efficient cars. The High Court had three questions before it in this case.

- Do states have the right to sue the EPA to challenge its decision?
- Does the Clean Air Act give EPA the authority to regulate tailpipe emissions of greenhouse gases?
- Does EPA have the discretion not to regulate those emissions?

The Court said yes to the first two questions. On the third, it ordered the EPA to re-evaluate its contention it has the discretion not to regulate tailpipe emissions. The Court said the agency has so far provided a "laundry list" of reasons that include foreign policy considerations. The majority said the agency must tie its rationale more closely to the Clean Air Act. Justice Stevens, writing for a majority of the Court, stated that the "EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change."

The lawsuit was filed by 12 states and 13 environmental groups that, with good reason, had grown frustrated by the Bush Administration's inaction on global warming. The full impact of this decision won't be known for some time. Much will depend on what the EPA now does. Obviously, the agency can't ignore this decision. It will be interesting to see what happens over the coming months. In any event, it's evident that global warming harms everyone. States that want to challenge pollution generators now have special standing to do so. The EPA had denied a petition by several environmental groups requesting that it regulate four such gases, including carbon dioxide, emanating from new motor vehicles. The majority opinion, written by Justice John Paul Stevens, also said that only one petitioner needs to have standing to authorize review, and that states should be afforded a "special solicitude" to claim standing as sovereign entities representing a multitude of interests.

Source: *Associated Press*

ENVIRONMENTAL GROUPS GET A VICTORY IN HIGH COURT

Environmental groups recently won a victory in the U.S. Supreme Court against a coal-burning utility. In a 9-0 ruling, the Supreme Court vacated a decision by the U.S. Court of Appeals for the Fourth Circuit, holding that the appeals court implicitly invalidated 1980 EPA regulations without considering whether it had jurisdiction to do so. It is significant that before reaching that result, the High Court considered the meaning of the word *modification*. It gave a boost to EPA efforts begun during the Clinton Administration to force older coal-fired power plants to install pollution-control equipment when upgrading facilities.

Because the Supreme Court did not confine its ruling to the narrow question of which appeals court has jurisdiction, the decision may well have far more impact than first thought. The decision appears to be much more helpful for environmental groups, which had intervened in the case, because it addresses a lot of these specific arguments about the regulations. The decision endorsed the EPA's interpretation of its regulations, which require a permit when major modifications to power plants result in an increase in annual pollution emissions.

Duke Energy Corp. had claimed the 1980 regulations needed to be consistent with 1975 regulations defining *modification* as a physical change that increases the hourly rate of pollution, rather than an increase for the year. Duke had upgraded 29 of its plants so it could operate them more often, resulting in a net annual increase in pollution even though its maximum hourly pollution discharge had not increased. The Fourth Circuit had said that under the terms of the Clean Air Act, the definition of *modification* had to be consistent in both regulations, and so it interpreted the later regulation as requiring an increase in the

hourly pollution rate. Justice Souter rejected that approach as “too far a stretch,” saying the EPA can assign more than one meaning to the word.

This was the first time the High Court had granted review in an environmental case over government opposition in nearly 30 years. Unless a person is really familiar with all of the regulatory rules, it’s difficult to understand the full impact of this decision. Nevertheless, I do believe it is a major boost for “enforcement suits” brought by the EPA to force older power plants to install pollution equipment when making upgrades. It should be noted, however, that since 2005 the EPA has been discussing a proposed regulation that, in effect, adopts the meaning of *modification* endorsed by Duke Energy and the Fourth Circuit. Apparently, the efforts by the agency to narrow the rule will continue.

Perhaps, the most bizarre feature of the appeal of the Duke case was that the EPA was promulgating regulations contrary to what their own lawyers were arguing in front of the Supreme Court. It will be interesting to see what happens next in this case. The case now goes back on remand to the Fourth Circuit. That court may decide to exempt Duke Energy from the 1980 regulation on the ground it retroactively targets practices that were routine under 20 years of contrary interpretation of the Clean Air Act. Another unresolved issue, according to experts, familiar with the case, is whether upgrades that constitute merely minor modifications are exempt from the permit requirements. There is “still a lot of room to litigate application of the rules in the case-by-case context,” according to one good source.

Source: *Alabama Bar Association Journal*

ACCESS TO JUSTICE FIGHT BY WAY OF THE CLINE CASE GOES TO THE U.S. SUPREME COURT

The U.S. Supreme Court is being asked to review a decision of the

Alabama Supreme Court that could deprive countless toxic tort victims of the right to sue for their injuries. The case involved Jack Cline, an Alabama citizen, who fought a courageous battle right up to the time of his death. In that ruling, the Alabama Supreme Court held that tort victims must sue within two years of their exposure to a toxic substance, but only after they become sick. In a dissenting opinion, four justices of the court described what the majority did as creating a system for toxic tort victims—whose injuries often do not manifest until years after exposure—in which “no matter when the person attempts to file the action, it is either too soon or too late.”

You may recall that we wrote about Mr. Cline’s case in the February issue of the Report. The petition for review was filed on behalf of the estate of Mr. Cline, who was exposed to benzene in 1999, contracted leukemia many years later, and filed suit after the diagnosis—and had his case thrown out because a majority of the Nabors’ court said it was filed too late. Mr. Cline died twelve days after the court finally affirmed that decision after months of delay. His widow Jane Cline is taking the case to the U.S. Supreme Court, arguing that Alabama’s rules violate her and her husband’s fundamental right to due process of law under the United States Constitution.

Public Justice has joined the case and will help the Cline family fight for justice in this case. Lawyers from Public Justice will join Bob Palmer, the Birmingham lawyer who has represented Jack Cline from the outset, and who hasn’t given up his cause. I hope all Alabama citizens will be made aware of the Cline case. What happened to him was clearly a total miscarriage of justice and one that shouldn’t be swept under the rug. I hope the U.S. Supreme Court will take this case and make justice more than just an empty campaign slogan from some of our judicial candidates. No right-thinking person could

possibly justify the Alabama court’s decision. I believe that eventually real justice will be done!

VAST MAJORITY OF MEDICAL MALPRACTICE CLAIMS ARE WON BY DEFENDANTS

The insurance industry has done a good job over the years of convincing folks that medical malpractice cases against doctors were being lost by doctors at alarming rates and that doctors all over the country were having to leave their practices in droves. That myth was never supported by the true facts, and a recent study is good evidence of that conclusion. The majority of medical malpractice claims in a study of seven states were closed without any compensation paid to those claiming a medical injury, according to a report by the United States Justice Department’s Bureau of Justice Statistics (BJS). The BJS conducted a study of medical malpractice insurance claims that were closed from 2000 through 2004 in Florida, Illinois, Maine, Massachusetts, Missouri, Nevada, and Texas. These states were identified as having comprehensive medical malpractice insurance claims databases, some of which extended back to the early 1990s. That made valuable information available to the research team. The study revealed what I have known for years and that is doctors don’t get sued very often and when they do, they generally win their cases.

In Alabama, it’s almost impossible for a claimant—even when the claim has absolute merit—to win a medical malpractice claim against a doctor. Even so, the tort reform groups have portrayed Alabama as a state where doctors lose cases on a regular basis. That simply isn’t true and the groups know it. However, that doesn’t stop the false information from being put out by groups such as Alabama Citizens Against Lawsuit Abuse. The complete report, *Medical Malpractice Insurance Claims in Seven States*,

2000—2004 (NCJ-216339), can be found at <http://www.ojp.usdoj.gov/bjs/abstract/mmicss04.htm>.

Source: *Insurance Journal*

THE INSURANCE INDUSTRY HAS BEEN GUILTY OF PRICE-GOUGING DOCTORS

If claimants are having such a hard time winning even valid claims, one has to wonder why insurance premiums are so high for good doctors. The truth is that the insurance companies have been guilty of overcharging the medical community on premium rates. A recent study has revealed that the medical community has been charged unreasonably high malpractice insurance premium rates. Americans for Insurance Reform (AIR) released a new study *Stable Losses/Unstable Rates 2007*, that examines fresh insurance industry data to determine what caused the most recent medical malpractice insurance crisis for doctors. The study by AIR, a coalition of over 100 consumer and public interest groups representing more than 50 million people, found that the insurance crisis that hit doctors between 2001 and 2004 was not caused by claims, payouts, or legal system excesses as the insurance industry claimed. Instead, the following information—from the industry’s own data—tells a much different story:

- Inflation-adjusted payouts per doctor not only failed to increase between 2001 and 2004, a time when doctors’ premiums skyrocketed, but they have been stable or falling throughout this entire decade.
- Medical malpractice insurance premiums rose much faster in the early years of this decade than was justified by insurance payouts.
- At no time were recent increases in premiums connected to actual payouts. Rather, they reflected the well-known cyclical phenomenon called a “hard” market. Property/casu-

ality insurance industry “hard” markets have occurred three times in the past 30 years.

- During this same period, medical malpractice insurers vastly (and unnecessarily) increased reserves (used for future claims) despite no increase in payouts or any trend suggesting large future payouts. The reserve increases in the years 2001 to 2004 could have accounted for 60% of the price increases witnessed by doctors during the period.

Dr. J. Robert Hunter, Director of Insurance for the Consumer Federation of America, was the author of the study. Dr. Hunter, a former federal Insurance Administrator and Texas Insurance Commissioner, observed:

This report is proof positive that the huge medical malpractice insurance rate increases between 2000 and 2003 were not related to a jump in claims. Rather, as in the mid-1970s and mid-1980s, they were simply the result of insurance industry economics, supplemented by insurer hype intended to divert attention away from the mismanagement by insurers that caused the crisis.

The insurance industry—and the tort reformers—for years have used the medical community effectively in the joint effort of increasing insurance rates and selling the tort reform story. This report shows that the real reasons medical malpractice insurance rates rose so dramatically for doctors during this decade was actually market forces and dropping interest rates. Clearly, it wasn’t because of a sudden increase in medical malpractice jury awards or payouts. These periodic insurance crises will continue to occur unless lawmakers take steps to reform the insurance industry. State lawmakers must strengthen state insurance regulatory laws, and Congress must repeal the

decades-old McCarran Ferguson Act, which exempts the insurance industry from anti-trust laws. It will be interesting to see what happens. The full study can be found at: <http://insurance-reform.org>.

Source: Americans For Insurance Reform

JURY FINDS GOVERNMENT AGENCY LIABLE IN GIRL’S DEATH

A jury ordered Huron County, Ohio and the Department of Job and Family Services, its child welfare agency, to pay \$600,000 to the estate of a young girl who was stabbed to death by her foster father. According to media reports, the agency had placed the child with the man without doing a proper investigation. This wasn’t the first problem concerning the Department. The agency had been widely criticized for not intervening earlier in the case of two adoptive parents who made some of their special-needs children sleep in cages. The jury found that the county commission and Family Services were at fault in the 2004 death of 11-year-old Connor Dixon, who was stabbed five times by her foster father. The foster father was convicted in 2005 of voluntary manslaughter and sentenced to three years in prison.

Witnesses testified at trial that the agency knew of several child abuse allegations against the foster father, but still approved him as a foster parent and placed the child in his home after removing her from her mother’s care in 2003. It was interesting that the jury asked the judge during their deliberations whether they could direct the financial award to benefit a school or a park instead of a father who didn’t seem to want the child. Under the current state of the law in Ohio that request unfortunately had to be denied. The jurors indicated that the verdict would have been larger if they could have specified it would go to the siblings of the deceased child. It should be noted

that none of those children, one of whom was an adult, lived at the same location with the child who was killed. The company's insurance carrier, CORSA Insurance Co., will have to pay the full amount if the verdict stands. This case points out how important it is for state and county agencies to do real background checks before placing children in foster homes or any type of facility for that matter. Of course, once information is learned that raises a red flag, the agency must act responsibly and not put a child at risk.

Sources: *Associated Press* and *Beacon Journal*

V. THE NATIONAL SCENE

GOP ADVOCATE TARGETED IN ABRAMOFF PROBE

It appears that the head of a Republican environmental advocacy group is a target for criminal prosecution in the Jack Abramoff corruption probe. Italia Federici, who co-founded the group, the Council of Republicans for Environmental Advocacy, with former Interior Secretary Gale Norton and GOP activist Grover Norquist, was told by the Justice Department recently that she faces up to five charges in the influence-peddling scandal. One lawmaker, two senior Bush Administration officials, and several congressional aides have already been convicted.

While running the advocacy group, Federici was involved with J. Steven Griles, who was deputy interior secretary during President Bush's first term. Griles last month became the highest-ranking Bush Administration official to be convicted in the lobbying scandal when he pleaded guilty to a felony charge of obstructing justice by lying to the Senate Indian Affairs Committee in 2005. Griles, a longtime oil and gas lobbyist, was an architect of President

Bush's energy policies while serving as the number two man at the Interior Department. It was admitted in federal court that Griles had lied to investigators about his relationship with Abramoff. Griles, while at Interior, had helped Abramoff on behalf of his Indian tribal clients. Investigators have been looking at the hundreds of thousands of dollars that Federici's environmental advocacy council received from Abramoff's Indian tribal clients and from energy and mining companies, including some of Griles' former clients.

In a confidential letter, federal prosecutors told Federici that the Justice Department was considering bringing charges of fraud, impeding the Internal Revenue Service, tax evasion, obstructing the Senate committee, and testifying falsely to the committee and its investigators. The letter, which became public when it was first reported by *Legal Times*, stated:

The investigation is focused on the allegedly illegal manner in which you operated the Council of Republicans for Environmental Advocacy, commonly known as CREA. The government has also received information that you may have assisted others in depriving the American public of the honest services of at least one administration official.

The Senate committee turned up e-mails detailing numerous contacts between Abramoff and Federici and between Federici and Griles from 2001 to 2003. Many of the e-mails sought meetings with Griles or favors from him. Griles' office calendars, obtained through Freedom of Information Act requests, revealed meetings with Federici soon after they were discussed in e-mails between Federici and Abramoff. Griles routinely passed on departmental information to Federici, who in turn passed it on to Abramoff, according to e-mails and other evidence obtained by

the Senate committee. Abramoff persuaded his Indian clients to pay him tens of millions of dollars to influence decisions coming out of Congress and the Interior Department. It may be significant that Abramoff still hasn't been sentenced in the bribery scandal. But, he is serving a six-year prison sentence for fraud in a Florida casino deal. According to reports, Abramoff is still cooperating with the Justice Department, which should make some folks in Washington pretty nervous.

Source: *Associated Press*

CONGRESS SHOULD CLOSE \$10 BILLION OIL COMPANY LOOPHOLE

House Democrats passed a bill in January designed to fix a \$10 billion "mistake" that gave huge royalty breaks to oil companies that drill on federal land. But, so far the U.S. Senate has taken no action on the measure. The so-called **mistake**, which took place during the Clinton Administration, has been compounded by inaction during the Bush Administration. It appears that a price cap was left out of offshore drilling leases negotiated in 1998 and 1999. The **missing language** allowed the companies to avoid royalties when oil prices spiked. Although calling this a mistake really doesn't meet the "smell test," I can't say definitely that the omission was intentional. But, I do know that the oil industry is very strong politically and certainly capable of engineering a windfall of this sort. Inspector General Earl Devaney concluded, however, that the omission was inadvertent.

It's significant that the Inspector General in January faulted what he called the "shockingly cavalier" response when in 2004 top Interior officials became aware of the problem. If it remains uncorrected, the **mistake** is slated to **cost** taxpayers over \$10 billion. It was reported recently by *USA Today* that thus far the government has already lost at least \$1 billion. Unfortunately,

there can be no recovery of that lost revenue, because royalties can't be imposed retroactively.

The House bill seeks to require companies to renegotiate their faulty leases or pay a conservation fee. Those that refuse to do so would be banned from future deals. Thus far, only six of 59 leaseholders have voluntarily renegotiated, according to the Interior Department. The oil industry and the Bush Administration have argued that to correct the problem threatens the sanctity of signed contracts. The Bush White House has come out publicly for a plan that has drawn strong criticism from environmentalists. That plan is to entice the oil companies to renegotiate the faulty leases by **extending** their contracts, which are for as long as 10 years, for an additional three years without bids. In my opinion, the oil companies should not be rewarded for correcting what most agree was at least an error.

The non-partisan Congressional Research Service says the House bill would pass legal muster. There is no reason to give the oil companies an additional windfall profit. Hopefully, there are enough members of the Senate who will do the right thing and stand up for the American taxpayers and against the giant oil companies. Citizens and businesses that have to buy gasoline and natural gas are hurting and the giant oil companies are raking in record profits. Let your Senator know that you will be watching their vote on the House bill, that is, if you agree that the oil companies should back off and let the legislation pass.

Source: USA Today

OHIO LAWSUIT TARGETS FORMER LEAD PAINT PRODUCERS

Ohio Attorney General Marc Dann has filed suit against paint manufacturers and chemical companies. On April 2nd ten companies were sued, including Sherwin-Williams, DuPont, and Atlantic

Richfield Co. of Warrensville, Illinois. The Attorney General, wants the companies declared in violation of the state's public nuisance law. It's alleged in the lawsuit that "because lead is hazardous or toxic, at all relevant times the defendants were under a duty to exercise the highest degree of care that skill and foresight can attain."

As we have reported previously, the federal government banned lead paint in 1978, but it still turns up in older buildings. Lead in the bloodstream can cause neurological damage and learning disabilities, especially in children. The other companies named in the lawsuit are Delaware-based DuPont; Augusta, Maine-based American Cyanamid Co.; Atlanta, Georgia-based Armstrong Containers Inc.; Naperville, Illinois-based Conagra Grocery Products Co., West Paterson, New Jersey-based Cytec Industries Inc.; and Houston-based Lyondell Chemical Co.

Source: Insurance Journal

CONGRESS AND NOT BIG PHARMA SHOULD FUND THE FDA

I believe strongly that Congress—not the pharmaceutical industry—should fund the U.S. Food and Drug Administration (FDA). For the past 15 years, pharmaceutical companies have put \$2 billion into a program that helps finance the FDA. This has allowed the FDA to become one of the world's fastest drug-approval agencies. That influx of money from the industry is under fire, however, from public-interest groups, academics, and former FDA officials. Most believe that the financial connection between the agency and drug companies should be severed.

The current five-year Prescription Drug User Fee program expires at the end of September. It is up to Congress to reauthorize the program or risk the loss next year of about \$400 million in industry funding for the FDA. Maybe at one time the program served a useful

purpose, but that was years ago. Now it has become part of the drug safety problem rather than part of the solution.

In 1992, legislation was passed to fix what was perceived at the time to be a serious problem at the FDA. The United States was lagging behind other countries in new drug therapies. The fact that the drug review process was hurt by chronic understaffing and delays made taking drug money by the FDA more acceptable. The user-fee program has been reauthorized twice since then. As it now works, the industry and FDA negotiate the terms of the agreement, hold a hearing, get public comment, and then submit a proposal to Congress for approval. Industry fees pay for more than half the drug review program, with funds appropriated by Congress making up the rest. In fiscal 2006, Congress appropriated \$219 million for the program, and user fees generated \$304 million.

It's believed by many that user fees compromise safety and give the perception "that industry has become the primary client of FDA rather than the American people." A group of academics and former FDA officials supports direct congressional appropriations to fund the agency "to assure FDA's independence and commitment to drug safety." Drug companies and the FDA recently proposed to Congress that the industry payment for fiscal 2008 be about \$393 million. I hope the new Congress will take over the funding responsibility of the FDA and take the drug money out of the mix. That would be a form of consumer protection that is badly needed.

Source: Washington Post

FEDERAL AGENCY FIRED FIRM OVER TIES TO INDUSTRY

The National Institutes of Health (NIH) will review the work done on a chemical called bisphenol A by a contractor hired to assess its health risks. It appears that the agency fired the company because, while it was working

for the government, it was also doing work for the chemical industry. The Environmental Working Group, an advocacy organization that first raised alarms about a possible conflict of interest, believes the government needs to scrutinize the entire body of work performed by Sciences International Inc. (SI) for the federal government since 1998. This would include analyses of 19 other chemicals. When it was fired last month, the Alexandria, Virginia-based company was reviewing about 500 scientific studies on bisphenol A, a chemical common in plastics that has been linked to cancer and reproductive problems in animals. NIH had given Sciences International a contract to prepare a summation for a panel of experts responsible for determining whether the chemical poses risks to human fertility or development. Interestingly, Sciences International's corporate clients have included Dow Chemicals and BASF, two companies that manufacture bisphenol A.

Science International was working for three chemical trade associations at the same time it was performing federal reviews of two chemicals linked to those groups. NIH was sufficiently concerned to terminate the bisphenol A contract. Apparently, the government doesn't plan to revisit the company's past work on other chemicals even though NIH says it is taking steps to "ensure the integrity of our work and science." For the first time, all current and future contractors will be required to disclose any potential conflicts of interest regarding their federal work. In addition, the agency will convene an independent panel of scientific experts to assess all contracts let by the National Toxicology Project for conflicts of interest and report its findings by July 1st. It should be noted that Sciences International prepared the center's preliminary reports on the risks of about 20 chemicals. Richard Wiles, executive director of the Environmental Working Group, who

believes the government must scrutinize all the federal work performed by Sciences International, stated:

Every chemical where Sciences International was the lead organization, all those need to be reopened. We need to look at which ones present the greatest health risk and whether a potential conflict of interest might have affected the science.

Since 1998, Sciences International has been working for the Center for the Evaluation of Risks to Human Reproduction, a tiny federal agency charged with assessing potential dangers to reproduction and newborns. The company was in the fourth year of a five-year, \$5 million contract. NIH has only two federal employees, but Sciences International supplies the rest of its workforce. The following potential areas of conflict were disclosed:

- Sciences International prepared the federal health center's review of the risks of styrene—used in plastics—and worked for a styrene industry trade group.
- The company also prepared the government review of ethylene glycol, used in automobile antifreeze and plastics.
- It worked on the chemical for the American Chemistry Council.
- The company also was funded by the United Soybean Board and reviewed the health risks of soy formula for the federal center.
- Sciences International also in recent years worked for BASF and Dow Chemical, two manufacturers of bisphenol A. The company wrote the health center's draft report on the chemical, which is found in polycarbonate plastic baby bottles and other containers. Bisphenol A mimics estrogen and has been linked in animal

studies to prostate and breast cancer and reduced fertility. Some scientists who study bisphenol A say that the review prepared by Sciences International downplays its risks and omits some findings.

The situation concerning this conflict of interest points to a larger problem of the federal government delegating too much authority to private contractors. In this regard, Mr. Wiles says that there can be "no substitute for a government scientist who's insulated largely from political pressures when they're making these decisions." He adds that there are certain jobs you can't farm out to contractors. Hopefully, the government will put an end to conflicts of interest for persons and companies who are making policy decisions that affect the public's welfare. This situation concerning Sciences International appears to be a good place to start a reform of the system.

Source: *Washington Post*

GIRLS GONE WILD FOUNDER DESERVES TO BE IN JAIL

A few months ago we wrote about Joe Francis and his abuse of underage girls. Now the founder of the Girls Gone Wild videos has been placed in jail for yelling obscenities at lawyers representing underaged girls featured in one of his videos. A federal judge found Francis in contempt of court after lawyers for seven women complained he used profanities and screamed at them during settlement negotiations in a civil suit. He is now serving his sentence in jail. The young girls had been filmed on Panama City Beach during spring break in 2003. According to reports, Francis threatened to "bury" the lawyers and their clients. Francis told U.S. District Judge Richard Smoak that his actions were "posturing" for the sake of the negotiations.

Francis, who makes an estimated \$29 million a year through his video series,

was ordered earlier this year to pay fines and serve community service in both Florida and California because his companies violated federal laws designed to prevent the sexual exploitation of minors and improperly labeled videos. I hope the judicial system will continue to deal as harshly as possible with this man who profits financially at the expense of young girls who become his victims. We have no place in society for men like Francis!

Source: *Associated Press*

RECESS APPOINTMENT FOR DUDLEY PUTS PUBLIC AT RISK ON SAFETY ISSUES

Recess appointments that avoid confirmation by the U.S. Senate should never be allowed. The present occupant of the White House isn't the first person to use recess appointments. But that doesn't make them right. In any event, President Bush has by-passed the Senate and appointed Susan Dudley to head the powerful regulatory agency, the Office of Information and Regulatory Affairs (OIRA). Public Citizen President Joan Claybrook, who believes this appointment is a blow to the federal government's ability to protect citizens, observed:

This is devastating news for the public. Dudley has a record of unrelenting hostility to regulatory protections for the public health, safety, consumers, the environment, privacy rights—everything that we expect our government to provide.

By White House fiat, Ms. Dudley became the new administrator of this important agency, which is located in the Office of Management and Budget. She will have the power in that agency to weaken, delay, and eliminate important regulations designed to protect the environment, public health, safety, civil rights, privacy, and consumers. This position is so powerful that the White House

is required to submit nominees to the Senate so the Senate may fulfill its constitutional role of advice and consent. A recess appointment dodges the process. Bypassing the Senate is clear evidence that the president knew he couldn't get Ms. Dudley confirmed by the Senate. Instead of facing up to her record on the issues, this president has decided to evade public accountability and place a tool of Corporate America in this incredibly powerful office.

In January, President Bush signed an executive order giving the office Ms. Dudley will occupy even more power over regulatory policy, by requiring agencies to submit to her office not just draft standards but also "guidance"—essentially any important information that the White House wants to influence. A review of Ms. Dudley's past confirms that she is bad news for consumers and for people generally. For example, as director of regulatory studies at the industry-funded Mercatus Center, the Bush appointee has argued that:

- the lives of seniors should count for less than the lives of the young when agencies are weighing the costs and benefits of proposed rules;
- smog is good for you, and instead of requiring the government to reduce ozone levels, poor, asthmatic children should stay indoors on peak ozone days;
- agencies should not provide us life-saving improvements in air bag designs because if the public really wanted them, the market would already be providing them; and
- a Clinton Administration rule to increase our protection from arsenic in drinking water was "an unwelcome distraction."

These examples are just a few of the many signs of Ms. Dudley's irrational campaign against regulation. By giving

her a recess appointment to an office where she can put her bad ideas into action, President Bush has put all Americans at needless risk on safety and health issues. This type of thing should never be tolerated, but in this instance, nothing can be done about it and that's a sad commentary on how the Bush White House operates.

Source: *Public Citizen*

SEC WILL EASE SARBANES-OXLEY RULES FOR SMALL FIRMS

The Securities and Exchange Commission (SEC) board has officially endorsed changes in the Sarbanes-Oxley (SOX) compliance rules that will particularly benefit smaller companies. The SEC commissioners voted to allow more flexibility in the rules, particularly the guidelines developed by the Public Company Accounting Oversight Board (PCAOB), the independent board that oversees the accounting industry. The new rules are expected to be approved by June in time for 2007 financial audits. I believe that small businesses should be given relief from any unnecessary burdens under the 2002 law.

The law, which requires companies to adopt internal controls to prevent fraud, has been criticized by small business owners for creating an unnecessary burden. Under the SOX Act, PCAOB audit standards must first be approved by the SEC and cannot take effect without a vote of the Commission. The Commission expects the new PCAOB standard will be submitted for SEC review by the end of this month or early June, in time for the 2007 financial statement audits.

Source: *Insurance Journal*

VI. THE CORPORATE WORLD

SCRUSHY SETTLES FEDERAL GOVERNMENT'S SUIT OVER HEALTHSOUTH FRAUD

Fired HealthSouth Corp. CEO Richard Scrushy has agreed to a settlement in the lawsuit filed by the Securities and Exchange Commission (SEC) that is valued at \$81 million. The suit blamed Scrushy for a \$2.7 billion accounting fraud at the rehabilitation chain. The settlement has been approved by a federal judge in Birmingham. Actually, Scrushy agreed to give up \$77.5 million that the government claimed he profited from the scheme and agreed to pay another \$3.5 million in civil penalties. So in reality he is only paying a small amount in the scheme of things. In any event, the agreement ends a lawsuit the SEC filed four years ago when the HealthSouth fraud was first publicly revealed. Since then, 15 former executives have pleaded guilty and another went to trial and was convicted by a jury. As you know, Scrushy is awaiting sentencing in federal court in Montgomery in a separate bribery case related to his years at HealthSouth.

Source: *Associated Press*

THE U.S. SUPREME COURT RULING MAY AFFECT WHISTLEBLOWER LAWSUITS

The U.S. Supreme Court handed down a 6-2 ruling in March that could have a negative impact on whistleblower lawsuits. The ruling prohibited whistleblowers from collecting any money for exposing fraud at a nuclear weapons plant. James Stone, who is now 81 years old, filed a suit against Rockwell International, now Boeing Company, in 1989. The lawsuit alleged some environmental cleanup problems at the Rocky Flats nuclear weapons plant northwest of Denver. Although

Justice Antonin Scalia wrote an opinion that held Mr. Stone, the whistleblower, had no direct knowledge of the cleanup mishap, a court ordered Rockwell to pay a government fine of \$4.2 million for false claims the company submitted. Even though Mr. Stone won't get a share of the fine, Rockwell must still pay the entire amount to the government.

The Supreme Court held that Mr. Stone was not an original source of information because he did not file suit until after environmental problems at Rocky Flats surfaced with the media. But, reports show that Mr. Stone did reveal problems to federal investigators before any news reached the public. In its response, the company claimed that Mr. Stone was laid off months before the company even began submitting false reports. In dissent, Justice John Paul Stevens and Justice Ruth Bader Ginsburg said that whistleblowers "should have to only show that their information led the government to the fraud, not that the claims ultimately proved to a jury must also have come from them."

Some in Corporate America collectively celebrated when this ruling came out. They obviously hope it will discourage whistleblowers in false claims lawsuits. It's certainly possible that the decision will result in workers refusing to step up and expose the theft of our tax dollars in the future. Critics of the decision fear that if a worker, who is considering blowing the whistle can expect only to be fired or penalized in some way, then most workers won't report the crimes of Big Business. The price to report may have become too costly for whistleblowers, which is just the way Corporate America appears to want it. It should be noted that some in Congress is also looking at ways to discourage whistleblower lawsuits. I hope the leadership in both the House and Senate will derail those efforts. It is indeed a sad commentary if fraud and corruption in Corporate America is actually protected by discouraging

employees from reporting such activity to the government.

Source: *The Washington Post*

JURY CONVICTS FORMER QWEST CHIEF OF INSIDER TRADING

Joseph Nacchio, who built Qwest Communications International Inc. into the fourth-largest U.S. phone company and presided over a \$100 billion drop in its market value, has been convicted in a criminal court of illegal insider trading. Last month, a federal jury in Denver found Nacchio, Qwest's former chief executive, guilty of selling stock based on private warnings from top lieutenants that the company would miss revenue targets. According to the prosecutors, Nacchio made \$101 million by illegally trading on information he withheld from investors. The jury found Nacchio guilty on 19 counts of insider trading for stock trades totaling \$52 million. He was found not guilty of 23 counts relating to earlier trades totaling \$49 million.

The conviction of Nacchio caps a U.S. crackdown on corporate fraud that began when Enron collapsed in 2001. Hundreds of executives have been convicted, including three ex-CEOs—Enron's Jeffrey Skilling, Bernie Ebbers of WorldCom and John Rigas, founder of Adelphia Communications Corp. Nacchio faces up to 10 years in prison and a \$1 million fine on each count. Sentencing is set for July 27th.

Source: *Bloomberg News*

SHELL OFFERS \$352.6 MILLION SETTLEMENT

Royal Dutch Shell has offered non-U.S. investors \$352.6 million to settle claims related to its oil reserves accounting scandal of 2004. In January 2006, investors filed a class action suit against the company in the U.S. District Court in New Jersey. In a statement published on its Web site, Shell said the offer to shareholders who bought stock from

April 1999 to March 2004 was subject to approval by the Amsterdam Court of Appeals. In addition, Shell said it would “request” that the U.S. Securities and Exchange Commission (SEC) give U.S. shareholders the \$120 million fine that the company paid the SEC to resolve that agency’s investigation of the scandal. In the second quarter of 2006, Shell took a \$500 million charge against potential payments to shareholders in class action suits. Shell’s earnings for 2006 were a record \$25.4 billion.

Shell’s shares suffered a one-day decline of more than 10% when the reserves problem was first made public in January 2004. Several smaller declines followed later that year. On five separate occasions, Shell was forced to adjust the size of its estimated reserves—an oil company’s most valuable asset—cutting them by around a third. Shell paid \$90 million in 2005 to settle a lawsuit brought by employee shareholders.

Source: *Associated Press and Forbes*

VII. CAMPAIGN FINANCE REFORM

NONPROFIT GROUP SHOULD BE PENALIZED FOR ELECTIONEERING

Public Citizen has filed complaints with the Internal Revenue Service (IRS) and the Federal Election Commission (FEC) alleging that Americans for Job Security (AJS), a nonprofit group, has violated both the terms of its tax status and federal election law. The complaints, which were also sent to congressional committee leadership as part of a request for an investigation into the issue, request the IRS to revoke AJS’s tax status and the FEC to fine the group for election law violations. AJS is just another political group set up under a loophole in the U.S. tax code by powerful forces to influence elections.

Americans for Job Security is regis-

tered under Section 501(c)(6) of the Internal Revenue Code, which is the category reserved for business leagues and trade associations. Groups that are registered under this section are prohibited from engaging in efforts to influence elections as their primary purpose. But according to Public Citizen, AJS, which maintains no Web site and appears to have only one paid employee. Yet, it spends millions of dollars on advertisements to influence elections without appearing to engage in any other substantive efforts. Although many groups registered under 501(c) of the Internal Revenue Code participate in some level of electioneering activity, and others may have violated the law, it appears that AJS is one of the most egregious offenders. It’s significant that the IRS is being asked to revoke AJS’s 501(c) status, collect back taxes for its undeclared electioneering activities and require it to pay penalties for violating its tax-exempt status.

It’s essential that the IRS and FEC enforce the law and crack down on rogue organizations that blatantly violate election laws. That would be a clear message to other groups that this kind of lawless field day in future election cycles won’t be tolerated. Hopefully, Congress will also take action to close any loopholes that exist in the tax code that allows any group to be involved in political activity without fully disclosing its donors.

Source: *Public Citizen*

VII. CONGRESSIONAL UPDATE

A REPORT CARD ON THE FIRST 100 DAYS IN CONGRESS

In the February issue of the Report, we wrote about what the new Congress had accomplished in its first 100 hours. It appeared at the time that things were

really looking better in Washington. But, in reviewing what has happened since then in the first 100 days, however, I must say there is very little of consequence to report when it comes to badly needed legislation. None of the bills passed by the House of Representatives in the first 100 hours have been passed in the Senate. I hope all of the big talk about the first 100 hours was not just that—big talk! Frankly, I believe that the voters expected a whole lot more. Most folks I have talked with expect the Senate to get back to work after the Easter recess and take up the bills sent over from the House. In the defense of the Senators, I will say all the scandals in the Bush Administration and the war in Iraq have dominated much of their time in recent weeks. I hope those distractions—although extremely important to the public—won’t keep the Senate from acting on the House bills.

CONGRESS IS DRAGGING ITS FEET ON THE LOBBYING AND ETHICS BILL

Most American citizens expected lobbying and ethics legislation to be put on the fast track by the new Congress. Unfortunately, thus far, very little has been done in Washington on that front by either the House or Senate. In fact, no real action of any sort has been taken. Several of the same loopholes that led to the Abramoff-era scandals are still wide open. For example, consider that:

- There is currently no disclosure requirement for lobbyists who bundle contributions for politicians from their clients, wealthy friends, and corporate cronies. Constituents have a right to know how much lawmakers are indebted to lobbyists for their campaign funds.
- Special interests are dumping truckloads of cash on fake “grassroots organizing” to sway Congress, but the

public has no easy way to follow the money.

If folks back home don't keep the pressure on, nothing of substance will be done by our lawmakers. If you agree that Congress should pass the legislation needed to clean up Washington, let members of Congress know that you haven't forgotten their promise last year to end the culture of corruption.

Source: Public Citizen

SENIORS NEED A BREAK ON PRESCRIPTION DRUG PRICES

One of the worst things to have come out of Washington in recent years was the Prescription Drug Act. Passage of this legislation in 2004 has hurt citizens and especially seniors all over the U.S. The drug industry wrote the bill and pushed it through the House and Senate with the active participation of the Bush Administration. One of the worst parts of the new law was prohibiting the federal government from negotiating with the drug companies on the costs of drugs. That must be changed. It is absolutely essential that Congress lift the ban that presently prevents Medicare from using its bargaining power to negotiate lower drug prices for seniors. The House of Representatives has already passed a bill that would accomplish this badly needed change in the existing law. The bill is now in the U.S. Senate awaiting action.

It's high time for the senators to help American seniors get lower drug prices by voting to lift the ban. The excessive cost of prescription drug is one of the largest burdens facing seniors in this country today. Retail drug stores are caught in the middle of a very bad situation. Their profits have been cut drastically while the retail prices have been forced up. While the discounts to drug stores were lowered, the co-pays on prescription drugs have increased to consumers under all of the insurance plans.

Allowing Medicare to negotiate discounts for recipients is a commonsense solution. The fact that the federal government can't bargain for lower prescription drug prices is absurd and can't be justified. As you probably know, the United States already pays the highest drug prices in the world. There are presently over 43 million enrollees under Medicare.

The Bush Administration is directly responsible for the mess that currently exists and should be helping to solve the problem. The President can regain some of his lost popularity by getting on the right side of this issue and correcting a very bad situation. In the meanwhile, don't be fooled by the massive advertising campaign being conducted by the powerful pharmaceutical industry. Congress should pass the necessary legislation to clean up the prescription drug bill and make it consumer-friendly.

Source: Associated Press

DRUG SAFETY BILL COULD LIMIT ADVERTISING

If Congress will do its job, pharmaceutical companies will be prohibited from advertising new drugs directly to consumers for the first two years the products are on the market. A bill to accomplish that is pending in the U.S. Senate. According to supporters, the goal is to assure that medicines are safe before allowing industry to promote them to the public in the hopes consumers will request prescriptions from doctors. Obviously, a reduction in TV and print advertising, which helped transform medications for heartburn and arthritis into blockbusters, would be a serious financial blow to drug makers. According to one study, every \$1 spent on pharmaceuticals advertising often adds more than \$2 in sales. That's a pretty good return.

Although the Food and Drug Administration already screens a small portion

of ads voluntarily submitted by drug companies, consumer advocates favor much tougher regulation, arguing that the studies companies use to test the safety of new drugs are not always large enough to spot dangerous side effects. Bill Vaughan, an analyst for Consumer Reports, observed:

We don't know, and we won't know, how truly safe a drug is until it's been used in millions of people. The real testing of these drugs takes place after a pill hits the market and that's why the advertising needs to be regulated.

Drug makers spent nearly \$5 billion on direct-to-consumer advertising last year, according to Nielsen Media Research. A 2004 study found that American television viewers watch an average of 30 hours of drug ads per year. That pretty well tells the story. In any event, I still believe that Congress should ban all direct-to-consumer ads simply because they can't be justified. However, a week-long snow in mid-July is more likely to happen. Being realistic, however, I guess we should simply hope that the pending bill will be passed.

Source: Associated Press

IX. PRODUCT LIABILITY UPDATE

ANTI-ROLLOVER TECHNOLOGY FOR U.S. VEHICLES

All new vehicles will now be required to have anti-rollover technology by the 2012 model year. On April 5th, the National Highway Traffic Safety Administration (NHTSA) issued a final rule mandating electronic stability control (ESC) in all vehicles—but amazingly it requires systems that are less advanced than what automakers are already installing in vehicles already on the

road. Although NHTSA has the authority to issue technology-forcing standards, it is undercutting the likelihood that manufacturers will continue selling the superior technology now being offered to consumers. Electronic stability control senses when a driver may lose control of the vehicle and automatically applies brakes to individual wheels to help stabilize the vehicle and avoid a rollover. Many vehicles, including sport utility vehicles, already have the technology, and several automakers have outlined plans to make it a standard feature in future cars. The mandate has been widely supported because of its potential for far-reaching safety benefits.

More than 43,000 people are killed annually on the nation's roadways. Safety advocates view electronic stability control as a major advancement in safety because it holds the potential of reducing rollover deaths. More than 10,000 people die in rollover deaths a year, even though only 3% of crashes involve rollovers. Almost 40% of all 2007 vehicles already have the technology, including about 90% of SUVs. That's what makes the action taken by NHTSA suspect. The agency said the proposal would cost about \$111 per vehicle on those that already include antilock brakes, or a total of \$479 per vehicle for the entire system. Automakers will need to comply with a 50 mph test involving a double-lane change. The requirement first was proposed last year, and the final regulations include a swifter phase-in plan. Stability control will be implemented beginning in the 2009 model year, when 55% of new vehicles will be required to have it. By the 2011 model year, it will be in 95% of new vehicles. Congress had required NHTSA to implement a rule by 2009.

Although NHTSA has substantially moved up the implementation schedule for the final rule and added engine control to the rule initially proposed, the final rule is still not strong enough. The rule must comply with historic

safety mandates in a 2005 highway transportation law. That law requires that all passenger vehicles under 10,000 pounds—which includes all passenger cars and most SUVs—be equipped with electronic stability control to help prevent the vehicles from veering off roads and rolling over in crashes. What Congress demanded was an important development in preventing deadly rollover crashes. If properly implemented, the law could save thousands of lives that otherwise would be lost in rollover crashes. NHTSA estimates that 5,300 to 9,600 deaths a year would be prevented by installing the kinds of systems now on the market, but these numbers appear to be overstated because they are based on the range of systems now offered, not on those mandated by NHTSA's less extensive rule.

Although NHTSA Administrator Nicole Nason has touted the new rule as requiring "the most technologically advanced safety equipment available," the truth is that what the agency has demanded is less sophisticated than every ESC system currently installed. The new ESC rule falls short in several ways:

- It does not require roll stability control, which corrects vehicle tip-up, a feature to prevent vehicles like SUVs from tipping over. (ESC measures the vehicle's side-to-side movement.)
- It does not mandate the most extensive equipment available: every system on the road today is more extensive than what the new ESC standard requires.
- It requires the system to prevent loss of control when the vehicle turns less than the driver intends it to (understeer) without requiring a performance test to validate the effectiveness of the understeer intervention.

By the agency's own admission, rollover crashes are a complex problem, and the solution to reducing rollover crash fatalities will require more than

electronic stability control. A comprehensive response to protect occupants when rollover crashes occur is vital and will be addressed with other safety standards now in process. Instead of fully protecting consumers, NHTSA has elected to demand less than the best. Rollover crashes are too deadly for the agency to approach this promising crash prevention technology with such mediocre ambitions.

Source: Public Citizen

FIRM SUES TO ACCESS ROADWAY SAFETY DATA

A research firm that has studied tire failures on Ford Motor Co. sport utility vehicles has filed suit against the Transportation Department for access to roadway death and injury data. Quality Control Systems Corp., (QCS) which is located in Crownsville, Maryland, contends that the National Highway Traffic Safety Administration (NHTSA) has wrongfully withheld records on deaths and injuries from tire-related incidents involving Ford Explorers and Mercury Mountaineers. QCS wants access to Ford's early warning system data, which the government has withheld from the public, to learn more about potential tire-related deaths and injuries involving the SUVs.

QCS says that its review of the government's public fatality database found nearly 400 deaths in tire-related incidents involving Explorer, Mountaineer, and Mazda Navajo SUVs from July 1994 and mid-January of this year. As a matter of interest, recent news reports have indicated another two dozen deaths. NHTSA has noted that the fatality database does not list what specifically caused a crash. QCS, along with some consumer groups have requested early warning system data submitted by automakers. The legislation passed by Congress following the massive recall of Firestone tires in 2000 required these data to be reported by NHTSA. It

required automakers and other manufacturers to provide data on deaths, injuries, consumer complaints, property damage, and warranty claims.

Consumer groups, including Public Citizen, and the Rubber Manufacturers Association, a tire industry trade group, have sued over the possible release of the data. Thus far, NHTSA has, without justification, refused to allow access to the information. Last year, NHTSA reissued a proposal to keep confidential some vehicle safety data involving information on vehicles involved in deaths and injuries, consumer complaints and warranty claims. NHTSA claims that releasing the information would cause competitive harm for companies and hurt the government's ability to obtain the information in the future. The agency's proposal, issued in October, has not yet been fully implemented. One would certainly expect that highway safety would be a top priority for NHTSA. But, based on its performance, safety doesn't appear to top the agency's priority list at present.

ANOTHER LOOK AT THE IMMI SEAT BELT CASE THAT DISCLOSED A MAJOR SAFETY PROBLEM

Between 2002 and 2004, seatbelt manufacturer Indiana Mills and Manufacturing, Inc. (IMMI) manufactured and sold defective seatbelt buckles for use in heavy trucks and school buses. We wrote about a case we handled in the February issue. The buckles, known as the "H2" buckle, suffer from an internal design defect that causes them to fail to latch. The wearer may not notice that the buckle is not latched. IMMI acknowledged the failure, and in 2004 redesigned the H2 buckles. But, the defective buckles have not been recalled. As a result, thousands of heavy truck drivers are at risk of death or serious injury if their older model H2 buckles fail in a collision.

Because the driver will likely be

ejected, an investigating officer could conclude that the driver was not wearing his seatbelt. We uncovered and developed this defect and have numerous documents and depositions that we obtained during pretrial discovery in the case relating to the defect. We made a demand on IMMI to recall the defective buckles. To date we have had no response and to my knowledge the company has taken no action. The dangerous condition caused by the defective buckles still exists. Mike Andrews is the primary lawyer who is familiar with these cases. If you would like more information, call Mike at (334) 269-2343 or go to our Web site, www.BeasleyAllen.com.

JURY RULES AGAINST FORD MOTOR CO. IN SUV ROLLOVER SUIT

A jury in Middlesex County, New Jersey, recently awarded \$10.6 million in compensatory damages to a paralyzed driver. The suit against Ford Motor Co. contended that the 2000 accident was caused by a defective throttle design in the 1997 Ford Explorer that made its accelerator stick in the closed position. When the driver, Rebekah Zakrocki, who was 21 years old at the time, pressed hard on the gas while driving the Explorer, the vehicle lurched forward. In a panic, she turned the wheel to the left and lost control, causing the vehicle to roll onto its roof. The suit also alleged that the design of the vehicle's suspension, brakes, and geometry gave it a heightened propensity to tip over.

The suit alleged that Freehold Ford knew or should have known of the Explorer's throttle defects but failed to notify Ms. Zakrocki. Interestingly, the jury wasn't allowed to hear evidence about Ford's recall of Explorers for throttle plate problems. That is rather difficult to understand. Ms. Zakrocki received notice of the recall a few months after the crash.

Ms. Zakrocki's right hand was nearly severed in the crash, but doctors reattached it in surgery. She also suffered torn nerves in her brachial plexus, leaving her with only 10% use of her right arm. As a result of her injuries, she can no longer work as a cosmetics salesperson. The jury awarded \$8.5 million for pain and suffering, \$1.5 million for medical expenses and \$1 million for lost wages. However, the jury reduced the award by 28%, the proportion by which it found Ms. Zakrocki responsible for the crash. The jurors also deducted another \$2 million because the driver was not wearing a seatbelt. Factoring in both those deductions, Ms. Zakrocki will receive about \$7 million in compensatory damages.

In the second phase of the trial, the jury awarded only \$42,500 in punitive damages, which came as a real surprise to most observers. Over objection, the jurors were allowed to hear evidence of Ford's poor financial situation, including massive lay offs and a weak sales record. I suspect the jurors may have felt that Ford had already been punished by its earlier award. Barry Eichen, who is with the firm of Eichen Levinson, which is located in Edison, New Jersey, represented the plaintiff. As I understand it, both the plaintiff and Ford may file appeals.

Source: *New Jersey Law Journal*

GOODYEAR RV TIRES HAVE DESIGN DEFECTS

In handling a number of lawsuits, our lawyers have uncovered a major design defect dealing with Goodyear RV tires. We have found that Model #G159 275/70 22.5, manufactured by Goodyear, is not safe or appropriate for use on recreational vehicles (RVs). The manufacturers of recreational vehicles utilized this tire on several of their RV models manufactured between the mid 1990's and approximately 2004. This Goodyear RV tire has a history of de-treads and failures, some of which have led to serious injury and death.

Goodyear and some of the RV manufacturers have initiated limited recalls and tire replacement programs for the G159. We have taken several depositions dealing with this safety issue and have disclosed numerous significant documents. There are thousands of RVs in use today that are equipped with this dangerous tire. Rick Morrison is the primary lawyer in our firm handling these cases. If you would like more information, call him at (334) 269-2343 or go to our Web site, www.BeasleyAllen.com.

DEFECTIVE DOOR LATCHES ARE STILL A PROBLEM

Our firm has handled a number of cases involving defective automobile door latches. Door latch systems are a primary safety feature to ensure that occupants remain in the vehicle during an accident. Statistics show that the likelihood of surviving a motor vehicle accident is greatly increased if an occupant can remain in the vehicle during the incident. We have represented several clients who had family members die as a result of side collisions and rollover accidents in which door latches failed to keep the occupants in the vehicle during the accident sequence.

Door latches can fail for various reasons, including mechanical problems. But, we have often found that door latch designs can also result in a failure of the door to remain closed during an accident sequence. In fact, certain door latch designs will open simply by forces put on the outer body of the vehicle. These designs fail during an accident scenario, not because of unreasonably high forces on the latch system, but rather due because of poor designs that allow the door latch to actuate during the accident sequence. Proper door latch design is critical to survivability in certain types of automobile accidents. All of the lawyers in our Products Liability Section have handled door latch

cases. If you would like more information, call Greg Allen or Cole Portis, who are in our Product Liability Section, at (334) 269-2343, or go to our Web site, www.BeasleyAllen.com.

GENERAL MOTORS CARS RECORD HIGHEST AND LOWEST DEATH RATES

General Motors Corp. vehicles had the highest and lowest driver death rates from 2002 through 2005, according to a study released by the insurance industry. Two-door, two-wheel drive Chevrolet Blazers built from 2001 to 2004 had the highest rate, 232 driver deaths per million registered vehicles during the four-year span, the Insurance Institute for Highway Safety found. By contrast, the Chevrolet Astro minivan had the lowest rate, with only seven deaths per million registered vehicles. It was followed by the Infiniti G35, BMW 7 Series, and the Toyota 4Runner. The two-door Acura RSX had the second-highest rate, with 202 driver deaths, followed by the Nissan 350Z, which registered 193 deaths.

Automakers claim that the study was limited in its scope because it didn't include factors that could play a major role in the fatalities. The Astro and Blazer went out of production in 2005. GM currently sells the Chevy TrailBlazer midsize SUV. The institute found that the average death rate for all vehicles has declined from 110 from 1990 to 1994 to the current rate of 79 for the 2002-2005 period. Anne McCartt, the institute's senior vice president for research, observed:

This is a big improvement over time. The rates have gone down about 30% since the mid-1990s.

The study also reaffirmed past research, which found that heavier vehicles in categories such as cars, SUVs, and pickups generally had lower death rates. The study of 202 passenger vehicle models included rates of driver deaths

in all crashes, as well as rates in multiple-vehicle, single-vehicle, and single-vehicle rollover crashes. The rate represented the reported number of driver deaths divided by the model's number of registered years, according to data from the federal government's Fatality Analysis Reporting System and registration counts from The Polk Company, a Michigan-based provider of automotive information.

Source: Insurance Journal

X. MASS TORTS UPDATE

We filed a significant lawsuit last month in Tuscaloosa County, Alabama, against the drug companies that make and sell Celebrex. The wrongful death complaint was filed in state court on behalf of Michael H. Allen, Administrator of the Estate of Nina Earline Ratliff, who was a resident of Tuscaloosa County. Ms. Ratliff developed Stevens-Johnson Syndrome (SJS) after taking Celebrex, which resulted in her death. SJS is a serious medical condition that can cause death in severe cases. Defendants in the case include Pfizer Inc., Pharmacia Corp., Monsanto Company, and G.D. Searle.

The drug companies knew of the dangers and risks associated with taking Celebrex and withheld that knowledge from the public and the medical community. Celebrex was aggressively marketed by the drug companies, which spent a record amount on a marketing campaign. The defendants' actions in this case are a classic example of putting corporate profits over the safety and welfare of the people taking prescription drugs. The drug companies in this case displayed a conscious disregard for the safety of the public and subjected people to the risk of injury or death as a result of taking Celebrex.

As you know from prior reports, Celebrex, which is a pain killer, is the same class of drug as Vioxx and Bextra. Studies reveal that these painkillers can cause Stevens-Johnson Syndrome and that death can result in severe cases. The defendants failed to warn the medical community and the public of the risk associated with taking Celebrex. I will be handling this case along with Navan Ward and Jerry Taylor from our Mass Torts Section.

OUR FIRM FILES ANOTHER CELEBREX LAWSUIT IN ILLINOIS

Our firm has also filed another major Celebrex case, this one in a Madison County, Illinois circuit court. The five plaintiffs in the lawsuit suffered heart attacks, strokes, and other serious injuries, as well as economic damages, as a result of taking the pain reliever. Defendants include Pfizer, Pharmacia, Monsanto, G.D. Searle and Walgreen Co.

Celebrex was defectively designed and inadequately tested, and lacked proper warnings as to the dangers associated with its use. It is dangerous to human health. As you know, Celebrex, in the same category as Vioxx, is a COX-2-specific inhibitor used for treating osteoarthritis and rheumatoid arthritis. Pfizer launched one of the largest "direct-to-consumer" marketing campaigns ever undertaken for prescription drugs for Celebrex in late 1999.

Pfizer's massive marketing campaign fraudulently and misleadingly depicted Celebrex as a much safer and more effective pain reliever than less expensive traditional NSAIDs (non-steroidal anti-inflammatory drugs). Each of the plaintiffs properly used Celebrex, but they would not have if the defendants had properly disclosed the risks associated with the drug. The defendant's intentionally "concealed, suppressed, omitted, and misrepresented" results of clinical trials which showed Celebrex posed serious cardiovascular risks to

users. Andy Birchfield, Navan Ward, Jerry Taylor and I will be handling this case, along with John Driscoll, who is with the firm of Brown & Crouppen located in St. Louis, Missouri.

Pfizer To Bring Celebrex Ads Back

I regret to report that Celebrex ads will soon be back on television for the public to view. Pfizer will advertise its pain drug to consumers for the first time in two years. In my opinion, this shouldn't be allowed by the FDA. As you know, Congress is presently considering legislation on the issue of advertising. Clearly, drug ads remain a hot issue in the halls of Congress and should be at the FDA. In my opinion, no direct-to-consumer ads for drugs of any kind should be allowed. The decision to prescribe a prescription drug should be made by trained medical professional. Pfizer's new TV ads for Celebrex, instead of just focusing on how the pill can effectively ease arthritis pain, as earlier ones did, are saying basically that Celebrex still represents a good option for some patients. In my opinion, Celebrex is not a safe drug, but that's apparently of little concern to Pfizer.

Pfizer says in its new ad that all common arthritis drugs, including ibuprofen, naproxen and Celebrex, carry the same boxed warning advising consumers and doctors that they can cause both heart and stomach problems. The ad uses only blue and white lines, which, on closer examination, are the words taken from the package inserts of Celebrex and other drugs. These lines are used to create animations of people running, dancing, and bicycling. At one point, a close-up of a fish reveals part of a precautionary message related to the drug. You will recall that Pfizer pulled all Celebrex advertising in December 2004 after a study found an increased risk of heart attack and stroke related to the pill. The drug now carries a black box warning

required by the FDA, which is the strongest warning that can be placed on any drug.

Source: *Forbes*

Parkinson Drug Withdrawn From Market

Approximately 50,000 Americans are diagnosed with Parkinson's disease each year. It has been reported that an estimated 500,000 people in the United States currently suffer from the disease. Parkinson's is a progressive neurological disorder that affects nerve cells in the part of the brain that controls muscle movement. The symptoms of the disease usually begin gradually and worsen over time. As symptoms worsen, people may have trouble walking, talking or doing simple tasks. There is no cure for Parkinson's, but a variety of medicines are available to treat the symptoms. Permax, manufactured by Eli Lilly, came on the market in 1988 and was used to treat the spasms, tremors, stiffness, and poor muscle control of those suffering from Parkinson's. In 2003, warnings were added to the labeling after reports of heart valve problems. In 2006, the warning was upgraded to a black box warning, the Food and Drug Administration's (FDA) strongest form of warning.

Recently, the *New England Journal of Medicine* published findings of two studies that link Permax and its generic equivalent Pergolide to life-threatening heart conditions. The studies confirmed previous findings that the drug is associated with an increased chance of regurgitation of heart valves. Valve regurgitation allows blood to flow backward across the valve because the valves do not close tightly. On March 29, 2007, the FDA announced that Pergolide products are being pulled off the market because of the risk of serious damage to patients. It is estimated that between 12,000 and 25,000 people were taking Permax or its generic equivalent at the time of withdrawal. At least 14 patients have needed to have heart

valves replaced. The FDA concluded that the drugs have no demonstrated advantage over other therapies, and the removal is not expected to adversely affect patient care because of the available alternative therapies.

Source: *USA Today*

ACCUTANE LAWSUITS FILED AGAINST HOFFMAN-LA ROCHE

Millions of Americans, most of them teenagers and young adults, have taken the powerful drug Accutane. It is undisputed that the drug worked very well for acne. As a result, Accutane, or isotretinoin, is considered the biggest breakthrough in acne treatment in the last 25 years. About 500,000 prescriptions for the drug and its generic equivalents were written last year, with combined sales of about \$250 million. But that's not the end of the story. At least 500 individuals have filed suit against the drug maker Hoffman-La Roche Inc. claiming that Accutane has injured them. At issue is whether the company downplayed the risk that the medication could cause serious gastrointestinal diseases. But Roche, which is based in Nutley, New Jersey, maintains that there is no reliable evidence that Accutane causes inflammatory bowel disease.

The plaintiffs contend that the treatment led to their conditions, which is ulcerative colitis or Crohn's disease. The conditions are characterized by abdominal pain, diarrhea, and weight loss. Internal company documents uncovered during pre-trial discovery reveal that the company has long downplayed the drug's link to the disease. Patient safety groups and some members of Congress contend that drug companies routinely mislead the public about risks.

The drug's current label lists Accutane and its generic equivalents as only "associated" with inflammatory bowel disease. That term is crucial, because it means that a side effect is known to occur only while people are on a drug

and is so mild that many doctors discount it when prescribing medications. The company knew long ago not only that the drugs could cause gastrointestinal diseases, but also that they were more common than any other side effects listed on the drug's label. Internal company documents show that the company describes the drug as a possible cause of the disease.

Source: *Los Angeles Times*

A LOOK AT THE ORTHO EVRA LITIGATION PICTURE

Over the past few issues, we have been reporting to you about the hormone contraceptive patch Ortho Evra. This product is manufactured by Ortho McNeil, which is a subsidiary of Johnson & Johnson. You may recall that Ortho Evra, first introduced in 2002, was the first skin patch approved by the U.S. Food and Drug Administration (FDA) for birth control. The FDA has now updated the labeling for the product, warning women of higher levels of estrogen than most birth control pills. According to the FDA, women who use Ortho Evra are exposed to **60% more estrogen** than those who use a birth control pill. The agency has received numerous reports of women suffering from blood clots, strokes, deep vein thrombosis (DVT), pulmonary embolisms, and even death while using the patch. Our firm is currently investigating claims that have documented use of Ortho Evra at the time of injury with a significant adverse event including the injuries listed above. Chad Cook and Frank Woodson are the primary lawyers in our firm working on Ortho Evra cases.

AN UPDATE ON THE FOSAMAX LITIGATION

Fosamax (alendronate sodium), which is manufactured by Merck & Co., is in a class of drugs called bisphosphonates. Fosamax is commonly used in tablet

form to prevent and treat osteoporosis in post-menopausal women. You may recall that the *Journal of Oral and Maxillofacial Surgeons* reported a link between bisphosphonates and a serious bone disease called osteonecrosis of the jaw (ONJ). Osteonecrosis is a disfiguring and disabling condition of the jaw bone that causes infection and rotting of the jaw bone. Our firm is currently investigating claims of persons with documented use of Fosamax and a diagnosis of ONJ. Starting next month, several cases filed by plaintiffs in federal court will begin the discovery process, including expert discovery. Three of these cases will then be selected for trial, one by plaintiffs' counsel, one by defense counsel and one by the Court. Our firm has filed a number of Fosamax cases. Jerry Taylor and Chad Cook are the primary lawyers working on these cases for the firm. We will keep you updated on any further litigation developments.

MORE PROOF THAT HORMONE THERAPY CAUSES CANCER

Two studies published the week of April 16th confirm that hormone replacement therapy (HRT), such as Prempro, Premarin, and Provera, causes breast and ovarian cancer. One study, published in *The Lancet* medical journal, found women who used HRT were 20% more likely to die from ovarian cancer than similar women who did not use HRT. Using data from the "Million Women Study," which looked at just under a million women, Dr. Valerie Beral and colleagues at the Cancer Research UK Epidemiology Unit in Oxford said their findings suggested that as many as 1,000 extra women in Britain died from ovarian cancer between 1991 and 2005 because they were using hormone replacement therapy. The Beral team wrote:

The effect of HRT on ovarian

cancer should not be viewed in isolation, especially since use of HRT also affects the risk of breast and endometrial cancer. The total incidence of these three cancers in the study population is 63% higher in current users of HRT than never users. Thus when ovarian, endometrial and breast cancer are taken together, use of HRT results in a material increase in these common cancers.

A separate study, published in *The New England Journal of Medicine*, revealed that the incidence of breast cancer dropped, along with a decline in HRT use, by 8.6% between 2001 and 2004 in the United States. These new federal statistics provide powerful evidence that the sharp drop in hormone therapy use by menopausal women that began in 2002 caused a dramatic decline in breast cancer cases. Most of the drop in breast cancer cases was seen in 2003, and then rates leveled off in 2004. Dr. Donald Berry of the M.D. Anderson Cancer Center in Houston found this drop happened right after the 2002 Women's Health Initiative study showed that HRT could raise the risk not only of breast cancer, but of strokes and other serious conditions. Researchers said the statistics show that the number of women diagnosed with breast cancer abruptly began falling after concerns emerged about the safety of hormone treatment and that the decrease persisted into the following year, strengthening the case that the trends are related. Dr. Berry stated:

At first I didn't believe it—it was so astounding. But it really looks like it's a story that holds together.

Based on the findings, the researchers estimated that about 16,000 fewer cases of breast cancer are being diagnosed each year because of the precipitous fall in hormone use, a stunning reversal of a decades-long increase in cases. Rowan

Chlebowski of the Harbor-UCLA Medical Center, who helped conduct the analysis, observed:

This is colossal. It translates into thousands of fewer breast cancers that have been diagnosed in women in the United States and could be in the future.

Others said the findings underscored the danger of drug therapies becoming widespread before they have been carefully tested. Dr. Larry Norton of Memorial Sloan-Kettering Cancer Center in New York, and others said the findings should encourage more women to discontinue hormone use and only take them at the lowest dose for the shortest time necessary.

Millions of women took hormones for years to alleviate hot flashes and other symptoms of menopause and in the belief that hormones were a virtual fountain of youth—boosting energy, preventing wrinkles, and providing a host of health benefits, including reducing the risk of heart disease. In 2002, however, the large federal Women's Health Initiative study stunned doctors and patients when it showed that the hormones not only failed to protect women's hearts, they appeared to increase the risk of heart attacks and strokes, as well as breast cancer and other health problems. The news prompted millions of women to abandon the drugs. Researchers first reported last fall that the breast cancer rate had dropped in 2003 after rising steadily since the 1980s, and that the drop appeared to coincide with the news about hormones. Experts have been waiting for the latest federal data, from 2004, to see whether the trend persisted.

The new analysis showed that the breast cancer rate began falling almost immediately after the Women's Health Initiative findings were released in July 2002, dropping 6.7% between 2002 and 2003. The 2004 data showed that the rate remained at the lower level. The

researchers said that indicates the drop resulted primarily from the decrease in hormone use and not other factors, such as fewer women getting mammograms, greater use of hormone-blocking drugs like tamoxifen, or some unknown change in the environment, and that it will be long-lasting. "It's significant that the incidence rate did not go back up. That suggests that the effects will be long-lived," according to Peter M. Ravdin of the University of Texas, who helped conduct the analysis.

The link is strengthened by the fact that the decline occurred primarily in women ages 50 to 69, the age group most likely to use hormones, and predominantly in a form of breast cancer sensitive to hormones. New cases of this type fell 14.7%, the researchers said. Researchers suspect hormone use may mostly spur the growth of tumors that may never become life-threatening. In the absence of hormones, they may remain small enough to escape detection by mammograms or may even shrink.

Our Mass Torts HRT team continues to prepare for its first trial, scheduled for November 2007 in Minnesota. In that case, we represent a woman who was diagnosed with hormone positive breast cancer after taking hormone therapy for more than fifteen years. Our client took Premarin, Provera, and Prempro. The defendants in the case are Wyeth, Pfizer, Pharmacia, Upjohn, and Greenstone. Ted Meadows is the primary lawyer handling the HRT cases for our firm and will try the case along with Gale Pearson who is with the firm of Pearson, Randall & Schumacher, P.A., located in Minneapolis, Minnesota.

Sources: Reuters, MSNBC/Newsweek, and Washington Post

FDA SHOULD NEVER HAVE APPROVED ZELNORM

Recently, the U.S. Food and Drug Administration (FDA) requested that

Novartis to pull Zelnorm from the market. The FDA found a potential link to heart problems with Zelnorm, the heavily advertised constipation drug sold by Novartis, saying it could pose cardiovascular risks. Zelnorm sales had surged 36% to \$556 million on a series of direct-to-consumer ads in which women's bare midriffs were used as billboards for messages about stomach discomfort. Actually, the FDA should never have approved this drug.

As far back as 2001, Public Citizen was asking the FDA not to approve Zelnorm because the consumer group considered the drug only marginally effective in treating constipation-predominant diarrhea in patients with irritable bowel syndrome. Of course, the major concern is with the serious safety concerns. These concerns included an increased incidence of ovarian cysts and a five-fold increase in fainting compared to placebo in patients in clinical trials completed before its approval. In a petition filed by Public Citizen in March 2001, it was noted that receptors with which this drug interacts exist not only in the intestinal tract—related to its anti-constipation effects—but also in the heart. It was also pointed out that cisapride, a gastrointestinal drug that likewise also caused fainting, and which had been taken off the market because it increased cardiac arrhythmias, also affected this same receptor in the heart. Readers of Public Citizen's Worst Pills, Best Pills newsletter were warned in 2004 not to take Zelnorm because of the dangers involved.

It should be noted that there were 2.13 million prescriptions issued for Zelnorm in 2005 alone, making it one of the top 200 drugs in the country. Despite all of the warnings by Public Citizen, the FDA approved a drug with marginal effectiveness in the face of serious questions about its safety, putting at risk the millions of people who have already used it. Now the FDA has had to ask the company to withdraw the drug

from the market. This episode again raises questions about both the adequacy of the FDA's pre-approval review and post-marketing surveillance. In my opinion, the FDA's performance in carrying out its regulatory duties leaves a great deal to be desired.

Source: Public Citizen

FDA SHOULD NOT APPROVE MERCK'S PAINKILLER

Merck & Co. is trying hard to gain approval of a painkiller to replace its loss of Vioxx. Public Citizen has urged the Food and Drug Administration to reject an application by Merck. Arcoxia, which is in the same class of drugs as Vioxx, is associated with an increased risk of cardiovascular problems. Does that sound a lot like Vioxx? In testimony to the FDA's Arthritis Advisory Committee, Dr. Sidney Wolfe, director of the Health Research Group at Public Citizen, said the drug should not be approved for sale in the United States. In fact, Dr. Wolfe told the group that Arcoxia should be pulled from the market in the more than 60 countries where it is sold. Arcoxia, whose generic name is etoricoxib, is a COX-2 inhibitor. Since data clearly proves that COX-2 inhibitors increase the risk of heart attack and other cardiovascular events, none of these drugs should have ever been put on the market.

In randomized trials, etoricoxib was associated with increased cardiac risks when compared to naproxen. Further, with regards to serious gastrointestinal problems, there is no evidence of benefits of taking etoricoxib compared to diclofenac, a non-steroidal anti-inflammatory drug. Therefore, etoricoxib offers no unique benefits, but carries a risk not associated with older pain relievers. Concerning the possible FDA approval by the new drug, Dr. Wolfe observed:

How can the approval of etoricoxib and the large numbers of

preventable, life-threatening cardiovascular adverse reactions be justified? Why should the similarly dangerous offspring of Vioxx be approved? The answer is that it should not. It is time to shut the door on further additions to this dangerous class of COX-2 inhibitor drugs. The idea that there may be certain patients, however unidentifiable they are, who might benefit from this drug is just not good enough as a basis for its approval. In addition, further trials on these COX-2 drugs are unethical and should be stopped.

Dr. Wolfe pointed out to the group that trial data presented by Merck on cardiovascular risks compared etoricoxib with diclofenac, which is much more cardio-toxic than older, safer pain relievers. It seems overwhelmingly evident that the FDA should deny Merck's application for approval of Arcoxia.

Source: Public Citizen

PHARMACIST FILES SUIT AGAINST MERCK & CO.

Tudor Jones has spent 35 years of his life running marathons and cycling thousands of miles. Now the 52 year old pharmacist says he can't do that anymore because he suffers from shortness of breath, chest heaviness, and dizziness. Interestingly, this medical professional blames his current health problems on Vioxx. Mr. Jones, a pharmacist, says he first heard about Vioxx in his job when Merck called him about seven years ago asking for his help. He went on a tour throughout the state of Florida promoting Vioxx. Merck gave Mr. Jones samples of the pain killer for his personal use. He took Vioxx several times a week for four years to treat arthritis, but then research reports surfaced claiming the drug was not safe. Mr. Jones wanted to know the truth

about this drug, so he asked Merck a direct and very basic question: "what is the truth about the cardiological effects of this drug?"

Merck blamed all of the bad publicity on the competition and told Mr. Jones there was nothing wrong with this drug and that it was "safe and effective." But, Mr. Jones stopped taking Vioxx when the recall came out in 2004. A month later, his life changed forever. Mr. Jones, then 51-years-old, was rushed to the hospital after tests showed he had massive amounts of blood clots in both of his lungs. This trained medical professional says that he was personally defrauded by Merck's misconduct. To put it bluntly, he says the company **lied** to him. If a pharmacist didn't realize how dangerous Vioxx was, how could a lay person be expected to know? It's become very clear that Merck has lied to the FDA, the medical community, and to the public about Vioxx. To this very day, this powerful drug company has shown no remorse. Merck believes that because of its wealth and political influence in high places, that it can beat the system.

Source: *First Coast News*

INVESTOR LAWSUIT AGAINST MERCK DISMISSED

A federal judge in New Jersey has dismissed the investor class action lawsuit related to Vioxx that had been filed against Merck & Co. In a ruling last month, Judge Stanley Chesler of the U.S. District Court in Newark ruled that investor claims should be dismissed because they were time-barred under applicable statutes of limitations. The lawsuit was dismissed with prejudice, meaning investors cannot file the suit again. Investors who had bought Merck stock between May 21, 1999, and October 29, 2004, alleged the company had defrauded them by concealing information about the drug's safety risks. As you know, Merck withdrew Vioxx from the market on September

30, 2004. The earliest fraud complaint was filed in November 2003, according to court records. In his opinion, the judge wrote that a Food and Drug Administration warning letter on September 21, 2001, and attention from the media and financial analysts thereafter, made it "clear that storm warnings of fraud by the company existed more than two years before this complaint was filed." The court ruled that the suit was time-barred because it had not been filed within the applicable limitations period.

Merck says that investors had plenty of warnings after the 2000 naproxen study and failed to investigate them. The investors claimed that Merck misled them by predicting rising sales for Vioxx while privately acknowledging that the drug posed a heart risk. It would seem that investors couldn't have known about the confidential information in Merck's files even as analysts touted Merck's stock based on Vioxx. However, the court apparently disagreed. Clearly, the shareholders have every right to be upset over how this company has been run since the marketers replaced the doctors as the driving force of the drug company.

Source: *Associated Press and Bloomberg*

ILLINOIS JURY FINDS THAT VIOXX DIDN'T CAUSE DEATH

The Vioxx case that was tried in Illinois resulted in a defense verdict last month. The jury concluded that the person who died after taking Vioxx had too many risk factors and that Vioxx didn't cause her death. An appeal of the decision is being considered because Vioxx should never be taken, especially not by a person with numerous risk factors such as the person in the case.

XI. BUSINESS LITIGATION

LILLY SHAREHOLDERS FILE ZYPREXA- RELATED SUIT

Shareholders have become the latest plaintiffs to sue Eli Lilly and Co. over Zyprexa, its top-selling anti-psychotic drug. A lawsuit, filed late last month in federal court, accuses the drug maker of fraudulent conduct that led to a \$30 billion decline in the company's market value in 2004. The complaint cites *New York Times* articles from last year that stated Lilly knew of health risks tied to the drug and denied the risks repeatedly. The lawsuit also accuses Lilly of purposely marketing the drug for illegal, off-label uses. The suit seeks class-action status on behalf of those who purchased Lilly securities between March 28, 2002, and December 22, 2006. It notes that the price of Lilly stock grew from \$43.75 a share on July 18, 2002, to nearly \$77 on May 7, 2004.

Zyprexa registered \$4.4 billion in sales last year as Lilly's top-selling drug. There are thousands of lawsuits pending against Lilly over the drug. In a June 2005 settlement, the company agreed to pay about \$700 million to resolve more than 8,000 product-liability lawsuits involving patients. In January, the company announced it would settle about 18,000 more lawsuits and said about 1,200 were still pending. Insurers and several state attorneys general also have sued Lilly over Zyprexa. For example, seven states have filed Medicaid cost recovery suits against Eli Lilly over the way it promoted Zyprexa, including Louisiana, Mississippi, West Virginia, and Pennsylvania.

The state of New Mexico, which claims it spent about \$18 million on Zyprexa-related medical expenses between 1999 and 2005, also has sued Lilly. States have spent millions on the drug through Medicaid programs.

Alaska's lawsuit is expected to be the first to go to trial, in an Anchorage, Alaska, court. Medically unnecessary claims for reimbursement through Medicaid are one basis for these suits. Another involves costs of treatment for side effects associated with the drug's use.

Source: *Associated Press*

MORGAN KEEGAN ACCUSES FORMER AM SOUTH EMPLOYEES OF TAKING AWAY CLIENTS

Five former AmSouth Investment Services brokers from the Mobile area resigned from Regions' investment arm, Morgan Keegan & Co., and took thousands of client accounts with them. As a result, Morgan Keegan has filed suit in Mobile County Circuit Court, claiming that the five men and their new firm unlawfully took confidential customer information and client relationships worth millions of dollars to Morgan Keegan. As a term of the merger—which was finalized last year and went into effect in February—all of AmSouth Investment's customer accounts and some 200 brokers moved over to Morgan Keegan.

It is being alleged in the lawsuit that on March 16th, the five men, without warning to Morgan Keegan, left that firm to go to work for RBC Dain Rauscher Inc., which is the investments arm of the Royal Bank of Canada. This bank, through its subsidiary, RBC Ventura, purchased 39 AmSouth branches in Alabama. The federal government required the sales before it would approve the merger, because of concerns that the merger otherwise could limit competition. A temporary restraining order is being sought in the lawsuit. In this case, Morgan Keegan wanted such an order to prevent the defendants from mailing further attempts to induce the Morgan Keegan clients to follow them to RBC Dain. This lawsuit is another example of how Corporate America likes and uses the court

system when it benefits their interest.

Source: *Mobile Press Register*

TEXAS ATTORNEY GENERAL SETTLES ANTITRUST CASE WITH ALLIED WORLD ASSURANCE

A settlement has been reached in an antitrust case resulting from an investigation that Texas Attorney General Greg Abbott says uncovered collusion between a Bermuda-based commercial casualty insurer and various U.S. insurance companies. The settlement amount in the antitrust case is \$2.1 million. Attorney General Abbott says that between 2001 and 2004, Allied World Assurance Co. (AWAC) of Bermuda and companies affiliated with American International Group (AIG) conspired to coordinate bidding opportunities and share client information. The Attorney General observed concerning this case:

An open, competitive marketplace is critical to the success of our capitalist system. Texans will not tolerate anticompetitive schemes that violate the law and drive up prices. We will continue cracking down on unlawful operations that hurt Texas policyholders.

According to the AG's office, under the terms of the agreed final judgment, AWAC is prohibited from coordinating with its founding companies on the pricing, marketing, underwriting, or quoting of its insurance policies. Those founding companies include AIG, Chubb, and Goldman Sachs. AWAC, which will have to maintain an operational separation from its founding companies, is also prohibited from using policyholder databases maintained by the founding companies. It may not allocate customers or submit bids in a manner that violates antitrust laws.

Source: *Insurance Journal*

MICROSOFT TO PAY IOWA CONSUMERS \$180 MILLION

Microsoft Corp. will pay by way of settlement, as much as \$179.95 million to Iowa consumers who claimed that they were overcharged for software since 1994. The settlement, to be paid in cash and vouchers, was made public last month in a hearing in state court in Des Moines. Microsoft and lawyers for the consumers hadn't disclosed terms of the settlement, however, when it was first revealed during the trial in February. The statewide class of consumers claimed Microsoft used its monopoly position to overcharge for products including Windows and Word.

The Iowa court gave preliminary approval to the settlement. If given final approval, the settlement will resolve one of the last remaining private antitrust cases filed against Microsoft. Iowa customers claimed \$329 million in damages, which could have been tripled under Iowa law. It appears that the settlement is the largest, per customer, of any of the similar cases Microsoft has settled. When the Des Moines trial started in December, Microsoft had settled private antitrust suits in 18 states and the District of Columbia. Under the settlement, Microsoft will pay consumers and businesses that purchased Microsoft operating systems and applications software between May 18, 1994, and June 30, 2006.

Source: *Bloomberg News*

CREDITORS SETTLEMENT EXCEEDS \$80 MILLION

A most significant settlement of a lawsuit involving the former executives and directors of Just For Feet Inc. has been reached. The company's former auditor and the estate of the company's founder agreed to settle the lawsuit stemming from the collapse of the Birmingham retailer. The settlement, which will require a payment of \$80 million,

was filed by a trustee appointed by the bankruptcy court to pursue the claims. Eric Breithaupt of the Birmingham firm of Christian & Small, along with Baltimore-based firm Whiteford Taylor Preston LLP, filed the lawsuit on behalf of Charles Goldstein, as trustee, in 2001.

Four former outside directors paid a combined \$40 million to settle the case against them in September. The personal payments by the former directors of Just For Feet eclipse those in several better-known cases. The lawsuit claimed Just For Feet leaders, directors and outside auditors failed to file for bankruptcy in a timely manner, deciding instead to refinance debt. It was alleged that the decision was influenced by personal agendas and numerous conflicts of interest and led to the “fire-sale liquidation of the company’s assets” that generated significantly less money to repay creditors.

As you may recall, Just For Feet collapsed in 1999, and revelations of accounting fraud followed later. Three former executives pleaded guilty to crimes related to a scheme to overstate earnings by \$8 million between 1996 and 1998. The company filed for bankruptcy protection and its assets were auctioned off in 2000. A bankruptcy judge had named Mr. Goldstein as the case trustee, and charged him with recovering money for the company’s creditors. In all, the trustee recovered roughly \$80 million for the creditors. Unsecured creditors may get 10 to 20%, as a result of the settlement. This was an outstanding accomplishment since I am told that creditors of a bankrupt company seldom receive very much.

Source: *Birmingham News*

XII. INSURANCE AND FINANCE UPDATE

INSURANCE COMPANIES REPORT HUGE PROFITS

Despite all of its disclaimers, it appears that the insurance industry is doing extremely well financially these days. When you consider that Allstate reported a record \$5 billion profit for 2006 and with State Farm Insurance’s profit climbed 65% for the year, things haven’t been too bad. In addition, St. Paul Travelers’ earnings rose sixfold in the fourth quarter and American International Group’s rose eightfold. Again, not too shabby! A year-and-a-half after Hurricane Katrina devastated the Gulf Coast, profits at the nation’s major property-casualty insurance companies soared. Based on forecasts, profits are expected to be strong again in 2007. At least, that’s according to estimates by the A-M Best Company rating agency. The insurers are doing well financially at a time when their policyholders—including hundreds of consumers who still haven’t been paid for their Katrina claims—are having difficulty getting claims paid. Interestingly, the industry denies taking advantage of policyholders. Instead, the companies credit their record profits to fewer storms last year and improved business procedures.

Source: *Associated Press*

\$2.8 MILLION KATRINA JUDGMENT RETURNED AGAINST ALLSTATE

A Louisiana federal court jury returned a verdict last month against Allstate Insurance Co. in a Katrina-related lawsuit and awarded substantial damages. The insurer will have to pay a Louisiana man who lost his home to Hurricane Katrina more than \$2.8 million in damages. This was a most significant case that hinged on whether it

was wind or storm surge that destroyed the house. The jury found Allstate, which claimed most of the damage was caused by storm surge, an event it claimed was not covered in its policy, did not pay the plaintiff enough money to cover wind damage to his home. The verdict included \$1.5 million as punitive damages for the company’s failure to pay the claim quickly enough.

Allstate, which says it will appeal, claimed that Katrina’s winds were not strong enough to do the damage to the plaintiff’s home. The policyholder had received more than \$400,000 in insurance payments, including \$350,000 in federal flood insurance—prior to the trial. The home involved was in the Slidell area on the north shore of Lake Pontchartrain. It was proved at trial that the house was too high above sea level to have been destroyed by Katrina’s storm surge. The eye of Katrina had passed just east of Slidell on the morning of August 29, 2005.

The lawsuit against Allstate was the second Katrina damage claim to come to trial in a New Orleans federal court. Hundreds of similar disputes are still pending in Louisiana and Mississippi. In addition to federal flood insurance, the plaintiff homeowner had an Allstate homeowner policy with limits of \$343,000 for the dwelling and \$240,100 for personal property. The company, blaming the majority of damage on Katrina’s storm surge, had paid \$29,483 for structural damage and \$14,787 for additional living expenses. There was evidence that the house was 17 feet above sea level, and engineering data suggested only 14 feet of surge hit the area.

It was significant that a surveyor and engineer who inspected the house for Allstate, initially told the policyholder and his wife that wind may have destroyed the home before the surge of water washed away its remnants. He later backed off that conclusion and deferred to an engineering consultant. There was proof that the consultant,

who wrote the final report on the home for Allstate, convinced the engineer that storm surge demolished the house. It was rather interesting that the consultant testified that he didn't personally inspect the property until after he wrote the report. The jury found that Allstate failed to act in good faith to settle this claim.

Source: *Associated Press*

NATIONWIDE SETTLES WITH 227 KATRINA POLICYHOLDERS

Just as this issue was being sent to the printer, we learned that Nationwide Mutual Insurance Co. had agreed to settle out of court with more than 200 residents of Mississippi's Gulf Coast who sued the insurer over Katrina-related claims. Terms of the settlement had not been disclosed when this issue went to press. Hopefully, this was a good result for the policyholders.

Source: *Associated Press*

CRACKER BARREL SUES INSURERS TO COVER \$2 MILLION HARASSMENT SETTLEMENT

Cracker Barrel Old Country Store has filed suit against two of its insurance carriers, alleging the companies failed to reimburse Cracker Barrel for the cost of defending itself against a federal lawsuit that led to a \$2 million settlement. The original lawsuit involved sexual and racial harassment claims. The new lawsuit, filed in the U.S. District Court in Nashville, Tennessee, claims that the Cincinnati Insurance Company and the Houston Casualty Company breached their contracts with Cracker Barrel by "refusal to honor their insurance policy obligations." Cracker Barrel became the target of an Equal Employment Opportunity Commission (EEOC) lawsuit in August of 2004 after an EEOC investigation uncovered multiple instances of sexual harassment of female employees in three Illinois restaurants, as well as harassment and other discrimination

against black employees. According to the EEOC, "the harassment of women at the Cracker Barrel facilities included circulation of pornographic photographs and cartoons, obscene jokes, sexual propositions, groping, and sexual assaults." The complaint filed by Cracker Barrel alleges:

Despite repeated requests from Cracker Barrel, the Insurance Company Defendants have consistently denied their insurance policy obligations by refusing to reimburse Cracker Barrel for defense and indemnification in connection with the EEOC Lawsuit.

The EEOC also found that managers not only refused to investigate or act upon complaints of harassment, but "became personally involved in it by grabbing female employees, propositioning them, and laughing at their complaints." The investigation also uncovered the circulation of obscene cartoon depicting an African-American employee, as well as continuous derogatory comments toward other black employees. Last March, Cracker Barrel entered into a settlement with a total of 51 employees, agreeing to pay a total of \$2 million collectively. Cracker Barrel claims that before it agreed to the settlement, it repeatedly consulted with the carriers of insurance policies the store says was designed to protect it against monetary losses incurred from employment lawsuits. Cracker Barrel was founded in 1969 in Lebanon, Tennessee, but now has over 525 stores in more than 40 states. Combined, those stores took in revenues of \$2.6 billion in 2005.

TENTATIVE SETTLEMENT IN ALLIANZ ANNUITY CLASS ACTION REACHED

A federal district court in California has sent notice to members of a class action brought against Allianz Life Insurance Company of North America. The notice advises of a tentative decision in

which the court has decided that some of the claims brought by the class representatives may be certified by the court. The basic allegations are that Allianz improperly sold deferred annuities to persons age 65 or older. The plaintiffs allege that Allianz and its sales agents induced persons 65 or older to purchase deferred annuities that were fundamentally inferior investments, and that had proper disclosures been made, the clients would not have purchased the annuities. The lawsuit alleges that the plaintiffs have suffered damages by having their money tied up in poorly performing investments, and are furthermore forced to pay surrender charges and other fees and costs if they try to get out of the annuities.

Interestingly, the court has not decided whether the class members will receive any money or benefits at this time. The court has only tentatively certified certain issues in the class and will decide later on whether or not damages are warranted for the plaintiffs and class members. According to the notice, class members include all persons then 65 years of age or older who between September 19, 2001 and November 21, 2006, purchased one or more Allianz deferred annuities. The court gives class members the option to either stay in the lawsuit and see what comes of the claims or exclude themselves from the lawsuit by "opting-out" of the class in writing on or before May 15, 2007. John Stoia of the firm of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, located in California, and Andy Friedman, with the Arizona-based firm of Bonnett, Fairbourn, Friedman & Balint, P.C. represented the plaintiffs in this case.

As we have previously reported, there have been a number of lawsuits filed against insurers, agents and brokers for selling fraudulent annuities. This litigation has really picked up steam over the last couple of years as the insurance industry has sought to increase their

bottom line profits through the sale of annuity investments and related products, especially to the elderly. We are currently handling a number of these cases. Jay Aughtman, who is in our Consumer Fraud Section, is the primary lawyer involved in this litigation. If you need additional information, you can call Jay at 334-269-2343 or go to our Web site, www.BeasleyAllen.com.

Source: *Associated Press*

XIII. PREDATORY LENDING

PAYDAY LENDERS' BILL DEFEATED IN GEORGIA

An attempt to repeal the ban on payday lenders in Georgia failed. The attempt by the payday lending industry was rejected by the lawmakers. If passed, the measure would have destroyed the state law passed three years ago that made Georgia the only state to specifically outlaw the high-interest, short-term loans. The measure died by a 82-77 vote, failing to earn the 90 votes needed. This was a tremendous victory for consumers in Georgia. The lenders had been outlawed in the Peach State because they trapped the neediest Georgians into an endless cycle of loans and debt as they do everywhere. Hopefully, there won't be another effort in Georgia to allow the payday lenders back in. Unfortunately, I expect them to keep trying. I just wish Alabama would follow our neighboring state's lead and ban payday loans. In my opinion, payday loans are the very worst example of how predatory lenders take advantage of low-income citizens.

JUDGE ORDERS ONLINE PAYDAY LENDERS TO RELEASE DOCUMENTS

A judge in West Virginia has ordered 10 Internet payday lenders to produce

documents subpoenaed by the state Attorney General's office. The lenders were also ordered to stop making or collecting payday loans in West Virginia until further notice. Internet payday loans are secured by the consumer giving the lender permission to electronically debit the full amount owed, plus interest, from a personal checking account. The Attorney General's Consumer Protection Division began investigating these loan practices in 2005 after hearing that some companies were sidestepping West Virginia usury laws by providing loans online.

In some cases, the agency says that consumers were charged annual percentage rates (APRs) ranging from 600% to 800%, which is more than 44 times the maximum allowable rate of 18% APR for similar consumer loans in West Virginia. Since his office began its investigation, the Attorney General has reached settlement agreements with at least 17 Internet payday lenders. These settlements have resulted in \$225,000 in refunds and canceled debts for more than 1,600 West Virginia consumers. The judge had actually granted the Attorney General's petition in February, but there had been a delay in getting it entered in writing.

Source: *Associated Press*

SETTLEMENT OF CASE FILED UNDER FAIR CREDIT REPORTING ACT

New Century Mortgage Co. has reached a settlement in a class action lawsuit filed by Indiana residents. Twenty-eight thousand northwest Indiana homeowners who received junk mail from a subprime mortgage lender in 2003 filed the suit. Two residents accused New Century, a subprime lender, of illegally obtaining their credit reports to target them for vaguely described loans. New Century, which has had its problems, has been under federal investigation and has filed for bankruptcy.

As has been widely reported by the media, the subprime mortgage industry has been largely responsible for a record number of home foreclosures across the nation. Analysts say this has negatively affected financial markets. The northwest Indiana residents accused New Century of breaking federal law by getting credit reports on them without their permission. The company's lawyers claim that New Century's activities were legal because they followed a section of the law that allows anyone to search credit reports as long they use them to make a "firm offer of credit." But after more than a year of federal civil litigation, a federal judge ruled that New Century's mail offers were not "firm offers" because they did not disclose even basic terms such as annual interest rates. After that ruling, New Century agreed to settle the case. Under the terms of the settlement, the company will set aside \$300,000 to compensate the victims without admitting it violated the Fair Credit Reporting Act. If the typical percentage of class members in a class-action suit participate in the settlement, victims will not get a great deal of money. Hopefully, there will be some significant non-monetary relief involved in the settlement.

I may be all wrong, but it appears that the New Century problems are a classic example of a company that took advantage of sub-prime borrowers, letting its greed take over and thus overriding good business practices. The end result is that everybody gets hurt—New Century, their stockholders, their borrowers, and indirectly the nation's economy.

Source: *Wall Street Journal*

XIV. PREMISES LIABILITY UPDATE

NEW JERSEY CASINO SETTLES ALL CLAIMS ARISING FROM THE DEADLY GARAGE COLLAPSE

The Tropicana Casino Resort in Atlantic City, New Jersey, has settled all civil litigation stemming from the 2003 collapse of its parking garage that was under construction. Four people were killed and another 20 workers were injured in the collapse, which came less than an hour after a city inspector had visited the site and found that nothing was wrong. The garage was being built as part of a \$265 million Tropicana expansion called The Quarter, which included upscale shops, restaurants, and clubs, to go along with Atlantic City casinos. The top five decks of what was intended to be a 10-story, 2,400-space garage in the center of this gambling mecca came crashing down in an avalanche of concrete and steel. The families of the men who died sued Tropicana, its parent company, Aztar Corp., and several contractors engineers and architects on the job. The plaintiffs will share \$101 million under the settlement.

Reportedly, this is the largest settlement amount involving a construction accident case in U.S. history. Apparently, the project collapsed for a very simple reason—the floors were not connected to the walls. The results of a six-month investigation by the federal Occupational Safety and Health Administration (OSHA) pointed to a project flawed in design, execution, and oversight, one in which basic principles of construction and engineering were broken or overlooked. OSHA officials found that the contractors had failed to install critical steel connections between the garage decks and an outer wall, and had not provided a strong enough support system to brace the concrete decks while they cured. The lack of steel rein-

forcements in the parking garage's concrete and the inadequate support for the completed floors were to blame for the collapse of the garage's top five levels.

The lawsuit had been scheduled to go to trial in June. The settlement funds will be divided case by case through arbitration. Robert Mongeluzzi, of the firm of Saltz, Mongeluzzi, Barrett & Bendesky in Philadelphia, represented the plaintiffs in the case and did an outstanding job.

Source: *Insurance Journal* and *Philadelphia Inquirer*

XV. WORKPLACE HAZARDS

LAWSUIT FILED IN LOCKHEED SHOOTING

A lawsuit filed in Mississippi had largely gone unnoticed, but because of the two recent events occurring in Virginia and Texas where innocent folks were killed it is now getting some attention. In the Mississippi case, it appears that Doug Williams, an employee of Lockheed, had undergone psychological evaluation for a racially-charged argument with a fellow worker less than two years before he went on a shooting rampage at a Mississippi Lockheed Martin plant. Williams killed six and injured eight in the 2003 attack. Three Alabamians were among the victims. The family of one victim, Thomas Willis, contends that Milwaukee, Wisconsin-based NEAS Incorporated and Meridian, Mississippi-based Psychology Associates failed to address the racism and rage that erupted in this workplace attack.

The family of Thomas Willis of Lisman, Alabama, is suing the companies, asking both "for damages and for acknowledgment that this was a senseless racial murder." It is alleged that Williams, who had worked for Lockheed almost two decades, abruptly walked out of a mandatory diversity training class at the

plant on July 8, 2003. He returned with a 12-gauge shotgun and a semiautomatic rifle, shooting 14 people before killing himself. Mr. Willis, who was said to have complained to company officials about Williams' threats, was shot in the back as he tried to get away from the shooter. The wrongful death lawsuit is pending in a Mississippi federal court.

Source: *Associated Press*

JURY FINDS TXI GUILTY IN BLAST DEATH

A jury in Dallas, Texas, has ruled in favor of the widow of a man who was killed in the explosion at the Texas Industries Inc. (TXI) plant and awarded \$18.9 million in damages. The verdict ended a month-long trial in which the Dallas-based company was said to be guilty of negligence and recklessness in the death of a 34-year-old welder who was working for a TXI contractor. The worker was killed in January 2003, when a fire broke out at the plant located in Midlothian, Texas. A pollution-control device called a scrubber that contained "extremely hazardous and flammable materials," was involved.

Three other welders were burned in the explosion. It was proved at trial that TXI ignored basic safety principles by sending this team into a highly dangerous situation without adequate warning and without properly maintained equipment and fire extinguishing devices that might have saved the worker's life. TXI, which is a cement maker and supplier of heavy building materials, knew of the risk in the area where the welder was working. The plastic in the pollution scrubber had overheated and melted 18 months before this worker's death. A representative of the company that manufactured the plastic testified at trial that he had previously recommended that TXI replace the plastic with stainless steel for several reasons, including the risk of overheating. As a result of this verdict, industrial plants should understand the need to hire experienced

safety professionals to overlook the operations of their facilities. Michael Heygood and Robert Lee of Dallas, Texas, represented the widow in this case and did a very good job.

Source: *The Dallas Morning News*

ALBERTSONS SETTLES EMPLOYEES' OVERTIME LAWSUIT

Overtime lawsuits have received a lot of media attention around the country lately. It appears that many employees haven't been properly paid by their employers for working overtime hours. Some recently settled lawsuits against a grocery chain and a restaurant company show that many people are at risk for not being properly compensated for working overtime. One of the lawsuits was against Albertsons grocery stores. Over 7,000 employees of the chain, after a long wait, have settled their lawsuit. The employees will share \$53.3 million from the settlement funds.

In their lawsuit, the employees claimed that they were forced to work "off the clock," they were not paid for work performed, and some were improperly classified as exempt from overtime pay and therefore not properly compensated for hours worked. Albertsons was bought last year by SuperValu, which agreed to the settlement. The lawsuits were filed between March 1996 and October 1997 in ten states, although the majority of claims came from employees working at Albertsons in California. Of the plaintiffs involved in the lawsuit, five did not settle and will pursue their own separate legal actions.

Source: *LawyersandSettlements.com*

JURY AWARDS COAL MINER \$1.9 MILLION IN FIRING SUIT

A jury in Boone County, Kentucky, has returned a \$1.9 million verdict in favor of a coal miner, who was fired by his employer. In his lawsuit, the miner alleged that Rivers Edge Mining Co., a

subsidiary of Peabody Coal Co., retaliated against him after he was hurt on the job. The miner broke his arm in October 2003 while working in an underground mine. For about four months, he continued working with his arm in a cast. Then, in March 2004, his physician told the miner his arm was not healing properly. He then left work for two months, but when the miner was scheduled to come back to work in May 2004, Rivers Edge fired him. It was alleged that the firing was in retaliation for the miner filing a workers' compensation claim. State law in Kentucky requires employers to reinstate employees when they return to work after they have been on workers' compensation leave. The jury verdict in the case included \$171,697 in back pay, \$513,410 for loss of future earnings, \$200,000 for "aggravation, inconvenience, humiliation, embarrassment and loss of dignity," and \$1 million in punitive damages.

Source: *The Charleston Gazette*

JURY VERDICT IN A NEW YORK LEAD-RELATED LAWSUIT

A New York jury recently awarded nearly \$13 million to three men who got lead poisoning after working on the Grand Central Terminal renovation project. The Metropolitan Transit Authority (MTA) and a major contractor were found to be at fault for ignoring safety laws. The men suffered brain damage after working months without respiratory protection on the train-terminal project starting in 1996. The jury found the MTA and contractor Bovis Lend Lease responsible. A small group of men had used torches to cut steel during demolition. The burning of lead-based paint spewed smoke that the men—wearing just paper dust masks for up to 10 months—inhaled. It was contended at trial that the contractor ignored the safety risks to cut costs and boost profits.

Source: *New York Post*

JURY RULES FOR WIFE OF VIRGINIA SHIPYARD WORKER IN ASBESTOS DEATH CASE

The widow of a former shipyard worker who died from exposure to asbestos while building Navy aircraft carriers was awarded \$5.55 million last month by a state circuit court jury in Virginia. The seven jurors determined that Kay Oney should receive the damages from two suppliers to the shipbuilding industry—John Crane Inc. and Garlock Sealing Technologies—for their role in the death of her husband of 43 years, Vaughn Oney. Jurors deliberated for two days. The Newport News Shipbuilding worker died in November after developing mesothelioma, a deadly form of cancer triggered by breathing asbestos fibers decades earlier. The jury awarded \$9.25 million to Kay Oney. Sixty percent of the total, or \$5.55 million, is to be paid by John Crane Inc., a multinational company that manufactured gaskets and sealants made with asbestos. Garlock Sealing Technologies, a Palmyra, New York, company that competed with John Crane in making the same products, had already settled for an undisclosed amount with Oney before the case went to trial. John Crane is expected to appeal the jury verdict.

Between 1963 and 1973, Vaughn Oney was sometimes in contact with asbestos daily. He retired in 1994, in his early fifties and in good health. But mesothelioma can remain latent in the body for 40 years. Although the disease can stay latent for decades, it typically kills within two years of the initial diagnosis. Mr. Oney was diagnosed in 2004. The verdict comes less than one year after the court awarded \$10.4 million to the family of Buddy Jones, another Newport News shipyard worker who died of the disease. The asbestos industry knew that asbestos fibers could kill and they knew how to prevent it. The Virginia Peninsula, with a high proportion of persons who worked in ship-

building, an industry that heavily used asbestos, has one of the highest rates of asbestos cancer in the country. The Jones case has been appealed to the Virginia Supreme Court.

The case involving Vaughn Oney focused on the period between 1963 and 1973, when the worker was sometimes in contact with the asbestos daily. When he retired in 1994 in his early 50s, Mr. Oney appeared to be in very good health. Robert Hatten, a lawyer who is with the firm of Patten, Wornom, Hatten and Diamonstein, located in Newport News, Virginia, handled these cases.

Sources: *Newsday* and *DailyPress.com*

XVI. TRANSPORTATION

DEATH CASE FILED IN JEFFERSON COUNTY

Our firm recently filed a wrongful death lawsuit arising out of the tragic deaths of a father and his son at an air show in Shelby County, Alabama. The suit was filed in Jefferson County Circuit Court. On September 23, 2006, John W. Smitherman, Pam Smitherman and their son, Landon, attended the "Wings and Wheels Air Show" in Calera, Alabama, which was sponsored by the Birmingham Aero Club Air Safe Foundation. Mr. Smitherman and his son were paying passengers on a Beech Bonanza F-33 aircraft provided by its owners for use at the show. Shortly after take-off from the Shelby County Airport, the airplane experienced a total loss of engine power and inadvertent stall caused by a lack of fuel. While Mrs. Smitherman watched, the airplane crashed, causing the tragic deaths of her husband and her only child. Defendants named in the lawsuit are C.J. Aviation, the Executrix of the Estate of Clayton Reuse, Birmingham Aero Club Air Safe Foundation, and Jon Rogers, who was one of the owners of the airplane.

Our firm was selected to represent

Pam Smitherman, a courageous lady who lost her husband and son in the crash, who desires for the complete story of this airplane crash to be made public. She wants to make sure that in the future, safety is the paramount issue for the Air Show and pilots. The deaths of John and Landon were senseless. The Birmingham Aero Club Air Safe Foundation and the pilot failed to ensure there was enough gas in the plane's engine before taking off with these two victims. Once the pilot realized his plane was out-of-gas, he maneuvered the plane, which is contrary to accepted pilot standards. Mrs. Smitherman witnessed the horrific deaths of her husband and only son, which has caused her tremendous mental pain and anguish. Cole Portis will be the primary lawyer handling the case for Mrs. Smitherman.

DISTRACTIONS WHILE DRIVING A CAR ARE DANGEROUS

Over the past 10 years or so, cell phone use in this country has grown by leaps and bounds. It has been reported that millions of people drive a motor vehicle while using a cell phone in the U.S. Unfortunately, studies of cell phone use reveal that consumers fail to acknowledge the great harm that can result from this behavior. It's really not too surprising to learn that many people fail to appreciate that an automobile is an extremely dangerous instrument that can cause great harm and injury. We simply don't look at our cars in that manner, and neither do the advertising campaigns carried out by the automobile makers. Even when driven carefully and defensively, a motor vehicle can become a dangerous weapon. Driver distraction is a major safety issue. Driving while distracted for any reason puts both the driver and others on our highways at great risk. Clearly, talking on a cell phone while driving a car, especially in heavy traffic, causes a major distraction.

According to the National Highway Traffic Safety Administration (NHTSA), distracted driving contributes to 1 in 4 traffic accidents. I was shocked to learn that between 4,000 and 8,000 crashes per day are actually related to distracted driving. Driving while talking on a cell phone is very dangerous. As we pointed out last month in the discussion of the Martinez case we handled in Georgia, serious injuries and even deaths can result from distracted driving. Cell phone use is an unfortunate part of our driving environment in today's world, but risks accompany such use that simply can't be ignored. As of 2004, there were 182 million cellular subscribers in the U.S. Two separate field studies have revealed that over 40% of Americans admit to driving while on a cell phone. Studies also reveal that a person driving a car and talking on a cell phone causes the same distraction as being legally drunk. We even find that text-messaging while driving a vehicle has become very common. That is really hard to imagine.

Of course, cell phones aren't the only devices in cars that cause distractions. The Center for Auto Safety wants U.S. federal regulators to restrict the use of interactive systems that carmakers are building into vehicles so motorists can't make phone calls and check e-mails while driving. The nonprofit group filed a petition in January with NHTSA saying accidents will increase because drivers will be paying more attention to their personal affairs than to the road. The Center asked NHTSA to write rules prohibiting the use of such built-in systems while a vehicle is in motion. The systems include OnStar from General Motors Corp., and Sync, which Ford Motor Co. introduced this year.

A 2005 *British Medical Journal* study found that cell phone use increased the risk of an accident fourfold and keeping both hands on the steering wheel didn't reduce the danger. Although NHTSA has done several research reports on the

distraction issue, there are no federal rules that govern the use of cell phones or other personal wireless devices in vehicles. New York, Connecticut, New Jersey, and the District of Columbia allow only hands-free cell-phone use in moving vehicles, while 11 states ban school bus drivers and eight ban teenagers from any cell phone use while driving. The policy by NHTSA has been “that auto and equipment manufacturers need to take into account what the impact might be on distracting the driver.” The agency can regulate equipment built into the car by the original maker, but it has no jurisdiction over what an owner can install. Congress should give NHTSA the power to regulate. Being safe is much more important than convenience.

Sources: *Associated Press* and *NHTSA*

ALABAMA HIGHWAY DEATHS CONTINUE TO RISE

Highway deaths in Alabama continue to be a problem. More than 1,200 people died on Alabama highways last year. This is the highest number since 1973, according to a report by the Alabama Department of Public Safety. The preliminary reports from the troopers show at least 1,208 deaths on state roads in 2006. State officials estimate that the final tally will be about 1,240 once all cities and counties have submitted their numbers. As a matter of interest, the highest number of deaths on Alabama highways was 1,251 in 1971. You would have to believe that we would have seen a substantial decrease in the number of deaths over the last 35 years, but that hasn't been the case. There were sizable increases in deaths on rural roads—from 791 in 2005 to at least 835 last year—and in motorcycle accidents. There were 76 reported deaths involving motorcycles, up from 59 a year earlier. I hope putting more troopers on Alabama highways will result in a decrease in fatalities in the coming months.

Source: *Associated Press*

SAFETY ISSUES AT OUR NATION'S AIRPORTS

Recent reports indicate that there are serious safety issues at a number of U.S. airports, especially some of the smaller facilities. The federal government says that air-traffic control towers at small and medium airports have been routinely understaffed with only one person on a shift, a violation of federal aviation rules. The practice came to light last year after one air-traffic controller was on duty in Lexington, Kentucky, when Comair Flight 5191 taxied to a closed runway and tried to take off before dawn on August 27th. The runway was too short, and the jet crashed into trees and burst into flames, killing 49 of the 50 people aboard.

Comair Inc. has reached the first two settlements arising out of the crash. Comair settled claims filed on behalf of the estates of Priscilla Johnson, of Lexington, Kentucky, and Mary Jane Silas, of Columbus, Mississippi. Details of the settlement are confidential. Twenty-nine lawsuits have been filed so far on behalf of 38 passengers. The Department of Transportation's inspector general estimated that 2,500 shifts at air-traffic facilities that are similar to the Lexington airport were staffed by a single controller on overnight shifts during a one-year span. That's 11% of all overnight shifts at those facilities, according to the report. It was made very clear in this report that the Federal Aviation Administration (FAA) must do a better job of implementing its policies.

The FAA has stopped understaffing the towers and is following the inspector general's recommendations. In August 2005, the FAA ordered its facilities at airports that operate 24 hours a day to maintain at least two controllers at all times—one to oversee landings and takeoffs, and another to monitor flights around the airport. The rule was prompted by a controller working alone at Raleigh-Durham International Airport in North Carolina who guided one plane into the path of another that had

just taken off. Fortunately, that incident did not result in a crash.

Air-traffic tapes showed the controller in the Lexington crash sent the jet to the correct runway, but the controller told investigators that he turned away to perform paperwork and did not see the takeoff. Although the cause of that crash has not been determined by the National Transportation Safety Board, the focus of the investigation appears to be on the pilots' actions. Inspector General Calvin Scovel found that the FAA failed to communicate its new staffing policy in writing. The review examined 20 weeks of staffing data at 15 of the 62 facilities covered by the FAA rule. It found that 11% of shifts had been staffed by only one controller. According to the report, compliance with the rule got steadily better during the one-year period it was in effect before the Lexington crash. On the day of that accident, however, it was determined that the Lexington airport and facilities in Duluth, Minnesota, and Fargo, North Dakota, were improperly staffed with only one controller each.

Source: *USA Today*

RUNWAY SAFETY SYSTEM HAS A SERIOUS GAP

There are other safety problems existing at some of our airports. Restrictions on a \$550 million system to prevent runway collisions are compromising safety by keeping the system from accurately tracking snowplows, fire trucks, and other ground vehicles at most airports, according to government data and air-traffic controllers. According to the National Transportation Safety Board, the risks of a crash on the ground represent the greatest threat in aviation. The Board says the potential for a plane to strike one of the vehicles that crowd commercial airports is a significant part of the problem.

Collisions between vehicles and planes were narrowly averted 26 times from 2003 through January of this year, accord-

ing to a *USA Today* review of Federal Aviation Administration (FAA) data. That represents 22% of all serious runway incidents, or about one serious incident every other month. The new system, known as "Airport Surface Detection Equipment Model X," allows controllers, who may not be able to see runways at night or in bad weather, to monitor the location of aircraft on color computer displays in the tower. The government and safety advocates see this system as a major improvement over previous technology. That's because it can track aircraft on the ground in all weather.

But, the FAA has acknowledged that the agency is blocking the system's ability to track ground vehicles. Because the FAA won't allow those vehicles to carry radio identification beacons, the system has difficulty tracking them, particularly during heavy rain. The agency is concerned that the beacons, known as transponders, could interfere with broadcasts from similar beacons on planes. If that occurred, it could cause planes to disappear from radar screens or trigger other safety problems. The agency says it is moving slowly because it wants to avoid unanticipated problems.

The system was first put in use last year at Hartsfield-Jackson Atlanta International Airport, which is the world's busiest. But not one of the airport's fleet of 1,500 ground vehicles has a radio beacon. Eight airports now have the runway system, including airports in Seattle, Orlando, and St. Louis. It will be installed at an additional 27 airports, including all of the largest in the U.S., over the next several years. The system was originally intended for smaller airports, but its color displays and advantages in bad weather apparently caused the FAA to install it at larger ones.

Source: *USA Today*

FAA BANS DISPUTED LANDING PROCEDURE

There is another safety issue at a Memphis airport that hopefully is an iso-

lated matter. The Federal Aviation Administration (FAA) has ordered a halt to a controversial practice in Memphis that allowed arriving aircraft to fly directly over planes on another runway. The procedure, disclosed by *USA Today*, had nearly caused midair collisions. The FAA will now direct controllers to space out arriving flights at Memphis International Airport so that planes about to land no longer pass directly over flights that have just touched down on a nearby runway. It appears that pilots and controllers had been trying for months to end the practice in Memphis.

The Air Line Pilots Association union continues to press the FAA to stop similar practices at other airports in which planes simultaneously land or take off from nearby runways that have intersecting flight paths. Under normal conditions, these operations are safe. Even so, the pilots union says it can be difficult to keep aircraft separated if a pilot aborts a landing at the last moment and suddenly begins climbing. Thus far, according to the *USA Today*, the FAA has not found another case like Memphis that required an end to procedures.

The near-collision in February between a Northwest Airlines DC-9 and a Northwest AirlinK Saab 340 prompted the review of the procedure in Memphis. The two planes involved were within 500 to 700 feet of each other, according to an official with the Memphis controllers' union. FAA safety investigators, who operate independently from air-traffic managers, demanded in an April memo that Memphis halt the landing procedure. The procedure violated FAA rules, and local air-traffic managers were unable to provide documentation that they had ever received proper approval for it, according to the memo. Officials in the FAA's air-traffic division initially refused to stop the procedure. Hopefully, the situation in Memphis has been corrected. It is also hoped that the safety issues found there are confined to Memphis.

Source: *USA Today*

FAMILY SETTLES SUIT OVER RUNWAY ACCIDENT

In another lawsuit arising out of an incident at an airport in Chicago, Southwest Airlines Co. has reached a settlement with the family of Joshua Woods. The 6-year-old boy was killed when one of the airline's jets skidded off an airport runway and slammed into a car in which he was riding. His parents filed a wrongful death lawsuit against Southwest and Boeing Co., the plane's manufacturer, in Cook County Circuit Court nearly a year ago. The suit alleged that both companies were at fault and caused the December 8, 2005, accident at Midway International Airport. Southwest and the Woods family were the only parties to this settlement, which was agreed to in February. Financial details of the settlement are confidential.

The little boy was riding in a car with his family when Southwest Airlines Flight 1248 landed in a snowstorm, skidded off Runway 31-C, tore through an airport blast fence and careened into traffic. The lawsuit alleged that Southwest was at fault for failing to properly land the Boeing 737 and attempting to land when deteriorating weather conditions dictated that the plane should have been diverted to another airport. The family claimed Boeing shared some of the blame because of problems with the plane's thrust reversers, which are used to slow down the aircraft. Since the accident, the airport has installed a lightweight concrete bed designed to collapse under the weight of an aircraft and stop planes from overshooting the runway. Boeing wasn't involved in the settlement, and the claim against that company is still pending.

Source: *Associated Press*

CSX RAILROAD HAS SAFETY PROBLEMS

An investigation has found more than 3,500 problems with CSX Corp. railroad properties in 23 states. A probe had been started in response to a series of acci-

dents involving the company's trains. The inspection by the Federal Railroad Administration, conducted over four days in January after a derailment in East Rochester, New York, recommended that CSX be fined for 199 violations, including failure to replace defective rails, failure to make repairs, and improper handling of hazardous materials.

According to Joseph Boardman, administrator of the Federal Railroad Administration, CSX "is still not doing enough to make safety a top priority." The agency's inspectors "identified problems in every area of the company's safety performance, including track, hazardous materials and on-track equipment." In the inspection, federal railroad inspectors found 3,518 defects, or less-severe problems, with railroad equipment or operating practices, such as not using radios or switches properly. A violation is a more serious infraction that usually results in a penalty being levied.

There have been a number of incidents in the state of New York involving CSX trains. The report shows CSX is not making safety enough of a priority. Earlier this month, 28 cars on an 80-car freight train in upstate New York jumped the tracks. Eight tanker cars contained flammable substances and caught fire, forcing the temporary evacuation of thousands of residents. That incident was the fifth derailment involving CSX in New York since December. Jacksonville, Florida-based CSX also had a derailment in Brooks, Kentucky, which so far has cost the railroad \$30 million, according to railroad officials. Other recent derailments have occurred in Maryland and Ohio. Federal railroad officials are checking nearly 1,300 miles of track in New York state for problems. CSX operates a 22,000-mile rail network, covering 23 states, the District of Columbia, and two Canadian provinces.

The company holds primary responsibility for making sure its tracks are safe.

It appears CSX has lots of safety-related work to do. I remember a case our firm handled several years back against a major railroad company. While cross-examining an engineer in a grade-crossing case, I was trying to prove a bad safety policy that the company had in effect. When facing a tough question on the policy, the engineer responded: "Mr. Beasley, the company sets policy, all I do is drive the train!" He was absolutely right on that point and it's not fair to the public or employees of the railroad for a bad safety policy to exist.

Source: Insurance Journal

\$31.8 MILLION AWARDED BY JURY IN INTERSTATE CRASH

A federal court jury in Texas has awarded \$32.8 million in damages to the victims of a crash that occurred in 2003 on an interstate highway. The crash happened when the driver of an Allied Van Lines truck failed to slow down for traffic stalled because of a minor accident that had occurred a few miles ahead. The 18-wheeler struck 10 other vehicles before finally coming to a stop on a bridge. Five people were killed in the crash, including the Allied driver and four others. Among those killed was a 9-year-old child. Two other people sustained serious burns in the incident when their vehicle caught fire. A lawsuit was filed against Allied Van Lines and Sorenson Moving and Storage Company Inc., alleging that the driver was negligent in his handling of the vehicle and that Allied was negligent in the screening, hiring, training, and supervision of the driver. A Houston lawyer, Richard Mithoff, represented the family and did a very good job.

Source: The Daily Advertiser

XVII. HEALTHCARE ISSUES

ERRORS IN U.S. HOSPITALS CONTINUE TO RISE

Most American citizens believe that hospitals should be as **safe** as they can be possibly be, within reason. Unfortunately, that may not always be the case in some hospitals. It appears there is safety issues in a great number of U.S. hospitals, according to a report released last month. Patient safety incidents in hospitals in this country increased by 3% overall from 2003 to 2005, and the error gap between the nation's best- and worst-performing hospitals remained wide. America's top-rated centers had 40% lower rates of medical errors than the poorest-performing hospitals, the study showed. The fourth annual HealthGrades Patient Safety in American Hospitals Study, put out by HealthGrades, an independent health care ratings company, examined over 40 million Medicare hospitalization records at almost 5,000 hospitals from 2003 to 2005. The study found that:

- There were 1.16 million patient safety incidents among Medicare patients during the three years of the study. That works out to an incidence rate of 2.86%.
- During those three years, there were 247,662 potentially preventable deaths in U.S. hospitals. Medicare patients involved in one or more safety incidents had a 25% chance of dying.
- The excess cost to Medicare associated with patient safety incidents was \$8.6 billion from 2003 to 2005.
- Ten of 16 types of patient-safety incidents increased over the three years of the study, by an average of almost 12%. The greatest increases were in post-operative sepsis (about 34.3%);

post-operative respiratory failure (18.7%); and selected infections due to medical care (about 12.2%).

- Incidents with the highest occurrence rates were decubitus ulcer; failure to rescue; and post-operative respiratory failure.
- If all hospitals had performed at the same level as the top-rated hospitals, about 206,286 patient safety incidents and 34,393 Medicare patient deaths could have been avoided, resulting in \$1.74 billion in savings.

The study's primary author, Dr. Samantha Collier, HealthGrades' chief medical officer, observed:

The cost of medical errors at American hospitals in both mortality and dollar terms continues to be significant, and the 'chasm in quality' between the nation's top and bottom hospitals, which HealthGrades has documented in this and other studies, remains. But the nation's best-performing hospitals are providing benchmarks for the hospital industry, exercising a vigilance that resulted in far fewer in-hospital incidents among the Medicare patients studied.

There can be no justification for all of our nation's hospitals not being at least reasonably safe. Governmental officials at every level—national, state, and local—have an obligation to take whatever steps are necessary to improve the current state of safety in hospitals.

Source: *Forbes*

WRONGFUL DEATH SUIT LAWSUIT INVOLVING THE GIVING OF A WRONG DRUG IS SETTLED

The family of a 73-year-old man who died after receiving the wrong drug during surgery will receive \$1.775 million in the settlement of a wrongful death lawsuit. According to lawyers who

represented Martha Cogan, widow of Herbert Cogan, Piedmont Medical Center, in Rock Hill, South Carolina, will pay about \$1.275 million, which is the bulk of the settlement. The remainder will be paid by an insurer for the doctors and other medical personnel involved in the case. According to the lawsuit, an anesthesiologist and a certified registered nurse anesthetist accidentally gave Mr. Cogan the wrong drug during his heart surgery in 2002.

It's also alleged in the suit that the surgeon failed to tell the family how the man died. The original death certificate said that Mr. Cogan died of natural causes, but apparently that was changed after the body was exhumed. An autopsy found that the man actually died of a heart attack after receiving the wrong drug from a health care provider. This was a most unfortunate incident and one that points out how dangerous giving the wrong drug can be in any setting and especially during surgery.

Source: *Associated Press*

PFIZER DIVISIONS AGREE TO PAY \$34.7 MILLION IN FINES

Two subsidiaries of Pfizer Inc. have agreed to pay fines totaling \$34.7 million for offering a kickback to recommend company drugs and for illegally promoting the human-growth hormone product Genotropin for nonapproved uses. Prosecutors allege that Pharmacia & Upjohn Co. Inc. offered to overpay a subsidiary of a pharmacy benefit manager by \$12.3 million in the hope the company would, in turn, recommend Pharmacia's drug products to its clients. As we have reported, pharmacy benefit managers act as middlemen between pharmaceutical companies and health insurers. They quite often make product recommendations to health plans based on a drug's efficacy or cost-effectiveness. Pharmacia hired the pharmacy benefit manager in this case to distribute Genotropin.

Prosecutors allege the company then offered to make excess payments on the distribution contract in an effort to improperly influence the unnamed pharmacy benefit manager's decision about which drugs to include on its list of product recommendations. Under a plea agreement filed in U.S. District Court, the company agreed to plead guilty to one count of offering a kickback and to pay a criminal fine of \$19.7 million. U.S. Attorney Michael J. Sullivan made this statement concerning the case:

The relationships between pharmaceutical companies and the pharmacy benefit managers who have so much influence over the drug choice of millions of Americans must be free of the taint of kickbacks or other illegal payments.

Another Pfizer subsidiary, Pharmacia & Upjohn Co. LLC, has agreed to pay \$15 million to settle allegations that it illegally promoted Genotropin for uses not approved by the FDA. Genotropin is approved by the FDA for treatment of children with growth failure and for other growth-related diseases, such as long-term replacement therapy in adults with growth-hormone deficiency. According to the prosecutors in that case, Pharmacia & Upjohn promoted Genotropin for anti-aging purposes, cosmetic use, and athletic-performance enhancement. Doctors are allowed to prescribe medications for so-called "off-label" uses, but it is illegal for pharmaceutical companies to market drugs for unapproved uses. It does appear that New York-based Pfizer, which acquired Pharmacia in April 2003, acted responsibly when it disclosed Pharmacia's unlawful promotion of human growth hormone to various federal government agencies in May of that year.

Both settlements cover activities that occurred at the Pharmacia subsidiaries, based in Bridgewater, New Jersey, before it was acquired by Pfizer. It appears that Pfizer voluntarily and fully self-disclosed

the off-label promotion of Genotropin by a Pharmacia subsidiary before Pharmacia was acquired by Pfizer. Pfizer's marketing and promotion practices are not involved in the settlement, according to the company. It says the company has internal controls to guard against these types of practices.

Source: Associated Press

TOUGHER PROCEDURES FOR MEMBERSHIP ON FDA ADVISORY COMMITTEES IS NEEDED

The U.S. Food and Drug Administration (FDA) should implement a more stringent approach for considering potential conflicts of interest for its advisory committee members and for recommending eligibility for meeting participation. The FDA is currently accepting public comments on a proposal made by the agency in late March that purportedly will improve things. The FDA badly needs to make the advisory committee process more rigorous and transparent so that the public can have confidence in the integrity of the recommendations made by its advisory committees. The FDA claims that it currently screens all prospective advisory committee participants before each meeting to determine whether the potential for a financial conflict of interest exists. However, the agency can grant a waiver and therein lies a major part of the overall problem. In my opinion, no person who has a financial conflict of interest should be eligible to serve on an advisory committee. Such things as stock ownership, related research, and consulting arrangements by a committee member are and should be deemed financial conflicts of interest.

Advisory committees provide FDA with independent advice from outside experts on issues related to human and veterinary drugs, biological products, medical devices, and food. In general, advisory committees include a chair and several members, including a consumer representative, industry representative,

and sometimes a patient representative. Additional experts with special knowledge may be consulted by the committees as needed. Although the committees provide advice to the agency, their recommendations are not binding and FDA makes final decisions. But, from experience I can tell you that an advisory committee's opinions carry a great deal of weight at the FDA and even in courtrooms when pharmaceutical companies are on trial.

Source: FDA News

XVIII. ENVIRONMENTAL CONCERNS

WEAK ENVIRONMENTAL LAWS IN ALABAMA ALLOW CANCER-CAUSING POLLUTANTS

To "clean up" Alabama and follow the EPA's model regulations, the state would have to reduce maximum allowable levels of benzene, arsenic, DDT, dioxin, and pentachlorophenol in state waters by 90%. Alabama lags behind other surrounding states in this important area. In fact, our state allows higher levels of some 60 cancer-causing pollutants to be dumped in Alabama's waterways. Fighting to clean up our state's rivers and streams, the Alabama Rivers Alliance submitted three petitions to the Environmental Management Council, asking for the state to follow the EPA's recommendations. Most other southeastern states have already implemented these recommendations. Only Tennessee and Alabama have failed to do so. The following will explain what the petitions are seeking:

- The first petition is a request to revise the "cancer risk level" in formulas used to calculate water quality criteria for 58 carcinogenic pollutants. Choosing a more protective "cancer risk level" will reduce the risk and probably the incidence of

cancer in humans and will make fish safer to eat.

- The second petition requests that the state reduce permitted levels of 14 toxic pollutants and apply a "relative source contribution" factor. This revision would result in an 80% reduction in the authorized pollution levels for the 14 toxic pollutants. The Alabama Rivers Alliance argues that people are already exposed to chemicals like toluene and cyanide in the environment, and the water is not the only source of these toxic pollutants. Because ADEM allows the pollutants at such a high level, Alabama citizens are at a greater risk of being exposed to dangerous toxins at higher levels than what federal scientists have determined to be safe.
- The third petition asks ADEM to adopt the EPA's "reference dose" of acrolein and phenol, which would result in a 97% reduction in the amount of acrolein and a 50% reduction in the amount of phenol dumped in Alabama waters. Phenol is used to manufacture plastics and nylon, and acrolein is used to manufacture chemicals and pesticides. The Phenol-Chemie plant in Theodore, Alabama, uses large amounts of phenol in their production.

Although other southern states and the majority of the United States uses a 1 in a million cancer risk level in formulating their water quality standards, Alabama water quality rules are based on a 1 in 100,000 cancer risk level. Our state further lags in protecting the safety of its citizens by allowing people to consume fish containing PCBs at levels 10 times greater than what other states allow. The U.S. Food and Drug Administration and regulators from other states have urged Alabama to change their PCB standards in fish. The three petitions will be debated by the Environmental Management Council in the following months. If

the standards are adopted, industries dumping in Alabama's waterways will have to change their ways and make Alabama a safer place to live. I hope that will be the result.

Source: *The Mobile Press-Register*

ALABAMA'S CARBON DIOXIDE EMISSIONS CLIMB

Carbon dioxide emissions in Alabama have climbed at above-average rates in recent years, driven in large part by releases from coal-fired power plants, a new study has found. Between 1990 and 2004, carbon dioxide releases in the state rose 29%, to about 141 million metric tons, according to the report by the U.S. Public Interest Research Group, a Washington, D.C. advocacy group seeking steep cuts in emissions of the colorless, odorless gas linked to global warming. Only nine other states saw larger tonnage increases. About two-thirds of the added Alabama emissions resulted from coal-fired plants, the report says. For the United States as a whole, carbon dioxide releases increased 18% from 1990 to 2004.

ALABAMA POWER INSTALLING BIG SCRUBBER

Alabama Power Co. (APCO) is taking a major step toward improving air quality in the Birmingham area by adding one of the world's largest scrubbers to its Walker County plant. The company says it will start using a \$261 million scrubber early next year on its coal-burning power plant just over the Jefferson County line in Walker County. The aging plant is required by the U.S. Clean Air Act to install the scrubber to remove pollution from three of its stacks. It is meant to decrease sulfur dioxide emissions from the three units by 98% and should reduce mercury and fine particles. The Birmingham area currently fails to meet two federal rules for particle pollution. The state has said power plants are the largest source of the soot and is forcing them to change.

According to reports, the new APCO scrubber will be among the largest in the world with a stack that is 755 feet high. It will be the first of several to be installed in the company's coal-fired plants over the next five years. As pollution studies have shown that increasingly smaller particles can reach the lungs and blood stream—a cause of lung and heart disease—the federal government has passed stricter rules on air pollution. Alabama Power, which is our state's largest utility, serves 1.4 million homes and businesses. The majority of its power comes from aging coal plants that need a total of about \$3 billion to conform with current environmental standards by 2012. It's real encouraging to see the utility taking steps necessary to protect Alabama's environment.

Source: *Birmingham News*

VERMONT JURY AWARDS FIRM \$2.3 MILLION AGAINST DUPONT

A federal court jury in Burlington, Vermont has ordered chemical giant DuPont to pay a company \$2.3 million to settle a dispute about a coating made to line steel ducts used in the semiconductor industry. Fab-Tech Inc., of Colchester, Vermont, maintained that DuPont sold the coating in violation of an agreement between the two companies. DuPont said it plans to appeal. The two companies developed the coating in the early 1990s. Fab-Tech maintained that in some areas, such as South Korea, its investment in a manufacturing facility became worthless because DuPont violated an agreement and sold the coating product there on its own. The jury awarded Fab-Tech \$1.3 million in compensatory and another \$1 million in punitive damages. DuPont says it will appeal.

Source: *Insurance Journal*

MICHIGAN RESIDENTS SUE SEVERSTAL NORTH AMERICAN FOR AIR POLLUTION

A class action lawsuit has been filed

against Severstal North America in Wayne County Circuit Court on behalf of Melvindale, Michigan residents. The claims are for air pollution and dust discharge on their property. It follows a previous suit that was settled. The residents are seeking monetary damages from the multi-million dollar facility, formerly known as Rouge Steel. Severstal North America is the fourth largest steel company in the nation. Headquarters and manufacturing facilities are located in Dearborn, Michigan. Manufacturing at the facility includes flat-rolled carbon steel products for the automotive industry and other markets. The company's largest customers include Mazda, Mitsubishi, and Toyota.

A similar lawsuit, filed in 2005 by Dearborn residents, was settled in March 2006. Facing action for violations from the Michigan Department of Environmental Quality (MDEQ), Severstal spent \$500 million in investments on upgrades of a baghouse and oxygen furnace for the facility. The settlement in 2006 included a \$50,000 grant to Salina schools and \$200,000 for a community tree planting. Severstal, a Russian-based steel plant translated as "Northern Steel," also paid a \$900,000 penalty to MDEQ for past violations of federal and state air regulations. The company also agreed to fines of \$5,000 a day for future violations.

It appears that Severstal has more work to do. The plant must install a baghouse by 2008 or shut down. Severstal must also comply with its new air permit, stop torch cutting scrap at the facility, and enforce a plan to cut emissions from the railcars used to transport molten metal. MDEQ is also requiring Severstal to install a digital camera system to monitor visible emissions from the basic oxygen furnace and reduce opacity at the facility. MDEQ claims that Severstal's request for a permit for design changes meets the federal air quality requirements and regulations, but a public hearing will be

held before the permit is issued.

Source: *Press & Guide, A Heritage Newspaper*

PARTIAL SETTLEMENT IN HEXION SPECIALTY LAWSUIT

The court has approved a \$5.25 million settlement for the plaintiffs in a class-action lawsuit against Hexion Specialty Chemicals Inc. This is the first odor lawsuit to settle in the Rubbertown neighborhood, which is located in the southwest area of Louisville, Kentucky. As previously mentioned in The Report, a total of five lawsuits were filed against plants in Louisville. The plaintiffs alleged that the air pollution impaired their health and their use and enjoyment of their property, and reduced their property values. This settlement provides monetary compensation and improvements to the plant's wastewater treatment system. The improvements will help regulate emissions and odors from the plant. A landscaped buffer zone, consisting of berms and vegetation, will be created between the neighborhood and Hexion. Lawsuits are still ongoing with other plants in the area—American Synthetic Rubber, E.On (the parent company of Louisville Gas & Electric), OxyVinyls, Rohm and Haas, and Zeon Chemicals. As you may know, Hexion, located in Columbus, Ohio, is the former Borden Chemicals. About 80 residents sued Hexion, along with E.On.

Source: *The Courier Journal*

XIX. THE CONSUMER CORNER

ALABAMA CITIZENS SHOULD BEWARE OF DIPLOMA MILL SCAM

It's extremely important for a person seeking the advantages of higher education to know that all of the schools being considered are on the level. Although such schools must be legitimate and

properly accredited, it appears that is not always the case. Because my knowledge in this field is limited, I asked Margaret Gunter, who is Communications Director for the Alabama Commission on Higher Education, to write a piece for the Report on the subject. Fortunately, she gladly agreed to do so. The following article, which is very good, is by Ms. Gunter and is included for your edification.

Why do you want a college degree? Write an essay based on your life's experiences. This is an example of some of the coursework required to obtain a degree from what is commonly known as a diploma or degree mill. Webster's Third International Dictionary defines a diploma mill as, "An institution of higher education operating without supervision of a state or professional agency and granting diplomas which are either fraudulent or, because of lack of proper standards, worthless."

Diploma mills award academic degrees and diplomas with very little or no academic study. Such organizations are unaccredited, but they often claim accreditation by non-recognized/unapproved organizations set up for the purpose of providing a veneer of authenticity. These operations, often Internet-based and complete with fraudulent accreditation, have grown into a lucrative, billion dollar per year industry utilizing sophisticated marketing techniques and delivering false credentials with big price tags. A case in point involved the security-conscious Department of Homeland Security. They were looking for someone to oversee the department's computer network. The candidate they selected had outstanding academic credentials: bachelor's through Ph.D. However, the person's employment was short-lived. The Office of

Personnel Management opened an investigation into the new employee's resume following the publication of articles questioning the validity of the degrees he held. It turned out that all three degrees had come from an institution that is a now-defunct diploma mill operating out of a former Motel 6 in Evanston, Wyoming.

Alabama education leaders hope to reverse the state's reputation as a haven for diploma mills by strengthening laws regulating how these enterprises are set up. As other states have toughened their stance on diploma mills, which offer degrees for little or no academic work, those schools have migrated to states like Alabama, which has lax regulations. An Associated Press story carried in the Jackson Hole Star-Tribune said... "Preston University has moved to Alabama—where there's less oversight of post-secondary education—now that Wyoming requires private universities to be accredited."

Alabama has a dual system for private college approval, which has allowed diploma mills to work the system for an operating license. Those responsibilities are shared by the Alabama Commission on Higher Education and the Alabama Department of Postsecondary Education. Centralizing the review process would create a more efficient system to prevent these institutions from setting up. This collaborative initiative of the two state agencies mirrors efforts by other states across the country to close their borders to such operations. However, legislation would be required to address the authorization and consolidation of the licensure and review processes. The full intent of streamlining the process is not to cut out business

incubators, small businesses or entrepreneurs. But, if the seller is offering a degree or certification, they need to be subject to review.

According to an article in The New Republic, with the increasing importance of credentials for professional advancement and the ease of Internet access, the nation's 2,000-plus mills have become a \$500 million per year business. That spells a growing number of people performing jobs for which they are untrained and unqualified. A 2004 Government Accountability Office (GAO) report found 463 federal employees alone with degrees from three mills, including 28 senior-level employees at, among other places, Homeland Security and the National Nuclear Security Administration. The Commission has a link on the website explaining diploma mills and ways to recognize them. That information may be obtained at www.ache.state.al.us with a link to Colleges and Universities. Additional facts may be found through the U.S. Department of Education. Exercise your right as a consumer to get answers before making a commitment on what could turn out to be a bad investment of time and money.

Governor Riley, Lieutenant Governor Folsom, and Speaker of the House Hammett should take an active role in protecting Alabama citizens from what Ms. Gunter describes as diploma mills, and I believe that they will do so. Because it appears legislation is needed and the Legislature is in session, the time to act is now. If you agree that Alabama citizens need protection, contact these officials and ask for their support.

VEHICLES FAIL TO PASS NECK INJURY TEST

Head restraints in several passenger vehicles provided marginal or poor protection against neck injuries and whiplash, according to a report by the Insurance Institute for Highway Safety, which as you know is a safety group. Only 22 of 75 vehicles tested in a simulated rear crash at 20 miles per hour received the top score of good from the Institute. Several 2007 vehicles got the lowest score of poor in the tests. Those vehicles include: Acura TSX; some versions of the BMW 5 Series; Buick Lacrosse and Lucerne; Cadillac CTS, STS and DTS; Chevrolet Aveo, Pontiac Grand Prix, Honda Accord and Fit, Hyundai Accent, Infiniti M35, Jaguar X-Type, Kia Rio, Mitsubishi Galant, Toyota Avalon, Toyota Corolla, and the Suzuki Forenza and Reno.

The Institute estimates that neck injuries account for 2 million insurance claims annually, costing at least \$8.5 billion. Among the top vehicles for head protection, according to the Institute's testing, were the Audi A4, A6 and S4, Chevrolet Cobalt, Ford Five Hundred and Mercury Montego, Hyundai Sonata, Jaguar S-Type, Kia Optima, Mercedes E-Class, Nissan Sentra and Versa, Saab 9-3, Subaru Impreza, Outback and Legacy; Volvo S40, S60, S80; the Honda Civic 2-door and 4-door versions, and some versions of the Volkswagen New Beetle. Concerning the public's understanding of head rests, Adrian Lund, the Institute's president, observed:

People think of head restraints as head rests, but they're not. They're important safety features. You're more likely to need the protection of a good head restraint than the other safety devices in your vehicle because rear-end crashes are so common.

The vehicles were tested on a crash simulation sled, replicating the forces in a stationary vehicle that is struck in the

rear by a similar vehicle at 20 mph. Vehicles got a higher rating if the head restraint contacted the dummy's head quickly and the forces on the dummy's neck and the acceleration of the torso were low. The tests also consider the height of the restraint and its horizontal distance behind the back of the head of an average-size man. The Institute says a head restraint, which are a part of an integrated approach to occupant protection, should extend at least as high as the top of the ears of the tallest motorist and be placed close to the back of the head so the restraint can support it early in a rear-end crash. Models that received poor or marginal scores for the restraint design were given poor overall marks because they could not be positioned to protect many motorists.

Source: *Insurance Journal*

PUBLIC CITIZEN QUESTIONS SETTLEMENT OF CLASS-ACTION LAWSUIT BY CARFAX

Public Citizen has filed objections to a proposed nationwide settlement of a class-action lawsuit against Carfax, a company that sells history reports for used cars. The lawsuit, filed in Ohio, alleges that consumers are being deceived by Carfax's claim that its vehicle history reports are based on searches of its nationwide database, when in fact the database does not include police accident data from 22 states and the District of Columbia. The objections to the settlement were filed on behalf of 17 individual class members and the nonprofit Center for Auto Safety.

Although the complaint asked the court to award damages to Carfax customers and to require Carfax to disclose the specific limitations of its database, it appears that the proposed settlement would do neither. Instead, Public Citizen believes it would primarily benefit Carfax, which would obtain a release from all similar claims by all former customers nationwide. The settlement defines the class of consumers bound

by its terms to include anyone who purchased a Carfax vehicle history report before October 27, 2006. But, individual notice of the proposed settlement was sent only by e-mail and only to customers who bought Carfax reports during the one year preceding the settlement. As a result, it appears the majority of class members got no notice of the settlement.

Public Citizen takes the position that "if the settlement is approved, class members who know about the settlement will receive coupons that are worthless to most of them." The settlement allows class members to choose between a coupon for another Carfax report or a coupon for \$20 off a car inspection by the company SGS SA. The report coupons expire in two or three years, while the inspection coupons expire in six months, rendering them useless to any class member who is not buying a used car during those time periods. Clarence Ditlow, executive director of the Center for Auto Safety, has voiced his strong opposition to the settlement. A hearing on the motion for approval of the settlement was scheduled for May 11th in Warren, Ohio.

Source: Public Citizen

RADIOSHACK SUED OVER TEXAS ID THEFT LAW

The Texas Attorney General has filed a civil suit against RadioShack Corp. The Attorney General's office alleged that the electronics retailer exposed consumers to potential identity theft by dumping data such as addresses and credit-card numbers in a trash bin behind one of its stores. The civil suit, filed in San Patricio County, Texas, accuses the company of violating the state's 2005 Identity Theft Enforcement and Protection Act, which requires businesses to protect consumer records that contain sensitive information. RadioShack is based in Fort Worth, Texas. According to the complaint, which is

posted on the state attorney general's Web site, "thousands" of records containing customer names, addresses, telephone numbers, and other data were found in a trash can in an alley behind a RadioShack store located in Portland, Texas, in March 2007.

It is said that RadioShack "failed to safeguard the information by shredding, erasing or other means, to make it unreadable or undecipherable before disposing of its business records." The lawsuit seeks a permanent injunction, civil penalties, and other relief. The Texas law allows the attorney general's office to seek up to \$50,000 per violation, the department said. The suit marks the latest action that raises concerns about identity-theft risks in the retail sector.

Source: Reuters

DO NOT CALL LIST GREW BY 25 MILLION LAST YEAR

Most folks are sick and tired of marketing calls that normally come in the hours between 5 and 8 p.m. That results in more Americans signing up for the federal government's Do Not Call List. The Federal Trade Commission says almost 25 million phone numbers were added during the last fiscal year. That is an increase of 23% from the year before. As of September 2006, 132 million numbers had been registered. Consumers can add their numbers to the list, created after Congress passed legislation in 2003, through a government Web site, www.donotcall.gov, or by calling a toll-free number.

Source: Associated Press

FDA WAS AWARE OF DANGERS TO FOOD

I was shocked to learn that the Food and Drug Administration had known for years about contamination problems at a Georgia peanut butter plant and on California spinach farms that led to disease outbreaks that killed three

people, sickened hundreds, and forced one of the biggest product recalls in U.S. history. Apparently, the FDA took only limited steps to address the problems and relied on producers to police themselves. Congressional critics and consumer advocates said both episodes show that the agency is incapable of adequately protecting the safety of the food supply. FDA officials conceded that the agency's system needs to be overhauled to meet today's demands. Interestingly, however, they contend that the agency couldn't have done anything to prevent either contamination episode. Congress must take immediate action to correct the situation that exists at the FDA. Any corrective action must include proper funding of the agency.

Source: Washington Post

XX. RECALLS UPDATE

Again, this month we will list some of the more significant product recalls that have come to our attention. The following are by no means all of the recalls that have taken place recently:

FORD RECALLS 527,000 ESCAPE SUVs

Ford is recalling 527,000 Escape sport-utility vehicles because of a problem in the antilock braking system that could cause fires, the company said Tuesday. Missing or incorrectly installed wiring harness seals on the Escape's antilock brake connector could allow water and other contaminants such as brake fluid or road salt to enter the ABS connector causing corrosion. The corrosion, in turn, could "lead to an illuminated ABS warning indicator, an open fuse, and in some rare instances smoking, melting or burning of the electrical ABS connector," the company said in a state-

ment. The recall affects 444,880 Escapes from the 2001-2004 model years in the U.S., as well as 82,000 Escapes in Canada, Mexico and Europe. The hybrid version of the Escape wasn't included in the recall, although the Mazda Tribute, which is essentially a twin of the Ford Escape, is being included.

Ford says there have been no reported accidents or injuries. The National Highway Traffic Safety Administration has been investigating the issue. Ford, which competes with DaimlerChrysler and GM, owns a controlling stake in Mazda. Under the recall, Ford dealers will inspect the antilock braking system for corrosion and replace it if necessary.

DYNACRAFT RECALLS BICYCLES DUE TO FRAME FAILURE

Dynacraft BSC Inc., of American Canyon, California, has recalled about 32,000 Triax PK7 and Vertical PK7 Bicycles. The bicycle frame can crack while in use, causing the rider to lose control and suffer injuries from a fall or collision. The firm has received two reports of bicycle frames cracking, resulting in minor injuries including scratches to the legs and feet. This recall involves Triax PK7 (model 8509-24) and Vertical PK7 (model 8596-71T) 20-inch aluminum cushion framed bicycles. The Triax model was manufactured between October 2005 and May 2006, and the Vertical model was manufactured between August 2004 and December 2004. The model numbers and manufacture dates are printed on a label affixed to the bicycle frame.

The bicycles were sold at Target stores nationwide from September 2004 through early February 2007

for about \$100. Consumers should stop riding these bicycles immediately and return them to the nearest Target store to receive a full refund, including applicable sales tax. For additional information, contact Dynacraft at (800) 551-0032 between 7 a.m. and 4 p.m. PT Monday through Friday, or visit the firm's Web site at www.dynacraft-bike.com. For additional information, you can contact Target at (800) 440-0680 between 7 a.m. and 6 p.m. CT Monday through Friday, or visit the firm's Web site at www.target.com.

POOL LADDERS

Above-ground pool ladders blamed for more than 120 injuries have been recalled. Importer Intex Recreation Corp. announced a recall of about 466,000 A-frame ladders sold with pools under the brand names Intex, Easy Set and Sand N Sun. The recall was initiated because the steps can be attached to the frame backward. If this happens, the steps can break while someone is climbing them. Intex has received 172 reports of steps breaking. They are aware of 127 instances of injuries, including cuts requiring up to 21 stitches, broken bones, back injuries, torn ligaments and sprained ankles. The recall only includes ladders with A-frame shapes that have two connected pieces of metal forming each leg of the ladder's base. Blue plastic steps connect each side of the A-frame. If a ladder has an A-frame shape, but each leg of the base is made from a single piece of metal, with no connectors, it is not included. Likewise, if a ladder has connectors but included a 300-pound weight limit on the warning label, it is not part of the recall. The ladders came in a

variety of sizes and were sold at Wal-Mart, Sam's Club, Target, and other stores around the country between February 2006 and February 2007. To learn more about the recall and arrange for a free replacement ladder, call 800-549-8829.

DOLLS RECALLED

About 3,500 "Lovely Baby" and "Happy Baby" dolls, imported and sold by OKK Trading Inc., have been recalled. The dolls contain small parts, which pose a choking risk. All of the dolls came in clear plastic bags, sealed at the top with "Lovely Baby" or "Happy Baby" written on a cardboard label. The dolls came in a variety of sizes, and some came inside baskets with baby bottles. Some of the dolls sing when pushed in the stomach. The dolls were sold at Dollar stores around the country between September and October 2006. For a refund, return the dolls to the place of purchase. For more information call 877-655-8697 or visit www.okk-trading.com or www.cpsc.gov.

LITTLE TREE WOODEN CARTS RECALLED

About 18,500 Little Tree wooden activity carts, imported by Target, have been recalled because the hubcaps on the cart's wheels can detach and pose a choking risk. The company has received seven reports of hubcaps falling off of the wheels. The multicolored carts have orange seats with a wooden tray in front. One side is painted with apple trees, a fence and flowers, with a wooden sheep, dog and horse stuck to the wood. The other side has a board where children can place wooden magnets. The carts were sold at Target stores around the country between July 2006 and

March 2007 and on Target's Web site between October 2006 and February 2007. For a refund, return the carts to a Target store. For more information, visit www.target.com or www.cpsc.gov.

BRACELETS

About 4 million Groovy Grabber children's bracelets, manufactured by A&A Global Industries, have been recalled because the paint on the metallic part of the bands contains high levels of lead, which is toxic for children and can cause adverse health effects if ingested. The flexible bracelets are made from metal bands wrapped in plastic covers that are decorated with a variety of colors and designs. The designs include smiley faces, Chinese symbols, dogs, cats, aliens, checker boards, and flames. They were sold at vending machines in department, grocery, and discount stores, as well as in shopping malls around the country, between November 2005 and March 2007.

KEY CHAINS

About 396,000 metal key chains, imported by Dollar General Merchandising, Inc., have been recalled because they too contain high levels of lead. The recall includes three styles of key chain: A flip flop, a single letter, and dangling charms. The flip flop chains came in purple, yellow, and aqua blue, with a flower on top of the flip flop. The letter key chains have a single, silver English letter. The dangling charms key chains feature small objects, including a cross, flower, shamrock, and heart, hanging from a silver chain. The packaging for all three styles has "Key Chain" and "Dollar

General \$1.25" printed on the front. The key chains were sold at Dollar General stores around the country between December 2005 and January 2007.

PUZZLE RECALL

Small World Toys is recalling some 78,500 puzzles in conjunction with the Consumer Product Safety Commission. The "Sounds on the Farm" and "Sounds on the Go" puzzles have knobs on the pieces that can come off and cause a choking hazard. The toys were sold at stores from June 2003 through February of 2007. Consumers can visit www.smallworldtoys.com and click on "recalls" for information to get a free replacement.

CONTAMINATION PROMPTS RECALL OF LISTERINE AGENT COOL BLUE

Johnson & Johnson recalled a recently launched Listerine plaque-detecting rinse marketed primarily for use by children after testing revealed contamination by microorganisms. The company's McNeil-PPC Inc. unit recalled all 4 million bottles of Glacier Mint and Bubble Blast flavors of Listerine Agent Cool Blue plaque-detecting rinse, a spokeswoman said Wednesday. The recall covers all lots sold or distributed since the product's launch last year. The recall does not include any other Listerine products, including traditional versions that contain alcohol. Agent Cool Blue is alcohol-free. The company says that product testing showed contamination by microorganisms despite the use of preservatives. There have been no reports of consumer health problems associated with the contamination, according to the company.

The company says the risk of illness is low, except for individuals with weakened or suppressed immune systems. Consumers should stop using and instead properly discard the product. The company is offering full refunds. For more information, call 888-222-0249 or visit www.agentcoolblue.com/.

TOY MAGNETIC BUILDING SET RECALL EXPANDED

A recall of some toy magnetic building sets has been expanded. This came about after more children swallowed the tiny magnets in the set and were seriously injured. The expanded recall of the Magnetix building sets was announced by the Consumer Product Safety Commission. We wrote about the original recall in our May 2006 issue. You may recall that a little over a year ago, Mega Brands recalled 3.8 million of the sets. One child had died and four others were seriously injured after they swallowed the magnets. This new recall involves an additional 4 million sets. It now includes all of the Magnetix sets, except the ones sold in the past year with an age label of six and above and a warning label about the magnets. According to Mega Brands the newer sets better retain the magnets because of material and design changes. In total, the company and the government know of one death, one aspiration of a magnet, and 27 intestinal injuries. All but one of the cases required emergency surgery.

XXI. SPECIAL RECOGNITIONS

THE UNITY GAMES ARE GOOD FOR MONTGOMERY

We have experienced a great deal of division among people in Montgomery and actually in the entire country over the past several years. People have been divided on the basis of race, education, and so-called social standing, as well as other criteria that serve to divide rather than unify. The division has not been good for any of us. It's high time that we come together and put the problems of the past behind us.

I was one of the coaches selected for the Third Annual Unity Games played in Montgomery last month. Seniors from 12 different Montgomery high schools, both public and private, gathered at AUM's Physical Education Complex to compete in the games. The event, originally the brainchild of Belinda Forte, who works for Mayor Bobby Bright, has proved to be highly successful. The goal was to create a positive and collaborative effort within the community to bring about unity among people. The event consists of two basketball games, one for girls and the other for boys. The teams put together this year had some great athletes and the teams put on a good show for the crowd that came out on a "stormy night," in Montgomery.

The Unity Games event is very important because it brings together young men and women who come not only from different schools, but from different backgrounds. In fact, the biggest division in Montgomery concerns our school system. While Montgomery should have a very strong public school system because it's the capital city, it has become most apparent that we have let our public schools down and they have suffered as a result. On the other hand, we have built a tremendous private school system in Montgomery. Some

believe that neglecting the public schools is most unfortunate and I share that view. It's a condition that must be remedied before it's too late.

In any event, getting young people together—even late in their academic careers—for a common cause that is wholesome is a very good thing. I was most impressed with all of the participants in this year's games. We should be unified as a people in Montgomery—and for that matter nationwide—and not remain divided as we have allowed ourselves to become. The theme of the Unity Games should be carried over into our everyday lives.

COMMENTS CONCERNING A SPECIAL NEED IN ALABAMA

There are many children in Alabama who for a number of reasons have special needs. Many of these needs must necessarily be met by our system of public education. The State Board of Education will be considering some proposals soon that need to be addressed. At our request, Dr. Kinta Parker, who is a clinical psychologist and a mother from Birmingham, wrote the following piece for this issue. Hopefully, it will be helpful to our readers since it tells a story that needs to be told and explains the need very well.

Our son weighed four pounds when my husband and I adopted him. This was him in his beefed-up state—he was born in the second trimester at only 24 ounces. Now 11 years old, my tall, otherwise healthy son has Asperger's Syndrome, a form of autism.

It's often said that Asperger's is a "mild" form of autism. This is not remotely true. Yes, a diagnosis of Asperger's requires that the child have at least normal intelligence and no major delays in language. But there is nothing mild about

the challenges facing my son. He has the reading skills of a high school student, the size of a fifth grader, and the social understanding and interpersonal skills of a second grader.

My son is creative, affectionate and smart. For fun, he designs buildings using professional design software. He has memorized more geography than I will ever know. He cares deeply about all sorts of animals.

On the other hand, many situations are too stimulating or emotionally complex for him. The nature of autism is such that he cannot process information about other people, social situations or emotional states like typical children. We can rarely send him to Sunday school, and never to group sports. When he is overwhelmed, he slaps or pinches himself, or may shriek in frustration.

The heroes in our story are the administrative and special education staff in our school. They've gone above and beyond to understand our complex child, and to meet his needs in a way that prepares him for the next step in his journey. Our son leaves his classroom several times a day for special education services to help with fine motor control, social skills training, speech and other areas of difficulty for him. Other services are provided to him within his regular 5th grade class. All teachers involved in his care, special ed or regular ed, have had special training in Asperger's syndrome and other forms of autism.

Special education is, fundamentally, about providing specialized instruction and services to children with disabilities to ensure that their academic, developmental, and

functional needs are met. And why should this matter to most people?

Many children with a disabling condition, given the proper services early and diligently, go on hold jobs, pay taxes and obey the law. We know that children who have the same conditions but who are not given those services are more likely to end up failing in school and not achieving independence. Studies of the homeless and incarcerated show that many had identifiable, often treatable, conditions but were not provided services when it could have helped.

In December 2004, the Individuals with Disabilities Education Act (IDEA) was reauthorized. The IDEA is our nation's special education law, originally enacted in 1975 to make sure that children with disabilities can have a free, appropriate public education just like other children.

Alabama is presently revising its regulatory laws in order to be compatible with the federal statute. This gives Alabama the opportunity to reflect on how it intends to support local school and parental efforts to ensure that students with disabilities leave school ready to lead productive and independent lives.

I have concerns about this process. Many of the changes under IDEA 2004 have the effect of weakening existing protections for children within the special education system.

I would urge the State to carefully review the changes being considered. One provision restricts access of parents to the child's educational record, making it harder for parents to monitor services and progress, and collaborate

effectively with local schools. Yet other provisions remove the previous time limitations for the school to respond to a parent's request for a special education meeting, and make it easier for schools to suspend children for behaviors that result from their disabilities.

The proposed revisions to Alabama's regulations are still just that—proposals. There is yet time for the public to have input and to require that these vulnerable citizens in our society be treated with dignity, wisdom, and hope.

The opportunity for public comment ended on April 23rd. However, you can still have input into this process by contacting members of the State Board of Education, including Governor Riley.

Dr. Kinta Parker, who is a clinical psychologist and mother of a 5th grade student, can be reached at kmparker@mindspring.com. I really appreciate her taking the time to write this piece for us.

ANOTHER ALABAMA LEGEND DEPARTS

When Ray Bass, former state highway director and chief engineer of the Alabama Transportation Department, died on March 22nd, Alabama lost another living legend. Anybody who has kept up with Alabama politics over the past 50 years has heard of Ray Bass. Ray served as highway director during three of former Governor George C. Wallace's four terms, in 1971-1979 and 1983-1987. I believe that Ray is the only person to serve consecutive terms as highway director. That position has always been a hot bed of political activity. Ray, who served as director longer than anyone else in Alabama history, retired on June 1, 2005. He was ALDOT's chief engineer at the time, and he had held that position since 1995.

Among projects developed during

Ray's service as director are the George C. Wallace Tunnel in Mobile, Mobile Bay Crossing, Mobile Delta Crossing, Interstate 459 in Birmingham, I-565 spur connector in Huntsville, Warrior Bridge in Tuscaloosa, and the Tennessee River Bridge in Guntersville. I have heard Ray say on many occasions that "every public road is a political road." He was never reluctant to say that "it's no secret road decisions are always determined by whether local politicians have supported the Administration in power at the time." I know that when George Wallace was governor, that was the rule 100% of the time. Ray was the scorekeeper on that subject and everybody knew it.

I didn't always agree with Ray's political views. But, I can say without reservation that he was man with deep-rooted convictions and a man who always kept his word, regardless of political pressures or consequences. You never had to worry about where Ray stood on an issue because he wouldn't hesitate to let you know. I can also say that Ray Bass was my longtime friend. Our prayers go out to his wife, Clara, and to Ray's entire family.

ALABAMA APPLESEED FOUNDATION DOES GOOD WORK

Roman Shaul, a shareholder in the firm, is involved with a number of civic and charity organizations. He presently serves on the Board of Directors for the Alabama Appleseed Foundation. The Appleseed Foundation is a non-partisan, multi-issue advocacy organization that seeks to identify root causes of injustice and inequality. The organization seeks to craft practical and lasting solutions through legal advocacy, community involvement, and policy expertise. The Alabama Appleseed Foundation is one of 18 independent Appleseed centers around the country. Each center has its own board of directors and sets its own agenda. The Alabama

chapter was created in 1999 and has been functioning since that date.

The organizing Board consisted of a number of prominent and well-known Alabamians, including former Governor Albert P. Brewer, J. Mason Davis, former Chief Justice C.C. Tolbert, Jr., former Supreme Court Justice Janie L. Shores, and Dean Kenneth C. Randall of the University of Alabama School of Law. Alabama Appleseed receives tremendous recognition from across all political lines, including support from both the business community and the trial lawyer community. Alabama Appleseed's current projects include the passage of a bipartisan landlord/tenant law; increased assistance to small businesses concerning their employees access to health insurance; looking at ways to reduce the abuse and burden of predatory lending on Alabama's poor; and trying to restore independence and integrity through non-partisan judicial elections or through merit selection.

XXII. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

Russ Abney

Russell T. Abney is a new lawyer with the firm, having joined us a few weeks back. Russ received his law degree with honors from the University of Georgia School of Law. Russ started his legal career in Texas in 1989 and spent the first eight years of his legal career defending insurance companies, contractors, and manufacturers. During this period, Russ published many articles, speeches, and two books on Texas insurance law and the use of technology in litigation. His defense training provided excellent insight on how large corporations and their insurers evaluate, manage, and resolve significant disputes. After becoming a partner in a

Houston defense firm, Russ decided that his calling was not to represent large corporations.

In 1998, Russ began representing individuals who had been injured or damaged by Corporate America. In September of 2002, Russ joined the Watts Law Firm, which is an excellent firm, continuing to represent individuals harmed by defective drugs and vehicles. During his legal career, Russ developed a great deal of expertise in pharmaceutical and medical devices litigation. Russ is licensed to practice in the state courts of Georgia and Texas, the Central District of Georgia, all federal courts in Texas and the United States Court of Appeals for the Fifth Circuit. Additionally, because his practice has been national in scope, Russ has been admitted to practice before the courts of numerous states for specific cases.

Russ, who will be in our Mass Torts Section, will be working out of Atlanta, Georgia. Russ is married to Aileen Nakamura, a native of Japan, and they have 2 young daughters, Mika Keili and Saya Anne. We are fortunate to have Russ with us and believe that he will be an asset to the firm and to our clients.

David Byrne

After serving as a Deputy Attorney General for the State of Alabama and as a law clerk to U.S. District Judge Robert Varner and Alabama Court of Criminal Appeals Judge John M. Patterson, David Byrne entered the private practice of law as a member of the firm of Beck & Byrne, P.C. David's practice included consumer fraud litigation, business litigation, personal injury litigation, and state and federal criminal litigation. He came to our firm in 2001 and is now a shareholder in the firm's Toxic Torts Section. Today, David is focused primarily on commercial and environmental litigation.

David is listed in the Best Lawyers Consumer Guide under the Personal Injury Law and Criminal Defense practice sections. He has assisted clients in

obtaining multi-million dollar settlements or verdicts in the following types of cases: environmental and toxic injury cases; food-product franchise litigation; Federal Tort Claims Act cases; accounting malpractice litigation; motor vehicle franchise disputes; consumer fraud class actions; funeral services industry cases; premises liability claims; insurance agent contract disputes; and defective product litigation. He was the lead lawyer in the Continental Carbon case mentioned in last month's issue of the Report, which resulted in a \$20 million verdict in federal court.

David has been married to his wife Betty Bobbitt for fourteen years, and they have two children. The family attends Young Meadows Presbyterian Church in Montgomery, where David serves as a Deacon. He currently serves as Vice-President of the Montgomery County Trial Lawyers Association, and is on the Board of Governors for the Alabama Trial Lawyers Association. David, who is one of the outstanding young lawyers in the state, does an excellent job in a most complex area of law. We are fortunate to have him with the firm.

Clint Carter

Clint Carter, one of the lawyers in our Consumer Fraud Section, represents individuals and business plaintiffs in complex litigation throughout the country. He is currently involved in complex business litigation cases involving pharmaceutical pricing, as well as the representation of Medicaid agencies in several states involving average wholesale price litigation. Clint is also involved in the representation of state entities and their health and insurance plans in litigation against the pharmacy benefits management industry.

Clint has additional areas of practice in insurance fraud, consumer rights, and bad faith litigation. He has been involved in several significant settlements on behalf of individual policy-

holders and also businesses in cases against the insurance industry. Clint has spoken at legal seminars on a wide range of topics, including the trial of insurance fraud cases. Clint is married to the former Elizabeth K. Brannen of Frostproof, Florida, and they have two children: Brannen Kay, 5 years old, and Smith Pierson, 2 years old. Elizabeth is a lawyer with Hill, Hill, Carter, Franco, Cole & Black of Montgomery. The Carter family attends church at St. John's Episcopal Church in Montgomery. Clint does excellent work for his clients and is recognized in his area of practice as being on the cutting edge of that type of litigation. We are fortunate to have him with the firm.

Kathy Gunn

Kathy Gunn, who has been with the firm for a little over 6 years, is a receptionist in the building that houses our Mass Torts Section. Kathy is one of four receptionists who operate the firm's very busy multi-line switchboard. She has a most difficult job because of the tremendous number of daily contacts in her section. Kathy and her husband, Scott, have been happily married for 21 years and have four children. Anna & Rachel are 20-year-old fraternal twins; Anna is a full-time student at Auburn University, and Rachel, who works full-time at Colonial Bank, is also a full-time student at Troy University Montgomery. Son Jake will graduate this month from Stanhope Elmore High School and youngest daughter Abbie has been accepted to Booker T. Washington Magnet School for her 11th grade year. Kathy and Scott are active in the music ministry at Harvest Family Church. Kathy is a most valuable employee who does very good work and we are most fortunate to have her with us.

Elizabeth Kidd

Elizabeth Kidd has been with the firm for almost twelve years as a secretary for Julia Beasley in the Personal Injury Section. She has been involved in the

work-up of a tremendous number of important cases. Elizabeth is excellent with people, very organized, and dedicated to helping best represent our clients and their interests. She also helps our law firm with many charitable causes and events.

Elizabeth has two children. Samuel is an 11th grader at Prattville High School, who has a passion for cars. He is skilled in repairing and accessorizing vehicles. Hope, who received her degree in broadcast journalism from Troy University, is now living in Mobile. Hope is getting her masters in Turf Management and may return to the golf course business. She is engaged to be married in June. Elizabeth is a dedicated employee who works very hard and does exceptional work, is a huge asset to this firm.

Kwanza White

Kwanza White, an Opelika native, has been with the firm for five years. She is the receptionist for the 272 Commerce Street building and answers incoming calls from a switchboard and greets visitors as they come in and out of the building. Kwanza started as a relief receptionist, helping out with lunches, breaks, and vacations, before she became the fulltime receptionist at her building in May 2003.

As mentioned above, a receptionist's job at the firm is most difficult. It takes a special sort of person to be able to handle the activity and stress that are a part of a very busy job. Kwanza received her Bachelor of Arts in Liberal Arts from Auburn University Montgomery in 1999. She and her husband, James, currently reside in Montgomery with their 4-year-old daughter, Alexandra. Kwanza does an outstanding job for the firm, and we are fortunate to have her with us.

FIRM SUPPORTS CYSTIC FIBROSIS FOUNDATION

Our firm takes pride in supporting many worthwhile charitable organiza-

tions. One such organization is the Cystic Fibrosis Foundation. Cystic fibrosis (CF) is a life-threatening genetic disease that affects the lungs and digestive system. More than 10 million Americans are symptomless carriers of the defective CF gene. Much progress has been made toward finding a cure for CF, but, the CF Foundation's work is far from over, as precious young lives continue to be lost to this disease.

On April 22, 2007 several employees from our firm attended the Great Strides walk at the Montgomery Zoo. Team Beasley Allen walked in honor of Mary Lindsey Hannahan. Mary Lindsey, who has fought CF for 12 years, is the niece of our Managing Shareholder, Tom Methvin. In preparation for the walk we did several fundraisers including Jeans for Genes. We designated Monday, April 16th as Beasley Allen's Cystic Fibrosis Foundation Casual Day. In exchange for a \$5 donation, employees were allowed to wear jeans to work. We were able to raise a significant amount of money to help support the vital research and care programs of the CF Foundation.

OUR SEMI-ANNUAL BLOOD DRIVE WAS HELD RECENTLY

Our firm held its semi-annual blood drive on April 26th in conjunction with LifeSouth Community Blood Center. As usual, the event attracted a good number of donors from the firm. All who participated received free cholesterol screening, which we believe is most important. LifeSouth is a primary blood supplier for Montgomery, Autauga, Elmore, and Crenshaw Counties. LifeSouth supplies 100% of the blood to Baptist Medical Center East; 99% to Jackson Hospital and 96% to Baptist Medical Center South. We are glad to have the opportunity to help them with their need for an adequate supply of blood.

XXIII. SOME CLOSING OBSERVATIONS

SOME GOOD ADVICE FROM THE DISTANT PAST

With so many bad things in this country being reported by the media on almost a daily basis, I thought it might be good to write something on a lighter note this month. While many of our younger readers may not even recognize the name “Will Rogers,” most have probably read some of his good advice. For the uninformed, I will tell them a little bit about this remarkable man. Many believe that the Oklahoma native may well have been the greatest political sage this country has ever known. He was first an Indian, a cowboy and then a national figure. Clearly, Will Rogers became a legend. Born in 1879 on a large ranch in the Cherokee Nation near what later would become Oologah, Oklahoma, he was taught by a freed slave how to use a lasso as a tool to work Texas Longhorn cattle on the family ranch. As he grew older, his roping skills developed and became so special that he was listed in the Guinness Book of Records for throwing three lassos at once. His hard-earned skills won him jobs trick roping in Wild West shows and on the vaudeville stages. It was there that he developed his real talent. Quickly, his folksy observations became more prized by audiences than his expert roping. Will Rogers became recognized as being a very informed and smart philosopher—telling the truth in very simple words so that everyone could understand.

Will Rogers, who had dropped out of school after the 10th grade, became a cowboy in a cattle drive. He was the star of Broadway and 71 movies of the 1920s and 1930s and a popular broadcaster, besides writing more than 4,000 syndicated newspaper columns and befriending presidents, senators and kings.

During his lifetime, I understand that Will Rogers traveled around the globe three times—meeting people, covering wars, talking about peace, and learning everything possible. He wrote six books and was the first big-time radio commentator. His opinions were sought by the leaders of the world. In spite of all his successes, from all accounts, Will Rogers remained a simple Oklahoma cowboy. Will Rogers would say frequently that he never met a man he didn't like. Not many folks in his day or mine could make that statement. Will Rogers, who said he belonged to no organized political party because he was a Democrat, always said there was something wrong with a person who didn't like a horse. Unfortunately, he was killed in a plane crash in 1935. The following comments by Will Rogers—good in the 1930s—are still good advice for us today:

- Good judgment comes from experience, and a lot of that comes from bad judgment.
- Never miss a good chance to shut up.
- If you find yourself in a hole, stop digging.
- If you're riding ahead of the herd, take a look back every now and then to make sure it's still there.
- Never slap a man who's chewing tobacco.
- Never kick a cow chip on a hot day.
- Letting a cat out of the bag is a whole lot easier than putting it back.

Maybe we need more folks like Will Rogers in this country today and especially in our nation's political arena. At least, if he were around today, Will Rogers would be a breath of fresh air.

ANOTHER BOGUS ATTACK ON THE AMERICAN CIVIL JUSTICE SYSTEM

The U.S. Chamber of Commerce released an updated “study” last month claiming to rank the best and worst

state legal systems in America. The purpose was supposedly to grade states as to whether they were good or bad for business. This is just another effort to convince people that our courts are bad and need reform. The facts, however, discredit the “study” and reveal how truly bad it was:

- **It Was Really A Corporate Lawyer Survey**—Instead of attempting to measure the effectiveness of the civil justice systems in each state, the Chamber instead commissioned a poll of senior corporate lawyers whose livelihood comes from defending large corporations sued by consumers or employees who have been injured or abused by corporations.
- **The Chamber's Own Pollster Discredits Polling Results**—Humphrey Taylor of Harris Interactive, the polling firm that conducted the survey for the Chamber, admits there is no way to measure fairness of the legal system in each state. According to the Copley News Service, “Humphrey Taylor of Harris Interactive said the survey is based on the individual responses of the [corporate] lawyers because there is no hard data that can be used to measure the perceived fairness of a state's legal system.”
- **The Corporate Lawyers Surveyed Knew Very Little About The States' Court Systems**—When questioned about the methodology of previous versions of the “study” that ranked West Virginia as 49th in the list of state legal systems, the Chamber's CEO, Thomas Donohue, and the pollster who conducted the survey, Humphrey Taylor of Harris Interactive, were forced to admit that less than 10 percent of the lawyers surveyed actually knew anything about West Virginia's courts.

The best example of how bogus the study is the ranking of the State of Alabama. While Alabama ranked 47th in

the “study,” the truth is business has never been better in the state. In fact, it has been very good for at least the past 10 years. Governor Bob Riley is the best witness on that subject. All you have to do is read the news accounts over the past 12 months of how good things are in Alabama for business and then decide how bad this so-called study really was. In Southern Business and Development’s “State of the Year Award,” Alabama and North Carolina tied for the second year in a row. Governor Riley was quoted in 2006 in *The Montgomery Advertiser* as saying the state “continues to be one of the nation’s leaders in job creation.” If you doubt how good things are for business in our state, I suggest you contact your local chamber of commerce and the Alabama Development Office and ask.

The U.S. Chamber of Commerce should be ashamed of its role in this charade—lying to the American people about the court systems in this country is pretty lowdown—and tells me that their agenda is one designed to protect corporate wrongdoers and hurt their victims. As with similar reports in the past, this particular Harris poll’s findings are unsubstantiated and a complete fabrication. Alabama is a great place to live and conduct business, and the state’s well-documented economic growth backs that up. Shame on Tom Donohoe who is nothing more than a tool of the tort reform movement.

BIASED STUDY FAVORS CORPORATIONS OVER CONSUMERS

Consumers have been on the short-end of the stick when it comes to media attention relating to the civil justice system over the past 10 to 15 years and the above mentioned study is a prime example of what the public has been subjected to. The media and the American people have been fed lots of anti-consumer propaganda that came directly from the bad guys in Corporate

America who were working hard to destroy the civil justice system. Few people on the side of the good guys ever saw fit to get involved and let the public know the truth. Ralph Cook, a Birmingham lawyer who currently serves as president of Alabama Trial Lawyers Association, wrote an op ed piece that appeared recently in the Birmingham News. He told the truth in response to some information had come from another so-called independent study. I believe Ralph sets out very well why the court system is so virtually important for people. He points out how misleading this study was that blasted the system. Ralph, a former justice on the Alabama Supreme Court who served with distinction on that court, has given me permission to include his writings in this issue.

I suppose it was in the spirit of April Fool’s Day that a “study” was released claiming civil justice attorneys and personal injury cases cost the United States \$865 billion a year; via a so-called “tort tax.” There is no such thing as a “tort tax,” and the “facts and figures” contained in the “study” are outrageous, misleading and downright false. Consumers take heed: It may be April, but don’t be fooled by the “study’s” claims. The truth is, civil justice attorneys are America’s guardians of justice, helping ordinary citizens without fame, money or power stand against big and powerful corporations. This makes society safer for everyone. For instance, consider the following:

- *Because of civil justice attorneys, our children sleep and play in greater safety, free from the threat of burns (or worse) from pajamas catching fire. Their toys and clothes are now safer and flame retardant. In addition, lead has been removed*

from paint forever, and just the other day, millions of key chains and “Groovy Grabber” children’s bracelets containing high amounts of lead were recalled. Clearly, there is still work to be done.

- *Because of civil justice attorneys, our family cars are safer. Airbags, seat belts and safer gas tank placement save lives every day. Were it not for the work of civil justice attorneys, the sale of dangerous vehicles still would be allowed.*
- *Prescriptions and over-the-counter medications are safer because of civil justice attorneys. By forcing big drug companies to be accountable for dangerous products, these goods have been kept off the shelves and out of our homes.*
- *Because of civil justice attorneys, fairness in the workplace has improved. Thanks to them, corporations can no longer discriminate on the basis of color, race, religion, sex or age. This alone has helped millions of Americans get the salaries and job levels for which they are qualified.*

Pacific Research Institute, the entity that released the “study,” is a think tank bankrolled by big corporations and the oil and insurance industries. It spends its time constructing phony reports, books and studies in an effort to erode the civil justice system. And who can blame it? Chipping away at the system that holds the “institute’s” parent companies accountable for their negligence is in the group’s best interest and might soon become its mission statement.

The “study” contains fuzzy math, unsubstantiated conclusions and numbers pulled out of thin air. The “tort tax” is a fabricated figure meant to scare American citizens into believing they are personally paying for lawsuits out of their pockets. The corporations found to be responsible for negligent products and practices have no desire to pay money to the people their goods or policies have harmed because doing so would affect their bottom line. Those corporations want to diminish their damages or shift the harm they cause to the injured and/or to the public through Social Security and other public-assistance programs. To that end, they will employ every means, including releasing misleading information about a tax that doesn’t exist.

We should scrutinize closely any claims that suggest when citizens seek adequate, fair and reasonable compensation for injuries and damages sustained, the result is a so-called “tort tax.” If wrongdoers are not held accountable for injuries and damages they inflict, you and I will become responsible, in the form of a real tax—public-assistance programs—and the wrongdoer, essentially, will get a tax subsidy.

Organizations like PRI are helping their parent corporations get filthy rich by backing away at the American civil justice system. If consumers who purchase the corporations’ goods do not have the right to hold them accountable for defective and unsafe products or practices, there would be no check or balance on the corporations. Regulatory laws, civil justice attorneys and the American civil justice system place people above profits and without those laws, big

corporations would have nothing to restrain them. Many of us bear witness to this lack of restraint in the form of incredibly high fuel prices and denied insurance claims to honest, hardworking individuals who pay sky-high rates for premiums. Look for more unfounded “studies” from PRI and others in the future that are just as ridiculous as the phony “tort tax.” Rumor has it that spokespeople being considered for future “studies” are the Easter Bunny, the Tooth Fairy and Santa Claus. Unlike the “tort tax,” at least their existence would add a little credibility to the “institute’s” claims.

*Ralph Cook
Birmingham News*

XXIV. SOME PARTING WORDS

We were trying the Thorne case referred to in the Capitol Comments Section when the news concerning the mass murders in Virginia broke. At first nobody could believe that a tragic event like this could occur on a college campus in this country. Since that time, all of us at the firm have been praying daily for the families of the innocent victims who were killed in the terrible tragedy that took place at Virginia Tech. It’s impossible for me to imagine how devastating this sad chapter in our country’s history has been for the families involved as well as for the friends of the victims. People all over the country felt this tragic event deeply regardless of whether they had ever even heard of Virginia Tech. On a positive note, the event may serve as a wake up call for all of us in this country. Clearly, there is a definite need for a spiritual revival in our nation—one which is long overdue—and hopefully, it may now

become a reality. If so, the lives tragically lost, would not have been lost in vain. But for the present, our first obligation is to pray for comfort, peace, and healing for the families who have lost loved ones.

All too often we are now witnessing tragic events in today’s society that would not have even been considered a remote possibility just a few decades back. I believe there has to be a cause for all of the senseless violence that affects our homes, our schools, and our workplaces. In fact, there are most likely several causes. One such cause may well be the messages of violence and the depictions of extremely violent scenes of a graphic nature in movies and on television that our citizens and especially young people, are being constantly bombarded with. The extreme shock approach is utilized even in television advertisements—where the more gross and vulgar they get—the more the producers and companies paying for the ads seem to like them. There are also video games on the market readily unavailable to our youth with violence and death as the central themes. We must deal with these massive problems without delay and we can’t depend on our political leaders to do the job for us. However, they must be involved because legislation at the national, state, and local levels will be needed. The courts will also be a necessary part of the process.

The availability of guns in this country with few real restrictions is also a major problem. I have grown up hunting and owning pistols, rifles, and shotguns, but I have never had any need for an assault rifle that holds 50 rounds or for an automatic handgun that will fire 25 rounds in rapid succession. I would like for some smart individual to explain to me why any person can buy such weapons with little difficulty. Maybe we should take a lesson from Great Britain and other nations where sensible gun control laws are in place

and where the number of persons killed in gun-related murders is relatively small. Hopefully, Congress and the state legislatures will see fit to address the gun control issue in a sensible manner. In my opinion, they must deal with this problem now and not let the powerful NRA dictate what happens.

However, I believe there is a greater need that exists today in the U.S. and that is, we are badly in need of a nationwide spiritual revival. All of us have a responsibility to help bring about that revival and work to restore morality and right-living to our culture. 2 Chronicles 7:14 gives God's ingredients for genuine revival:

If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then I will hear from heaven and will forgive their sins and will heal their land." There can be no spiritual revival unless thousands of individuals like you and me renew our focus on Jesus and live as He taught us to live in His Word.

We can no longer sit back and let our real family values and our true sense of right and morality drift away any further. It's high time that we reverse the current trends. In addition to our own commitments, I believe also that our churches must get actively involved

and be the leader in this badly needed movement that will hopefully curb—if not eliminate all together—the wave of violence that is sweeping our country.

The Virginia Tech incident brings to mind a question that always surfaces when a tragic event like that occurs and especially in a "religious" nation like ours, and that is: "why do bad things happen to good people?" Another question that follows and is put directly to Christians is "why would a loving God allow such awful things to happen?" Certainly, those questions are being asked today by many people. Frankly, there is no easy answer to either of these questions. Actually, we should distinguish between mere explanations and real answers when we deal with these issues.

First, it's reassuring in times like these for all of us to remember that God is still on His Throne, is in control of our lives and our destiny and offers to each of us, who will believe in Him and accept His Son as our Savior, eternal life. That truth is what allows us to deal with tragic events. We are never promised in the Bible that bad things won't happen in this world. There are evil folks who do real bad things and that is a stark reality. God certainly didn't cause what happened in Virginia. We can rest assured that God loved all of the victims and their families, and He understands their suffering. He suffered infinite pain

when He allowed His only Son, Jesus, to suffer on the cross and die that we might have the promise of eternal life with Him forever:

For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish but have everlasting life.

John 3:16

God never promised that our lives would be problem-free, but He did promise to be with us at all times, including times when bad things happen to us. Jesus himself felt love, compassion, and even sorrow. He was drawn like a magnet to those who were hurting. Jesus experienced pain and a violent death. The Virginia Tech families are still hurting and that will take a while to subside. In the meanwhile we must continue to pray for and support them in every way possible. Hopefully, even in their sorrow and grief, they know a time is coming when there will be no more suffering. In Heaven—with God—we will enjoy a paradise beyond our wildest imagination. To get a preview read, chapter 4 of Revelation. Ultimately, there will be no more crying, pain, sick or death. In fact, reading this final book in the Bible tells us who wins the battle in the end—and it's not Satan!

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