



THE
JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

JERNIGAN V. GENERAL MOTORS

I am pleased to report that the case of *Jernigan v. General Motors Corp.* was settled satisfactorily on April 16th. Young Jeffrey Jernigan was 12 years old when his life was dramatically changed forever on December 10, 1999 because of a defective automobile having been put on the highway by General Motors. This young child, who was a brilliant student with unlimited potential, suffered a severe brain injury that rendered him permanently impaired. Jeffrey's life care plan has a present value of over \$10 million. In other words, that's what it will cost today to fully fund the plan. The total cost over his life expectancy of almost 60 years will be tremendously high. The actual settlement amount, however, is confidential at General Motors' request. It has been a long, tough journey from the time this lawsuit was filed to a final resolution. Our objective was to make sure that Jeffrey was taken care of for the rest of his life. I will write more on the ramifications of this case and General Motors' wrongdoing under the Product Liability Update Section.

ALABAMA JUDICIAL BUILDING RENAMED

The Alabama Judicial Building is now officially named "The Heflin-Torbert Judicial Building." A resolution was passed by the Legislature to rename the building in honor of two former chief justices of the Alabama Supreme Court, Howell Heflin and C.C. "Bo" Torbert. Over the years, these two outstanding Alabamians have contributed greatly to their state. Howell was Chief Justice and later served as an outstanding U.S. Senator. Bo had a distinguished record in the Alabama Legislature before being elected Chief Justice. Alabama's judicial system has been recognized as one of the best in the country. The work of the two honorees was largely responsible for the creation of the system during the 1970s, and it is quite appropriate

that the State's judicial building be named in their honor. I am also pleased to say that each of these men has been a good friend of mine for a number of years.

NEW REVENUE FOR STATE GOVERNMENT NOT AN OPTION

A task force assembled by Governor Bob Riley to study rising health insurance costs for public employees held its first meeting on April 21st. It should not have come as a surprise when the chairman said new revenue for the State was not an option. The Governor told the health care insurance task force that he wanted its recommendations in two months. Obviously, that would be after the current session of the Legislature ends. The task force includes legislators, lobbyists and business people. Task force Chairman John McMahan, who is chairman of Ligon Industries in Birmingham, told the group: "It will not be the scope of this committee to talk about revenue." I am concerned that the mission of the task force is not broader. I would like to see a real in-depth look at tax reform and the need for additional revenues. We must face up to the State's fiscal problems and that should be the first priority, in my opinion.

EXXONMOBIL IS BOTH PROFITABLE AND POWERFUL

Those of us who have litigated against the powerful oil and gas industry were not surprised to learn that ExxonMobil Corp. was number 23 on the latest BusinessWeek 50 list of America's top-performing companies. ExxonMobil is one of the most powerful corporate entities in the world. In 2003, the world's largest oil company racked up record earnings of \$21.5 billion, up 91% from 2002, on revenue of \$246.7 billion. In addition, the energy giant posted industry-leading return on capital employed of 21% and cash flow from operations and asset sales in excess of \$30 billion, while returning a record \$11.5 billion to shareholders through dividend payments and share purchases.

The merger between Exxon and Mobil in 1999 made for a most powerful company. Since the merger, ExxonMobil has generated \$120 billion in cash. In the last five years, ExxonMobil has earned \$74 billion, representing the combined profits of nearly 400 of the 500 companies in the Standard & Poor's 500-stock index over the same period. ExxonMobil has developed tremendous political clout and is not bashful about using it. The company's bosses are accustomed to having politicians ask "how high" when ExxonMobil says "jump!" I suspect that the high gas prices that American citizens are currently paying are a good example of how effectively the top five oil companies – which includes ExxonMobil at the top of the list – use their political influence in Washington.

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THE EXXONMOBIL CASE

Jim Martin served with distinction as Commissioner for the Department of Conservation and Natural Resources under two Governors. The former Commissioner, who was a successful businessman, is very much familiar with the State's case against ExxonMobil. Mr. Martin wrote a letter to the Editor of the Birmingham News, which I hope each of you will read. It tells how the giant oil company set out to cheat the State of Alabama and almost got away with it. You can read the text of the letter by going to www.BeasleyAllen.com/news/exxon_letter_to_editor.htm.

GROCERY STORES SHOULD LABEL FOREIGN PRODUCE

Agriculture Commissioner Ron Sparks is hard at work on behalf of Alabama consumers. He is pushing a plan that would require labels designating the point of origin of fruits and vegetables grown outside the United States in Alabama grocery stores. Legislation mandating the labeling is moving slowly through the legislative process. Hopefully, a bill sponsored by Representative John Robinson (D-Scottsboro) will become law. However, the Alabama Retail Association and the Alabama Grocers Association have actively opposed the legislation.

Given that produce comes to stores in boxes and sacks showing the point of origin, it shouldn't be a big problem to transfer that information to the displays in the produce section. According to Commissioner Sparks, most grocery store chains operating in Alabama are already familiar with labeling because the chains have stores in Florida, which requires labeling. The labeling legislation offers merchants a variety of options for complying, ranging from labeling each piece of produce to simply putting a sign on the bin holding the produce. Stores that mislabeled produce would be subject to fines. I believe this legislation is needed and should be passed by the Legislature.

COMMISSIONER JOSEPH BORG ON THE ROAD

Joseph P. Borg, Director of the Alabama Securities Commission spoke at the United Nations Commission on International Trade Law in Vienna, Austria, on April 16th. Commissioner Borg proudly represented all State securities regulators and the great state of Alabama as participants in this international effort to build unity and cooperation in fighting crime. Presently, a wide variety of laws and policies in different countries often make it very difficult to track down criminals or laundered money that have left our borders. International crime affects Alabamians and citizens throughout the United States as people around the world can invest via the Internet from anywhere and at any time. As we have stated in previous issues, Alabama citizens have been victims to offshore Ponzi, foreign currency, pyramid and prime bank schemes. Cooperative information sharing programs, policy and laws to move towards greater enforcement and protection from fraud make sense and are needed. Commercial fraud doesn't recognize boundaries, and that's why it's important to have cooperation from the international community. It is highly appropriate that Joe Borg, who is a real credit to the State of Alabama and who has done a tremendous job for Alabama citizens, be made a part of this movement. I can't think of anybody I would rather have in this role.

REPORT ON ALGERIA LNG BLAST

The Mobile Register's April 14th edition carried another timely story concerning the January explosion of a liquefied natural gas facility in the African nation of Algeria. A newly released document provides important insights into the chain of events that led to the explosion. Several scientists who specialize in LNG research said the document indicates that a similar accident could occur at LNG plants such as those proposed for Mobile Bay and other locations in this country. The new document presented by Sonatrach, the owner of the destroyed LNG plant,

gives additional information concerning the cause of the explosion. Apparently, initial reports blaming a faulty steam boiler were inaccurate.

The Algerian explosion should be a warning signal for those who must make decisions concerning location of LNG facilities in this country. According to the Mobile Register article, it now appears that a large amount of liquid gas escaped from a pipe and formed a cloud of highly flammable and explosive vapor that hovered over the facility. The cloud exploded after coming into contact with a flame source. You will recall that 27 people were killed by the force of the blast at the facility in Algeria. Significantly, the fire burned for 8 hours. This report raises more concerns about the location of the LNG terminal in the State of Alabama or elsewhere for that matter. Thanks go out to the Mobile Register for staying on top of this matter.

II. LEGISLATIVE HAPPENINGS

AN UNHEALTHY IMPASSE

With the legislative session nearing the final days, it appears that a most serious impasse has developed that may result in making a bad fiscal situation facing our state, very much worse. At this writing, there were only 6 legislative days left. It is well-documented that without new revenues, there will be a tremendous shortfall in the general fund budget. One of the most serious fiscal problems deals with the funding of Alabama's Medicaid program. Under a law passed by the U.S. Congress last year, Medicaid coverage was significantly expanded. Due to this congressional mandate, many states, including Alabama, will have to come up with additional funding. As you probably know, Medicaid works on a 70-30 matching funds basis. This means that the federal government provides 70% of the funding, with the states being responsible for the remaining 30%. In

the event a state fails to come up with its 30% share, that state gets no federal funding. As I understand it, Alabama must come up with an additional \$180 million in new revenue for next year's budget to comply with the Medicaid formula. Obviously, if Medicaid is to be fully funded, then drastic cuts must be made in other state programs, unless new revenues are found.

The partisan stalemate, which has caused this session to be less than productive, shows no signs – at this writing – of being resolved. The reported rift between the Governor's office and the Legislature should be patched up if at all possible, for the good of all concerned. But, the obvious division that has developed between the Democratic and Republican members of the Legislature could also stand some remedial attention.

It appears that I may be one of the few folks in Alabama who believes our state needs a substantial amount of new revenues. I also believe that those tax measures should be permanent in nature and not another "Band-Aid effort." I am sure we also have a need for some accountability in government and in the public schools. However, passage of every single accountability bill won't solve the "fiscal mess" our state is in. The groups spending "big bucks" to kill any tax measures are not doing the State's citizens any favors. I hope some progress will have been made before this issue is received. If not, we are heading toward a major fiscal disaster, which will be bad for all Alabama citizens. The best Alabama citizens can hope for from this session is a stop-gap approach to the State's problems – with no real solutions having been found – and that's not good.

ALL ALABAMIANS SHOULD SUPPORT THE SUPREME COURT ELECTION BILL

Last month, we mentioned the Senate bill that, if passed, would have associate justices on the Alabama Supreme Court elected by districts rather than in statewide races. The bill was approved by the Senate Judiciary Committee and will go to the full Senate for a vote. If

passed by the full Senate and the House, the bill would assign the eight associate justice positions to the geographic regions designated for members of the state school board. The chief justice still would be elected statewide. The bill's sponsor, Senator Myron Penn (D-Union Springs), wants to make sure all regions of the State are represented on the court and to lower the costs of Supreme Court elections. In the last election cycle, candidates for the court spent an average of more than \$1 million.

Committee chairman Rodger Smitherman (D-Birmingham) said the bill also was crucial to ensuring that black candidates have access to the State's highest court. To my knowledge, there have been only three black justices, the late Oscar Adams, Ralph Cook, and John England. Each of these men served with distinction. It is regrettable that no black candidate has won statewide office without first being appointed to fill a vacancy. The Senate committee approved the bill 10-3 over objections from Senators who disagreed with having judges represent districts the way legislators do. Reports from the State House reveal that a number of powerful special interest groups oppose the bill. That makes me know for sure that passage of the bill would be a step in the right direction. The only change I would suggest is the addition of some type campaign finance reform, which is badly needed. Because a vote of the people is required, all Alabama citizens will have the right to express their opinion at the ballot box. I hope they will get that opportunity. However, it is getting pretty late in the session to pass any bill with strong opposition to it. If you believe this to be a good thing for Alabama citizens, let your senators know how you feel.

COMMITTEE VOTES DOWN JUDICIAL BILL

The House Judiciary Committee has voted down a proposed bill that would have prevented the Alabama Court of the Judiciary from removing judges from office. The bill would have allowed the Court of the Judiciary to suspend judges, but not remove them.

Representative Mark Gaines (R-Homewood), the sponsor of the bill, told committee members the power to remove judges should be limited to the Legislature. Committee members voted 7-6 to kill the bill. I had stated prior to the session that this was a bad bill, and I still believe that to be the case.

VETERANS HOMES CONTRACT DELAYED

Alabama's Board of Veteran Affairs appears to be catching flack from all corners concerning the operation of some state-run nursing homes. The Board was facing mounting criticism from veterans' families who believed that VA nursing homes perpetuate neglect and abuse. According to news reports, the Board found that the homes were understaffed. The facilities for veterans are currently operated by USA Healthcare, Inc., the Cullman-based company owned by Frank Brown. After making its findings, the Board took action that didn't set well with the Alabama Legislature. Last month, a legislative panel stalled efforts by the Board to change the operator of three state veterans homes. Members of the Legislature's Contract Review Committee criticized the notion of awarding a three-year \$70 million contract to Health Management Resources Inc., a South Carolina company, without first accepting public bids. The contract is for the care of about 400 residents of nursing homes in Bay Minette, Alexander City and Huntsville.

Representative Neal Morrison, D-Cullman, took the lead in committee, arguing that the Board should have looked more closely at renewing the existing contract with USA Healthcare. This company has operated the homes for the last five years and submitted a cheaper proposal than HMR to continue the services. But, because of the complaints relating to the level of care and especially the staffing levels provided at these facilities, the contract was not renewed.

The legislative panel reviews most state government contracts that are issued without seeking bids. Lawmakers cannot void a contract, but a single member can delay it for 45 days. The

full Legislature had adopted a resolution asking the Board to delay its decision on the contract for six months to give lawmakers a chance to examine the manner in which the contract was awarded. The existing contract with USA Healthcare expired May 1st, which is about three weeks before the 45-day hold period from the Contract Review Panel will expire. However, legislators may lift their holds on contracts at any point during those 45 days. Agreements reviewed by the Contract Review Committee must be signed by the governor in order to take effect.

James Jackson of Mobile, vice chairman of the Veterans Affairs Board, told the Associated Press that he believes the contract with the South Carolina company is in the best interest of the state's veterans. Jackson opposed the hold on the contract. The Legislature, the Board and the Governor all have the responsibility to make sure that the nursing homes serving our veterans are properly staffed and provide good care and attention to the residents. Anything less should not be tolerated. I hope the end result of all of this will be good for the veterans and their families.

ENVIRONMENTAL LEGISLATION

There have been a fairly good number of bills introduced in this session that, if passed, would affect our State's environment. As expected, one of the bills (Senate Bill 261) that was being pushed hard by Alfa was the new infamous "Alfa hog bill," which bears the title "The Alabama Family Farm Preservation Act." The Senate Judiciary Committee held a public hearing on this bill a few weeks ago. There was no vote taken at that time by the Committee. I hope the bill will die a natural death in committee. This is bad legislation, with a title that sounds good, but is designed to benefit primarily large hog farm operations. It does very little – if anything – for the overwhelming majority of farmers in Alabama. This is a prime example of how special interest groups can mislead even their own membership. The hog bill "smells to high heaven" and shouldn't have a

chance to pass during this session. The following items are a few things that you should be aware of:

- Another bill (House Bill 116), pushed by environmental groups, provides local tax abatement for brownfield development property that is voluntarily cleaned up by the owners. This bill should have been signed by the Governor by the time this issue is received. This is good legislation and the legislators should be commended for doing a "good thing" for our state.
- There is an effort to have the Legislature take a look at what our state government needs to do in order to improve the state's ability to protect the environment. HJR 23 (a House Joint Resolution), if passed, would create a joint interim committee to study ADEM and make recommendations for improvements. At this writing, the bill was still in the Senate Rules Committee and may stay there, according to my sources. In my opinion, passage of this resolution would be a step in the right direction. ADEM has a duty to protect the environment in our state. We should do everything possible to give this agency the tools necessary to do the job required of it.
- House Bill 126, if passed, would place a 10-cent per ton severance tax on natural materials such as granite, gravel, limestone, and other natural minerals. A good amendment by Representative Jeff McLaughlin was added to the bill in the House that provides for local approval of a quarry before a quarry could be started up in a county. At this writing, the bill had passed the House and was in the Senate. I am hopeful this bill will pass the Senate with the amendment attached. I believe there is another quarry bill in the Senate. Senate Bill 469, which is known as the Quarry Bill, was introduced by Senator Myron Penn. At this writing, the bill was in the Environmental and Natural Resources Committee.
There are a number of groups fighting to protect Alabama's environment. AlaLEAVs, one of such groups, does an excellent job with limited resources. If

you are interested in protecting our environment and proper usage of our state's natural resources, call Jeff Martin and let him know you want to help out. If you need additional information concerning the status of environmental legislation, Jeff Martin, Executive Director of AlaLEAVs, can be reached at 334-221-5882 or Post Office Box 1987, Montgomery, Alabama 36102.

CONSTITUTION REFORM IS STILL NEEDED

Advocates for rewriting Alabama's 1901 constitution have to be a little dismayed by the obvious lack of support for reform around the State. There certainly needs to be something to rekindle the effort. Some of those pushing reform believe a petition drive could bring about a constitutional convention with the issue being kept alive by the use of public forums. But, the Legislature would still have to approve a statewide referendum calling for the convention. A petition drive for a constitutional convention is currently being discussed by groups interested in bringing our state fully into the 21st Century. The petition and campus forums were a key topic at the state meeting in Birmingham recently. There seems to be growing consensus to start a petition movement. I am hopeful the reform movement is still alive. I believe we badly need to amend the 1901 constitution. I also realize there is not much public support for reform, which is difficult to understand.

The constitution reform movement slowed after voters defeated the effort to pass the tax and reform package last September. Subsequently, a key leader in the reform movement, University of Alabama journalism professor Bailey Thomson, died and that compounded the problem. Bailey's death was a great loss, not just to the reform movement, but for the state. He was an outstanding person and was totally dedicated to constitutional reform. Passage of a new constitution would be a proper manner in which to pay tribute to a man who worked hard for meaningful change in our state.

III. COURT WATCH

THE PRIMARY SEASON IS HERE

There will be three Supreme Court justices elected this year, as well as the Chief Judge of the Civil Court of Appeals. Sharon Yates, who has served two terms on the Civil Court of Appeals, and who now serves as Chief Judge, is seeking reelection. Sharon, who is running as a Democrat, has done an excellent job on this court and should have strong support from people from all walks of life. Frankly, I was surprised that she picked up any opposition. Apparently, doing a fair and impartial job on the court doesn't amount to much any more. If it did, Sharon would not have to worry about reelection. She has done an outstanding job and has been totally fair and impartial during her years on the court.

The most interesting thing about this year's election is the fact that most of the action in the spring elections will be in the Republican primary. In years past, the interest was in the Democratic primary. But, this year, a total of 8 Republican candidates are seeking 3 seats on the Alabama Supreme Court. In contrast, only 3 Democratic candidates are running for these 3 seats on the highest court in our state. I am not sure I understand fully why all the interest appears to be in the GOP primary this year. Maybe I will figure it all out during the next few weeks. In the meanwhile, if anybody has the answer, or can enlighten me, please feel free to let me hear from you.

JUDICIAL CANDIDATES SHOULDN'T HAVE AGENDAS

There has been a great deal said and written concerning our court system in Alabama. It was rather interesting that a recent survey indicated our judges weren't doing their jobs very well. Personally, I take issue with that finding. My only complaint with judges is when they come into their positions with an agenda of any kind. All any person should ask of a judicial candidate is a pledge of fairness and a willingness to

follow the well-established law in making decisions once they are elected. No candidate with an agenda should be elected to any judicial position and certainly not to a slot on an appellate court. I hope we don't elect folks with agendas in Alabama, but sometimes I have to wonder.

The Governor and Legislature could do the people of Alabama a great service if they would get together on some significant campaign finance reform that would apply to judicial races. That would solve most "agenda problems." There can be no justification for the tremendous sums of money that are spent on judicial races in Alabama – or in any state for that matter. Limits should be placed on the amounts of contributions, and political action committee donations should be prohibited. It's too late to expect any legislation this year. But, the political parties could join together and do something constructive on their own. The primary voting will take place on June 5th. It should be an interesting spring. It would be much better for Alabama citizens if we had some real limits on contributions to candidates and strict limits on what their campaigns could spend.

MANAGED-CARE LAW DOESN'T BRING FLOOD OF LAWSUITS

It is most interesting that the HMO and insurance industries had claimed that if lawsuits were allowed against HMOs, the numbers of such suits would go "through the roof." That argument was made in Texas a few years ago and is still being made today in Congress and state legislative bodies. A 1997 law made Texas the first state to make managed-care plans legally responsible in court for wrongdoing. Consumer advocates hailed it as an invaluable tool that would hold insurers accountable for their decisions. The HMOs and insurance companies warned that a deluge of litigation would send health care costs soaring. Seven years later, the effect of Texas' patients' bill of rights has been far less dramatic, with only a trickle of lawsuits there and in the nine states that followed Texas'

lead. The message in Texas was clear. If you wrongly refuse to cover patients' prescriptions, hospital stays or medical procedures, consumers harmed by those denials will have the state Legislature's go-ahead to sue.

That's a telling outcome for right-to-sue measures, which have proven so divisive that Congress' attempts at a nationwide patient-protection bill have stalled repeatedly – primarily because the powerful insurance industry has resisted provisions allowing litigation. Despite the dearth of lawsuits, Texas' overhauls – combined with economic pressure from employers and consumers – have transformed insurance coverage in the state. Since the law's passage, health maintenance organizations and preferred-provider organizations have become less stringent about controlling members' spending. For example, insurance companies in Texas rarely second-guess doctors' plans for their patients. But, before this bill was passed, most of the health plans in Texas were very strict about utilization review and how they oversee medical decisions. That has changed, and the result has been good for people.

In Texas there have been only about 50 lawsuits filed after the 1997 law was passed. Nationwide, litigation was a nonevent as well, with some states seeing no suits at all, according to a September 2003 study by researchers at the University of North Carolina and Wake Forest University.

Since the inception of Texas' law, health plans have argued that the state law is preempted by the federal Employee Retirement Income Security Act, which sets standards for private employers' pension and health plans. The HMOs have consistently pushed to move lawsuits to federal courts. After several conflicting rulings from lower courts, the U.S. Supreme Court will decide that issue as soon as this summer, in a pair of cases brought against Aetna and Cigna HealthCare of Texas.

IV. THE NATIONAL SCENE

LARGE CORPORATIONS SHOULD PAY THEIR FAIR SHARE OF TAXES

Having just written a check to the IRS, I am acutely aware of how painful the payment of taxes can be. Nevertheless, I consider paying taxes to be a duty that accompanies citizenship. Unfortunately, there is much unfairness in our system of taxation in this country. Some are simply not paying their fair share of taxes and some pay no taxes at all. During the boom years of the late 1990s, more than half of U.S. corporations paid no federal income taxes. Those that did were able to shelter much of their income, according to congressional accountants. A recent report by the General Accounting Office raises questions about whether the corporate income tax burden is too light and distributed unequally. It could undermine arguments that U.S. companies are overtaxed. Many observers believe too many companies are able to use loopholes to avoid paying their fair share. Senator Byron L. Dorgan (D-N.D.), a former state tax commissioner who requested the GAO study, stated: "This describes a problem in the corporate tax system in which a good many of these companies are avoiding any tax obligation at all. We've got a bad tax law that tells ordinary folks, 'You pay up,' and allows some of the largest enterprises to avoid paying."

U.S. government figures show that the share of tax receipts paid by corporations has been declining for decades. The GAO report showed that 61% of U.S. corporations paid no federal income taxes from 1996 through 2000, a period of rapid economic growth and rising corporate profits. The study was based on an Internal Revenue Service sampling of more than 2 million tax returns. An estimated 94% of U.S. corporations reported tax liabilities amounting to less than 5% of their total income in 2000. The corporate income tax rate is ostensibly 35%, but companies are able to reduce their effective

burden by claiming various deductions and credits. In some cases, deductions for losses incurred in other years can be taken. U.S. companies paid an average of \$11.88 in corporate taxes for every \$1,000 in gross receipts, the study said. About 38% of big companies (those with more than \$250 million in assets or \$50 million in revenue) paid no taxes during the five-year period. Foreign-owned firms fared better in some respects than did their U.S.-based competitors. The report found that 71% of foreign-controlled corporations paid no taxes on their U.S. income. About 90% had liabilities of less than 5% of their income.

The burden of the federal tax share is being shifted to the average worker in this country. This shift to the worker is at the expense of fairness in America. The percentage of federal tax collections paid by corporations has tumbled from a high of 39.8% in 1943 to a low of 7.4% last year. It ranged from 10% to 11% in 1996 to 2000, the period studied by the GAO. But since World War II, the share paid by individual income tax filers has remained relatively stable. It has ranged between 40% and 50%. We have all read about the aggressive marketing of shelters to corporations. This may well become a major issue in the presidential campaign. Corporate tax shelters cost the Treasury an estimated \$18 billion each year. Unfortunately, when corporations dodge the payment of taxes, the burden falls on the average American citizen to pick up the difference. Last year, corporations were paying just 13.7% of the federal tax bill. Individuals, on the other hand, were paying 86.3%, or almost \$800 billion. According to the Congressional Budget Office, corporate income taxes in 2002 contributed to less than one-tenth of overall federal budget revenues. I firmly believe that massive tax avoidance is simply wrong. All citizens – including corporate citizens – have an obligation to pay their fair share of taxes. It is grossly unfair to put an unreasonably harsh and unbalanced burden on working men and women in this country.

DEDICATED PUBLIC EMPLOYEES SHOULDN'T HAVE TO PAY A PRICE

Jack Spadaro is an engineer who has devoted his life to the safety of miners and the safety of people who live near mines. Until recently, he was head of the National Mine Health and Safety Academy, a branch of the Department of Labor, which trains mining inspectors. It went unnoticed last year when Mr. Spadaro lost his job. His termination came after Spadaro blew the whistle on what he called a "white-wash" by the Bush Administration of an investigation into a major environmental disaster. CBS News did a feature story on what has been described as a massive cover-up of an environmental disaster. Spadaro told CBS News:

I had never seen anything so corrupt and lawless in my entire career, what I saw regarding interference with a federal investigation of the most serious environmental disaster in the history of the Eastern United States. I've been in government since Richard Nixon. I've been through the Reagan Administration, Carter and Clinton. I've never seen anything like this.

The safety advocate believes the government is guilty of the cover-up of an investigation into a disaster 25 times the size of the Exxon Valdez spill. It happened in October of 2000, when 300 million gallons of coal slurry - thick pudding-like waste from mining operations - flooded land, polluted rivers and destroyed property in Eastern Kentucky and West Virginia. The slurry contained hazardous chemicals, including arsenic and mercury, and presented serious environmental hazards, according to reports.

Spadaro was second-in-command of the team investigating the accident. The slurry had been contained in an enormous reservoir, called an impoundment, which is owned by the Massey Energy Company. The heavy liquid broke through the bottom of the reservoir, flooded the abandoned coal mines below it and flowed out into the

streams. According to Spadaro, the investigators discovered the spill was more than an accident. He describes it as an accident waiting to happen. The slurry polluted 100 miles of stream, killing everything in the streams, all the way to the Ohio River.

During the investigation carried out by Spadaro and his colleagues, it came out that there had been a previous spill in 1994 at the same impoundment. The mining company claimed it had taken measures to make sure it wouldn't happen again, but an engineer working for the company said the problem had not been fixed. The company engineer said that both he and the company knew another spill was "virtually inevitable." Spadaro claims that a number of people in the company knew there would be another breakthrough. Clearly, it would have been expensive to find another site and it is Spadaro's contention the company was willing to take the risk.

The reason another massive spill is said to have been a certainty is because there was only a very thin layer of rock at the bottom of the reservoir. Apparently, the mining company had told the government that there was a solid coal barrier, at least 70 to 80 feet wide, between the mine workings and the bottom of the reservoir. Davitt McAteer, who was Spadaro's boss when the disaster happened and head of the federal Mine Safety and Health Administration (MSHA), told CBS News that his own regulators hadn't done their job. It was reported by CBS that MSHA was primed to cite the coal company for serious violations carrying large fines and possible criminal charges. Interestingly, that all changed when the Bush Administration took over and decided that the country needed more energy – and less regulation of energy companies. The investigation into Massey Energy, reportedly a generous contributor to the Republican Party, was abruptly cut short.

The new head of MSHA, Dave Lauriski, a Bush appointee, was a former mining industry mining executive. Interestingly, so are his top deputies. Spadaro claims that Lauriski insisted he sign a watered-down version of the report - a version that virtually let the

coal company and MSHA off the hook. Originally, Spadaro says his investigating team wanted to cite the company for eight violations. But in the end, Massey Energy was only cited for two violations, and had to pay approximately \$110,000 in fines. This was a slap on the corporate wrist for the fifth largest mining company in America. Since there are hundreds of slurry impoundments in the mountains of Appalachia, the potential for another spill is certainly there.

Spadaro had worked for mine safety over his entire career. So when he felt his new bosses were trying to sabotage the investigation by trying to get him to go along with a cover-up, he complained to the Labor Department's Inspector General. The Inspector General looked into the matter and released a report, saying: "None of the allegations brought forward by Mr. Spadaro were substantiated." The government says he was removed from his job primarily for abusing his authority, failing to follow procedures, and also for using his government credit card without authorization.

Residents of Appalachia, who were familiar with his record, demanded that Spadaro get his job back. I understand Spadaro is now back at work instead of being fired. Instead of termination, he was demoted, taking about a \$35,000 pay cut. Spadaro is also being transferred to the agency's Pittsburgh office, far from his family in West Virginia. Spadaro told CBS News that he plans to sue the government. The Office of Special Counsel for Whistleblower Protection has agreed to investigate whether Spadaro was a victim of retaliation by MSHA officials. I hope this story is not what happens when a career public servant wants to protect the environment and go after the polluters.

RELEASE OF ENERGY POLICY TASK FORCE DOCUMENTS ORDERED

Last month, a federal judge ordered the Bush Administration to release more documents related to a White House task force that met behind closed doors to develop a national energy policy.

Government watchdog groups, including Judicial Watch and the Sierra Club, have requested the records as part of an investigation into whether top energy company executives and lobbyists helped draft energy policies friendly to their industries during President Bush's first year in office. The Administration has maintained for some time that only government employees were members of the task force, which was disbanded in 2001. Judicial Watch alleges that former Enron Chairman Ken "Kenny Boy" Lay and energy lobbyists Mark Racicot, Haley Barbour (who is now Governor of Mississippi) and Thomas Kuhn may have participated in the task force.

The court's order covers documents that the Energy Department, Interior Department and other Federal agencies have failed to produce since a similar federal court order was issued two years ago. This latest order would cover some of the material that is the subject of a separate case now before the U. S. Supreme Court. That particular case involves documents that describe the inner workings of the Energy Task Force headed by Vice-President Dick Cheney. The powerful Vice-President, who many believe is really running the federal government with the able assistance of Karl Rove, was ordered to produce the documents. Cheney appealed that part of the dispute to the Supreme Court, which will hear oral argument on the case.

It will be very interesting to see how this case plays out. I believe very strongly that top energy company executives and lobbyists have had a "field day" with this Administration. The documents at issue in these lawsuits may demonstrate the degree of involvement that these individuals tied directly to the energy companies have had in the shaping of our nation's energy and environmental policies. No Administration in my lifetime has done a better job of taking care of their "corporate buddies" and especially those with connections to the oil industry. The fact that Ken Lay is still a free man could be considered as Exhibit "A" if I set out to prove this case.

V. CONGRESSIONAL UPDATE

AN ELECTION YEAR AGENDA

I don't expect anything of significance to happen in Washington until after the fall elections. Unfortunately, little good happens in Congress during an election year. With the sharp partisan division that exists at present, I don't expect this year to be any different. I hope this assessment will be wrong and some good consumer legislation will be enacted. I suspect the recent revelations concerning how the President and Vice-President bypassed Congress on their "secret" war plans will get a great deal of attention in coming weeks. If all reports are accurate, both Republicans and Democrats in Congress should be pretty upset. One thing is certain, however: so long as the special interest groups and their lobbyists call the shots, consumers won't see any relief in our nation's capitol for the rest of this year.

THE ASBESTOS BILL

As this issue was going to the printer, the asbestos bill had been debated in the U.S. Senate. I received a call just as I was putting the finishing touch on things, letting me know that an effort to pass the bill had failed. There weren't enough votes in the Senate to get a vote on the bill. It is possible that a reasonable compromise can be reached. If not, the present bill should be withdrawn. I hope the current version will not come back up, but when you consider the power of the groups pushing it, it may very well pop up again.

VI. CAMPAIGN FINANCE REFORM

PRESIDENTIAL CAMPAIGN SPENDING AT A RECORD PACE

I don't ever recall more "early spend-

ing" in a presidential race. It has caused many to forget that we haven't even had the nominating conventions. President Bush spent a record of nearly \$50 million in March. Of course, this hasn't put a dent in his campaign fortune. Bush raised \$26.2 million in March and about \$52.9 million for the quarter, setting a presidential campaign record for a three-month period, according to the campaign finance report filed on April 20th with the Federal Election Commission. The campaign of presumptive Democratic nominee Senator John Kerry raised about \$50 million for the quarter, a Democratic Party record. In all, Bush has taken in at least \$185.7 million and spent \$99 million since he "officially" began his re-election effort last May. Bush's March spending marks the most ever in one month by a presidential campaign. Nearly all of Bush's ad spending last month — about \$40.8 million — went to Maverick Media, an advertising firm run by Bush media adviser Mark McKinnon. The campaign payroll and direct mail were the other two single biggest expenses. Bush spent more than \$2 million on mailings and about \$1.3 million on staff salaries and related payroll costs.

Kerry came out of the primaries with very little money on hand. He raised over \$20 million over the Internet alone after becoming his party's nominee-to-be. Bush will have spent at least \$50 million for ads during March and April. Kerry has spent a fraction of that amount on ads since early March, about \$12 million. Both Bush and Kerry skipped public financing for the primary season. This allowed them to surpass the program's \$45 million spending limit. Both are expected to accept full government funding for their general election campaigns. That means each will receive a taxpayer-financed grant of about \$75 million when they are nominated by their parties in late summer.

REGULATION OF SECTION 527 GROUPS NEEDED

Public Citizen has submitted comments to the Federal Election Commis-

sion (FEC) supporting the agency's proposal to regulate so-called "Section 527" electioneering groups (named for a section of the Internal Revenue Code) under federal campaign finance laws to prevent a flood of "soft money" from special interest groups from flowing into federal elections. Public Citizen also criticized the proposed regulation as too sweeping and urged the agency to narrow its scope so that "501(c)," organized under another section of the Code, non-profit groups would not be captured under the regulation, because these groups usually are legitimate advocacy organizations.

The FEC has proposed regulation to expand the definition of a "political committee," which is subject to federal contribution limits, to include non-profit groups, which currently are not subject to the limits. Under federal campaign finance laws, as amended by the new McCain-Feingold law, political committees are not entitled to use "soft money" - money from corporate or union treasuries or from individuals and PACs in excess of the contribution limits - to pay for electioneering for or against federal candidates. Many electioneering groups have avoided the contribution limits by registering as Section 527 groups under the tax code, rather than as political committees under the election code. Because 527 groups fall outside the campaign finance laws, these groups can raise and spend unlimited soft money, and many are planning on doing exactly that in the 2004 presidential election. Public Citizen does not believe that Section 527 groups, whose primary purpose is to influence elections, should be exempt from campaign finance laws. This is a gaping hole that needs to be closed.

Public Citizen urged the FEC not to adopt an overly broad definition of political committee that could falsely capture legitimate advocacy organizations, such as 501(c) non-profit groups. Some of the regulatory options being debated by the Commission, such as classifying any group that spends more than \$50,000 supporting or attacking an officeholder as a committee subject to federal campaign finance laws, are far too sweeping and could endanger the

right of citizens and groups to discuss serious political issues and criticize officeholders for their positions on these issues. 501(c) advocacy groups should have the right to challenge officeholders and candidates on the real issues that affect citizens. Public Citizen believes that right must be protected and I agree. Public Citizen urged the FEC to act quickly on the proposed regulation because the political campaigns have already started – much earlier than usual. The group recommended that the FEC promulgate this regulation by May of this year or consider delaying its implementation until after the 2004 elections.

Public Citizen's comments also reflect its strong concerns about protecting the advocacy rights of the non-profit community. It noted that some political operatives abuse the tax code and conceal their primary purpose of electioneering under 501(c) tax status. This abuse is likely to become more common if the FEC does, in fact, close the 527 loophole. As a result, Public Citizen believes that the FEC should advise the IRS to enhance its disclosure requirements of 501(c) non-profit groups so total "electioneering expenditures" are distinguished from total "lobbying expenditures." Currently under the tax code, both types of expenditures are aggregated as "lobbying expenditures," making it impossible to detect shadow electioneering groups. Such an improved disclosure system for the non-profit community would not penalize groups with extensive expenditures that praise or criticize candidates and officeholders - the type of advocacy work expressly permitted for 501(c) non-profits. But it would help the IRS flag potential abuses of the tax code by groups primarily seeking the election or defeat of candidates for closer scrutiny under the "facts and circumstances" of each individual case.

VII. THE CORPORATE WORLD

EX-BOEING EXECUTIVE PLEADS TO CONSPIRACY

A former Air Force official, who later served as a top executive at the Boeing Co., has pleaded guilty to conspiring to help the aviation giant obtain a multibillion-dollar Pentagon contract. Darleen A. Druyun entered the plea in U.S. District Court to a single count of conspiracy, which carries a maximum five years in prison. Druyun was an Air Force procurement officer before becoming a Vice-President at Boeing. She and former Boeing chief financial officer Michael Sears were the subject of a federal grand jury investigation of the Air Force's plan to acquire 100 refueling tankers from the Chicago-based jet maker. With our country at war, this sordid story should make all Americans take stock of how our tax dollars are being wasted and how some governmental contractors "profit" during times of crisis by cheating the government.

Sears, while at Boeing, is said to have contacted Druyun about a possible top-level company job in 2002, when she still was at the Air Force and playing a key role in deciding whether Boeing should get the tanker contract. This contract could be worth up to \$23 billion to Boeing. Druyun retired from the Air Force in November 2002 and joined Boeing in January 2003 as deputy general manager of its Missile Defense Systems unit. The tanker contract, eventually awarded to Boeing, is under suspension while a series of reviews are conducted. The Air Force wants to acquire 100 modified Boeing 767 aircraft to modernize its aging fleet of aerial refueling tankers. The Pentagon's inspector general has said the unusual lease-purchase arrangement is more expensive than buying the planes outright, and said significant changes should be made before the deal is allowed to proceed. In a highly critical report issued last month, Inspector General Joseph Schmitz said procedural and financial problems with the deal could cause the

government to spend as much as \$4.5 billion more than necessary.

Senator John McCain (R-Ariz.), who has been a vocal critic of this deal, has called it "corporate welfare" for Boeing, which has cut nearly 40,000 jobs since the 2001 terrorist attacks sent the aviation industry into a tailspin. McCain has said Druyun's actions demonstrate the "incestuous relationship between the defense industry and defense officials that is not good for America." Boeing officials have said they expect the deal to go forward, but are prepared to take a \$310 million charge if it collapses. Boeing claims it has been cooperating with authorities since the company "uncovered inappropriate conduct" involving the company's hiring practices. To call this sort of thing "inappropriate" is a gigantic understatement.

The more we learn about how some in Corporate America cheat the U.S. government, the more disgusting the handling of government contracts becomes. It appears that some corporate officials simply believe it's not really cheating if the victim is the U.S. government. What seems to be lost in the reporting of these scandals is that the American taxpayers are the real victims. Personally, I believe that we should ban any corporation that is caught cheating the government on a second offense from doing business with any branch of the federal government. That is the only lesson that will get their corporate attention.

ANOTHER SHOCKING CORPORATE SCANDAL

Almost three years after price caps finally put an end to the California energy crisis, federal prosecutors have charged a corporation with manipulating the price of electricity. Reliant Energy Services Inc. and four former or current employees were charged with conspiracy, fraud and manipulating the price of electricity. According to federal prosecutors, Reliant used phony maintenance and environmental problems as excuses to shut down four of its five-generation plants in order to drive up prices by cutting supply. When the prices soared to \$750 per megawatt hour – as compared to a more typical

price of \$35 per megawatt hour – Reliant brought its plants back on line. Prosecutors allege that the two-day scheme cost California ratepayers as much as \$32 million in overpayments. It is significant that the charges target the corporation itself as a criminal defendant.

That prosecutors decided to charge Reliant, instead of just the employees who engaged in the price manipulation, is noteworthy. Prosecutors said they did so because Reliant had not cooperated with prosecutors, which I find troubling. If a corporation breaks a criminal law, that alone justifies prosecution. It shouldn't depend on cooperation or the lack of it. Attorney General John Ashcroft, in announcing the indictment, said that "When evidence shows that a company's corporate culture breeds corruption and disrespect for the law, the Department of Justice will not hesitate to bring criminal charges against the company itself." My question to General Ashcroft is, "how much evidence does it require?"

Reliant Energy faces several million dollars in fines and up to five years probation. Its parent company, Reliant Resources, services 1.8 million customers in four states and had revenues of \$11 billion last year. You may recall that Reliant Resources paid \$13.8 million to settle an investigation by the Federal Energy Regulatory Committee last year. But, Reliant was just one of 70 firms and utilities that the state of California believes were responsible for manufacturing an energy crisis in California's deregulated energy market in 2000 and 2001. So it appears federal prosecutors have lots of work to do.

JUDGE DECLARES MISTRIAL IN TYCO CASE

Last month, the judge in the criminal trial of two Tyco executives declared a mistrial in the case. The mistrial occurred after a juror, thought to be holding out for acquittal, reported receiving a letter questioning her reluctance to find the executives guilty and a phone call urging her to convict the executives. The juror caused a stir several days earlier by allegedly flashing an "OK" sign to the defense team –

something the juror later denied. In addition, during deliberations jurors sent a note to the judge saying that the atmosphere in the jury room had turned "poisonous" and that the juror in question was refusing to deliberate with an open mind. After the juror's name was printed in several news reports, defense lawyers filed for a mistrial. Judge Michael Obus initially rejected the defense team's request to end the trial. But, after the juror reported receiving the letter and phone call, Judge Obus reconsidered, declaring a mistrial.

The former executives, Dennis Kozlowski, and Mark H. Swartz, were charged with grand larceny, falsifying business records, conspiracy and securities fraud. The two are said to have looted Tyco of \$600 million, using the money to pay for yachts, lavish houses, parties, and jewelry. Jurors in the trial have said that they were very close to conviction on several counts before the judge's ruling. The former juror at the center of the controversy, while denying that she ever flashed an "OK" signal to defense lawyers, has stated that she does not think that she would have voted guilty on any count. The juror had reportedly expressed her concern to other jurors that Tyco's board of directors unfairly targeted the executives, and that prosecutors were eager to make an example of corporate greed. Frankly, I believe corporate greed should be targeted and the greedy prosecuted when criminal laws are violated.

The trial judge ordered Kozlowski and Swartz to return to court on May 7th, when a tentative retrial date is expected to be set. Besides the criminal prosecution, Kozlowski and Swartz still face a great deal of civil litigation, including cases filed by the Securities and Exchange Commission and Tyco's new managers. These cases have been put on hold until the criminal proceedings end.

I have three observations about this matter. First, the trial lasted much too long and that I can't understand. Next, it is pretty clear that Kozlowski and Swartz were doing some pretty bad things and were literally "raping" shareholders and employees of the corpora-

tions, using corporate funds for their personal use. Finally, I am hopeful that the civil courts will do their job and recover all of the funds taken by these corporate executives who had no regard for the law or for their own company's welfare. They must be taught a lesson!

MARTHA STEWART SEEKS NEW TRIAL

In a post-trial motion filed in March, lawyers for Martha Stewart claim that a juror violated his oath and lied to serve on the jury. In a jury questionnaire answered by juror Chappell Hartridge prior to the Stewart trial, the juror stated that the only time he had been to court was for a traffic violation. However, Stewart's lawyers allege that after the jury returned a guilty verdict against their client on March 5th, they learned that Hartridge was arrested in 1997 for assaulting a female roommate. Hartridge spent several days in jail and was arraigned in court for the assault charge but the victim eventually dropped the charge because she could not miss work to attend court. The new trial motion asserts that Hartridge, "dishonestly suppressed information concerning a gender-related incident in order to be able to sit in judgment of a well-known and highly successful woman in a case alleging false statements."

In addition, lawyers for Stewart also accused this juror of failing to state on his jury questionnaire that he had been sued three times. According to the motion for new trial, judgments have been entered against him in each case. Stewart's lawyers also allege, based on its post-trial investigations, that a little league baseball coach once accused the juror of stealing up to \$50,000 from the little league team when the juror served as the team's treasurer. Stewart's lawyers are seeking a new trial under a 1984 Supreme Court case that said a convicted defendant could seek a new trial if he or she can show a juror lied in jury selection and that the truth would have provided a basis to remove that juror. Unless the judge grants the new trial motion, Stewart's sentencing is scheduled for June 17, 2004.

KPMG AND FORMER UNIT SETTLE OVERBILLING CASE

KPMG, one of the Big Four largest accounting firms, and BearingPoint, its former computer consulting unit, have agreed to pay \$34 million to settle a lawsuit that accused them of overbilling clients for travel expenses. Each company will pay \$17 million as part of the preliminary settlement of the class action lawsuit. The lawsuit was brought against several accounting and consulting firms. PriceWaterhouseCoopers agreed in December to a \$54.4 million settlement to end its role in the case. This leaves Ernst & Young and Cap Gemini as defendants. The case involves undisclosed rebates that the companies are accused of receiving from travel companies on client-related travel. The suit says the consulting firms profited from rebates after travel was completed. The Wall Street Journal first reported news of the settlement in a recent edition.

VIII. PRODUCT LIABILITY UPDATE

THE JERNIGAN CASE FINALLY SETTLES

On April 16th, after 4 long years, the tragic case involving young Jeffrey Jernigan against General Motors Corporation (GM) was finally settled. While the amount of the settlement is confidential at GM's request, the story relating to this company's wrongdoing isn't and can be told. I believe the American people have a right to know how bad GM's conduct actually was leading up to this case. You will recall the case went up to the Alabama Supreme Court after a \$122 million jury verdict was returned against GM in the first trial. The jury had found conclusively that the vehicle designed, manufactured, and sold by GM was not crashworthy. The jury specifically found based on clear and convincing evidence, that GM engineers were fully aware of the potential head injury problem that existed with the class of Oldsmobile

involved in this case. The evidence against GM in this case was not only overwhelming, but also devastating for the automaker – and made the amount of the verdict totally justified. The trial judge found during post-verdict hearings (after the first trial) that the jury had also been completely justified in awarding punitive damages in this case. On the question of whether the punitive damage verdict was excessive, the court found the following:

GM's own internal documents, in conjunction with governmental testing, showed that GM knew that these changes increased the head injury criteria for this vehicle and made the risk of a serious head injury likely. With this knowledge, GM, in its documents, prior to the sale of this vehicle, made the decision to wait until the 1994 model year to implement design changes, which would have minimized this danger. GM made a conscious and deliberate decision to reduce safety in the Delta 88 and put an occupant at risk, including Jeffrey Jernigan. The defendant's conduct is sufficiently reprehensible to support a significant award of punitive damages. This factor weighs heavily against General Motors on this issue.

There was a reason why GM had to know it had created a hazard and was putting people in their cars at risk. GM had instituted what was known as the "2500 Project" a few years before the 1993 Oldsmobile 88 owned by the Jernigan family was sold. This project did two things: (1) it cut needed safety features from the cars, and (2) it increased GM's profits because the retail cost was not reduced. The evidence clearly showed that, based on the number of vehicles GM sold, even a small cost savings would have resulted in hundreds of millions of dollars in profits. The 2500 Project, which was labeled a cost reduction program, actually saved \$2,500 per vehicle each year during the time the H-car platform cars were sold. This statement by the trial judge is found in the court's post-verdict order:

The payment of this entire award would not take away or remove GM's

profit for two months recognized from the cost reduction program.

During the post-verdict motions hearing, we proposed to General Motors, on behalf of our clients, that if the company would simply recall all of these defective vehicles, we would forego any claim for punitive damages in the case. GM refused to do this, which is extremely difficult to understand when you consider how many defective vehicles are still on the highways of this country, and the great potential for harm to people that still exists. Perhaps the most telling indictment against GM arising out of the Jernigan case was this comment found in the trial court's order:

GM's conduct in the defense of this case was of a nature that cannot be tolerated by the Court. The abuses of discovery and failure to comply with orders of the court by GM's trial counsel shocked the court.

Even though the Alabama Supreme Court reversed the verdict from the first trial on a jury selection issue, the Court's lengthy opinion was very strong on all liability issues. In fact, it has been described as a classic opinion on crashworthiness and has been widely discussed by legal scholars around the country. So there can be no misunderstanding about GM's wrongdoing which was the basis for the settlement of the Jernigan case, we are putting both the trial judge's post-verdict order and the majority opinion from the Alabama Supreme Court on our website. You can read these two documents by going to www.BeasleyAllen.com and then draw your own conclusions.

GENERAL MOTORS' 2500 PROJECT – PUTTING PROFITS OVER SAFETY

I want to discuss in more detail GM's disregard for safety. There was one most significant discovery made during our handling of the Jernigan case that deserves further mention. As stated above, the case involved an Oldsmobile Delta 88 that was found to be dangerous and defective by an Alabama jury.

The reason for the large punitive award by the jury was General Motors' callous disregard for safety. In an effort to increase profits, GM had implemented a cost reduction program to take effect in the design and manufacture of what GM refers to as the "H car" platform (the Oldsmobile Delta 88, the Buick Skylark, and the Pontiac Bonneville). During discovery, we learned that the 2500 project played a major role in causing the Jernigan car to be "uncrashworthy." It literally took safety features out of the H cars or reduced the effectiveness of what remained after the design changes.

During the extensive pretrial discovery, we learned a great deal about GM's cost cutting efforts – instituted to reduce the costs of production by \$2,500 per vehicle in the H car group – and which made the cars uncrashworthy. GM intentionally compromised safety in a number of areas. As a part of the project, the company removed a substantial amount of mass, which equates to weight, from the vehicles. This resulted in a compromise of the front-seat passenger's survival space, which GM refers to in its marketing as the car's safety cage. I urge all of you to obtain copies of the marketing materials put out by GM relating to their cars. Since we are still under a protective order relating to actual documents received from GM, I am not going to quote from the marketing documents. But, I urge you to check out for yourself what GM told its potential customers about safety in the H car platform cars, including the Olds 88. I can say without question, Project 2500 is certain to cost lives and cause serious injuries and disabilities throughout this country unless all of these vehicles are recalled. Because of the lack of crashworthiness of these vehicles, the occupants in otherwise survivable wrecks will very likely receive serious head injuries in frontal collisions.

The portion of the vehicle from the bumper to the beginning of the passenger compartment is designed so as to absorb and distribute the energy forces of a crash. The front portion actually crumples – much like an accordion – by design. Specifically, the following

changes were made in the H car platform cars that made the cars unsafe. The upper rail, which is an important safety feature, was reduced from 40-psi steel to 30-psi steel. This means the hard steel was taken out and soft steel used instead. Interestingly, this change was brought about to accommodate plastic fenders, which were replacing the previous metal fenders on these vehicles. In addition, the mid rails, which go down the lower sides of the vehicle, were reduced in size and actually cut off under the floor pan of the cars. The door beam, which had been a large, wide one in the previous generation of the H cars, was changed to a much smaller tube. All of this was done to take weight from the vehicles and had the direct effect of compromising safety. GM did crash tests of the H cars with the 2500 Program changes in place and got results that told them head injuries to front seat passengers were "likely." The Head Injury Criteria (HIC) numbers received were in excess of the 1000 HIC number allowed by the federal government. In fact, the test results greatly exceeded GM's own internal standard, which was 800. The bottom line is that GM knowingly and intentionally put a defective vehicle on the highways knowing it was gambling with human life. GM gambled and Jeffrey Jernigan and his family were the losers.

FORD MOTOR CO. HAS A PATTERN OF DISCOVERY ABUSE

Last month, I wrote about our pending case in Crenshaw County, Alabama, where we have pending a motion for default judgment against Ford Motor Company for its blatant discovery abuse in that court. The trial judge recently conducted a hearing on our motion and took testimony from a Ford design analyst engineer and several of its lawyers. For the uninformed, an engineer with that title doesn't design cars. Instead, design analyst engineers serve as lawsuit engineers and are a part of Ford's litigation team. Although I cannot discuss the particulars of the hearing because we are under a protective order that places

all Ford testimony under seal, I can say that the testimony confirmed that Ford intentionally withheld critical information in our case for over four years. It also confirmed their pattern of discovery abuse for which it has gained nationwide notoriety. We are waiting on an order from the trial judge. I hope at some point, we can discuss fully the testimony offered by Ford. Once again, Ford cannot claim an "honest mistake" as they have in our case and in numerous other cases during the past decade in its "take no prisoners" approach to defending against claims that it designed and built defective vehicles.

Ford Motor Company has engaged in a pattern and practice of discovery abuse in a number of courts. Persons who are victims of a defective vehicle resulting in serious injuries or the death to a family member shouldn't be further victimized by a corporation that believes it is above the law. Judges have an obligation under their oath of office to deal harshly with discovery abuse. Although our firm is certainly no stranger to Ford's discovery practices, we wanted to do a little checking to see just how bad Ford has been in its approach during the discovery phase of litigation. Shockingly, we found nearly 50 instances over the past decade or so where Ford has been seriously sanctioned by Judges across the country who imposed large fines, reversed defense verdicts, and granted default judgments. There is no telling how many other court-ordered sanctions have been levied against Ford or how many times Ford has gotten away with their tactics. While a complete listing of all of the sanction orders is not possible, I do want to comment on some of the more recent sanction orders against Ford which confirm this company's arrogant approach. We uncovered discovery abuse orders dating all the way back to the 1980s. Some of these orders included the entering of default judgment just as we have requested in our pending case referred to above. Each of the following is a report from various actual cases involving Ford.

- In March of this year the judge presiding over the Crown Victoria fuel system class action filed in St Clair

County, Illinois, ruled that Ford had once again willfully and intentionally disobeyed Court Orders regarding discovery. As a result, the court levied a high monetary sanction against Ford for not producing documents and also ordered the company to conduct a seventy-five mile per hour crash test of the trunk pack on the Crown Victoria as it had falsely claimed to have done. The court, in reprimanding Ford further, held that the “setting the record straight” brochure mailed by Ford was deceptive and misleading because Ford had not conducted any fuel system testing despite its assurances in the brochure that it had conducted a seventy-five mile per hour crash test on the Crown Victoria.

- Last August, a Hinds County Mississippi judge reversed a defense verdict in favor of Ford and ordered a new trial in a fuel-fed fire case involving the death of two students in an Explorer. In that case, Ford waited until trial to produce thousands of documents in willful and blatant violation of court rules, according to the court. The Mississippi trial judge also ordered Ford to pay \$200,000 as trial expenses. Ford has appealed.
- Earlier in 2003, the Los Angeles County Superior Court, after the company continuously disobeyed discovery orders, issued an order sanctioning Ford. The sanctions included instructing the jury at trial that jurors should assume the lap-belt-only design in Ford’s vehicle at issue was inadequate. In that case, the jury awarded a \$30 million compensatory award with an additional \$15 million in punitive damages. Ford has also appealed this verdict and the sanctions order.
- Also in 2003, a federal judge in the Northern District of Illinois scolded Ford for its conduct during a case involving a fifteen-passenger seat van. The plaintiff’s lawyers argued that the Ford van was unstable and prone to roll. As a part of the prosecution, the plaintiff requested that Ford produce computerized stability tests on the van. Ford claimed that

they did not have any such tests. Subsequently, the plaintiff’s lawyers discovered that Ford had actually conducted such tests with the tests confirming that the vans were unstable. Ford’s lawyers argued that they had made an “honest mistake” in not producing the information. United States District Judge Robert W. Gettleman, in severely sanctioning Ford wrote, “that it almost borders on criminal...somebody is committing perjury... or at least may be committing perjury. I do not want to believe that a corporation such as Ford does stuff like this, but I am being convinced against my own instinct.”

- In March 2003, an Ohio court set aside a settlement and vacated an earlier judgment, clearing the way for product liability claims and fraud claims against Ford relating to Ford Bronco litigation. That court found that Ford had committed a fraud upon the court by misrepresenting the true facts, submitting and notarizing documents and materials that Ford and its lawyers knew to be false. Ford was also found to have withheld critical information from the court concerning the severity of the injuries suffered by the young victims.
- In 2001, a New Mexico judge entered a default judgment against Ford for its discovery abuse in a case involving a Ford pickup truck that rolled over causing the roof to collapse. Throughout the litigation, Ford maintained that it had no records showing that the company had ever considered and implemented a reduction of the thickness in the steel of the roof so as to make the roof more susceptible to collapse. Remarkably, the supposedly non-existing documents appeared in a case in another state. The trial judge, noting that Ford’s conduct bordered on being criminal, issued a default judgment and the case eventually settled.
- Finally, Ford began the year 2003 having to pay more than \$700,000 in sanctions after a Michigan court found that the carmaker had failed to produce test reports in a case where seat

belt failure caused an occupant to be paralyzed. Ford’s disregard for the notions of fair play and good faith is not limited to the past year. Just a few years before Ford was caught in New Mexico, it was severely scolded in its home state of Michigan. In the case of *Traxler v. Ford*, a child’s parents brought suit to recover damages for their young infant who suffered severe brain damage when the rear seat in their Ford Tempo failed. After the carmaker disobeyed several discovery orders, a Kent County judge issued a default judgment against Ford, citing the company’s disgusting failure to cooperate in discovery. The judge found that Ford has perpetrated an outrageous fraud on the court, concealed documents, and then blatantly lied about the existence of those documents. Any word short of “lying” would understate what Ford did in that case. The judge in the Michigan case found that Ford had concealed numerous safety tests and the existence of other lawsuits that revealed the problems with their seats and the ramifications of those problems.

While Ford is not the only big company to be cited for improper behavior and specifically discovery abuse, several national newspapers have recently reported that Ford apparently has a special knack for antagonizing judges and continues to disregard court orders and rules of fairness at an alarming rate. It is obvious that Ford Motor Co. has time-and-time again exhibited a pattern and practice of discovery abuse in product liability lawsuits. Ford can’t claim the “honest mistake” defense any longer. Neither should the company be allowed to get away with abusing the discovery process and then thumbing its corporate nose at the courts. Frankly, I have to wonder how a judge could ever tolerate this type activity by any litigant – regardless of whether they represent plaintiffs or defendants, because it destroys our system of justice. I hope judges around the country are now realizing how widespread the discovery abuse problem has become and that Ford Motor Co. is one of the worst offenders.

MIDSIZE SEDANS DO POORLY IN SIDE CRASH TESTS

The results are in from the first consumer test of how passenger cars fare when struck in the side by sport utility vehicles and pickup trucks, and the results aren't good. Last month, I watched a news program on CBS News concerning the new crash tests that really got my attention. The news segment showed crash tests performed by the Insurance Institute for Highway Safety, and the results were shocking. Twelve midsize sedans earned the lowest safety rating from the insurance industry in crash tests designed to show what happens when pickup trucks or sport utility vehicles hit cars in the side. The test results were released on April 18th and should cause automakers to make side airbags standard, because vehicles with both head- and torso-protecting side airbags performed best. Models of the Toyota Camry and Honda Accord with optional side airbags were the only cars to earn the highest safety rating from the Institute. Without the airbags, the Camry and the Accord got the lowest rating. About 15% of Camry buyers get the optional airbags, which cost \$650. Apparently, Toyota has no plans to make them standard. Vehicles with standard side airbags did not necessarily do well. The Saturn L-Series has a standard torso-protecting airbag, but the crash dummy's head was hit. The Hyundai Sonata and Kia Optima, which have combination head-torso bags, did not protect the dummy's torso. All three vehicles were rated as poor.

The only car tested without standard or optional side airbags was the Suzuki Verona, and it was rated as poor. The Institute said these were the first consumer tests to use a dummy representing a short female. Researchers wanted to make sure side-curtain airbags, which come down from the ceiling, were long enough to protect smaller occupants. Each vehicle was hit with a 3,300-pound barrier moving at 31 mph. A vehicle earned the highest safety rating if its driver wearing a seat belt would have a lower likelihood of serious injuries in an actual crash. The

Institute's president Brian O'Neill, said side airbags that protect the head are critical because they have been shown to reduce the number of deaths by up to 45%. Side airbags that protect the chest and abdomen are less effective. Design improvements by the automobile industry could minimize injuries in side-impact crashes.

The Mitsubishi Galant had the best structure among sedans because it was not severely crushed, although it rated as poor because the dummy's head and torso were not protected. The Dodge Stratus was the most damaged. About 9,600 people were killed in side-impact crashes in 2002, according to the Institute. While driver death rates in front-impact crashes are half what they were in 1980, side-impact crashes are killing a growing percentage of drivers. According to the Institute, side-impact crashes accounted for 37% of driver deaths in 2000-2001, compared with 26% in 1980-1981. Better vehicle design and increased seat belt use are helping drivers survive front-impact crashes. Car drivers are at increasing risk in side-impact crashes because SUVs and pickups are so much larger and many vehicles lack side airbags. The Institute buys cars for testing based on sales volume. If an airbag was optional, the Institute tested the vehicle without it. Manufacturers had the option of supplying a second car with an airbag for a second test. The ratings for all of the cars tested can be seen at www.iihs.org.

Although the National Highway Traffic Safety Administration already performs front and side crash tests on new cars and trucks, the Institute's test more closely resembles the impact made by light trucks, which now make up more than half of new vehicle sales. For that reason, safety advocates believe that the government's test is obsolete. The government's test uses a 3,015-pound moving metal barrier set at a height to simulate a car's front end. The Institute, the insurer's group, has a barrier that is a foot taller and 285 pounds heavier to simulate what happens when the front end of an SUV or pickup truck strikes another vehicle. The group also uses a shorter dummy - which more closely resembles a woman

driver - than the government.

It is interesting to note that the Department of Transportation is almost a generation behind in its safety standards and in its consumer information. The Institute's test is conducted at 31 miles an hour. The government's test is done at 38.5 mph. The average light duty truck tips the scales at almost 4,600 pounds, according to data from the Environmental Protection Agency, more than half a ton heavier than the insurance group's barrier weight. Height, as well as size and weight, is a factor. Light trucks ride high off the ground and many do not engage the bumpers or side floor structure of passenger cars and can directly strike an occupant's head. Protecting heads is important in truck-car collisions, but the shorter stature of women and children can leave them more vulnerable. Side airbags that descend from the roof to offer head protection are seen as particularly effective. Other airbags that inflate from the seat to protect the pelvis and chest are viewed as important but less critical. Side airbags come standard on many luxury vehicles but are generally options on others, if they are available. But they vary in effectiveness and do not always offset structural deficiencies.

Federal safety data has shown for years that booming sales of SUVs and large pickup trucks are adding to the death toll of people riding in cars, particularly in side-impact accidents. At the same time, SUVs and pickup trucks do not, as a class, better protect their own occupants, because they tend to be less stable and more prone to rollovers than passenger cars. NHTSA administrator Dr. Jeffrey W. Runge has pressured the industry to voluntarily agree to upgrade design and safety equipment to account for the growing number of light trucks on the road. As a result, the industry has agreed to install side airbags on almost all cars and trucks by the end of the decade. The agency's plan for a tougher side-impact performance standard will probably use a new dummy that can measure damage to the side of a dummy's head. The government's current minimum performance standard only measures damage to a dummy's

chest and pelvis. Frankly, I don't believe voluntary compliance by the industry will ever work. Nor do I believe we need to wait any longer for needed safety features that are both available and feasible.

Senator John McCain (R-Ariz.) has backed new auto safety regulations in the Senate's version of a massive highway funding bill working its way through Congress, including new side-impact requirements. But, the House leadership not surprisingly is giving the bill a cool reception. The industry opposes the measures, supposedly because they lay out timetables for action by the traffic agency. Dr. Runge has said he prefers to set his own agenda, which sometimes favors voluntary agreements over regulation. R. David Pittle, the senior vice-president for technical policy of Consumers Union, the publisher of Consumer Reports, and a former regulator, said Congress needed to prod the agency to work faster. We have seen the reluctance of Congress to force action by NHTSA and the automobile industry over the years. Members of Congress only seem to get active when pressure mounts from the public, such as outcry over the Ford/Firestone problems that got them moving, for a short time.

PLYMOUTH VOYAGER DEFECT

After a 5-week trial, a New Jersey jury found that the front seatback in a Chrysler Plymouth Voyager minivan was defectively designed. The seatback had collapsed in a 25 to 30 mph rear impact. The female plaintiff, who was 48 at the time, suffered the following injuries: traumatic brain injury, TMJ (jaw) dysfunction, two herniated disks and other problems. As a result, she became totally disabled. Daimler-Chrysler Corporation argued that the vast majority of the cars on the road have similar seatback strength and that it far exceeded the federal standard for seatback strength. Predictably, the car manufacturer contended that any injury suffered by the plaintiff was caused by the crash itself and not by the seatback. The jury found that the seatback was defectively designed and awarded

\$2,160,000, with DaimlerChrysler liable for \$1,296,000. The other defendant, the driver whose vehicle struck the plaintiff's car, settled early in the trial for \$600,000. It should be noted that the federal standard for seatback strength is so weak that an aluminum lawn chair would meet the standard.

SENSELESS DEATHS STILL HAPPENING

Our firm has handled a number of cases where innocent children were strangled by power windows in family cars. Another child fatality that occurred recently underscores the need for Detroit-based automakers and the federal government to act immediately to prevent these senseless tragedies. The technology exists to prevent children from being injured or killed by power windows and should be implemented without further delay. The recent case involved a three-year-old child who died after the power window on the family car closed on her neck, strangling her. Kids And Cars, a consumer advocacy group, has been alerting officials to this hazard for over 5 years. American automakers use the more dangerous "rocker" or "toggle" switches in their cars that children can accidentally activate by exerting downward pressure on the switch. On the other hand, foreign automobiles use safer "pull-up/push-down" switches that must be lifted up to raise the window and are difficult to activate inadvertently.

Kids And Cars, a nonprofit organization dedicated to preventing nontraffic, noncrash vehicle related child injuries and deaths, has been trying for years to get auto makers and the federal government to make changes to power window switches and offer auto reverse power window technology. Over the past two years, letters have been sent by Kids And Cars to Detroit-based auto companies requesting that they change their power window switch design to the safer "pull-up/push down" type that most foreign automakers use. Janette E. Fennell, president and founder of Kids And Cars, believes that safer power window switches and "auto reverse" technology would eliminate virtually all

fatalities.

A petition requesting the needed changes was filed with the National Highway Traffic Safety Administration in August of 2003 by the Center for Auto Safety, Advocates for Highway and Auto Safety, Public Citizen, Consumer Federation of America, The Zoie Foundation, the Trauma Foundation, Consumers for Auto Reliability and Safety and Kids And Cars. Unfortunately, NHTSA has not responded even though over 7 months have passed. The petition asks NHTSA to consider a rule that would require "push-down/pull-up" switches and "auto reverse" or "anti-pinching" technology, similar to technology used in garage doors. The Zoie Foundation had filed an earlier petition with NHTSA in January 2003 that is still open and under consideration. This follows a third petition that was filed way back in 1996. This too is still under consideration by NHTSA, with no action, which is absolutely shocking.

The federal government and automakers are well aware of the serious nature of this problem. It is impossible to justify their refusal to make the necessary changes. Both NHTSA and the Detroit-based automakers have been put on notice that the switches used currently pose a real safety hazard. Predictably, the automobile industry continues to shift blame and responsibility to the parents for careless behavior. The U.S. Senate has passed a bill to address these dangers to children in and around cars, but I understand the House of Representatives has no intention of taking up those provisions. Congressman Peter King (R-NY) and Congresswoman Jan Schakowsky (D-IL) have introduced legislation that would address these issues in the House, but thus far there has been no action on their bill, HR 3683. The House should adopt these child-saving provisions without any further delay. These needless tragedies involving children can be prevented, and Congress has an obligation to act.

Kids And Cars commissioned a Harris Interactive national poll last year that revealed 75% of Americans were unaware of the problem and 89% believed that Detroit-based automakers

should install the same safer power windows for the U.S. market that are available in their same models produced overseas. The fact that parents are largely unaware of the dangers, makes the inaction by automakers and the federal government even more shocking. How many more preventable deaths of innocent little children will it take to make Congress act?

Kids And Cars was founded in 1996. The national nonprofit organization is dedicated solely to the prevention of injuries and deaths to children. Kids And Cars stands for the right of every child to be protected from disability or death caused by nontraffic, noncrash events in and around automobiles, and the right of every parent and caregiver to be free of worry and confident each child is protected from such sudden and preventable dangers. Kids And Cars is headquartered in Kansas City, KS. For more information, visit www.kidsandcars.org or call (913) 327-0013.

A LOOK AT THE UNINTENDED ACCELERATION PROBLEM

A recent article in USA Today gives a pretty good account of a safety problem that has received very little attention over the years. A serious question has arisen concerning the unintended or sudden acceleration that occurs in some cars. Some 15 years ago federal auto safety officials blamed the problem on drivers stepping on the gas instead of the brake. The National Highway Traffic Safety Administration (NHTSA) issued a report in 1989 that was in response to well-publicized complaints that models sold by Audi and other automakers would take off on their own from a standstill, travel several feet and then crash. There has been a rash of car crashes in recent months where there appear to have been accelerations in cars where the gas pedal wasn't involved. Serious injuries and at least one death have been reported.

Safety groups and the automobile industry have debated the cause of unintended acceleration. The debate always centered over whether a car defect or driver error caused the

crashes. The new rash of incidents has prompted a renewed look at the problem by safety advocates. As a result, NHTSA has opened an investigation into whether a new technology is making unintended acceleration more frequent. The technology – electronic throttle control – uses sensors to tell a car's computer how much to open the throttle, which lets in air, and how much fuel to inject into the engine to control speed. The industry likes the technology, which replaces a mechanical cable, for reliability and cost savings, and because it helps fuel economy and improves performance. But, some believe the new electronics may be causing the new rash of unintended acceleration.

Specifically, NHTSA is investigating the electronic throttle control system in more than one million 2002-03 Toyota Camrys, Solaras and Lexus ES 300s. It has narrowed the probe to 11 complaints of engine surge, including 5 that involved crashes. There have been several recent unintended acceleration developments, including:

- At least 16 drivers have told NHTSA that their 1998-99 Audi A6 sedans pick up speed without help while already moving, mostly in subzero temperatures in Northeastern states. Drivers said the only way to stop the car was to turn the ignition off. The agency is investigating.
- Subaru recalled 128,000 vehicles because of a possible defect in the cruise control system that could leave throttles sticking wide open. The throttle stayed open rather than returning to idle when the driver removed his foot, NHTSA says.
- For more than a decade, decisions usually favored car companies and blamed drivers in unintended acceleration cases, but some recent trials and court decisions reversed that trend. Ford Motor Co. and General Motors Corp. each recently lost a high-profile case. After the surge of complaints in the 1980s, automakers added mechanisms known as shift-locks, which force drivers to press the brake pedal if they want to shift into drive or reverse. That cut

the number of unintended acceleration complaints considerably in the 1990s. However, from the mid to late 1990s, we begin to see problems relating to the cruise control systems resulting in new unintended acceleration problems. Simultaneous and undetectable cruise control failures can give cars power as soon as the ignition is turned on and cause the vehicles to accelerate on their own. Automakers, as well as NHTSA, concede that cruise control systems can malfunction. But, they discount this as the reason cars take off on their own from a stop. Typically, they blame drivers and especially elderly drivers for their own mistakes.

There have been several jury verdicts against automakers in cruise control cases. Among those cases are:

- A Missouri jury last year ordered General Motors to pay \$80 million for the crash of a 1993 Oldsmobile Cutlass, which accelerated 120 feet in reverse and into a tree while the driver was backing up. Faulty cruise control was blamed. GM is appealing.
- The U.S. Court of Appeals for the Second Circuit in New York in 2002 reinstated a \$1.1 million judgment against Ford Motor Co. in the crash of a 1991 Ford Aerostar. Jurors had found that the crash was caused partly by a "negligently designed" cruise control system.

From a historical perspective, cases involving sudden and unintended acceleration go back to the 1980s and involve Audi 5000s, Ford Thunderbirds, Mercury Cougars and Grand Marquis, and Ford Aerostar vans, as well as Lincoln Town Cars. The complaints and incidents covered a broad demographic waterfront. Audi was linked for many years to unintended acceleration. The German automaker, owned by Volkswagen, was investigated for hundreds of complaints of unintended acceleration in its 5000 sedan. The company told the *USA Today* that it is cooperating fully with NHTSA's new probe into its A6 models. Audi denies its cars are defective.

NEW TECHNOLOGY SHOULD HELP

We know that automakers are adding new electronics to cars, including systems that will control acceleration, braking and steering if a vehicle gets too close to another. I hope these high-tech additions will help to make driving safer. New data-recording devices, similar to the black boxes on airplanes, are now becoming fairly common on new vehicles. They show computer codes that reveal whether the throttle control system failed, whether the brakes were used and numerous other details about cars before a crash. The often-missing electronic footprints of what actually caused a crash will be available to crash investigators. I am hopeful all of the new technology will help to make our highways safer.

SAFETY BELTS CAN FAIL IN ROLLOVER CRASHES

Public Citizen is requesting that Congress enact the vehicle safety measures contained in S.1072, a comprehensive approach to making rollover crashes survivable. Flaws in the design and performance of safety belts leave vehicle occupants vulnerable to serious and often fatal injuries in rollover crashes, a new Public Citizen report shows. There is no federal safety standard for belt performance in rollover crashes, and the auto industry has done little to design belts to fully protect occupants in these crashes.

As rollover-prone SUVs proliferate on U.S. roads, fatalities in rollover crashes have climbed to one-third of all vehicle occupant fatalities, or 10,600 each year. The three risks of rollover - roof crush, ejection from the vehicle and belt failure - combine to make rollover crashes unnecessarily deadly. All three of the risks compromise or destroy occupants' survival space during a crash and are interrelated. For example, roof crush becomes more deadly as seat belt use increases. The auto industry continues to blame drivers and passengers for failing to use safety belts, but belt use is at an historic high and rollover fatalities are not abating. The National Highway Traffic Safety Administration actively promotes belt use and that's good.

NHTSA is requesting \$150 million for this program next year. But its most recent regulatory move on safety belts came in 1999, when - under heavy pressure from automakers - it removed a portion of its 1967 standard that described a belt's required position in relation to the occupant's pelvis in a rollover crash. Public Citizen President Joan Claybrook, who works night and day for safety and for consumers, made this statement relating to the problem:

Safety belts are currently the most important safety feature that would keep people secure and inside the vehicle during a rollover crash. It is inexcusable to install belts that do not do the job. The auto industry has known for decades how to design belts to better protect occupants in rollover crashes but has failed to do so.

Statistics show that while safety belts usually keep occupants from being completely ejected from a vehicle during a rollover, they often allow partial ejection, which is deadly. Moreover, six of 10 occupants who suffer serious or fatal injuries in rollovers inside the vehicle were wearing a safety belt, according to NHTSA.

Public Citizen's report also pointed out a troubling discrepancy between observed belt use and rollover fatalities. Average belt use by SUV occupants is slightly higher than passenger car occupants, but recorded belt use by SUV occupants killed in rollovers is much lower than passenger car occupants killed in rollovers. The discrepancy suggests that some SUV occupants may come out of belts during the crash, or the belts may otherwise fail. The following are ways in which belt failures expose occupants to serious and deadly injury:

- Most belt systems lack rollover sensors that would engage pretensioners and fail to pull slack in quickly enough to prevent occupants from contacting hard vehicle surfaces.
- Current standard belt systems permit lateral movement of occupants' heads and bodies during rollovers, allowing impact with roof pillars or partial or full ejection of occupants through

side windows or weakened doors.

- Belt straps are anchored to the door-frame instead of the seat, undercutting the belts' effectiveness when the frame or door is deformed or torn off during a rollover.
 - Lap belts are anchored behind occupants' hips, rather than directly below. Belts are not effective in preventing people in rollovers from coming up out of the belts and toward the roof. It would be better for belts to wrap across the hips.
 - Some safety belts unlatch during rollovers, which occurs during interaction with the vehicle interior or occupants that unlocks the belt buckle, leaving occupants without the belt's protection.
 - The technologies and simple design improvements to enhance belt performance already exist, the report said. Manufacturers have the technical ability to install pretensioners to secure occupants in the seat; rollover sensors to prompt the tightening of safety belts at the start of a roll; belt buckles that will not unlatch; and belt retractors that prevent the belt from spooling out.
- The industry should be made by NHTSA to do these things, and if the agency can't, Congress needs to step in and do the job. Other simple suggested design changes include adjusted belt anchor points to reduce occupants' vertical movement, restraints integrated into the seat and tightened shoulder belt adjusters. Stronger roofs, interior padding of the roof, side head airbags and improved door locks and latches are also needed for protection in rollover crashes. As the Public Citizen report reveals, roof crush is not the only danger in rollover accidents. Current safety belt systems are designed to provide protection in frontal crashes, but victims of rollovers are not being adequately protected. In fact, persons have a false sense of security about the effectiveness of belts in rollovers. The industry has been unwilling to voluntarily incorporate rollover-safety technol-

ogy in a timely manner. It is, therefore, NHTSA's responsibility to make them do these things.

Safety provisions in the NHTSA reauthorization bill, S.1072, passed by the U.S. Senate in February, address the risks of rollover, including safety belt performance, requiring NHTSA to issue safety standards in a type of crash long ignored by automakers. But, the U.S. House did not include the safety provisions before passing its bill. The bills will now go to conference to reconcile the versions. Consumers are told again and again to buckle up to save lives. Manufacturers and the government should be doing everything in their power to ensure that we really can rely on belts to protect people in rollover crashes. The complete report by Public Citizen can be seen at: www.citizen.org/documents/beltreport.pdf.

NHTSA SHOULD REQUIRE STRONGER FUEL INTEGRITY STANDARD

On January 15, 2004, the Center for Auto Safety (CAS) petitioned the National Highway Traffic Safety Administration to reconsider a final rule issued December 1, 2003, regarding Federal Motor Vehicle Safety Standard No. 301, "Fuel Systems Integrity." The CAS petition cited a number of inadequacies in the new rule, and made recommendations for changes that would truly protect occupants from fire-related trauma. In the petition, CAS noted the following:

- Though the new rule is commonly referred to as an "upgrade" of the current standard, the rule's test procedures are pitifully insufficient. In fact, they are so poorly formulated that General Motors' C/K pickup passes muster, even though it is the motor vehicle responsible for the most fire-related crash deaths in history.
- The rule is based on inadequate data regarding the number of fatalities caused by fire crashes, and does not appropriately take into account the social and economic impacts of burn injuries, excluding and dismissing the

benefits that a reduction in these incidents would represent.

- Test regimens that would significantly strengthen FMVSS 301 have been extensively researched and developed, and if implemented would represent a true upgrade of the standard.
- The fuel system integrity goal of NHTSA and the industry should be to match occupant survival from crash forces with occupant survival from fire, i.e. if an occupant survives the trauma of a crash, he or she should not die by fire.

We have handled a tremendous number of cases, usually involving deaths, where a defective fuel system design was the culprit. This is another example of NHTSA failing to do its job. I hope the needed changes will now be implemented. We can't afford to wait any longer – as lives continue to be lost – for NHTSA to act.

IX. MASS TORTS UPDATE

CONSUMER GROUP SUES FDA FOR FAILURE TO BAN SERZONE

On March 15, 2004, Public Citizen filed suit against the U.S. Food and Drug Administration regarding its failure to act on a petition filed more than a year ago by the consumer watchdog organization. The petition had sought to ban the antidepressant drug, Serzone (Nefazodone). The lawsuit asks the court to find the FDA's delay illegal and to require the agency to act. This was not the first time the FDA had failed to take action regarding this drug when it appeared the federal regulatory agency needed to act. In March, 2003, Public Citizen filed a petition with the FDA urging the withdrawal of Serzone based upon reports of liver failure and deaths related to usage of the drug. To date, the FDA has not issued a decision on the petition, nor has it taken action to withdraw Serzone from the U.S. market.

Serzone has been removed from the

market in Canada and Europe, and is scheduled to be removed from the market in Australia and New Zealand in May of 2004. The director of Public Citizen's Health Research Group, Sidney Wolfe, MD, said, "It is grossly negligent for the FDA to allow doctors to continue to prescribe and patients to continue to take Serzone . . . It's a shame that we must sue to force the agency to fulfill its obligation to protect public health." Clearly, the FDA has a legal responsibility to protect the public from unsafe drugs. It is difficult to understand how drugs can be taken off the market in foreign countries and yet continue to be sold to American citizens.

Unfortunately, this is not the first time that the FDA has delayed taking action that would protect the public. At the end of December 2003, the FDA announced that it was banning the dietary supplement, Ephedra. This action was taken more than two years after Public Citizen petitioned the FDA to remove ephedra from the U.S. market. In that case, the FDA failed to take action until it received reports of more than 155 deaths of Ephedra users. In a news release, Dr. Wolfe stated, "This is an inexcusable dereliction of responsibility by an agency that has acted more like an ephedra sales extension agency than the public health agency it is supposed to be." On March 19, 2003, Public Citizen petitioned the FDA for the removal of the diet drug Meridia (Sibutramine) from the U.S. market due to the rising number of cardiovascular events and deaths associated with use of the drug. In September of 2003, Public Citizen supplemented its petition with additional numbers and new information. It has now been over two years since the first petition, and the FDA has yet to issue a decision.

Our FDA is supposed to protect us from bad drugs, not protect drug company profits. This is a disturbing trend under an Administration that is also spending a lot of time, effort and taxpayer money pushing tort reform legislation that would further protect the pharmaceutical industry. It is quite obvious that this industry is as powerful as any special interest group around.

Their political muscle in Washington has never been more evident. Not only do they have powerful friends in Congress, they have real good friends in the White House.

LATEST FATALITY FROM LIVER FAILURE CAUSED BY SERZONE

You may have seen a segment on CBS News recently concerning Cassie Jo Geisenhof, a Minnesota teenager, who died last month in a Minneapolis hospital from liver failure as a result of taking Serzone. Even though we represent her family, and knew how Cassie Jo had suffered, watching the segment was still hard. Considering that Serzone remains a threat to U.S. consumers, the question should be asked, why hasn't Serzone been taken off the market in the United States? Instead of removing the drug in this country, the FDA in 2001 simply issued a "black box warning." Even though this is the most serious warning the government agency can make, it is simply not enough. I sincerely believe the young lady from Minnesota would be alive today had the FDA done its job.

We have already seen enough to know that Serzone needs to be withdrawn from the market immediately. The only sure way to protect the public in the U.S. is to pull this drug from the shelves. But, there is too much money being made from sales of this dangerous drug to expect this to happen. We currently have over 30 active cases involving Serzone. We are told that these cases make up perhaps the largest group of persons seriously injured by the drug in the country. The only reason drug companies like Bristol-Myers Squibb take any action at all is because they are forced to do so. When they do finally act, their actions are said to be voluntary, but that's not the case. It takes somebody making these companies to take the needed remedial action. Tragically, there have been 21 deaths related to Serzone in the United States so far. I would ask the FDA, how many more have to die before this drug is banned?

SOME FACTS ON SERZONE

In addition to the above, the following is more pertinent information for our readers relating to Serzone. If you would like to obtain further information, you can go to our website: www.BeasleyAllen.com.

- Serzone (nefazodone hydrochloride) is a prescription drug manufactured by Bristol-Myers Squibb for the treatment of depression. Unlike other antidepressant drugs, Serzone was marketed as an antidepressant less likely to decrease sexual functioning or libido. It was this marketing tool that also led to increased sales for the drug. Since its approval by the U.S. Food and Drug Administration (FDA) on December 22, 1994, it is estimated that 8.3 million people worldwide have been prescribed Serzone. Bristol-Myers reported worldwide Serzone sales of \$409 million for 2001.
- Bristol-Myers Squibb made a labeling change to Serzone in June 2000, that strengthened its warning about the possibility of liver necrosis and failure, both of which may require transplantation or lead to death. In December 2001, the FDA instructed Bristol-Myers to issue a "black box" warning label informing physicians and patients of the drug's propensity to cause life-threatening liver damage. And, on January 9, 2002, Bristol-Myers issued a manufacturer's warning advising patients of Serzone's risk of causing life-threatening hepatic (liver) failure.
- There have been 109 serious injury cases reported as a result of using Serzone since it appeared on the market in 1994. Of those 109 serious injuries, 23 resulted in liver failure and 16 resulted in liver transplants. The onset of serious liver damage usually occurs within 4 months of initiation of treatment. Cases of liver injury have occurred as early as a few weeks after beginning treatment with Serzone, or after continuous use for up to 1-2 years. In addition to the serious

injuries that have occurred as a result of Serzone usage, there have been 13 deaths attributable to Serzone.

- The possible side effects of Serzone are: agitation, dizziness, clumsiness or unsteadiness, difficulty concentrating, memory problems, confusion, severe nausea, gastroenteritis, abdominal pain, unusually dark urine, difficult or frequent urination, fainting, skin rash or hives, yellowing of the skin or whites of the eyes (jaundice), or a prolonged loss of weight or loss of appetite.

A SHOCKING REPORT ON THE FDA

When concerns arose some 11 months ago about a possible link between children taking antidepressant drugs and suicide attempts. Senior officials at the Food and Drug Administration ordered their leading expert to head up an examination of the evidence. When the government scientist filed his report last winter, however, his bosses decided to keep it secret — even though it found that children who took the drugs were twice as likely to be involved in serious suicide-related behavior as those who did not. Instead of revealing the findings, senior FDA officials ordered more studies, which are not expected to be completed until summer. They also kept the author, Dr. Andrew Mosholder, from presenting his conclusions to an FDA advisory committee when it took up the issue in February. At this writing, Dr. Mosholder's report had not been made public. But, news of his conclusions first surfaced in a recent CBS News report. His findings were detailed in an internal FDA document obtained by several newspapers, including The Los Angeles Times and New Orleans Times-Picayune. These documents have now been authenticated by government officials.

In March, when the agency issued a warning about the possibility of problems for young patients taking the drugs, FDA officials said no conclusive scientific evidence existed on the link between antidepressants and potentially suicidal behavior by children. Officials said they based their action on anecdotal

dotal complaints from doctors and families that had been presented to the advisory committee. They gave no hint that their own chief expert on the subject had examined the results of more than two dozen clinical trials conducted by antidepressant manufacturers and had found an unusually high correlation between their use by young patients and potentially suicidal behavior. In justifying their decision to hold back Mosholder's report, his superiors questioned the reliability of the data on which he based his conclusions. They suggested the drug companies, which manufacture the antidepressant drugs and conducted the clinical trials in order to market them, might have been too quick to count some behavior as potentially related to suicide. What they are really saying is that the companies might have been too eager to raise questions about their "own products." That is certainly an interesting conclusion, to say the least.

Among the kinds of actions these officials said should not necessarily have been counted as potentially suicide-related were instances of children who deliberately cut themselves. Some FDA officials defended the decision to sit on the report and seek more analysis of the data, but some psychiatrists and congressional leaders who are following FDA's handling of the issue were angered that the agency had kept Mosholder silent. Senate and House committees have ordered the FDA to hand over documents that might illuminate what the agency knew about the possible link between the drugs and suicidal behavior. Clearly, there are public health and safety issues involved. This is a matter that must be fully investigated and appropriate action taken. That the FDA appears to have been less than truthful is most troubling. Given what is at stake, the decision to keep pertinent information under wraps is inexcusable. Releasing the research would have given additional support to the FDA's warning, making it even clearer to doctors and patients that these drugs must be used with caution and careful monitoring.

FDA ADVISORY ON ANTIDEPRESSANTS

The FDA has issued an advisory requesting the manufacturers of certain antidepressant medications to add warning labels recommending that patients treated with these drugs be carefully monitored for sudden signs of becoming suicidal. This will definitely have a good effect on pending "failure to warn" lawsuits against the drug makers. The advisory was issued in response to recommendations from the FDA's drug review committee. Concerns were addressed by the committee that these drugs are linked to an increased risk of suicide, suicidal tendencies and other violence. The advisory applies to ten commonly prescribed drugs, including Paxil, Prozac and Zoloft. The warning will raise awareness of a possible risk and cause more persons to come forward. Most people, including doctors, were not aware that suicide could be caused by the drug. The advisory will definitely increase public awareness.

The drug manufacturers have known for years that the drugs referred to could increase the risk of suicide, but made the decision not to inform doctors and their patients. The proof of this failure lies in internal company documents, which indicate that the companies knew that these drugs could cause certain individuals to become violent or agitated. The companies failed to include this information in their labeling or to inform doctors about it. Companies failed to put the warnings on their products because they didn't want drug sales to suffer. The advisory will have the effect of negating the industry's assertion for over a decade that the FDA has not found credible evidence to indicate there is a "link" between the drugs and suicide risk. But, lawyers who have never handled a case involving antidepressants and suicide should be cautious in filing lawsuits. The science involved must be mastered before deciding to take on a powerful drug company.

EPHEDRA BAN TAKES EFFECT NATIONWIDE

The ban on ephedra has finally taken

effect. While it took the FDA almost 10 years to ban the substance, at least the agency finally acted. Unlike medications, which must be proven safe and effective before they are allowed to be sold, dietary supplements may be marketed under federal law without any such proof. To curb sales of a supplement, the FDA must show it poses a significant health threat. The ban resulted when a federal judge allowed the nationwide ban on dietary supplements containing ephedra to take effect. A plea from two manufacturers was rejected. Ephedra has been linked to 155 deaths, and that is proof enough that the banishment of ephedra was long overdue. U.S. District Judge Joel Pisano refused to grant a temporary restraining order that would have prevented the Food and Drug Administration from banning the products.

After years of fighting manufacturers over the risks, the FDA announced in December that it was banning the sale of the amphetamine-like herb — the first such ban of a dietary supplement. The ephedra products pose unacceptable health risks. Any consumers who are still using them should stop immediately. The judge said the manufacturers did not meet several legal requirements, including proving that they are likely to win the case and that they would suffer irreparable harm if the ban took effect. The court's ruling means the ban will be in effect at least until the lawsuit can be heard on its merits. At this writing, no trial date has been set.

HORMONE REPLACEMENT THERAPY

We are currently investigating potential claims on behalf of those injured by hormone replacement drugs such as Prempro, Premphase, Premarin and Provera. For years doctors have prescribed these drugs to relieve the symptoms of menopause and to help women maintain a healthy hormone level to prevent future health problems. It was believed that long-term use of these drugs was safe and protected against osteoporosis and heart disease. But, recent studies now show that hormone replacement therapy places women at a higher risk for breast cancer, ovarian

cancer, heart attack, stroke and blood clots. On July 9, 2002, the National Institute of Health halted the Women's Health Initiative study, a 15 year multi-million dollar research program designed to address the most common causes of death, disability and poor quality of life in postmenopausal women, because the overall risks of the drugs exceeded any health benefits. Specific study findings for women taking hormone replacements compared to placebo include:

- a 26% increase in breast cancer;
- a 29% increase in heart attacks;
- a 22% increase in total cardiovascular disease;
- a 41% increase in strokes; and
- a doubling of rates of blood clots.

Approximately 38% of postmenopausal women in the United States take hormone replacements. The purpose of healthy women taking these drugs is to preserve health and prevent disease. But, the results of the Women's Health Initiative study revealed that the opposite is happening. Any person who has suffered from any of the conditions referred to above may have a valid claim and should first contact their doctor and then a lawyer. All claims are subject to a statute of limitations, which means lawsuits that are not timely filed are barred and can't be pursued.

X. BUSINESS LITIGATION

U.S. SUPREME COURT WON'T HEAR HALLIBURTON CASE

The U.S. Supreme Court has refused to hear a patent dispute concerning a division of Halliburton, the energy and government contracting company formerly led by Vice-President Dick Cheney. Lawyers for Halliburton Energy Services Inc. sought review by

the High Court after a lower court ordered Halliburton to pay \$98 million to a rival. A competitor, BJ Services Co., had sued Halliburton for patent infringement over a particular method of extracting oil and natural gas. Although this case is unrelated to recent allegations of price gouging, bribes and kickbacks in Halliburton's multibillion-dollar contracts to provide services for the military in Iraq, it is another red flag relating to how this company operates. Halliburton has multiple contracts to support the Army and repair oil fields in Iraq, with a value estimated at \$18 billion dollars. The company has denied any wrongdoing.

MICROSOFT TO SETTLE MINNESOTA SUIT

Microsoft Corp. has settled a class action case in Minnesota that accused the company of overcharging in violation of state antitrust laws. The settlement's dollar amount wasn't released and some of its provisions will be resolved in binding arbitration. The final settlement will be presented to the state court judge by July 1st. The settlement will be made public when presented to the judge for approval. Class action antitrust cases against the software giant are still pending in Iowa, New Mexico, Vermont, Nebraska and Massachusetts. Cases in New York, Ohio, and Wisconsin have either been dismissed or denied class action status and are currently on appeal. In early April, Microsoft settled with rivals InterTrust Technologies and Sun Microsystems. The Minnesota suit alleged that Microsoft had violated state antitrust law by overcharging for its Windows operating system and its Excel and Word programs. The company had denied overcharging, saying the prices on its products had dropped. The settlement came during a jury trial that was expected to last several more weeks. The plaintiffs were seeking as much as \$505 million – and if successful – Minnesota law would have automatically tripled that.

Microsoft had previously settled with nine states and Washington, D.C., paying out a total of \$1.5 billion, including \$1.1 billion in California alone.

Cases in 16 other states were dismissed. A case brought by the federal government ended with a settlement in 2001 after the trial court found that Microsoft used its operating system monopoly to strong-arm competitors. The trial judge ordered a breakup of Microsoft, but a federal appeals court overruled the decision. It did, however, uphold the judgment that Microsoft held a monopoly with Windows.

CORPORATIONS SUED FOR ALTERING EMPLOYEE TIME CARDS

The practice of illegally altering or changing hourly employees' time records is a common aspect of today's business environment, according to experts. In August 2003, Taco Bell reached a \$1.5 million settlement in favor of Taco Bell employees of the restaurant in Oregon after a jury returned a verdict finding that Taco Bell routinely changed worker's time cards and required workers to perform duties after they were "off-the-clock." In addition to Taco Bell, workers have sued Toys R Us, Family Dollar, Pep Boys and Wal-Mart alleging that those companies doctored employees' time sheets or time cards in an effort to cheat them out of their rightful wages. Recently, the U.S. Department of Labor reached two settlements with Kinkos after learning that managers for Kinkos in New York and Massachusetts erased time record of employees.

According to wage and hour experts, many managers of retail stores and restaurants face enormous pressure from their superiors to keep costs down. In fact, experts say that often managers are compensated by way of bonuses based on minimizing costs. Consequently, in an era where managers can change time records by logging onto a computer, "shaving time" has become prevalent in the workplace. For example, employees in a suit against Wal-Mart allege that when they worked more than 40 hours in a given week, Wal-Mart managers would transfer the extra hours worked to the following week to avoid having to pay overtime. Our firm is currently handling lawsuits on behalf of workers

who were not properly paid for their overtime work. For more information on those lawsuits, our readers can visit our website, www.BeasleyAllen.com.

XI. INSURANCE AND FINANCE UPDATE

WADDELL AND REED FLEECING CASE

The National Association of Security Dealers (NASD) is pursuing Waddell & Reed, Inc., one of the largest broker-dealer firms in the country, for convincing its clients to exchange 6,700 variable annuity policies between January 1, 2001 and August 30, 2002. As you know, the NASD is the regulatory body having the duty to monitor the activities of firms who sell variable annuities and other security products. The complaint filed by the NASD accuses Waddell & Reed of convincing their clients to exchange their current variable annuity policies for new policies without having a reasonable basis for concluding that the transactions were suitable. Even further, the NASD alleges that approximately 1,400 of the Waddell & Reed clients were likely to lose money from the exchanges. Basically, the NASD accuses Waddell & Reed of putting their own interest and profit above the interests of their clients.

Robert Hechler, former President of Waddell & Reed, and Robert Williams, National Sales Manager for Waddell & Reed, were also named individually in the complaint. These were the two highest-ranking executive officers of Waddell & Reed during the time period in question. Ultimately, the responsibility for the thousands of annuity exchanges fell on their shoulders. Waddell & Reed denies the allegations brought by the NASD and claims that the exchanges provided additional and tremendous value to their clients and were suitable for their individual financial needs. The annuity exchanges in question generated \$37 million in commissions for Waddell & Reed and cost the clients \$9.8 million in unnecessary fees. The NASD has asked Waddell &

Reed to reverse the commissions charged to their clients, refund the clients' losses, and pay a yet-to-be-determined fine.

Torchmark Corporation previously owned Waddell & Reed. Simultaneously, Torchmark owned United Investors, another of its subsidiaries. United Investors had originally issued the variable annuities that Waddell & Reed convinced its customers to surrender in exchange for annuities from Nationwide Insurance Company. A lawsuit was later filed by United Investors against Waddell & Reed in Alabama. This case went to trial and resulted in a jury verdict in Jefferson County, Alabama, of \$50 million. The Alabama Supreme Court overturned that verdict and sent the case back to the trial court. Recently, the case was re-tried and the new jury returned a second verdict of \$45 million against Waddell & Reed.

The NASD cites three motives for the actions taken by Waddell & Reed:

- the \$37 million in commissions to Waddell & Reed;
- the annual fees Waddell & Reed would receive from Nationwide that it was not earning from United; and
- the fact Waddell & Reed was concerned that United might allow the clients to invest their annuity values in mutual funds not related to Waddell & Reed.

The outcome of this case remains to be seen but it appears to be a clear picture of "churning." As you probably recall, churning is a process by which a security instrument, such as an annuity, is exchanged for another product to the disadvantage of the annuitant. Through the mid-1980s to the present, churning has become a frequent practice of many insurance companies and financial institutions. For Waddell & Reed, it appears the NASD is in the process of putting an end to their churning activities. If that occurs, that will be good for Waddell & Reed's customers.

THESE REALLY IS AN INSURANCE CRISIS

Over the past several years, the insurance industry has worked very hard to convince the American people, and especially our political leaders, that a crisis exists in the insurance industry. I have to admit they have been correct all along that a crisis does in fact exist. But, the industry leaders have been flat wrong on the reasons for the crisis. The insurance industry sectors are now enjoying astronomical profits on the backs of policyholders. Let's take a look at the real facts.

- In 2003, major property/casualty insurers' profits were up 89% from 2002.
- In the first nine months of 2003, the property/casualty industry made \$23 billion in profits. That's \$12.2 billion more than they made during same period in 2002.
- In the first nine months of 2003, life and health insurer profits jumped 437%, "the best third-quarter increase in a decade."
- Insurance industry's return on equity in 2004 is likely to soar above double digits for the first time since 1997.

While profits are soaring, some insurers have finally started to lower rates for their policyholders. Unfortunately, others are still refusing to do so, especially for doctors. Some are even trying to by-pass regulators who attempt to keep a check on rate increases. Here are some interesting facts to consider.

- One-third of all commercial property/casualty accounts experienced insurance premiums that either *held steady or dropped* during the last three months of 2003.
- On the other hand, the "non-profit" doctor-owned ISMIE Mutual Insurance, the largest med-mal insurer in Illinois (a state that does not regulate insurance rates), is turning huge profits yet continues to hike premiums and executive salaries instead of lowering rates for its doctors.

- In 2003, the company turned a \$20 million profit and added \$31 million to its reserves.
- At the same time, rather than lower rates in light of soaring profits, it *raised* premiums 35% for its doctors, who actually own the company.
- At the same time, two senior executives received pay hikes of 12 to 18%, raising their annual salaries above \$600,000.

Meanwhile, new data proves – without any doubt – that jury verdicts and lawsuit filings have been dropping drastically in the United States. These are the true facts concerning lawsuits and verdicts.

- According to data released April 1, 2004, median jury awards in personal-injury cases “fell significantly,” dropping 30% in 2002 to \$30,000, from nearly \$43,000 in 2001.
- The top 10 jury verdicts dropped to the lowest total amount since 1997, and the number one verdict was the lowest in a decade.
- Personal injury case filings have dropped 9% over the latest 10-year period studied.
- According to data released April 1, 2004, jury awards for medical-malpractice cases have *remained level* in the latest three years for which data are available.
- Medical malpractice case filings per capita have been steady for 10 years, showing a slight overall *decrease* between 1992 and 2001.

The insurance industry – and those promoting the tort reform movement – have ignored the real facts relating to the insurance crisis in the United States. When you check out the record, you will find that the crisis came about from factors totally unrelated to lawsuits or jury verdicts. Yes, a crisis in the industry does exist – but the fault lies with the industry itself.

INSURANCE INDUSTRY POSTS INCREASE IN PROFITS OF 900%

We have been watching the State of Texas because of claims that tort reform legislation in that state would lower insurance rates. But, it appears that companies are raking in windfall profits in Texas and premiums haven't been reduced. In fact, rates have continued to climb. Texas Watch, the nonpartisan consumer research and advocacy organization, urged Texas legislators and regulators call for a full accounting of insurance industry practices and behavior. The industry should be made to meet its responsibilities to Texas citizens and to state government.

New data, released April 14th from the Insurance Services Office Inc. and the Property Casualty Insurers Association of America, document a 900% increase in profits for property and casualty insurance companies between 2002 and 2003. According to the new reports, insurers posted \$29.88 billion in profits in 2003 as compared to the \$3.05 billion profits they reported in 2002. This industry-wide information follows reports showing that Texas is currently a highly profitable and predictable market. A Texas Department of Insurance report in March documents loss ratios of 58% for the top Texas insurers in 2003. This means for every premium dollar the companies brought in during 2003, they paid out only 58 cents for claims. Yet despite windfall profits, the insurance industry refuses to pass these benefits along to Texas homeowners, doctors and other policyholders.

Texans are still waiting for lower insurance premiums, as well as for the promised decreases in the cost of products and services. You will recall that reduced premiums were guaranteed if tort reform measures were passed. It is time to demand some accountability, cooperation and respect from this industry. The insurance companies are reaping billions of dollars in profits, while Texans are continuing to see increased premiums, higher deductibles, lower coverage, weakened constitutional rights and a soft regulatory system.

Last year, the Texas Legislature passed

the insurance industry wish list curtailing the legal rights of Texas families with claims against insurance companies, further tilting the scales of justice in favor of defendants and their insurance companies. Promises of lower costs for health care and insurance have not materialized. A Texas Watch spokesman stated that after 15-plus years of pro-insurance industry changes in Texas law – weakening consumer protections – Texas families need to ask hard questions of their state elected officials. Those questions should be asked in most other states, including Alabama. It is most significant that the passage of tort reform legislation and the use in some states of arbitration to resolve claims hasn't helped policyholders a bit. People and business owners are still paying too much for their insurance.

STUDY FINANCED BY INSURERS CALLS FOR FEDERAL REGULATION

Researchers at the University of Massachusetts are releasing a study that advocates a strong federal role in insurance regulation, which has been the province of the states for more than 150 years. The study, financed by insurers and an industry trade group at a cost of \$300,000, notes that state regulation is regarded as inefficient, costly and a drag on the competitiveness of insurers as they compete with banks and mutual fund companies for customers. The study contends that the states may not be capable of an effective overhaul and concludes that “federal action is necessary to prompt needed improvements.” The study was directed by Sheila C. Bair, a former Assistant Treasury Secretary in the Bush Administration, who is now a professor of financial regulation at the University of Massachusetts in Amherst. State regulators disagree with the federal takeover of insurance regulation. Any attempt to switch the focus of regulatory authority from the states to the federal level will lead to more confusion and fragmentation.

While Ernst Csizar, the President of the National Association of State Insurance Regulators, admits that the states have failed to adequately monitor the

insurance industry, he opposes the proposed creation of a federal insurance regulator. At a hearing of the House Subcommittee on Capital Markets, Mr. Csiszar acknowledged complaints that state regulation has not always met the needs of both insurance companies and their policyholders. Many of the nation's largest insurers have been campaigning for a dual system. Such a system would create a federal regulator, but also permit companies to choose whether to be regulated by Washington or the states. That approach has met strong resistance from the states, consumer advocates and some members of Congress. Personally, I believe each state should retain the right to regulate insurance companies and related matters. I am convinced it would be a major mistake to allow the federal government to usurp state regulation of all insurance matters.

GENERAL MOTORS FINANCE ARM SETTLES RACIAL-BIAS LAWSUIT

General Motors Acceptance Corp., one of the world's largest consumer-finance companies, has reached a settlement in a class action lawsuit that alleged African-Americans were charged higher interest rates than whites for car loans. As part of the agreement, GMAC agreed to put tighter limits on the increases car dealers can impose on interest rates set by GMAC. Currently, GMAC allows dealers to add three percentage points to the annual interest rate GMAC would offer to the consumer, based on creditworthiness. This case was one of several class action lawsuits filed against major car-loan companies in the United States, alleging that their practices discriminate against minorities. At issue was how the \$500 billion U.S. car-loan business actually works and how some customers are treated.

XII. PREDATORY LENDING UPDATE

GEORGIA HAS NEW PAYDAY LOAN LAWS

The State of Georgia has stood up against the payday loan industry and their powerful lobbyists and passed a good piece of pro-consumer legislation. Governor Sonny Perdue signed a bill into law last month that caps interest on all small consumer loans, including payday loans, at 60% annually, which is Georgia's small loan usury rate. The law, which goes into effect on May 1st, applies to lenders who make loans of \$3,000 or less. Key provisions are:

- **Borrower rights:** Borrowers are authorized to sue for 3 times the amount of all interest and charges, plus attorneys' fees and court costs. Class actions are specifically authorized. Illegal payday loans are declared void, and lenders are barred from collecting the debt.
- **Tax penalties:** A tax equal to 50% of all proceeds from payday loans is imposed.
- **Protections for military personnel and their families.** Lenders are barred from garnishing wages of military personnel for unpaid loans, from contacting the commanding officer to report delinquency, and from making loans to military personnel when the commanding officer has made the lender off limits.
- **Anti-broking provisions.** Lenders are barred from offering payday loans on behalf of another lender, and are deemed de facto lenders if they make more money from the illegal loan than does the bank they claim to represent as an agent. These provisions make SB 157 the first piece of legislation to target the "rent-a-charter" subterfuge, under which lenders use agreements with banks to claim exemption from state usury limits.

PAYDAY LENDERS TARGET MILITARY MEMBERS

At a time when military families are under tremendous stress and strain, we have learned that payday lenders take advantage of military personnel. We all know that men and women who serve in our military are largely underpaid. Let's look at a typical case. When Army specialist Myron Hicks returned to Georgia from active duty in Iraq, he took out a \$1,500-dollar loan to fix up his car. A few months later, the soldier was in for a real shock. "I found out I was paying back \$3,000, twice as much as what I borrowed," Hicks told Fox News in Columbus, Georgia. The station did a good story on this situation. Military towns located throughout the country have become magnets for payday lenders. I don't have to remind our readers how payday lenders operate. They are businesses offering fast cash in exchange for high fees and annual interest rates that often exceed 700%. In fact, we have seen cases with annual interest rates as high as 1200%.

America's men and women in uniform are attractive to short-term lenders. This is because of their small but steady paychecks. Folks in the military also have to answer to superior officers, whom lenders often contact directly if military personnel under their command fail to pay off their loans. The payday loan industry claims military communities are only a small percentage of the industry's overall business.

Most consumer credit counseling experts say borrowing money in advance of payday is generally a bad idea. In most cases, what happens is the borrower has to roll the loan over. The payday lenders know the borrower won't be able to pay the loan back in the short time allowed, and the loan just becomes a cycle. Lawmakers in several states are considering legislation to further restrict payday lenders. Georgia has taken strong action. Unfortunately, Alabama is not among the number of states taking action. Whether it takes government regulation or just education in personal finance, the military should work to keep America's men and

women in uniform out of debt. States should take action to go after those in the industry that take advantage of the military.

THE SAD SITUATION IN ALABAMA

Since the payday loan industry was able to get a most favorable piece of legislation through the Alabama Legislature last year, payday loan operations have sprung up all over the state. In Montgomery, there appear to be dozens of new outlets popping up in all sections of town. Obviously, the owners must like the new Alabama law. When you consider rates as high as 25% monthly (300% annually) can now be charged, it is very to understand their eagerness to open new locations. I hope the Governor and Legislature will take another look at this industry and do something to help consumers.

WHAT EXACTLY IS A PAYDAY LOAN?

I had assumed that all of our readers understood how payday loans actually work. Because not everybody has to use "payday loans" as a source of money, I am not surprised to have been asked for a better explanation. Payday loans are small cash advances based on a personal check held for future deposit (or electronic access to a customer's bank account). These loans of \$100 to around \$500 are due in full on the borrower's next payday or within a certain number of days. The fees charged result in very large annual interest rates, with some in the past exceeding 1,000%. The design of these loans leads to frequent rollovers and perpetual debt. The holding of personal checks makes the loans inherently coercive, with over-extended borrowers faced with the choice of allowing the check to bounce, paying to extend the loan or being threatened with "bad" check charges or prosecution.

This industry disproportionately targets vulnerable groups such as low-income people, welfare-to-work women, seniors and members of the military. According to one recent study, the typical customers were female,

average age was 39, average individual income was \$24,673 gross, and 60% were renters compared to 22% who own homes.

While the situation in Alabama has become a little better, it is still very bad. In the mid-1990s, payday loan operations mushroomed in Alabama. The Consumer Federation of America estimates that there were about 700 lenders around our state before last year's legislation. Labeling their transactions as "deferred presentment" or "deferred deposit services" allowed the payday lenders to circumvent the Alabama Small Loan Act, which prohibits lenders from charging more than 36% APR. Payday lending is a highly profitable business that encourages people to "pawn their paycheck" and become trapped in a "downward spiral of debt." Now that the new law is in effect in Alabama, the industry is growing in Alabama by leaps and bounds.

THE NEED FOR MORE FINANCIAL LITERACY EDUCATION PROGRAMS

Our firm has been actively involved for several years in helping consumers all across the country who have been victimized by predatory lending. Recently, we were invited to participate in a community seminar sponsored by The Centennial Hill Gardening Project, Inc., New Providence Missionary Baptist Church and AmSouth Bank to speak on the topic of predatory lending and to help educate people on things they should look for when deciding whether to finance the purchase of an item, whether it be a household item, car, or home. This seminar is part of a growing trend of community-minded groups that are undertaking the task of educating people about managing their money and understanding what all is involved in the modern financial services industry. As evidenced by many recent studies, the "financial literacy" of this country is very poor. This is true among all socioeconomic groups, but it is especially true for those individuals at the bottom of the economic ladder. Many experts, notably Alan Greenspan and former Secretary of the Treasury

Paul O'Neill, have endorsed these financial literacy programs and stated that they will go a long way toward preventing fraud and abuse associated with predatory lending. They argue that these financial literacy programs can even have a positive effect on the economy by producing more informed consumers who will, in turn, make wiser financial decisions. These informed decisions would allow individuals to increase their wealth and maintain it, rather than losing it to some deceptive scheme. We are very honored to be involved in such a movement and encourage anyone with a similar interest to get actively involved.

XIII. PREMISES LIABILITY UPDATE

JUDGE AWARDS \$5.25 MILLION IN GAS EXPLOSIONS TRIAL

A judge in Kansas City has awarded \$5.25 million in punitive damages to two Hutchinson businesses destroyed during the first of a series of natural gas eruptions in 2001. A jury in February had awarded more than \$1.7 million to the businesses, to be paid equally by Tulsa, Okla.-based ONEOK Inc., and Mid-Continent Marketing Center Inc., an affiliated marketing subsidiary. After two days of deliberations, the jury also awarded punitive damages against Mid-Continent. Under that state's law, the trial judge determined the amount of the punitive damages. State geologists and investigators said the explosions were caused by natural gas that leaked from an underground storage cavern owned by ONEOK. They say the gas traveled from the Yaggy storage field seven miles northwest of Hutchinson, Kansas, erupting from old brine wells beneath the city. The blasts destroyed several buildings and killed two people.

The explosion and fire in 2001 destroyed the Woody's Furniture and Decor Party Supplies buildings on the first day of the eruptions. The businesses' lawsuit was one of more than a dozen that arose from the explosions.

Another explosion at a mobile home park the day after the downtown fire killed a couple. That claim by their family reached an out-of-court settlement with ONEOK. The largest lawsuit, a class action lawsuit, is scheduled for trial this summer. It is brought on behalf of all businesses and property owners in Reno County and seeks \$350 million in damages for loss of business and property values.

XIV. WORKPLACE HAZARDS

CHEMICAL INDUSTRY FACILITIES REPORT ACCIDENTS

Chemical facilities owned by companies enrolled in an industry-sponsored voluntary safety program have had more than 1,800 accidents per year since 1990. This information comes from a new report released last month by the U.S. Public Interest Research Group. Responsible Care, a voluntary security code subscribed to by companies that are members of the American Chemical Council, has apparently not done the job. The report criticizes the Bush Administration plans to address safety and security at chemical facilities by industry-self-regulation. The industry plan is a classic example of “letting the fox guard the chicken house.” U.S. PIRG analyzed accident data compiled by the National Response Center, which is the sole national point of contact for reporting oil and chemical discharges into the environment in this country, from 1990 through 2003.

The safety record of these companies shows that voluntary measures simply do not work. To protect both workers and the public, safety measures at these facilities must be improved. BP, Dow, and DuPont are the worst offenders for the period since 1990. Facilities owned by these companies had nearly one-third of the accidents since 1990. It is noteworthy that the EPA has identified more than 120 chemical facilities that each put more than one million people at risk of injury or death

because of the hazardous chemicals they use and store on site. Currently no federal government regulation requires industries to consider implementing inherently safer technology.

XV. TRANSPORTATION

1,000 DIE EACH YEAR IN HIGHWAY CONSTRUCTION ACCIDENTS

Accidents in highway construction zones kill more than 1,000 people, most of them drivers, each year. For thousands of men and women who work on construction projects, their workplace is the highway. According to statistics, 1,181 people died and 52,000 were injured in work zone crashes in 2002. That was 53% more than in 1998. Four out of five of those who die in work zone crashes are drivers and passengers, not highway workers. Unfortunately, the number of deaths is rising because highway construction is increasing. We see signs along our highways in Alabama alerting motorists to the fact that fines are doubled for speeding in a construction zone.

Texas had the most work zone deaths by far in 2002, with 192. California had the second-highest number, 119, according to statistics from the American Association of State Highway and Transportation Officials. In 2002, Alabama had 33 such deaths and in 2003, the number had risen slightly to 35 deaths. The government is trying to reduce the numbers by promoting the use of long-lasting pavement that needs fewer repairs and encouraging total road closures when appropriate. But, there are many highway systems that will need repair and improvement in the coming months and years. According to the federal government, rear-end crashes are the most common type of accident in work zones. This can be the result of speed, lack of patience, which causes drivers to tailgate, and inattention caused by such things as cell phone use and observing the work going on. In any event, the rate of accidents in construction zones remains a major problem.

PROPOSED AUTO SAFETY REGULATIONS

Consumer groups are urging the U. S. House of Representatives to pass various safety regulations contained in the Senate version of the highway funding bill. The Senate bill was drafted by Senator John McCain (R-Ariz.). As previously reported, the McCain bill was approved by the Senate in February, and it would require the National Highway Traffic Safety Administration to meet specific deadlines in addressing a comprehensive list of automobile safety issues. Some of the issues along with the deadlines for addressing those issues as contained within the bill are as follows:

- By 2005: add 15-passenger vans to the list of vehicles NHTSA tests to determine their propensity to roll over.
- By 2006: require vehicles to include government crash test ratings on stickers at dealerships.
- By 2007: upgrade tire “aging” and “performance” standards.
- By 2008: require door lock systems that reduce the chance that passengers can be ejected; establish minimum standards for vehicle resistance to rollovers; and develop a new moving crash test that realistically duplicates a vehicle rolling over.

These measures address very serious automobile safety issues. Our firm reviews cases involving these issues on a daily basis, often on behalf of individuals who have suffered serious bodily injury or death. The need to implement more stringent safety standards is evidenced by the rising number of highway deaths. In 2002, there were 42,815 highway deaths, which was the highest death toll since 1990. Dr. Jeffrey Runge, NHTSA’s Administrator, testified at a congressional hearing that his agency’s safety priorities would be compromised because of ambitious, unrealistic deadlines set out in the proposed bill. In my opinion, all of these proposed measures would result in safer vehicles and ultimately save lives.

I see nothing unrealistic or ambitious about the deadlines. In fact, these measures should have been put in place years ago to insure that automobile manufacturers put safe cars on the highways.

ALCOHOL AND DRIVING DON'T MIX

The mother of a 19-year-old killed in a traffic accident has filed a civil lawsuit against Coors Brewing Co., claiming that the company promotes underage drinking. The mother, a Reno, Nevada, resident, contends Coors has failed in its duty to protect the country's youth from drinking. Her son was killed in 2002 after he drank Coors at a party and later drove his girlfriend's car into a light pole at 90 mph. The lawsuit, which seeks unspecified damages, accused Coors of "glorifying a culture of youth, sex and glamour while hiding the dangers of alcohol abuse and addiction." Golden, Colorado-based Coors issued a statement saying that although the company could not comment on pending litigation, the company "doesn't want underage consumers - period." It is difficult for me to believe that the beer companies don't market this product to young people. It is clear that much of their marketing efforts are directed at younger people. In fact, some advertising appears to be designed to appeal to teenagers. Underage drinking and drunk driving is a problem in this country and it may take more lawsuits against those who market the products in order to help stamp out the problem to the extent possible. There is one thing for certain, and that is alcohol and driving – at any age – don't mix!

U.S. JETS MUST NOW HAVE DEFIBRILLATORS ON BOARD

Every large jet in the U.S. fleet must now have a defibrillator on board. This may result in making an airliner one of the safest places to have a cardiac arrest. A Federal Aviation Administration rule, four years in the making, has taken effect as of April 12th, requiring an automated external defibrillator and more advanced medical kits on all big jets. But, commuter planes are exempt

from the requirement. A defibrillator is an easy-to-use device that delivers a lifesaving shock when the heart develops a deadly short-circuit known as ventricular fibrillation. When the heart is quivering in this electrical chaos, a shock must be delivered within six minutes to save the person's life. The devices are becoming common in public places, largely because of lessons learned in the air. We are putting a defibrillator in each of the 4 buildings occupied by employees of our firm. Having Dr. Jim Lauridson, a medical doctor, on staff helped us make this decision. We are currently providing training for all employees.

XVI. ARBITRATION UPDATE

SOME COURTS DEAL WITH THE EVILS OF ARBITRATION

A federal district court in Georgia has refused to change its order in a payday lending case that was good for consumers. In that case, the court struck down an arbitration clause in a payday lending contract on mostly procedural unconscionability grounds. The court found, among other things, that the class of people who are so desperate as to go to payday lenders are in a particularly vulnerable contract position. The court upheld its original ruling by denying a motion to reconsider. The court's order included some good language about the history of payday lenders, and how "arbitration is just another means for high-cost lenders to circumvent state laws."

The payday loan industry is a multi-billion dollar enterprise nationwide. People who have to do business with this industry usually have few, if any, alternatives. However, that fact doesn't justify the payday lenders taking advantage of their customers. It is government's responsibility, both at the federal and state levels, to protect those persons who deal with payday lenders. If I had the authority to do so, I would close down the payday loan operators

or at the very least require them to charge reasonable interest rates.

ARBITRATION STILL A CONSUMER NIGHTMARE

Even though courts on occasion – such as the federal court mentioned above in Georgia – will strike down an arbitration agreement, those decisions are still too few and far between. In my opinion, the courts in our state and elsewhere have an obligation to protect consumers from the evils of pre-dispute arbitration of a mandatory and binding nature. However, the obligations of both the U.S. Congress and state legislature bodies are much stronger. No legal scholar can justify the transformation of the Federal Arbitration Act, from what it was intended by Congress to be, into a device used by large corporations to "stick it to consumers." Clearly, based on the history of the FAA, it was never intended by Congress to apply to consumer transactions.

Unfortunately, legislative action has also been slow in coming. Consumers have no chance to get justice from mandatory, binding arbitration that comes about from an agreement they were forced to sign before any dispute ever arose. Politicians who take campaign funding from proponents of arbitration have not seen fit to take on their donors. I think it is time for that to change! Congress should amend the FAA to take all consumer transactions and personal injury and death cases out of the Act. State legislatures should pass local legislation to curb the use of pre-dispute arbitration to the extent possible.

XVII. NURSING HOME UPDATE

SETTLEMENT BY KINDRED HEALTHCARE

Kindred Healthcare, a national healthcare services company operating hospitals and nursing homes across the country, recently agreed to settle claims resulting from a four-year investigation

of conditions at four nursing homes it operates in the state of Kentucky. The Kentucky Attorney General's Medicaid Fraud and Abuse Control Division conducted the investigation, which involved problems at these facilities including dehydration, untreated or delayed treatment of infection, injuries, lack of supplies to treat life-threatening conditions, failure to treat wounds, and failure to administer medication. Kindred operates more than 260 skilled nursing centers in more than forty states, providing care to approximately 28,000 nursing home residents every day.

This is not the first time that these types of claims have been made against Kindred's Kentucky facilities. In 2003, federal and state authorities ordered a plan of correction at Kindred's Bowling Green facility in response to a patient's death from accidentally strangling on a wheelchair restraint. In 2002 a suit was filed against Kindred's Lexington facility based on allegations that a resident had to have her feet amputated because of negligent care for diabetic foot ulcers. Another 2002 lawsuit out of the corporation's Winchester facility alleged the negligent death of a resident from infection.

Kindred agreed to make numerous improvements to resolve the Kentucky Attorney General's claims, including spending \$450,000 to have a monitor; \$1.38 million on geriatric nursing practitioners; \$900,000 on training; \$500,000 for nursing scholarship funds; \$357,752 to reimburse Kentucky Medicaid programs; and \$96,853 for repayment of the costs of the investigation. Kindred is the successor business to Vencor Inc., a nationwide chain of nursing homes that went bankrupt in 1999. Vencor filed for Chapter 11 protection after struggling amid mounting debt, federal probes, lawsuits and allegations of illegalities. In Vencor's bankruptcy case, the United States government submitted a claim for \$1.3 billion for Medicare fraud.

FIRE ANT ATTACKS IN NURSING HOMES

Over the past two years there have been numerous reports concerning fire ant attacks in nursing homes of all places. University of Mississippi researchers were

able to document at least six attacks by the South American fire ant in nursing home facilities. However, for some reason, those attacks received little – if any – news coverage. Arkansas is among the states where the fire ant population flourishes. The study documented attacks in other nursing homes – two each in Texas, Florida and Mississippi – as well in a state institution in Alabama. At least four nursing home residents have died after attacks resulting from complications because they are already in fragile health. Clearly, fire ant attacks present a serious problem. Fire ants inflict a painful sting, far out of proportion to their size. Large numbers will swarm onto the body and then sting almost simultaneously. Anybody who has ever been stung by fire ants knows how painful the bites can be. Nursing home patients who were attacked by the ants, according to the study, had physical or mental ailments that kept them from moving away or shouting for help. Incidents involving fire ants attacking nursing home residents can't be tolerated. There really can be no excuse for this sort of thing occurring in a nursing home.

EMERGENCY "WATCH LIST" IN GEORGIA

The federal government has recognized that it is difficult for residents and family members to compare the potential services that area nursing homes can provide. Indeed, it is much more difficult for the average person to compare the potential medical care that a loved one may receive at a nursing home than it is, for example, to compare the benefits of one particular make or model of automobile to another. The federal government attempted to assist the citizens of this country by developing the Nursing Home Compare website, www.medicare.gov/NHCompare. But, the Nursing Home Compare website does not alert potential residents and their family members to the existence of nursing homes that have either provided substandard care in the past or have continuous care problems according to their surveys.

The national magazine Consumer

Reports has attempted to address this problem. They now conduct a bi-annual survey that lists problem nursing homes in each state. The most recent survey for the state of Georgia is for the year 2002. Amazingly, there are thirty-seven nursing homes listed on the Consumer Reports nursing home watch list. These thirty-seven nursing homes constitute approximately 9% of the total nursing homes in Georgia. This is a troubling number indeed. The nursing homes placed on the Consumer Reports nursing home watch list are determined by reviewing the surveys conducted at each facility. More specifically, nursing homes in Georgia are subject to both state and federal surveys to determine their compliance with state and federal regulations governing the level of care provided at the nursing homes. If the surveyors conducting these inspections find that the care at the facility violates either the federal or state regulations, then a "deficiency" is awarded to that facility. The potential for actual resident harm from each of the deficiencies is also determined.

Consumer Reports takes into consideration both the number of deficiencies and the severity of the deficiencies in deciding which nursing homes in a particular state, if any, are to be placed on the nursing home watch list. According to Consumer Reports, potential residents and their family members need to be wary of the nursing homes listed. The nursing homes listed below are those included on the most recent Consumer Reports nursing home watch list for Georgia:

- Integrated Health Services of Atlanta Buckhead
- Savannah Rehab & Nursing
- Sunbridge Care & Rehab for Riverdale
- Salem Nursing & Rehab of Angus
- Marietta Health & Rehab Center
- Florence Hand Home
- West Lake Manor Health Care Center
- Ashton Woods Rehab Center
- Heritage Park of Savannah
- Sunbridge Retirement & Rehab (Rome, Georgia)
- Lafayette Nursing & Rehab Center
- Laurel Baye Health Care of Macon

- Riverside Health Care Center
- Beverly Healthcare-Tifton
- Roswell Nursing & Rehab Center
- The Heritage of Old Capitol (Louisville, Georgia)
- Decatur Health Care Center, Inc.
- Shamrock Nursing & Rehab Center
- Mariner Health of Northeast Atlanta
- Athena Rehab of Clayton
- CLC Jonesboro
- Beverly Healthcare of Jonesboro
- West View Nursing & Rehab Center
- Midway Health Care Center
- Mountain View Health & Rehab Center
- Meadowbrook Nursing Home
- Fountain City Care & Rehab
- Autumn Breeze Health Care Center
- Pinewood Manor
- Premier Subacute & Rehab Center
- Warner Robins Rehab & Nursing Center
- Palmyra Nursing Home
- Clinch Healthcare Center
- CLC Fort Valley
- Emorywood Nursing Center
- Fountainview Center for Alzheimers
- Banks-Jackson-Commerce Medical Center Nursing Home

If you are considering placing a loved one in a nursing home in Georgia, you should obviously think twice before using one of the nursing facilities listed above. There are many nursing homes in Georgia that provide excellent care. In contrast, based upon the information that Consumer Reports has developed in its investigation of the listed nursing homes, the care provided by those facilities would appear to be less than adequate. It is recommended that persons looking for a nursing home should always do their homework before choosing a facility. Unfortunately, it is difficult to obtain the needed information in some states.

FLESH EATING BACTERIA CAUSING PROBLEMS

The Centers for Disease Control (CDC) are looking into a deadly outbreak of "Flesh Eating Bacteria" in a Georgia nursing home. In late March, two patients at the Bell Minor Home in Gainesville, Georgia, got necrotizing fasciitis and one of them died. The

CDC is testing samples from the victims trying to find out where the bacteria came from. The disease is a skin and tissue infection brought on by the same bacteria that causes strep throat. There are approximately 600 cases reported in the U.S. every year. Symptoms include severe pain, swelling, and redness on the skin. The bacteria are contagious and can be passed on by coughing or sneezing. I hope this will prove to be an isolated occurrence. It doesn't appear at this time that the nursing home facility bears any legal responsibility for the outbreak.

FORMER PRESIDENT OF NURSING HOME CHAIN INDICTED ON FRAUD CHARGES

The Associated Press has reported that a federal grand jury indicted the former president of a defunct nursing home chain. Darrell C. Tucker is accused of stealing more than \$100,000 from employee retirement and health plans. Tucker is being charged with embezzlement and health care fraud related to missing 401(k) and health plan money at Newcare Health Corp. of Atlanta, according to the report. The facility filed for bankruptcy in Worcester, Massachusetts, in 1999 and later ceased operations.

Authorities say Tucker failed to forward \$16,282 in employee contributions to the Newcare 401(k) plan covering 856 participants and another \$90,000 in employee contributions to the Newcare Group Health Plan covering 1,494 participants. Newcare provided senior residential care services in Alabama, Georgia, Florida, Kansas, Massachusetts, Tennessee, and Texas. In September 1999, a federal bankruptcy judge cleared the way for the sale of 22 nursing homes owned by Newcare to a Nevada firm. At the time, several state and federal agencies said they had launched inquiries into allegations that NewCare pocketed money withheld from workers checks for health insurance, failed to pay payroll and other taxes, and quietly emptied a \$500,000 escrow account it had been required to post to get an operating license in Massachusetts.

XVIII. HEALTHCARE ISSUES

DRUG PRICES ARE MUCH TOO HIGH – WHO IS TO BLAME?

A typical Alabamian will spend approximately \$180 a month to purchase a thyroid and asthma medication. Unfortunately, many Alabamians have no health insurance to cover the cost of purchasing these medications. If these folks could purchase the same two medications in Canada, their prescription bill would be approximately \$56 for the same two prescriptions. Many Alabamians are asking, "Why do we have to pay so much more than the rest of the world?" We know that retail pharmacies are not the problem – they operate on a very small margin of profit. So, where does the problem lie?

Not every medication is cheaper outside of the United States. On the whole, however, Americans pay more for their prescription drugs than any other developed country in the world, according to the U.S. Food and Drug Administration. Experts point to several factors for price disparity, including research costs borne by U.S. drug companies. The main reason for higher U.S. drug prices, many experts agree, is that governments in Canada and Europe regulate the price of drugs or use their clout to negotiate lower prices. Unfortunately, the U.S. government does neither. Since the United States is the only country that does not regulate the price for prescription medications, the price can double or triple for a certain medicine and there is no mechanism to stop the drug companies from raising their prices. Because price controls exist in other countries, drug companies look to the United States to maximize their profits. As health insurance costs skyrocket, the governors of several states and other government officials are considering government sanction programs to re-import lower cost drugs from Canada.

U.S. prescription drug costs rose 17% from 2000 to 2001, according to the National Institute for Healthcare Foun-

dation. It was the fourth consecutive year of 17% growth or higher. The Foundation has determined that two-thirds of the spending increase from \$131.9 billion to \$154.5 billion came from the sales of 50 highly popular and heavily marketed drugs. These drugs included cholesterol reducers Lipitor and Zocor; arthritis drug Vioxx; ulcer drug Protonix; painkiller OxyContin; antipsychotic drug Zyprexa; and antidepressant Celexa. Sales for each of these drugs were up 25% or more. In the meantime, most drug companies have recorded healthy profits. Pharmaceutical companies have averaged 18% to 20% net profit over the last two decades, making this the most profitable industry in the United States.

The pharmaceutical industry claims its pricing policies are based on how much it costs to develop a new drug. Clearly, a new drug's journey from test lab to the pharmacy shelf can be costly. However, the drug companies get extensive tax credits to offset research and development costs. As a result, the companies are taxed at about half the rate of the average U.S. family. In addition, the National Institutes of Health provide millions of dollars in grants each year for new drug development. Many believe the pharmaceutical industry spends an excessive amount each year in marketing prescription drugs. Over the past five years, the pharmaceutical companies have intensified their marketing tactics. According to Public Citizen, the drug industry's advertising costs rose from \$791 million in 1996 to \$2.5 billion in 2001. Frankly, I find it hard to justify advertising by the industry. It seems that medical doctors, working with pharmacists, should decide what medications to prescribe. That is why direct advertising to the public by the companies makes no sense and can't be justified.

Some believe that the U.S. government will eventually have to do what other industrialized countries in the world have done one way or the other and regulate the price of prescription medications. But, because the drug makers are among the nation's most powerful political interest groups, I doubt this will happen. Public Citizen

found the drug industry spends more than \$60 million each year on lobbying politicians, and that does not include political contributions and money spent lobbying at the state level. The local pharmacists are on a very low margin of profit, the consuming public is paying more than ever, and the drug industry is making record profits. Who is the guilty party? Groups such as AARP are helping spearhead the fight to lower drug costs, but it will be a long, hard-fought battle.

VETS STRUGGLE TO OBTAIN BENEFITS FOR AGENT ORANGE EXPOSURE

While litigation is pending for Vietnamese victims, Vietnam veterans are still struggling to collect federal benefits. A Navy veteran, stationed off the coast, was denied benefits for cancer of the larynx because his ship did not keep records of who went ashore unless it was for an extended period of time. Others have been automatically denied compensation because their disease is not recognized as Agent Orange-related by the Veteran's Administration. For example, an aircraft maintenance veteran was denied benefits for testicular cancer. He also suffers from brain and lung cancer, staph infection, blocked bowel, seizures and eye problems. The federal government has obviously not adequately responded to the veteran's needs.

The Veteran's Administration (VA) organized the Agent Orange Registry Examination Program in 1978. By 2000, according to the agency, 297,194 vets had taken exams, 99,226 had filed claims and only 7,520 had received disability compensation for Agent Orange-related causes. That same year the General Accounting Office issued a report stating that the Air Force's study of Operation Ranch Hand "has had limited impact on decisions affecting veterans' compensation" despite taking 18 years and spending \$100 million. Operation Ranch Hand was the code name of the Air Force's program to spray herbicides, primarily Agent Orange, to reduce vegetation that could hide enemy forces.

Vietnam veterans did win a major

battle two years ago when a San Francisco federal appeals court upheld a Vietnam veterans and survivor class action victory against the VA. The court ordered the department to pay disability payments retroactive from that date to when the veterans applied for benefits, but not before September 25, 1985. This order nullified a government rule-making procedure that affected more than 30,000 veterans who were suffering from diabetes or prostate cancer as a consequence of exposure to Agent Orange. The court found that the agency had been systematically violating a previous court order by limiting payment of retroactive benefits to only those widows and Vietnam veterans who had specifically identified Agent Orange as the culprit for the veteran's cancer when they first applied for VA benefits.

In 1989 this same court had ruled that the VA's standard of scientific proof was illegally high. The VA had concluded that there was no link between Agent Orange exposure and any disease other than a minor skin condition. When the agency reevaluated, nine major types of cancer were added to the list. The current list includes cancer of the lung, bronchus, larynx, and trachea; multiple myeloma, Hodgkin's disease, non-Hodgkin's lymphoma, soft tissue sarcomas, type II diabetes, chronic lymphocytic leukemia and spina bifida (a birth defect) occurring in children of Vietnam veterans. A veteran must be suffering from one of these recognized diseases in order to receive federal benefits. A veteran who wishes to apply schedules an appointment at the Veterans Administration hospital to take an Agent Orange Registry examination. The agency confirms the specific disability, when it appeared, and the severity. The veteran must show evidence of service in or near Vietnam, diagnosis of a VA-recognized disease, and the date of manifestation within the particular deadline for certain diseases. If denied, the veteran has the right to appeal by sending a Notice of Disagreement to the Board of Veterans' Appeals. Approved veterans may receive disability compensation and medical services. Veterans may receive \$106 to \$2664 per

month for disability compensation depending on level of disability. Medical services include hospital care, nursing home care and outpatient care free of charge. More of our veterans should be receiving these benefits.

ASBESTOS RELATED DISEASES RISING

The first-ever analysis of federal mortality records has found that 10,000 Americans die each year from asbestos exposure. The Environmental Working Group, an environmental research group, has reported that 10,000 Americans die each year from asbestos-related diseases. Asbestos was widely used for fireproofing and insulation until the 1970s. Scientists have concluded that inhaled asbestos fibers are linked to cancer and other diseases. Since 1979, more than 43,000 Americans have died from asbestos-related diseases. This study gets down to the local level, and that is good. It gives us a better understanding of the problem areas.

The more troubling news, however, is that the number of deaths appears to be increasing, and research groups are reporting that the growing number could lead to a public health crisis. The EWG has projected that more than 100,000 people in the United States will die of one of four asbestos-related diseases – mesothelioma, asbestosis, lung cancer and gastrointestinal cancer – over the next ten years. The research group has called for an immediate ban on asbestos. In addition, they want federal asbestos health screening and a fair measure of assistance for victims of asbestos exposure.

Although many Americans believe that asbestos has already been banned and its victims have been compensated by the courts, the EWG study found that the conventional wisdom about this deadly material is almost completely wrong. The Environmental Working Group has concluded that we are at the beginning of a tidal wave of asbestos-related diseases and mortality that needs to be brought to the attention of the public, federal policymakers and health officials. Many believe that the fibrous mineral is no longer a threat.

Unfortunately, asbestos is still with us.

Federal legislation designed to replace asbestos lawsuits with a victims' fund supported by asbestos companies and insurers was being considered by Congress as this issue was going to the printer. Many environmental groups are very concerned about the proposed legislation being pushed by Senator Orrin Hatch of Utah. Several have labeled the Senator's proposal as "grossly insufficient." Clearly, Congress should be worried more about the public health issues involved. Instead, it appears that many in Congress are more concerned over the welfare of asbestos firms and have largely ignored their victims.

While we have reduced exposure in this country, and that's a step in the right direction, we still haven't had an educational campaign and public health campaign to educate people that asbestos still exists. A great deal of misinformation has been put out by the industry. Asbestos is not an economic issue, but a public health crisis – one that has yet to reach its peak, according to the EWG. The study reports that 30 million pounds of asbestos are used in the United States each year. It also lists dozens of widely-used consumer products that still contain it. Finally, the study says more than one million workers are exposed every year. EWG Action Fund's interactive website shows Americans how close they live to a site where asbestos was shipped or processed. The study lists sites nationwide where asbestos cleanup is most critical and finds that more than 100,000 people live within half a mile of such a site.

The Bush Administration and the Republican leadership in Congress appear to be taking a position that protects industry and does little for victims. As this report was being written, I was informed that an effort to bring the Hatch bill up to a Senate vote had been defeated. This is good for victims and their families. I hope the current version won't come up again.

XIX. MONSANTO UPDATE

THE MONSANTO SETTLEMENT

There has been a great deal written and said concerning the settlement of the PCB cases in Anniston. I am well aware that the federal portion of the settlement is taking longer than most residents anticipated it would. This is because of the number of claimants involved and the fact that blood testing of all 18,000+ claimants (including nearly 3,000 claimants who were blood-tested previously as part of our case) is required to find out who all actually will have valid PCB-related claims. Unfortunately, many of the financial benefits of the settlement haven't been fully reported, and I must confess we haven't done a good job of getting the message out. For example, the health clinic required in the federal (Tolbert) case, combined with a health study funded by the federal government, is a valuable part of the settlement. Experts can be brought in to identify the source of the problems and provide lasting solutions for the area affected. The new health clinic will deal with the cause of the health problems, as well as the treatment, and that's good for all people involved. Obviously, a health clinic was badly needed and should be operational by later this year.

The global agreement in the PCB litigation also included a package of health programs and initiatives sponsored by Pfizer with an estimated value of up to \$75 million over 20 years. As part of the settlement, Pfizer agreed to pay \$2 million to establish a health clinic in western Anniston to be operated by the University of Alabama-Birmingham or a similar entity. The clinic will be funded by 10 annual installments of \$2.5 million to operate the facility. UAB (or a similar entity) will be responsible for setting up and running the clinic. In conjunction with the clinic, Pfizer will also establish a \$500,000 fund for health screenings and provide free prescription drugs to low-income, uninsured patients of the clinic

through UAB. The drug program's value is estimated to be up to \$23 million over twenty years. Edgar Gentle III, claims administrator for the Tolbert PCB case, has said the health clinic would be customized to fit the community's needs and have some environmental and research aspects. A feasibility study to determine the clinic's location is currently being carried out and should be completed by the middle of this month. The architectural firm performing the study has built more medical clinics in the Southeast than any other firm in the Southeast.

The other portion of Pfizer's health program was for Calhoun County residents to sign up for the company's prescription drug discount card, which, if every eligible resident applies, could save up to \$50 million over twenty years. Since the settlement announcement, Pfizer has been marketing its Share Card in Calhoun County. Thus far, about 1,500 of 4,000 eligible residents have signed up. The Share Card is available to low-income and Medicare recipients for a fee of \$15 per month for each prescription. However, low-income residents of Calhoun County can apply for free medicine through the Senior Rx program at no charge. In Calhoun County, Interfaith Ministries, a nonprofit, processes the paperwork for the drug company's free assistance programs. The clinic and the health study are most significant because they will address the health issues caused by PCBs.

The \$3.2 million health study, which is separate from the lawsuits, should prove a lasting benefit to those who believe their health problems are a result of PCB exposure. The three-year study, funded by the federal Agency for Toxic Substances and Disease Registry, will look into the effects of PCBs on the health of local residents. The study is being headed by the Jacksonville State University College of Nursing and Health Sciences and involves leading PCB experts from hospitals and universities around the country. These studies can be the foundation for further long-term studies.

Another important aspect of the federal court settlement involved the

required property clean-up. This was required as a part of the settlement and will have a cost to Solutia and Monsanto of between \$50 and \$75 million for just those initial phases under the current consent decree, with further stages to follow. Because of the settlement, it will be a real clean-up of the PCB contamination, rather than the superficial one proposed by the EPA and the corporate entities. The federal court will monitor the clean-up until completed.

We are hopeful that the settlement of the federal case will continue on a fast track and be completed as soon as possible. Our firm has dedicated a number of personnel – including lawyers – to keep things on track. At one time, we had 9 lawyers and 50 support personnel working on the Tolbert case. This went on for well over a year. At present, we still have a good number of folks working to complete the settlement.

SOLUTIA GETS EXTENSION TO FILE BANKRUPTCY REORGANIZATION PLAN

Unfortunately, the threat of a Solutia bankruptcy that came up during settlement negotiations became a reality. A federal bankruptcy judge has now given Solutia Inc. another three months to detail how it expects to emerge from bankruptcy. On April 13th, the judge gave the St. Louis-based company an additional 90 days — until July 14 — to file its bankruptcy plan. The extension was labeled as being “necessary and appropriate to carry out the provisions of the bankruptcy code.” When it filed for Chapter 11 federal bankruptcy protection in December, Solutia by law was required to draft a new business plan in the first 120 days of bankruptcy to show its lenders how it intends to return to profitability. That “exclusivity period,” which would have expired last month, allows Solutia to formulate its own restructuring and won't allow competing plans from outsiders. The ruling gave Solutia until September to solicit creditors' votes to approve whatever plan emerges.

Solutia sought bankruptcy protection after struggling under heavy financial

obligations assigned to the company when it was spun off by Monsanto Co. as a separate company seven years ago. Solutia had warned for months prior to filing for bankruptcy that such a move was probable. After its 1997 spin-off from the former Monsanto, Solutia was left with the PCB problems accrued by Monsanto over several decades of manufacturing. In 1999, Monsanto was acquired by Pharmacia & Upjohn to create Pharmacia Corp., which last year completed a spin-off of its biotechnology and agricultural businesses to form the current Monsanto Co. Pharmacia was acquired by Pfizer Inc. in April. We don't expect the bankruptcy of Solutia to adversely affect the settlement reached in either the federal case or the state case. We are working to see that our clients are protected under the settlement agreement.

XX. ENVIRONMENTAL CONCERNS

BUSH ADMINISTRATION MERCURY STANDARDS DESERVE CRITICISM

During the past several weeks, the Bush Administration's plan for reducing mercury emissions from power plants has come under heavy criticism. Nearly half of the members of the U.S. Senate and 10 State Attorneys General have urged the Environmental Protection Agency to propose stronger Mercury regulations. EPA Administrator Mike Leavitt has given assurances that he will re-examine the proposed plan. Presently, the Bush Administration's proposal envisions a 70% cut in mercury emissions from coal-burning power plants by the year 2018. The plan has been sharply criticized because of the time given to utilities to reduce emissions and because the EPA would let some companies buy pollution credits from utilities rather than substantially cutting contaminants.

The government's mercury proposals appear to fall far short of what the law required. The proposals fail to protect

the health of our children and our environment. The group of 45 lawmakers complaining included seven Republican Senators. Leavitt is being urged to scrap the proposed regulations and “take prompt and effective action to clean up mercury pollution from power plants.”

The EPA proposal does not meet the minimum requirements of the federal Clean Air Act and should be withdrawn immediately. The EPA proposal ignores the Clean Air Act’s provision that requires each plant to make strict reductions in mercury emissions. Power plants account for 48 tons of mercury a year. These emissions are unregulated at the present time. The scientific and medical community have clearly established that mercury is a toxic substance that can cause neurological and developmental problems, especially in children. Once in the environment, mercury can remain an active toxin for thousands of years. Even with all of the mounting criticism concerning the EPA regulations, the White House has played down the toxic effects of mercury. I strongly urge all of our readers to contact their Senators and Representatives and urge them to voice their opposition to the Bush Administration’s mercury emissions plan. If we do not take active steps right now to stem the flow of this toxic pollutant into our rivers, streams and communities, I am afraid that our children and grandchildren will suffer the consequences for many decades to come.

The proposal largely tracks suggestions from the energy industry. The White House almost uniformly minimized the health risks in instances where there could be disagreement. The proposed regulations are available on the EPA website, www.epa.gov. Coal and utility groups lobbied intensively to help shape the regulations, which will cost billions of dollars. Paragraphs in the proposed rules are inserted nearly verbatim from memoranda from the law firm of Latham & Watkins, where two top political officials in the EPA’s office overseeing air regulations, Bill Wehrum and Jeffrey Holmstead, once worked. Mr. Wehrum, the chief counsel of EPA’s air regulation office, said that the handwrit-

ten changes were prompted by his agency’s desire to use more precise legal language from the Clean Air Act.

U.S. PLANS STUDY ON ENVIRONMENT AND CHILDREN

The U.S. government is preparing the largest study of U.S. children to ever be performed. The study will track 100,000 children from birth to age 21 and seeks to increase understanding of how the environment affects youngsters’ health. The National Children’s Study, according to pediatric specialists, is coming at a crucial time. Rates of autism, asthma, certain birth defects and other disorders are on the rise, as is concern about which environmental factors play a role. And, technology has finally advanced enough to allow study of multichemical and gene-environment interactions that might explain why some children seem at greater risk. I am hopeful the study will help determine the environmental causes of these conditions. It’s a quest to prove both what’s harmful and what’s not.

The study, ordered by Congress in 2000, is in its late planning stages. Enrollment of pregnant women is set for 2006, although proponents hope three pilot sites could begin work late next year. Already, families alerted by interested patient-advocacy groups are asking how to participate. Scientists say they need \$27 million to \$50 million next year to ramp up, including hiring a laboratory big enough to store more than 2 billion anticipated biological and environmental samples — from participants’ blood and DNA to dust from their houses, soil from their yards and air from their neighborhoods. Congress has provided roughly \$12 million annually for three years of study preparation.

The study will help fight diseases that cost billions in treatment and other costs every year. The last major child-health study took place in the 1960s. It tracked the children of 55,000 pregnant women until age 7 to learn the causes of cerebral palsy. It also yielded other important discoveries, such as that doctors at the time weren’t properly treating infants’ fever-caused seizures. The National Children’s Study is to be

far more encompassing and has among its overall aims the following:

- To measure environmental exposures of concern and hunt differences by degree of exposure. Chemicals and pollutants top the list. Dr. Peter Scheidt of NIH’s National Institute of Child Health and Human Development cites a Minnesota study that found signs of pesticide exposure in the urine of 85% of children tested, but exposure equals harms. Another example: chemicals such as phthalates, which soften plastic, may affect hormones so as to cause male birth defects or encourage early puberty. Other environmental influences studied may include day care, diet, early-life infections and television.
- To study health problems specifically suspected of environmental links, in hopes of pinpointing risk factors. For example, studies of genetically identical twins show when one twin gets Type 1, or juvenile, diabetes, the other has just a 50% of getting it. Genes put these children at risk, but something else, perhaps a virus, pushes them over the edge. Brain development is another huge concern, and some substances can harm a developing brain in subtle ways and tiny amounts. Only recently have scientists learned to measure low-level contaminant exposure and to show not only that a person was around something toxic, but it actually absorbed into their DNA. And then there are windows of vulnerability: An exposure may harm during one month of pregnancy but not another.
- Storing genetic and other health and exposure data long-term to test future questions without starting from scratch. “The kinds of information we’ll be collecting ... will provide an enormously valuable resource for doing this kind of research for decades to come,” Scheidt says.

MOVIE STAR SETTLES TOXIC MOLD SUIT

Many of our readers will remember Lou Ferrigno, the former bodybuilder who was the star of “The Incredible

Hulk” television series. Mr. Ferrigno recently settled a lawsuit filed against his insurance company over toxic mold at his home. Mercury Insurance and Ferrigno reached a settlement for an undisclosed amount. Ferrigno and his wife had sought more than \$250,000. It was claimed by Ferrigno that in 2002 an inspector with Mercury failed to properly locate and repair a water leak in his house that caused damage in several rooms and led to the mold growth. They had to live in the house the entire time it took to do the repair work, which was well over a year.

COUNTIES FAIL AIR STANDARDS

The Environmental Protection agency has announced that 31 states must develop new pollution controls. The action by the EPA came as a result of a finding that the air in some 474 counties – home to more than 150 million people – does not meet air quality standards. The EPA, acting under court order, identified all or parts of a total of 474 counties. The localities were mostly in the eastern third of the country and in California. Most of the problems dealt with a failure to meet the federal health standard for smog-causing ozone. Officials have 3 years in which to develop plans to come into compliance. States in our area that failed to meet the federal test included parts of eastern Tennessee, Georgia, North Carolina, and the Dallas, Houston, and San Antonio areas in Texas. I guess the good news is that 2,668 counties met the standard and 19 states had all counties in compliance. Unfortunately, those states did not include Alabama. I understand that Jefferson and Shelby County are the only two Alabama counties included in the list of 474 referred to by the EPA.

XXI. TOBACCO LITIGATION UPDATE

TOBACCO LAWSUIT REINSTATED

The family of a woman who died after 35 years of smoking will have the opportunity to sue cigarette manufacturers under a federal appeals court order reinstating her family’s lawsuit. A district judge in Birmingham had originally dismissed the wrongful death suit. The U.S. Court of Appeals for the Eleventh Circuit agreed to review the case. After receiving advice about state law from the Alabama Supreme Court, the appeals court ruled in late March that elements of the suit should proceed. Carolyn Spain of Birmingham began smoking cigarettes in 1962, when she was 15 years old and unaware that she was becoming addicted to nicotine. She smoked “multiple packs” a day and continued to smoke even after being diagnosed with lung cancer in 1998. Her husband claimed in the lawsuit that tobacco companies Philip Morris, R.J. Reynolds and Brown & Williamson were legally responsible for his wife’s death because they manufactured dangerous products and did not adequately warn consumers about the dangers. The companies had argued that Mrs. Spain’s right to sue had expired, and along with it her husband’s right to file a wrongful death suit. They also contended that health warnings required by the federal government were sufficient and precluded consumers from suing cigarette manufacturers.

The three-judge panel of the appeals court upheld the dismissal of six of Spain’s claims, but said the companies should face a civil trial for four others, including negligence in manufacturing and marketing the cigarettes. Barry Ragsdale, a Birmingham lawyer who represented the family, told the Associated Press that “the claims that have been allowed will allow us to litigate the central issues in the case, which include the fact that the tobacco companies sold to an unsuspecting public a product that included spiked and adulterated contents.”

CALIFORNIA COURT OVERTURNS SMOKER VERDICT

A California appeals court has overturned a \$21.7 million verdict against cigarette makers Philip Morris and R.J. Reynolds. In a ruling last month, the key smoker lawsuit was sent back to a lower court for retrial. The California Court of Appeals reversed the March 2000 award on grounds the trial court issued improper jury instructions in the case against Altria Group’s Philip Morris and R.J. Reynolds Tobacco Holdings. The tobacco industry is claiming a significant victory because the case was the first time cigarette makers were held responsible for people who began smoking after the U.S. surgeon general announced the dangers of smoking in 1965 and health warnings began appearing on cigarette packages in 1969.

Leslie Whiteley originally sued the cigarette makers in San Francisco County Superior Court, charging they acted with malice, knew about the hazards of smoking and deliberately misled the public about those dangers even though the companies had been printing health warnings on packages. A jury in March 2000 awarded Whiteley, who died of lung cancer soon after the trial, \$10 million in punitive damages from each company as well as \$1.7 million in compensatory damages, in a decision later upheld by a San Francisco judge.

The appellate justices found the trial court erred by refusing to instruct the jury that it could not base liability on conduct that occurred from 1988 to 1998. During those 10 years, California had given the tobacco companies immunity. The justices noted Whiteley’s lawyers in closing arguments charged that the defendants had misled the public from the 1950s through the late 1990s in an “uninterrupted course of blameworthy conduct” about the dangers of smoking. The three-judge panel found evidence the companies misled and deceived consumers, but the justices nevertheless sent the case back for retrial due to the improper jury instructions. “A proper instruction advising the jury that it could not find defendants liable for fraud or negli-

gence based upon its conduct during the last 10 years of that period would have made such arguments impossible," the panel ruled unanimously.

WARNING AGAINST CHEWING TOBACCO

While professional athletes may not be placed on the same pedestals they occupied back when I was growing up in Barbour County, they are still looked up to as role models by many young people. As a result, their activities – good and bad – are followed by thousands. Healthcare professionals are hopeful that new education programs will prevent teenagers from getting hooked on smokeless tobacco. Dentists around the country say they're seeing more children — rural and suburban — using the same chewing tobacco and snuff generally associated with farmhands and baseball players. According to reports, medical doctors predict a dramatic rise in oral cancers in the next several decades as a result of young people using smokeless tobacco. The widespread use of smokeless tobacco has been described as the "sleeping-giant health risk" at this point in time. In many cases, users start in middle school and don't realize that smokeless tobacco poses a health risk. A recent survey by the U.S. Surgeon General revealed that although most teenagers are said to recognize the danger of cigarettes, only 40% know chewing tobacco can hurt them. For example, the use of smokeless tobacco by baseball players sets a very bad example for our nation's young people.

One of the things that's remarkable about oral cancer is that it still remains difficult to treat. Survival rates haven't changed much in the past several decades. Oral cancer grows in the lips, cheeks, tongue, throat, gums, larynx and esophagus. Those who survive it can be disfigured after surgeons remove cancerous bone and tissue. The first signs are white patches in the mouth, often discovered in the dentist's office. Slightly more than half of patients with oral cancers live five years, according to statistics from the American Cancer Society. Doctors diagnose oral cancer in more than 18,000 people in the United

States each year. Clearly, strong education programs are needed to let young people know that smokeless tobacco is a very serious health risk. Professional athletes can do a great deal to help the situation by not only kicking their habits, but also by speaking out on the evils of the product.

XXII. THE CONSUMER CORNER

MORE ON THE DANGEROUS 15-PASSENGER VANS

I am still amazed that churches, schools, daycare centers and other groups continue to use 15-passenger vans. I have to believe this is simply the result of a lack of information. The high-risk of rollovers involving these vans has the government re-issuing warnings. The National Transportation Safety Board is urging schools of all kinds to stop using 15 passenger vans. But, the message on these vans is not new. The agency is reiterating its 1999 safety recommendation that says school buses, not passenger vans, should be used for all school-related travel. Of course, the warning applies equally to any organization or group that transports people. It is my opinion that all of the 15-passenger vans should be recalled before they cause further loss of life. They are top heavy, unstable, and extremely dangerous.

SOME WAYS TO STOP IDENTITY THEFT

In the last issue, we mentioned the mounting problems relating to identity theft. Several months ago, I had the interesting experience to meet and hear Frank W. Abagnale, a reformed thief who wrote, "Catch Me If You Can," when he spoke in Montgomery. Mr. Abagnale offers insights into the prevention of identity theft, a crime that's easier to commit than most folks seem to realize. Identity theft again tops the list of consumer complaints, according to a report from the Federal Trade Commission. Mr. Abagnale is a respected

authority on identity theft and other forms of fraud. As you probably know, his book, which details his criminal escapades, was made into a movie. Mr. Abagnale wrote this commentary for Bankrate.com:

Identity theft is one of those things you're probably not very concerned about if it hasn't happened to you. But, in my career, I don't know of any crime that's easier - and easier to get away with - than identity theft.

In 2001, there were approximately 500,000 identity theft victims; that's people who actually filed a police report. It cost banks and credit card companies about \$5 billion because they ultimately pick up the tab. But the consumer doesn't get away scot-free. The average victims will spend \$1,374 and 175 hours cleaning up their credit reports. That's a great deal of time and money out of their own pockets. It's so simple to assume someone's identity today. If you go to the grocery store and write a check for \$52, the check has your full name and address, and maybe your phone number. It also has the full name and address of the bank where the check is drawn, as well as your account number. Maybe the clerk asks for your driver's license number, which in 19 states is your Social Security number. So, they write your Social Security number on the face of the check, and then they ask for a date of birth and a work phone number. Now they can call and find out where you're employed.

Hundreds of people can see this check: people at the grocery store and the check-clearing house. Then it goes back to the payee bank, and if you don't get your checks in your statement, it goes to a company that shreds them. (We hope they get shredded and don't make copies.) So much information on just that little piece of paper, and that's just one way. ID theft started years ago with, "If I can get enough information, I can apply for a Visa. I'll use the card for two weeks and throw it away." But now it's, "If I can get enough information, I can get a cell phone, I can get a car, a mortgage, I can go to work for a company

under contract labor and have somebody else pay the taxes.” Criminals realize it’s the simplest scam in the world. No one has to see your face or know who you are.

Only amateurs hack into computers; pros hack into people. If I want a database in a bank, I’m not going to break into their database when all I have to do is sit in front of a bank where people are smoking, walk up to someone and ask where they work in the bank. Then I say, “How would you like to make a lot of money? Give me this information off the screen and I’ll give you \$5,000.” If you did that to 10 people 25 years ago, two would say yes and eight would report you. People had more ethics and character then. Now, if I can do it and get away with it, it’s OK. It’s a lot easier to approach someone and get the information than break into the database. We live in a time when if you make it easy to steal from you, chances are someone will. Consumers have to be much smarter.

It has been widely reported that identity thieves rob more than 500,000 Americans every year. I am amazed that so few people have any real understanding of what identity theft is all about and how it can affect them. All of us must become educated on the problem and how it works. The following steps were recommended by CNBC and are designed to help folks reduce their risk of identity theft:

- The most important step is to guard your Social Security number – it is the key to your credit report and banking accounts and is the prime target of criminals. Do not print your Social Security number on your checks. After applying for a loan, credit card, rental or anything else that requires a credit report, request that your Social Security number on the application be truncated or completely obliterated and your original credit report be shredded before your eyes or returned to you once a decision has been made.
- Monitor your credit report. Credit reports can alert you to activity in

your financial records. A monitoring service, such as Privacy Guard, will notify you whenever someone applies for credit in your name or checks your credit history.

- Buy a crosscut shredder and use it. Identity thieves may use your garbage to obtain personal information. Shred all old bank and credit statements, as well as “junk mail” offers, before trashing them.
- Remove your name from marketing lists. The three credit-reporting bureaus – Equifax, Experian and TransUnion – all maintain marketing lists that may contain your information. Contact the agencies to remove your name from the lists. Add your name to the name-deletion lists of the Direct Marketing Association’s Mail Preference Service and Telephone Preference Service used by banks and other marketers. Removing your name from these lists reduces the number of pre-approved credit offers you receive.
- Restrict what you carry in your wallet or purse. Don’t carry your Social Security card with you except when needed.
- Keep duplicate records of everything in your wallet or purse. Copy both sides of your license and credit cards so you have all the account numbers, expiration dates and phone numbers if your wallet or purse is stolen.
- Always mail payments from a safe location. Don’t put bill payments and checks in your mailbox to be picked up. They can be stolen from your mailbox and washed clean in chemicals.
- Monitor your Social Security activity. Order your Social Security Earnings and Benefits statement once a year to check for fraud.
- Monitor your credit-card activity. Carefully examine your credit-card statements for fraudulent charges before paying them. If you don’t need or use department store or bank-

issued credit cards, close the accounts. My advice is to limit the number of credit cards.

- Know whom you are talking to. Never give your credit-card number or personal information over the phone unless you have initiated the call and trust that business.

All of these recommendations make sense. I hope identity theft won’t hit any of our readers, their families or friends. But, each of us is a potential victim, and for that reason I hope some of the suggestions set out above will be helpful in avoiding serious problems.

LEADER OF ID THEFT SCHEME SENTENCED TO PRISON

Talladega native Bittrell Scott, who admitted he led a scheme to steal identities and set up fraudulent credit card accounts, has been sentenced to prison and home detention. The 23-year-old admitted he applied for credit cards using names taken from telephone accounts, then stole the cards out of the victims’ mailboxes. A federal grand jury indicted 3 persons, including Scott, last year on charges of credit card fraud and mail theft. Scott admitted he was behind the scheme, according to his plea agreement. Scott said he worked at Nextel in Oxford and applied for the cards with information from the telephone applications of customers. He would then check the victims’ mailboxes to see whether the cards had arrived, or would have the credit cards mailed to vacant houses. The men were arrested October 25, 2002, after U.S. Postal inspectors received complaints that mail was being stolen from mailboxes. Authorities found credit cards, convenience checks, a directions map, Nextel subscriber agreements, mail and handwritten notes containing personal information. Scott was sentenced to 10 years in federal prison and fined \$7,600. The remaining men are still awaiting prosecution.

CHOOSING APPROPRIATE TOYS FOR CHILDREN

The Consumer Product Safety Commission is one federal agency that takes its role seriously and in the process works hard to protect consumers. One area where the CPSC has done good work deals with toys for children. Most of us don't realize how dangerous some toys can be for small children. Often, toys are purchased with no real concern over potential hazards that exist. Many of these toys are extremely dangerous and present life-threatening hazards. The CPSC offers the following safety tips that will help consumers choose appropriate toys:

- Select toys to suit the age, abilities, skills, and interest level of the intended child. Toys too advanced may pose safety hazards to younger children.
- For infants, toddlers, and all children who still mouth objects, avoid toys with small parts, which could pose a fatal choking hazard.
- Look for sturdy construction on plush toys, such as tightly secured eyes, noses, and other potential small parts.
- Avoid toys that have sharp edges and points, especially for children under age 8.
- Do not purchase electric toys with heating elements for children under age 8.
- Be a label reader. Look for labels that give age and safety recommendations and use that information as a guide.
- Check instructions for clarity. They should be clear to you, and when appropriate, to the child.
- Immediately discard plastic wrappings on toys before they become deadly playthings. Plastic wrappings can cause suffocation.

You can find this and other helpful information at the CPSC website, www.cpsc.gov. You owe it to children in your family to take a look at this

website and then put into practice what you learn. The time you spend could save a young life!

BEWARE OF SECOND-HAND DANGEROUS ITEMS

We all know that toys, clothes and furniture are some of the most sought after second-hand products. Those are also the most frequent items on the Consumer Product Safety Commission's recall lists. Items like old cribs with broken wooden bars, children's jackets with drawstrings, and baby walkers without wheels can be dangerous for your family. As part of the spring recall roundup, the government has partnered with non-profit safety groups and the National Association of Resale and Thrift Shops to educate retail owners about dangers of second-hand products. I understand the online auction site E-Bay is now working with the CPSC to minimize the resale of defective products. Those placing items online are reminded to check the product's safety warnings before putting the item online.

HIDDEN FEES A PROBLEM

For a number of years, hidden fees have shown up in bills from companies in the telecommunications industry. I know that I have looked at my telephone bills on occasion and have wondered whether all the charges were legal. Like most folks, however, I never checked to find out. This billing practice involving hidden fees often uses the word "regulatory" somewhere in the title. For some time, persons have received these hidden fees in cell phone and regular telephone phone bills. Now these fees are turning up on bills for high-speed Internet service. These fees have absolutely nothing to do with any requirement by the government. The addition of the charges is nothing but a hidden rate increase, which benefits the industry. The Wall Street Journal reported on this problem last month and supplied a great deal of good information.

The Wall Street Journal reported some

new charges being added to cell phone bills. The industry says the charges are the result of new rules that require them to let customers who change providers keep their current phone numbers. For example, BellSouth Corp., one of the nation's largest phone companies, has started to levy a "regulatory cost recover fee" of \$2.97 a month for new DSL customers. The company, according to the WSJ, advertises that service for \$29.95 a month – or about 10% less than what it will really cost after the new fee is added. SBC Communications Corp., the nation's largest DSL provider with 3.5 million customers, added a similar charge of \$1.84 a month in February. SBC calls the fee "Federal Universal Service Fund Fee."

Several other companies are using the hidden method to increase their revenues. All 6 national U.S. cellular operators are attaching such add-ons. This means consumers are pretty well trapped. Among wireless carriers, AT&T Wireless Services Inc. charges the highest fee for many customers. The Wall Street Journal report can be found online at www.WSJ.com. Consumer advocates need to become active in this area of concern. In March, the National Association of Cellular Consumer Advocates filed a petition with the FCC asking it to look into the new fees that are popping up on wireless phone bills. All persons who use any of the services from the telecommunications industry should check their bills to see exactly what is being charged. I suspect some charges will be legitimate and others will not.

XXIII. RECALLS UPDATE

MAZDA, GM RECALL SPORT UTILITY VEHICLES

Mazda is recalling 106,000 Tribute sport utility vehicles because they can stall without warning, the National Highway Traffic Safety Administration said Thursday. Separately, General Motors announced a recall because of seat belt defects that could affect up to

1.8 million SUVs. Involved in the Mazda recall are Tributes from the 2001-2003 model years with 3-liter, V6 engines. In a letter sent to NHTSA in May 2002, Mazda said the engine stalling didn't present "an unreasonable risk to motor safety." At that time, Mazda said it had received 2,087 reports of stalling and that accidents resulted in three cases. The Tribute is similar to the Ford Escape, which was recalled earlier this week for the same defect. Ford said engine stalling in the Escape had caused eight minor accidents.

Mazda dealers will reprogram the Tribute for free as part of the recall. General Motors Corp. announced it will also recall some of its 2001 and 2002 Chevrolet TrailBlazer, GMC Envoy and Oldsmobile Bravada SUVs because their seat belts don't meet federal safety standards. A GM spokesman said the company is still determining which of its SUVs need to have their seat belts replaced, but the recall could affect up to 1.8 million vehicles. GM said the seat belt defect wouldn't affect safety, but fortunately for GM customers, NHTSA disagreed.

FORD RECALLS MORE THAN 363,000 ESCAPE COMPACT SUVs

Ford Motor Co. is recalling 363,440 Escape compact sport utility vehicles from model years 2001-2003 because the engine may stall at certain speeds. Ford said some Escapes with a 3-liter, V-6 engine may experience an intermittent stall when decelerating at speeds below 40 mph. In most cases, the automaker said, the driver is able to restart immediately. Ford said its automotive safety office has identified eight minor accidents that may have occurred because of the engine condition, three of which involved minor injuries. Customers will be notified of the safety recall by mail. Or, they may elect to call their local dealer or Ford's toll-free hot line (800-392-3673) for more information.

HONDA RECALLING 600,000 VEHICLES

Honda is recalling 600,000 minivans and sport utility vehicles, many of them

made in Alabama, because of a defect that can cause their transmissions to fail. Honda says that it has received no reports of deaths or injuries due to the defect. The recall includes 2002-2004 Honda Odyssey minivans, 2003-2004 Honda Pilot SUVs and 2001-2002 Acura MDX SUVs. The recall is the first for Odysseys made in Lincoln. Honda said insufficient lubrication can lead to heat build-up and broken gears in the transmission. Gear breakage could lock up the transmission. Honda said it has confirmed 10 cases in which the transmission failed, but says all were vehicles with high mileage. Honda dealers will inspect gears for free and replace the transmission if necessary.

JOHN DEERE TRACTOR RECALL

Approximately 300 John Deere Compact Utility Tractors manufactured in Moline, Illinois have been recalled. Some of the steel bolts used to secure Roll Over Protective Structure (ROPS) to the tractor's rear axle can shear off, decreasing the strength of the ROPS and its ability to protect the operator in the event of a roll over incident. John Deere is aware of three incidents where the bolts have sheared off, all which were discovered during factory inspections. There have been no reported

Model	Serial Range
4210 CUT with Hydrostatic Transmission	LV4210H320674 through LV4210H320773
4310 CUT with Hydrostatic Transmission	LV4310H331062 through LV4310H331359
4310 CUT with PowrReverser Transmission	LV4310P335452 through LV4310P335550
4410 CUT with Hydrostatic Transmission	LV4410H340381 through LV4410H340592
4410 CUT with PowrReverser Transmission	LV4410P345138 through LV4410P345179

injuries. These vehicles are small agricultural tractors that are green with yellow seats and wheels. The following model and serial numbers can be found

on the serial number plate on the tractor's frame:

Authorized John Deere dealers nationwide sold the units during January and February 2004 for between \$18,000 and \$21,500. The company is directly notifying purchasers. Consumers should stop using their tractors immediately and contact a John Deere dealer for a free repair. For more information, contact John Deere's Customer Communications Center at (800) 537-8233 or at the John Deere Web site at www.johndeere.com.

TV - VCR CARTS RECALLED

An Ohio company is recalling some 592,000 television-videocassette recorder carts because they can tip over and have caused injuries and at least one death. Sauder Woodworking Co., of Archbold, Ohio, has received at least 13 reports of tipping carts. A 19-month-old girl from North Wales, Pennsylvania, suffered a fractured skull and died in February 2001. Four other people have been injured in separate instances, according to the Consumer Product Safety Commission. The CPSC received a report of the death from the company last year. The recalled wooden carts have model numbers 2655 and 2755, located on the cart's instruction booklet. Department, discount and home electronic stores sold the unassembled carts nationwide from January 1993 to December 1999 for about \$100. Consumers are advised to stop using the carts and remove all contents. The carts should be turned over and the four casters removed from the bottom. More information and a free repair kit is available by calling the company at (888) 800-4590.

PACIFIC CYCLE RECALLS MOUNTAIN BIKES

Pacific Cycle Inc. is recalling about 14,000 Mongoose mountain bikes because the frame can bend and break, causing risk of injury to riders. The Madison, Wis., company has received at least two reports of the aluminum frames breaking, resulting in abrasions and bruises to riders. The recall covers the silver and red Mongoose 20-inch

wheel “D-XR AL” dual-suspension mountain bike with model number “R1590WMET.” Steel-framed bikes are not recalled. Bike and department stores sold the bikes from September 2003 to March for about \$99. The rear shock absorber allows the aluminum frame to bend and break, according to the Consumer Product Safety Commission. Consumers are advised to stop riding the bikes and call the company for a free replacement rear shock. Pacific Cycle can be reached at (877) 564-2261.

COMPANY RECALLS RIDE-ON TOYS

A Grapevine, Texas, company is recalling approximately 70,000 of its ride-on toys because of a possible choking hazard. A screw and nut assembly attaching the steering wheel can come loose, posing a choking hazard to children. Tek Nek Toys International, L.P. received six reports of the screw and nut coming loose, including one that resulted in the death of an 18-month-old boy. The ride-on toys were sold under five model names including Butterfly Girl, Fire Rescue, Mermaid, Police Car and Tonka Construction Crew. The toys can be used as a ride-on or push walker toy, with a handle on the back of the seat rest. The toys have buttons on the dashboard that produce sounds when activated. They were sold for children age 1 to 3 years old. The recalled ride-on vehicles have a date code from 20021127 to 20030319. The code can be located in the battery compartment on the top panel next to the steering wheel. Wal-Mart, Toys “R” Us, Kmart, Meijer and Shopko sold the ride-on toys nationwide. Consumers are advised to take the toy vehicles away from children immediately and contact Tek Nek Toys for free replacement parts at (877) 661-0222.

MORE TOYS RECALLED

Hundreds of thousands of Batman Batmobiles by Mattel are being recalled after reports that more than a dozen children have been hurt by the toys, according to the Consumer Product Safety Commission. Mattel, based in El

Segundo, Calif., agreed to recall 314,000 of the blue-and-gray toy cars. The rear tail wings of the Batmobile are made of a hard plastic that rises to a sharp point and poses a hazard to young children, the Commission said. According to the CPSC, Mattel has received 14 reports of cuts, scrapes and other injuries from the Batmobiles with 4 of the injuries requiring medical treatment.

The agency announced the toy recalls as it launched an awareness campaign about older recalled products that may still be lurking in consumers’ homes. Among some of the biggest hidden hazards: children’s jackets with drawstrings that present a strangulation danger and baby cribs that do not meet federal safety standards. Quite often the oldest products present the most serious hazards. Hand-me-downs and old children’s products may have sentimental value to parents and consumers, but more importantly they may no longer be safe to use. Resale, consignment and thrift stores should check their stocks to make certain that these older products aren’t being sold to consumers.

XXIV. FIRM ACTIVITIES

BEASLEY ALLEN SPONSORS PRAISEFEST AT JUBILEE CITYFEST



Again this year, our firm is excited to sponsor PraiseFest. PraiseFest is part of Jubilee CityFest, the Memorial Day weekend event held annually in Montgomery. PraiseFest is a day of praise with four great Contemporary Christian artists. Entertainment begins at 2:00 p.m. on May 29th. Don’t miss Plus One scheduled for 5:30 p.m. This Contemporary Christian band made their debut in 2000 with the release of the album,

The Promise. In 2001, they won a Dove award for New Artist of the Year. Since 2000, five of their singles have reached #1: “Written On My Heart,” “God Is In This Place,” “The Promise,” “My Life,” and “Forever.” Other hits include “Run To You” and “Soul Tattoo.”

At 7:00 p.m., be sure to see Jars of Clay. This Contemporary Christian group of four young men came together in 1994. Their first single “Flood” hit #1 on Christian and secular radio. This band won its first Grammy Award for best Gospel album of the year in 1997 with the album, “If I Left the Zoo.” This Multiplatinum selling band has since won several Grammy Awards. Their #1 hits include: “Unforgettable You,” “Collide,” “I’m Alright,” “Fade to Grey,” “Five Candles,” and “Crazy Times.”

Music entertainment is a huge part of Jubilee CityFest, but it offers much more. Children have an opportunity to learn and play in the KidsFest area, which boasts of 100,000 square feet of fun! Attendees will have an opportunity to see unique arts and crafts in the ArtFest area. Other exciting events included in the Jubilee CityFest weekend are a Symphony Pops Concert, Jubilee Run, “Thunder Over the River” fireworks spectacular, NCAA Division II Baseball Championship and FunFest.

Tickets are \$32 for a weekend pass or \$22 per day. Children 10 and under are admitted free with paid adults. Weekend passes are available at area banks, the Eastdale Mall Customer Service Center, Food World locations, Maxwell/Gunter ITT, the Montgomery Civic Center or online at www.jubileecityfest.org.

BEASLEY ALLEN CAR WINS 100-LAP LATE MODEL CHALLENGE RACE

You may recall that our firm is sponsoring a racecar. We are pleased to report that the Beasley Allen car, driven by Grant Enfinger, took the checkered flag last month in the 100-lap Palmer Toyota Late Model Challenge race at Mobile International Speedway. The 19-year-old University of South Alabama

freshman termed the win “the biggest race win of my career. We beat some of the best race teams in the southeast and we did it the hard way.” Grant was justifiably ecstatic after his exciting win. While in victory lane, he woke up Greg Allen with a late night victory phone call. Our law firm is the primary sponsor for the 2004 Late Model Challenge races the 82 will compete in. We hope to see Grant go to the next level and I sincerely believe he will. In any event, we are really proud of what Grant has accomplished so far.

EMPLOYEE SPOTLIGHTS

GRAHAM ESDALE

Graham Esdale began his legal career with the Jefferson County District Attorney’s office where he was involved in over 150 criminal trials. He left there in 1994 to enter civil practice specializing in products liability and workplace litigation. In 1996, we were most fortunate to have Graham join our firm. Graham primarily works in the area of product liability and workplace injury cases. He has been involved in many notable cases, including a \$114.5 million verdict against a bucket truck manufacturer. Graham recently obtained a \$3 million verdict for his client against Alabama Power Company involving an electrical accident. That case is now on appeal.

Graham has become a regular speaker at many different legal seminars. He speaks on topics related to pretrial discovery and trial strategies in personal injury cases. Graham has also authored several papers. Graham is married to the former Leigh Ann Hibbett of Florence, Alabama, and they have two children, Whitney and Robert. Graham and his family attend the Episcopal Church of the Ascension in Montgomery.

MELISSA PRICKETT

Melissa Prickett, who practices in the Mass Torts Section of our firm, is currently working on the Baycol litigation. She has clients throughout the United States with filed cases pending in three states. Melissa graduated from Jones School of Law in 2001. While attending

law school, Melissa was a member of the Law Review Board, held the position of First Year Senator and was also Vice-President of the Student Bar Association. She was recognized for Best Scholastic Achievement in Legal Research & Writing and as an Outstanding First Year Student. Melissa is a member of the Alabama State Bar, the Docket Committee of the Montgomery County Bar Association and the Women’s Section of the Alabama State Bar. She is married to Michael Prickett and they have twin sons, Jake and Sam. Melissa does an excellent job for the firm and her clients in a most challenging part of our practice.

VALERIE SCROGGINS

Valerie Scroggins, who has now been with us for almost four years, started as a receptionist for the 272 building before moving to the position of database manager. In that position, Valerie handled the mailing list for this report. During the past year, she moved over to the Fraud Section and now works as a legal secretary. Valerie is married to Mike Scroggins and has two children. Her daughter, Shanna Culp, was an employee with the firm, but now resides with her husband, Jud, in Clarksville, Tennessee. Jud is stationed there after completing a tour of military duty in Korea. Valerie’s son, Trevor Stange, is a 9th grader at Prattville High School. Valerie is a very good employee.

BONITA FOSTER

Bonita Foster has been with our firm for over two years and works in our Toxic Torts Section. She currently serves as staff assistant to David Byrne, who has kept her busy working on the Monsanto case. Bonnie handled daily client contact and database maintenance on those cases. Bonnie, who grew up in Atlanta, moved to Montgomery in 1997 to attend Faulkner University. Graduating from Faulkner Magna Cum Laude with a Bachelor of Science in Criminal Justice in December of 2000, Bonnie is currently working on a master’s degree in political science at AUM. Bonnie is very active at Landmark Church of

Christ. In June of this year she will be going to Malawi, Africa for 17 days on a medical mission trip with a group from her church. Bonnie does very good work for us and we are glad to have her with the firm.

KWANZA WHITE

Kwanza White has been with us for almost three years. The Opelika native 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 moving to the 272 receptionist desk in May 2003. 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 18-month-old daughter, Alexandra. Serving as a receptionist in a firm with a very heavy volume of contacts is a challenging job. Kwanza handles things extremely well and is a very good employee.

STEPHANIE JACKSON

Stephanie Jackson works in our Mass Torts Section as a medical advisor to Melissa Prickett. In this position, Stephanie reviews medical records and helps to determine medical causation for product liability injury cases involving prescription medications and other potentially toxic substances. For the past two years, Stephanie has focused mostly on Baycol cases. She is now helping to review cases involving welding rods, Crestor, and hormone replacement therapy. Stephanie graduated from high school in Eufaula, Alabama, attending Lakeside School. She then attended the University of Alabama in Tuscaloosa, where she graduated with a Bachelor’s of Science in Nursing in 1995. While at the University, Stephanie was inducted into Sigma Theta Tau, the National Honor Society of Nursing. Stephanie has previously worked in clinical settings, including hospitals, home health, and managed care. While in managed care,

Stephanie earned certifications in Case Management and Utilization Review. Stephanie, who has a 10-year-old daughter, Joy, is a most valuable employee. We are most pleased to have her with us.

REGINA ELROD

Regina Elrod celebrates her two-year anniversary with the firm this month. She came to the firm originally to fill a vacant receptionist position. But after a few months, Regina was moved to the Nursing Home Section as a legal secretary. Last December, she was promoted to legal assistant. Regina currently works as legal secretary and legal assistant for Les Pittman. Besides nursing home cases, she also works on personal injury and dram shop cases. Regina, who studied English and French at Middle Tennessee State University, has a six-year-old son, Colt. We are very glad to have Regina, who does extremely good work with our firm.

XXV. 25TH ANNIVERSARY

THERE HAVE BEEN A FEW CHANGES OVER THE YEARS

In early 1979, after receiving a strong mandate from the voters to leave the political arena on a permanent basis, I opened a one-lawyer law firm on South Hull Street in Montgomery. I rented a few rooms from my friend, Irving Winter, and started to work with one secretary. Karen Lewis, who had worked with me in the Lieutenant Governor's office, was brave enough to make the move. Wanting to pick up where I had left off as a lawyer in 1970 when I got on the "political bug" and ran for office, I expected clients to find my office. I enjoyed my years in government, but was really ready to get back in the courtroom. I must confess that I was a pretty bad politician and it eventually caught up with me. I was extremely happy to get back in the "real world."

At the outset of my new practice, I

had some difficulty in getting to do what I really wanted to do, and that was to try lawsuits on the side of victims. That's what I had done prior to 1971 with some success. Unfortunately, in 1979, many folks thought that I was a "corporate lawyer" since I had been in state government, and most couldn't believe that I was actually a "trial lawyer" who had wandered away into the weird world of Alabama politics. It took about a year to let folks know I couldn't be a corporate lawyer even if that had been my desire. That's when we started to get a few clients who had been victimized in some fashion and needed a lawyer. The rest is history.

Frank Wilson, who had clerked for U.S. District Judge Bob Varner, took a chance and came to work as our second lawyer in 1980. A few months later, Greg Allen joined the two-man firm as our first "law clerk." Greg was to become our fourth lawyer in April of 1983. The late Jim Traeger had joined the firm, coming from the District Attorney's office, as our third attorney and worked with us until his untimely and tragic death in 1987. Frank now has his own successful practice in Montgomery and Greg, who I believe is the best product liability lawyer in the country, is number two on our letterhead. We continued to add new lawyers and support personnel as our practice grew. Several of our "alumni" have gone on to "better things." For example, there have been several good lawyers who came through the firm and who now are practicing law in locations throughout the state. You will recognize such names as Kenny Mendelsohn, Mays Jemison, Randy James and David Vickers, to name a few. Another is Jim Main, who is now a key member of Governor Riley's Administration. One of these days, I would like to have a reunion of this group. We have tried hard to maintain an excellent relationship with all of these lawyers. I hope all of them benefited in some small way from hanging around Beasley, Allen for a time. I just hope none of them picked up any of my "bad" traits.

Obviously, the firm has grown during the 25 years of its existence. We currently have 39 lawyers and 182 employ-

ees on the payroll. While there have been some bumps along the way, God has greatly blessed our efforts. We have operated as a firm representing only persons who have been injured or damaged in some manner. We also have some corporate clients who want to be plaintiffs. In other words, victims are our only clients – by choice – and that won't change. I hope we have truly made a significant difference in our section of the country – I believe we have. It has been a labor of love for me, and I plan on hanging around for several more years before I retire to the farm.

XXVI. CLOSING REMARKS

On April 15th, while attending our firm's weekly devotion, I received an emergency phone call. I knew from the look on the person's face who called me out, that the news was going to be very bad. I soon learned that one of our young lawyers had been killed in a motor vehicle accident earlier that morning. We had been celebrating just minutes before the call – discussing the ramifications and benefits from the resurrection of Jesus Christ and how it had affected all of our lives. In fact, we were all rejoicing over the fact that the resurrection over 2000 years ago made it possible for each of us to have the promise of eternal life. When I heard that Ron Canty, a truly good young man, who was a believer, had tragically lost his life, it initially caused me to think – why? Then I remembered that Ron was now with the same Jesus who had died for Ron and for me and Who had risen from the grave with a promise of eternal life for those who would accept it. That immediately took away some of my initial sadness, but not the shock of the news. I went back into the room and had the sad duty to report that we had all lost a co-worker, who was also a good friend.

Ron's death cut short the career of a very good lawyer. He was proud to be a lawyer and extremely proud to be a part of our firm. I remember speaking

to Ron's law school graduation. I will never forget the smile on his face that Sunday afternoon. I knew then that Ron Canty was going to be a fine lawyer. We have received an outpouring of condolences from persons who knew and dealt with Ron from all over the state. We will miss him – both as a very special lawyer, and also a very good friend. Our prayers go out to his father and mother, Mr. and Mrs. James Canty, to his siblings, and to other family and friends. When bad things happen to good people, we all have to depend on God's love and comforting

spirit to get us through the ordeal. The funeral in Gordonsville, located in rural Lowndes County, was actually a celebration of Ron's life and his accomplishments rather than a down time for his family and friends. My real regret is that his work as a trial lawyer, who loved his work and his clients, was cut short. But, I do know for a fact that his acceptance of Jesus Christ as his Lord and Savior assured Ron of eternal life. That is something that each of us should desire. Ron's untimely and sudden death also is a reminder that life on this earth is fleeting and certain deci-

sions simply can't be put off and dealt with on another day.

A scholarship fund has been set up in memory of Ron at Jones School of Law. If anyone is interested in making a tax-deductible donation to this fund, please send it to: Ms. Norma McGee, Jones School of Law, Faulkner University, 5345 Atlanta Highway, Montgomery, Alabama 36109. Checks should be made payable to Jones School of Law and make a note that it is for the Ronald A. Canty Memorial Scholarship Fund.

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