



THE
JERE BEASLEY REPORT

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A NATIONAL LAW FIRM LOCATED IN MONTGOMERY, ALABAMA

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I. CAPITOL OBSERVATIONS

SPOTLIGHT ON ALABAMA'S GROWING ECONOMY

I received some interesting information from a state agency recently concerning the state of Alabama's economy. As expected, the news was good. Nothing in the report really came as a surprise since Alabama's business climate has been very good over the past decade and it is getting better. As we all know, Alabama experienced spectacular economic growth during Governor Riley's first term in office. The good news is that, thus far, his second term has been even better than the first. In past weeks, a number of reports have surfaced that show Alabama's economy is very strong. Almost on a weekly basis, there has been an industrial announcement and that is great news for all Alabamians. The following is some of the good news concerning my state:

- Figures from the U.S. Bureau of Labor Statistics show that Alabama workers saw their average weekly earnings increase 4.7% during 2006, the fastest growth rate in five years.
- Alabama's gross domestic product, the value of all goods and services produced in the state, grew at a 3.3% percent annual rate during the first quarter of 2007. By contrast, the U.S. GDP expanded at just 0.7% during the first quarter.
- Since January 1st of this year, more than 80 new and expanding industry announcements have taken place in Alabama. All together, they represent more than 10,000 announced new jobs.
- The latest issue of Southern Business & Development magazine says Alabama "continues its incredibly impressive economic development roll."

- Mark Vitner, the senior economist at Wachovia Corp., recently told the Birmingham News: "There is an enormous transition underway in Alabama as newer industries are rapidly expanding across much of the state...Most states have one or two hot spots. Alabama has economic potential from top to bottom and everywhere in between."

- "Record low unemployment. New jobs. Massive industrial projects. More auto industry growth. Can it get much better than this? Don't rule it out." — Jerry Underwood, Business Editor for the Birmingham News

It's quite evident to everybody that Alabama's overall economy is doing extremely well. The economic growth is affecting all sections of the state and that's most significant and very good. Even with all the good news, however, we are still constantly being bombarded from the group known as AVALA telling all who will listen about how "bad things are for business in Alabama." But, the truth of the matter is that things in the state are really pretty good. I guess having to deal with the truth, especially when it comes from the Governor's office, presents a big problem for those whose real mission is to destroy the jury system in our state. There is one thing for certain, and that is—misleading the politicians and news media with untruths and half-truths—doesn't seem to bother the "Chicken Littles" who lurk in the AVALA camp one bit. Fortunately, the public has started to realize the myth of tort reform created by the now illusive Karl Rove is that just—a fabricated myth!

JOHN EDWARDS IS THE BEST CANDIDATE FOR REGULAR FOLKS

If he is elected president, I am convinced that John Edwards would bring about the real change that is badly needed in Washington. As John puts it, he won't just substitute "our insiders for theirs." As president, he would have pro-

grams that when enacted will move our country forward. It has been said that John has pitched his campaign rhetoric in "populist" terms. In my opinion, that's not such a bad thing. John has couched many of his campaign issues—the absence of universal health care—the growth of wage inequality within the U.S. workforce—and the "entrenchment" of the "ultra-wealthy"—in what has been described as "populist" terms. These appeals should resonate with both middle-class and working-class American citizens. That is something I find to be both refreshing and significant.

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Contrasting the daily struggles of the working poor with the special privileges of the rich is an issue that should be discussed by all candidates during the campaign season. However, it should involve more than just talk by the candidates. John Edwards' message—if folks are listening—is one that would assure the election of a Democratic president in 2008. The message by this Democratic candidate has three key characteristics:

- There is a strong anti-government and anti-institutional stance, coupled with rhetoric, that suggests the government has not served the needs of the people;
- It encompasses programs that are designed to provide a straightforward solution to complex problems; and
- It contains honest and candid responses when difficult questions are asked on critical issues.

Political experts have said that the Edwards' campaign has introduced populist appeals into mainstream politics with greater success than any politician in recent times. Recently, his grass-roots campaign tour has focused on poverty, which is still a real and increasing problem in our country. The tour—referred to as “The Road to One America”—elegantly expresses the integrative and widespread appeal of U.S. populism. Beginning in the devastated post-Katrina New Orleans, John has taken his message on the road through other hardship areas in the Mississippi Delta, Tennessee, Ohio, Pennsylvania and Virginia. Significantly, he has emphasized rural poverty and the absence of health care facilities in smaller towns as much as urban blight. I find that approach to be most refreshing and one that addresses key issues that affect millions of American citizens. Considering that this candidate is sincere in his beliefs makes his message even more relevant for our times.

John's economic themes are the core

of what has been described by the experts as a populist message. His underprivileged upbringing gives this stance an authenticity that few of the candidates enjoy. His anti-trade and pro-worker messages have been well received in most parts of the country. Additionally, he has made an effort to address job insecurity and the lack of affordable health care, which are typically middle-class concerns, and which have been largely ignored by other candidates. I believe that the voters are ready for a real change in the direction our country is heading. John Edwards is the engineer of the train that will bring about that needed change in so many areas of concern and need. I just hope that folks across the U.S. are really listening. It's obvious that the media bosses don't want the son of a textile worker running the country.

Source: *Oxford Analytica*

BOSS OF CHINESE TOY COMPANY KILLS HIMSELF

On August 13th, it was reported that the head of a Chinese toy manufacturing company at the center of the huge U.S. toy recall committed suicide. Zhang Shuhong, who ran the company, Lee Der Industrial Co. Ltd, killed himself at a warehouse days after China said it had temporarily banned exports by the company. I am writing more about the massive Chinese toy recalls in other sections of this issue. Lee Der was involved in the Mattel toy recall that has shocked the nation. The fact that the head man at Lee Der committed suicide makes me realize how serious the Chinese toy problem for children in this country really is. Unfortunately, the toys are not the only problem relating to Chinese imports. The concern over the safety of Chinese imports of other products has reached an alarming level. Clearly, our government must take immediate action to protect the American people.

Source: *Associated Press*

FAULTY TRANSMISSION CASE SETTLES

On March 20, 2004, Felix Lassiter, an elderly cattle farmer in South Montgomery County, Alabama, parked his new 2004 Dodge Ram 2500 vehicle in order to open a gate on his farm. Mr. Lassiter had just exited the truck when all of a sudden the vehicle started backing up. As you may know, the Dodge trucks were designed with a transmission that had a very large space between park and reverse. While Mr. Lassiter believed that he had the truck in park, it was not fully engaged. When the truck backed up, it ran over him, breaking his leg. Mr. Lassiter never recovered from the broken leg. He developed a non-union and the state of his health progressively declined. Mr. Lassiter died approximately two years after his accident. Medical doctors testified that the death was connected to complications associated with the broken leg. DaimlerChrysler issued a recall for the 2003–2005 model Dodge Ram heavy duty pick up trucks in March of 2006. The recall noted that:

DaimlerChrysler has determined that in certain circumstances when a driver has not placed the shift lever fully into the park position and leaves the engine running, the vehicle may unexpectedly move rearward after seeming to be stable. Unintended rearward movement of the vehicle could injure those in and/or near the vehicle.

As with most diesel trucks, users normally leave the engine running if they are only going to be out of the vehicle for a short period of time. As part of the recall, DaimlerChrysler installed out-of-park alarms to notify the operators that the vehicle may not be fully engaged in park. Significantly, most vehicles don't have a significant dead space between park and reverse. As requested by DaimlerChrysler, the amount of the settlement in the Lassiter case has to be kept confidential. However, we believe it's

very important for the public to know what happened to Mr. Lassiter. Greg Allen from our firm along with Frank Hawthorne, Jr. of Montgomery handled this case for Mr. Lassiter's family. They did an outstanding job in discovery and pretrial preparation resulting in settlement of the case without the necessity of a trial.

RV AND HORSE TRAILER AWNINGS CASE SETTLES

Our firm recently settled a very important case that underscores the importance of fully exploring all facts of a serious injury or death case because there may be a defective product involved. Information learned in this case is also important to share because owners of recreational vehicles (RV's) and horse trailers may be unaware of the potential risks associated with awnings attached to their vehicle or trailer. On March 11, 2005, a young man attached an extended horse trailer to the rear of his 2001 Ford F350 truck and drove from Mississippi into Alabama. The trailer was equipped with a 21-foot roll-out awning attached to the driver side of the trailer. These are the same type awnings used on large motor homes. While driving north along a rural Alabama highway, the young man glanced into his rear-view mirror and saw that the front end of the metal and fabric awning assembly had broken loose from the trailer and was hanging out toward the oncoming lane of traffic. Because he couldn't immediately pull off the road, he continued to drive with the awning assembly dangerously hanging on the side of the trailer.

On the same day, Terry Bassett, a Uniontown city councilman, attended a meeting of the Perry County School Board in Marion, Alabama and was driving back south to his home along the same rural highway. When the two vehicles met, the awning assembly from the trailer struck the windshield of Terry Bassett's oncoming minivan. The

metal frame and roller tube punctured his windshield and killed him instantly. At first blush, this case appeared to be a tragic accident. As defense lawyers like to say during trials "sometimes bad things happen to good people and no one is to blame." However, our investigation and pretrial discovery revealed that Terry Bassett's tragic death was entirely preventable and that there was fault because of the defective product.

Mike Andrews, who handled this case for the firm, discovered that the retractable arms of the awning were equipped with metal folding locks that were defectively designed and manufactured. As a result, the locks were insufficient to withstand the effects of wind experienced while traveling down the highway. During pretrial discovery, Mike found a variety of alternative designs which are marketed to prevent such awning failures—some alternative locks are available online through various companies—and other locks were purchased on eBay. Apparently awning failures are such a problem in the RV industry that one company stated on its website "There are two types of RVers—those that have had their awning blow off and those that will!" Our experts tested several of the designs and found them to be superior to the faulty locks implemented by the awning manufacturer. Our experts also conducted metallurgical testing and took radiograph x-rays of the internal composition of the cast zinc locks. Their testing revealed that the cast zinc locks were cheaply made and defective because they contained unacceptable amounts of impurities which rendered them weak and ineffective.

Although nobody at our firm had ever met Terry Bassett before his tragic death, we were proud to represent his family in this case. Terry was not only a city councilman, but he was active in his community through the local school board. He operated a small local grocery store and was the pastor of two local churches. Terry will be missed in his

community and in his home. Lawyers who evaluate cases involving serious injury or death should always evaluate every facet of the case to determine if a defective product is to blame. Mike did an outstanding job in this case of recognizing a defective product and then developing the case for his client. The amount of the settlement is confidential, but we can warn the public about the dangerous condition that exists and the risk that persons are subjected to.

EJECTION OF BELTED OCCUPANT CASE SETTLES

Our firm recently settled a wrongful death case involving a beautiful 18-year old young lady, Keely Griffin. She was a passenger in a Mitsubishi Montero Sport which was being driven by her best friend and they were returning home from spring break. Keely was properly wearing her seatbelt and had reclined the seat to rest on the trip home. The two friends were on Interstate 65 in Butler County and were traveling through a construction zone when the left side tires left the narrow roadway onto a soft shoulder. The driver attempted to steer the vehicle back on the road, however, the drop-off was larger than allowed by road regulations. When the tires cleared the road edge, the vehicle traveled quickly toward the right side of the road. The driver then attempted to steer to the left and the vehicle then rolled over on the road. An eye witness following directly behind the Montero Sport observed the passenger side rear door come open during the rollover and observed Keely being ejected through that door immediately upon its opening.

We settled with the road construction company, and then proceeded toward trial against Mitsubishi. Our primary claims against Mitsubishi involved the failure of the door latch and Mitsubishi's failure to provide a warning about reclining the seat while the vehicle is in motion.

Dr. Kenneth Laughery, who was our warnings/human factors expert, has done extensive work on the issue of reclined seats. His studies established that people do not appreciate the hazard of riding with the seat reclined when they are properly belted. Mitsubishi clearly was aware of this hazard and was aware that people do not appreciate the hazard. In fact, the company included a warning on the subject in the Owner's Manual. However, Mitsubishi's expert acknowledged he would not expect a passenger in the vehicle to ever consult the Owner's Manual. Also, Dr. Laughery, who is at Rice University, established that people generally use the Owner's Manual as a quick reference guide and do not read it cover to cover.

We wrote on the reclining seat hazard in a recent issue. The reason it is hazardous to recline the seat while the vehicle is in motion is because it severely degrades the performance of the seatbelt. In a frontal collision, the lap belt portion of the restraint is not in contact with the boney structures of the hip nor is the shoulder belt in contact with any part of the occupant. As a result, the occupant often slides under the lap belt and either crashes into the dash or gets clothes-lined by the restraint system. In rear-end collisions, the seatback does not prevent the occupant from moving rearward and sliding underneath the belt. Similarly, in a rollover, as happened here, the occupant slides rearward and upward under the belt. It should be noted that Mitsubishi is not alone in its failure to address this hazardous situation. Unfortunately, serious injuries and deaths continue to occur and the automakers refuse to address this issue.

Dr. Laughery and our restraints expert, David Biss, have devoted an extensive amount of time and energy towards developing alternatives to remedy this situation. These include a back-lit warning for the passenger which would illuminate and provide an audible notifi-

cation to the passenger if the seat is reclined while the vehicle is in motion. Other alternatives are an interlock which would prevent the seat from being reclined while the vehicle is in motion, and seat integrated restraints which would be effective in rollovers and rear end collisions. A combination of the back-lit warning with the seat integrated restraints is the best alternative.

In addition to the hazard of the reclined seat degrading the performance of the seatbelt, this vehicle contained an additional feature which further degraded the performance of the belt. In an effort to pass Federal Safety Standards related to occupant injuries in a frontal collision, many manufacturers began installing a feature known as an Energy Absorbing (EA) loop in the restraint. This usually remains unseen by owners because it is contained in the plastic stalk of the seatbelt where it mounts to the floor of the vehicle. An EA loop is basically some additional belt webbing stitched into the restraint. When the belt is loaded, the stitches rip loose and allow additional "ride down" in frontal collisions. However, it quickly became known that this additional belt webbing counteracted the purpose of the retractor which is to lock the belt within one inch of belt spool out. Most manufacturers have ceased installing this feature in restraint systems. In fact, Mitsubishi had already removed this feature in the driver's restraint system in this vehicle. The company's biomechanical expert testified this feature allowed an additional two inches of slack into Keely's lap belt which contributed to her slipping out of the belt.

Our claim involving the door latch centered around what is known as a compression rod linkage, which consists of a straight metal rod that attaches the outside door handle to the interior door latch. Oftentimes in a rollover, and what happened in this case, is the outer door skin will flex or separate from the interior door components. When this

happens, it allows the outer door skin to move in relation to the door latch. Our door latch expert, Andy Gilberg, has done numerous tests and demonstrations showing that movement of the door skin of only a quarter inch in a downward direction is sufficient to unlatch the door. One of the ways to guard against this outside handle activation is by locking the door. Because people forget to lock doors, the best way to accomplish this is by an auto-locking feature. An auto locking feature automatically locks all doors when the vehicle is shifted into drive or when the vehicle reaches a nominal speed such as 10 mph. While this feature has been around since the 1960's, many auto makers are just starting to include this feature on newer models. Probably the best way to eliminate this hazard is through the use of a cable latch activation as opposed to the compression rod. A cable latch activation could withstand several inches of outer skin movement and still not unlatch the door.

Ian Jones was our design expert in the case. While Mitsubishi's experts tried to portray this as a very severe accident, they had to agree with Dr. Joe Burton, our occupant kinematics expert, that had Keely's seatback been in an upright position, she would not have sustained serious injuries in this crash. This was also evidenced by the fact that Keely's best friend, the driver, walked away uninjured. It should be noted that the driver error wasn't the cause of Keely's death.

Keely's death should never have happened and it wouldn't have had Mitsubishi utilized the proper design features in its vehicle. Graham Esdale and Cole Portis represented Keely's parents in this case and did an exceptional job. The case was settled before trial for an amount that is confidential.

FIRM SETTLES MACHINE GUARDING CASE

Our firm recently settled a product liability case against the manufacturer of

a planer infeed table. Our client, Stokes Moring, was employed at Dixon Lumber Company in Eufaula, Alabama. Mr. Moring was employed as a millright employee responsible for maintaining and repairing machinery in the saw mill. Mr. Moring sustained his injury in December of 2003 while attempting to replace a belt on the drive system of the infeed table. While removing an idler, another employee, who did not see our client, turned the machine on causing his left arm to be caught in a pulley. The speed and force of the pulley ripped Mr. Moring's arm from his body. The damage caused by the injury was so severe Mr. Moring suffers from severe phantom pain. As you may know, phantom pain is a sensation experienced by people who have lost a limb. The victim of a lost body part experiences pain as if it was still present. Mr. Moring's phantom pain was classified as severe because the nerves were damaged beyond repair causing him to experience constant shooting pain. Neither surgeries nor other procedures like nerve blocks have been successful at easing his phantom pain. As a result of his medical condition, Mr. Moring was unable to return to any gainful employment.

The infeed table that caused Mr. Moring's injury was manufactured in 1975 by Salem Equipment Company. Dixon ordered the machine to automatically feed lumber into their planer machine. Manufacturers of woodworking machinery like infeed tables are required to observe and adhere to standards relating to guarding hazards. Standards have called for the guarding of pulleys and belts since the early 1900s. Guarding hazards like pulleys and belts prevent accidents like the one sustained by Mr. Moring. Not only should the pulley have been guarded, but it should have been interlocked. The interlocking technology prevents machines from being inadvertently turned on when repair work is being done. As long as the guard is in the open position the interlocked guard will prevent the machine

from being turned on. The best example of interlocking technology is a microwave oven. As long as the door to a microwave oven is open, it cannot work. Interlocking technology was available and recommended for machines like Salem's infeed table.

The infeed table was defective and unreasonably dangerous and that was the basis of the case against Salem Equipment. The case was set for trial on August 20th and was settled. Although the settlement will not replace Mr. Moring arm, it will ease the burden placed on his family by losing his ability to earn income. As with all product liability cases handled by the firm, we hope that Salem will keep Mr. Moring and other workers in mind when designing and manufacturing machinery. An interlocking guard would have easily prevented Mr. Moring's injury. Kendall C. Dunson and Bill Robertson from our firm, along with Shane Seaborn from Penn & Seaborn, who are in Clayton, Alabama, represented the Moring family. The amount of the settlement is confidential, but we are very glad that we were able to take care of our client and his family in this case.

LAWSUIT FILED TO BLOCK ALFA BUYOUT PLAN

Eight shareholders have sued to block Alfa Corp.'s \$639 million proposal to buy out minority shareholders, claiming it's an unfair price. The suit was filed in a Delaware state court. Alfa Corp. is incorporated in Delaware. The plaintiffs own almost 900,000 shares. Four were longtime employees of Alfa. Tuscaloosa shareholder Jack Kubiszyn, who was a University of Alabama basketball star in the 1960's, claims company insiders are "trying to steal the company at an unfair price." The shareholders who sued oppose the plan of majority shareholders—three affiliated companies with long-standing ties to the publicly traded Alfa Corp. parent company—to buy them out for \$17.60 a share.

The suit alleges that most of the directors and officers of the three affiliates are directors and officers of Alfa Corp. That certainly appears to be a conflict of interest. For them to sit on both sides of the proposed deal isn't too good for minority stock holders. Alfa, which, as most Alabamians know, grew out of the old Alabama Farm Bureau, said in a statement the proposed buyout of minority shareholders is transparent, fair and in the best interests of the company. Together, the three affiliates, Alfa Mutual, Alfa Mutual Fire and Alfa Mutual General, which are proposing the takeover, own 55% of Alfa Corp. stock. The suit seeks unspecified damages and class-action status on behalf of all similar shareholders. There are at least two other suits that cite similar claims about the Alfa deal and seek class-action status. The Alfa Mutual companies deny that there is any wrongdoing and say through a spokesman that the case will be defended. Our firm will be involved in the Delaware lawsuit which was filed by Birmingham lawyer John Somerville and Frank DiPrima, a lawyer from New Jersey.

Source: Associated Press

EXPERT WITNESSES IN PRODUCT LIABILITY LITIGATION DO VERY WELL

Over the years, our firm has handled a large number of products liability cases against Ford Motor Co. and other automobile manufacturers. As all lawyers know, it is necessary for the parties in a products liability case to utilize expert witnesses. Many of these experts have worked for automobile manufacturers in the past. Don Tandy, an automotive engineer from Houston, Texas, is one of them. He has testified in a number of these cases for Ford Motor Co. Don is a most impressive witness, but one who always follows the company line, and he is hard to handle on cross examination. His job is to "defend" Ford products. In a recent trial, Tandy testified that his firm has been paid more than \$30 million by

Ford for work in lawsuits against the company. Don is a former Ford employee who helped design the Explorer and he is regularly called on to defend the vehicle.

While the amounts paid to Tandy may seem high to folks who haven't been involved in litigation against the automobile industry, I can assure you that expert witnesses make big money testifying for the car companies. These experts don't ever find a product to be defective regardless of how bad a specific product may be. While I ceased to be shocked at that sort of thing years ago, I could never condone that sort of thing. Actually, the amounts paid to Don Tandy pale in comparison to the huge amounts paid to other defense experts in products liability cases involving automobile manufacturers. Fortunately, jurors can recognize when a person is being paid to take a position that is difficult for a witness to sustain.

FEDERAL OFFICIALS RELEASE DATA ON DRUNKEN DRIVING FATALITIES

Drunk Drivers continue to be a major problem across the country. Texas led the nation with 1,354 drunken driving fatalities in 2006 and was among the states to record the largest increase in such deaths. The National Highway Traffic Safety Administration released data last month showing drunken driving deaths increased in 22 states and fell in 26 states in 2006. There were 13,470 deaths nationwide in 2006 involving drivers and motorcycle operators with blood alcohol levels of .08 or higher, which is the legal limit for adults throughout the country. The number was down slightly from 2005, when 13,582 people died in crashes involving legally drunk drivers. Texas' 2006 total was an increase of 34 from 2005, putting it even with Arizona and Kansas for the greatest increase. However, Utah, Kansas and Iowa had the largest percentage increases compared with 2005.

Nationwide, the overall number of

deaths involving drivers and motorcycle operators with any amount of alcohol in their blood was 17,602 last year. That was up from 17,590 in 2005, based on information from the NHTSA. Florida, Missouri and Pennsylvania had the greatest decreases in numbers of drunken driving deaths last year, while the District of Columbia, Alaska and Delaware had the largest percentage decreases compared with 2005. The District of Columbia had the smallest actual number of drunken driving deaths with a total of 12. Transportation officials announced the new figures as they unveiled an \$11 million nationwide advertising campaign as part of a Labor Day weekend campaign called "Drunk Driving. Over the Limit. Under Arrest." Hopefully, there will be a positive effect from the campaign and the number of alcohol-related fatalities will be less.

Source: *Associated Press*

II. LEGISLATIVE HAPPENINGS

THE 2008 REGULAR SESSION

Hopefully, Governor Riley, Lt. Governor Folsom, Speaker Hammett, and other Legislative leaders, are already hard at work planning for the 2008 regular session of the Alabama Legislature. Communication between the officials and pre-session planning sessions would avoid a replay of the 2007 regular session. There are a number of critical issues facing our state that require immediate legislative action. I will discuss these problems in detail in subsequent issues.

THE LEGISLATOR-EDUCATOR ISSUE

While there appear to have been some obvious abuses by a few members of the Legislature, I believe denying educators the opportunity to serve in either

the House or Senate in Alabama is a big mistake. There have been a multitude of outstanding legislators over the years who came directly from the ranks of public education. In my opinion, the most logical and fair way to handle the problem is to have a system that won't allow school systems at all levels—including community colleges and four year universities—to hire persons after they are elected to the legislature. In other words, hiring a legislator would be prohibited, but an educator would be free to run for a legislative seat under such a system.

Personally, I don't believe that we should prohibit any person—regardless of their occupation or profession—from running for the legislature and, if successful, from serving. Nevertheless, I suspect the political debate over the Educator-Legislator issue will be with us for a little longer. Interestingly, it has been reported that there were 33 members of the Alabama Legislature who worked for public entities last year and all of them weren't educators. Actually, one member of the senate, Larry Dixon, a full-time state employee, works as the Executive Director of the Alabama Board of Medical Examiners. I don't know if Larry was already elected when he was hired or whether he ran as a state employee. In any event, I believe that any restrictive rules should apply across the board to all legislators in order to avoid any potential conflicts of interests. Passage of strong ethics legislation that would affect all legislators and legislation controlling lobbying activities is really what would benefit all Alabama citizens. That should take center stage in the next session of the legislature.

LEGISLATIVE COMPENSATION SHOULD BE IMPROVED

I have always believed that members of the Alabama legislature should receive a fair and reasonable salary. In my opinion, the pay scales should be

high enough to make serving in the House and Senate less of a financial sacrifice. Underpaying legislators actually adds to the power and influence of the lobbyists who are called the fourth branch of government in Alabama. I believe that a Legislative Compensation Commission would be the proper way to handle the issue. Currently, the pay for Alabama Legislators is too low, and for that reason, I believe a pay increase is in order.

ALABAMA BOARD TURNS DOWN HEALTH INSURANCE FOR STATE SENATORS

The State Employees Insurance Board has rightfully rejected the Alabama Senate's attempt to get state-funded health insurance for all senators. The Legislature can reapply, however, if both houses follow the proper steps. The Senate passed a resolution to obtain coverage through an insurance program operated by the State Employees Insurance Board. Members of the board felt they needed a joint resolution passed by both houses of the Legislature for the application for insurance to be official. They are absolutely correct.

Other Southern states provide publicly funded health insurance for their legislators and Alabama should do the same. Currently, all legislators can get state insurance coverage provided they pay the full cost, but few of them pay the \$640-per-month cost for family coverage.

The State Employees Insurance Board is an 11-member board of state officials, state Personnel Board members and elected representatives of active and retired state workers. It oversees insurance programs for active and retired state employees and many city and county governments. Dr. David Bronner, who is a board member, observed that the Legislators "have a right to join in" the system. While Dr. Bronner correctly voted to reject the Senate's efforts for technical reasons, he apparently would vote for the coverage if both the House and Senate passed a joint resolution,

which requires the Governor's approval. This is a problem that reasonable folks should be able to work out and hopefully that will happen.

Source: *Associated Press*

III. COURT WATCH

STATE IS STILL WAITING ON THE EXXON APPEAL

We hadn't received any word from the Alabama Supreme Court on the Exxon appeal when this issue went to the printer. I have never seen a case on appeal that has drawn so much attention in the form of op-ed pieces, letters to the editor, text messages, and the like. The case was tried for the second time in 2003 and has been on appeal now for over three years. AVALA has been very active over the past several weeks for some reason and has been very busy labeling the case as frivolous. That has caused a number of persons to contact our office asking the status of the appeal.

To put matters in context, the case was first filed at the direction of Attorney General Bill Pryor. It was tried the first time when he was Attorney General resulting in a verdict in the State's favor. That verdict was reversed on a technical issue. The case was continued by the present Attorney General, Troy King, after he took office and tried a second time. Governor Bob Riley has supported the lawsuit fully and actually attended oral arguments in the Alabama Supreme Court. All of these men are familiar with the facts of the case and know that Exxon committed a massive fraud against the State of Alabama—a fraud that was devised and put together at the highest levels of the corporate structure of Exxon. Frankly, it's the strongest case of fraud that I have ever been involved with. We are awaiting the decision from the Alabama Supreme Court and hopefully it will come soon.

JUSTICE HAROLD SEE CALLS IT QUILTS

It appears that Supreme Court Justice Harold See has decided to call it quits and not seek re-election next year. His retirement announcement came as a major surprise to most Capital observers. Actually, I got the news in the form of a "Dear Friend" letter, which I received, signed by Justice See. I guess the biggest surprise for me was the fact that I was on his mailing list. Considering the tremendous investment that the powerful special interests have in Justice See, I really didn't believe they could afford to let him step aside. Apparently, I was wrong in my belief. All of the early polling on the single Supreme Court race scheduled for next year had included Justice See as a candidate.

Interestingly, at least two candidates—both female—had polled very well against See. Some believe that the poll numbers might have caused See and those who have financed his previous campaigns see the handwriting on the wall and that led to his announcement. The See record as a Supreme Court justice has been one that was seen by most neutral observers as being anti-consumer. It will now be interesting to see who is selected to run in See's place next year. A number of names are already being mentioned as possible candidates to succeed him.

GAG ORDER DENIED IN WALGREENS WRONGFUL DEATH SUIT

A Florida judge has denied Walgreens' request for a gag order on the family and the lawyer representing a mother of three, who died following a misfilled prescription at a Florida Walgreens. Beth Hippely suffered a massive stroke after being given the wrong dosage of a powerful blood thinning medication which crippled her and forced her to stop her needed chemotherapy. She died earlier this year. Citing an interview given by the Hippelys' lawyer, Karen Terry, in an ABC News "20/20" story investigating

pharmaceutical errors last spring, Walgreens claimed the lawyer's actions had the effect of generating pre-trial publicity prejudicing Walgreens.

The company claimed it had a constitutional right to a "non-tainted jury pool" and requested an order "prohibiting the parties and their attorneys from engaging in pre-trial publicity prior to jury selection, and during the trial of this case." Additionally, the motion requested the judge to "specifically prohibit the parties and their attorneys or staff from engaging in interviews or commenting about any aspect of the case before and during the trial of this matter." In my opinion, the court was correct in denying Walgreen's request for a gag order.

Source: ABC News

IV. THE NATIONAL SCENE

THE RECORD OF THE U.S. CHAMBER OF COMMERCE IS ANTI-WORKER AND ANTI-CONSUMER

The U.S. Chamber of Commerce has become one of the strongest lobbying organizations in the country. They have their considerable influence in a number of areas. Without a doubt, one of these involves restricting the rights of American workers. The Chamber has been campaigning against unions, fair labor practices, increases in the minimum wage, and legal protections for America's workers for nearly a century. The Chamber's anti-union initiatives are just one part of its multi-issue agenda against working men and women. Unlike other anti-union organizations, this prominent lobbying force does not hide its alignment with the giants of Corporate America. Headquartered in Washington, DC, the Chamber has an annual budget of \$150 million and 300 staff members.

It is most significant that annual con-

tributions to the Chamber from its largest corporate members rose from \$600,000 to \$90 million in less than a decade. Thomas J. Donohue has built a more aggressive and politically-powerful Chamber since he took office as president of the Chamber in 1997. It's not a coincidence that the Chamber allows large corporate donors to set the agenda for the organization. The Bush White House also has had an active role in setting an agenda that has been anti-consumer and anti-worker. The direction taken has actually caused the Business Roundtable and other moderate members of the business community to distance themselves from the U.S. Chamber. At least, that certainly appears to be the case.

In a recent year, 2004, the Chamber spent \$24.5 million lobbying the federal government. I doubt seriously if many small business owners benefit from the lobbying efforts. The Chamber works closely with the Bush administration and prominent anti-labor conservatives on Capitol Hill such as Rep. Charlie Norwood (R-GA), head of the House Subcommittee on Workforce Protections. Rep. Norwood was given the Chamber's Spirit of Enterprise Award for his pro-Chamber voting record. The Georgia lawmaker, who has been an anti-workplace safety zealot, caused controversy this year for his insensitivity during Congressional hearings on the Sago mineworker tragedy, and for lobbying strongly and vocally against renewal of the Voting Rights Act.

The Chamber's record insofar as workplace issues are concerned has at least been consistent. They have lobbied to oppose pro-worker legislation, including the Family Time and Workplace Flexibility Act, Fair Minimum Wage Act, and an expansion of the Family and Medical Leave Act. Among the Chamber's legislative priorities is opposition to the Employee Free Choice Act, which would strengthen labor law and provide workers with the right to union representation via the card check

process when a majority present signed union authorization cards to their employers. On May 4, 2006, the Chamber sent a letter to all Republican members of Congress urging them to support the Secret Ballot Protection Act, which would outlaw union recognition through card check. The Chamber also operates a website urging its members to pressure Congress on the issue.

A number of key players in the conservative movement have worked for the Chamber, including Grover Norquist, who served as the Chamber's chief speechwriter in the 1980s. Norquist has also worked as an adviser to President Bush and has tremendous influence over policy decisions in his administration. Over the past several years, the Chamber spent a tremendous amount of money in attempts to control judicial elections. Interestingly, local Chambers don't buy into everything that the national group promotes. On several occasions, local groups have actively opposed positions taken by the national group. The fact that the U.S. Chamber doesn't have to account for their money received to use in elections is not good for most Americans. The real donors are hidden from public scrutiny. The Chamber actually uses shadow groups it sets up to do its dirty work in the state races. Nobody knows how much these groups spend or where the money comes from and that's never a good thing. I would suggest that our readers take a close look at how the U.S. Chamber operates and what their real agenda and motivations are!

Source: American Rights At Work

THE IRAQ WAR CARRIES WITH IT A VERY HEAVY COST

Since the war in Iraq began in March 2003, there have been 3,647 confirmed U.S. military deaths and 27,104 confirmed U.S. military wounded as of August 1, 2007. The total U.S. military deaths for July were 77 and, as of August 19th, there have been 54 deaths reported

for the month of August. In addition, there have been 1,001 deaths of civilian employees of U.S. government contractors as of June 30, 2007. It has been reported that Iraqi civilian deaths have been more than 66,000. One study last year claimed there were as many as 655,000 civilian deaths. According to Associated Press figures, there were at least 2,024 Iraqi deaths in July. Also, since the war began, there have been 327 assassinated Iraqi academics and 112 journalists, who were on assignment, killed in Iraq.

As reported last month, military operations are now costing about \$12 billion a month, with Iraq accounting for \$10 billion per month of the total. Thus far, the total cost to the U.S. government is more than \$447 billion. The projected cost of providing medical care and disability benefits to veterans of Iraq and Afghanistan has been put as high as \$700 billion. When you consider that we should never have invaded Iraq, and have ignored, to a large extent, the real enemy, the loss of lives, the great number of seriously wounded troops, and the monetary costs of the war effort make this chapter in our country's military history one that will be debated for years to come. The fact that our troops are serving as an occupying force in Iraq, more or less in the role as a police force, makes this war one of the most difficult to justify ever.

Source: Associated Press

MASSIVE CORRUPTION EXISTS IN IRAQ

A recent article in *USA Today* told about an army officer who was accused of being involved in one of the largest bribery cases involving U.S. contracts in Iraq. Three persons, including the Army major who is alleged to have been involved, were arrested and charged with receiving and laundering \$9.6 million in bribes from Kuwaiti companies doing business with the U.S. Army in Iraq. This case was described as the most dramatic of a cluster of Iraq-related corruption

cases filed in July—the busiest month for corruption cases since the war began. It's part of a broader investigation into bid-rigging, kickbacks and bribery at U.S. government contracting offices in Kuwait.

Many contracts for reconstruction or serving U.S. troops in Iraq are managed in neighboring Kuwait. It was reported by *USA Today* that eleven people have pleaded guilty to corruption charges involving Iraq contracts overseen in Kuwait. Seven people and seven companies have been suspended or banned from getting new U.S. government work because of corruption in Kuwait, according to the Army office responsible for those sanctions.

The most recent suspensions came about on July 2nd. The Army suspended Kuwait-based Lee Dynamics International; the company's American father-and-son owners, George and Justin Lee; a relative identified as Oai Lee; and an Alabama business, Lee Defense Services, as part of a bribery investigation. Military contracting records show Lee Dynamics has been paid \$12.8 million since 2005 to operate seven warehouses in Iraq storing guns, ammunition and other gear for Iraqi security forces.

While all I know about the case is as described in that which was written in *USA Today*, I have read other reports about how widespread corruption has been since the Iraq war started. Some shocking things have been uncovered and a tremendous number of politically-connected companies have done very well in Iraq. American taxpayers should be outraged over the massive fraud and corruption that has been reported. I suspect that we haven't heard the last relating to the scandals that have come about over the past 6 years. Profiting over a war is one thing, but corruption and fraud are quite another matter.

Source: *USA Today*

KARL ROVE'S LEGACY WILL SOON BE SET IN STONE

Now that Karl Rove has "cut and run," leaving George W. Bush to run the

country all by himself, folks are discussing the immediate and long range effects of his jumping ship. History will record Karl Rove as being one of the most powerful and influential non-elected political figures ever on the national level. His ability to elect a person like George Bush to the most powerful office in the world, in my opinion, was a major political miracle. While it's somewhat early to assess it, the Rove legacy is not a good one when you consider the shape he has left our country in. Rove was the architect of a political strategy that has left our country more divided than ever before. The special interests are definitely more in control today and the American people more shut out from their government than at any time in my life. When you do an assessment of what Rove has left the American people with, consider the following:

Corporate corruption is at an all time high—prescription drugs prices are out of sight—global warming has been ignored—millions of Americans have no health insurance—gasoline prices at the pump are outrageous—oil companies are making record profits—raw politics have been the agenda setter in most every federal regulatory agency—powerful lobbyists, financed by special interests, control congress and most of the governmental agencies—and we are bogged down in a costly civil war in Iraq.

To say that Rove—the master strategist—has left our country in a terrible mess is a gross understatement. Clearly, Rove was one of the primary architects of the Iraq War. In June 2006, Rove gave a speech to New Hampshire Republicans and blasted Democrats for advocating "cutting and running" in Iraq, saying of the Democrats:

They may be with you for the first shots. But they're not going ... to be with you for the tough battles.

But it now appears Rove doesn't practice what he preaches since things are pretty tough for his boss. He is departing the White House at a time when the going in Iraq is as tough as it has ever been. Leaving the President in such a mess is difficult to justify. Rove helped the President start a war, and now hundreds of thousands of American service men and women have no choice but to live with the consequences of that decision. Rove is leaving others—including his protégé—to clean up the mess he created.

Rove has a reputation of doing whatever is necessary to win in the political arena. He recklessly steered this country into a debacle in Iraq that has caused the death of thousands of Americans and hundreds of thousands of Iraqi civilians. His policies carried out by the President have ruined the United States' reputation abroad. Rove, Vice President Dick Cheney, and the rest of the war planners did so with little understanding of what they were getting into and with insufficient planning. They sold the war to the public with bad information and blatant misrepresentations. Without any doubt, Rove was part of the White House Iraq group that devised the prewar messaging and who are now trying to justify all of the mistakes made.

I have never been a fan of the Rove style of politics and never will be. Rove's scorched earth policies over the years have included taking no prisoners and literally destroying his political opponents regardless of the consequences. All of this may eventually catch up with him—we will see!

Source: *The Nation*

IT APPEARS ROVE MAY HAVE SOMETHING TO HIDE

As stated above, Karl Rove's announcement last month that he would resign from his powerful position in the Bush Administration caused all sorts of speculation. We all know that the Bush White House had been fighting hard to keep

Rove from having to testify under oath before congressional committees. Many believe the top political advisor's sudden resignation could be directly related to that issue. Most Americans believe Rove should be made to testify before Congress concerning his role in the clandestine firings of the U.S. attorneys. But the White House has invoked executive privilege to keep the man with the most control over President Bush from having to testify. The Administration takes the position that Rove, "as an immediate adviser to the president," can't be ordered to testify. As you know, the Senate Judiciary Committee had called Rove and his deputy, Scott Jennings, to testify. The White House says it is trying to protect the president's ability to receive candid advice and offered to let top aides discuss the firings only if they were not placed under oath and with no transcript to be allowed. That is sorta weird especially if the men had nothing to hide.

Senator Patrick Leahy (D-VT) accused the White House of trying to cover up Rove's role in the firings. The veteran lawmaker questioned why Rove discussed the matter publicly when the issue first made news, all of a sudden has become "unable to talk it about it when he is under oath." Congress should be able to probe Rove's role in targeting well-respected U.S. attorneys for firing and in seeking to cover up his role and that of his staff in the scandal. If in fact Rove did play a role in the selective firings, it's a most serious matter and one that should be investigated. Can Rove afford to be put under oath and then run the risk of a perjury charge? I doubt that we will ever get the answer to that query.

Source: CNN.com

DANGERS EXIST IN OUR COUNTRY'S AGING INFRASTRUCTURE

A number of incidents have occurred recently that graphically illustrate existing hazards that are associated with an aging infrastructure. Those include a

steam pipe explosion near Grand Central Terminal in New York City, a levee failure floods New Orleans, and more recently, the major bridge collapse in Minneapolis which took place during rush hour traffic. These disasters have gotten the attention of public officials at every level of government and for good reason. We have to realize that the bulk of the nation's highway system was built over 60 years ago and is growing "old." Hopefully, we are not experiencing the beginnings of more serious disasters down the road. Many structural and civil engineers who have studied the matter believe there is a major infrastructure problem in this country. I believe they are on target.

The American Society of Civil Engineers issues annual rankings of the state of the nation's infrastructure. Unfortunately, the grades from those rankings haven't been very good. The Federal Highway Administration also issued a report last year that rated 13.1% of highway bridges as "structurally deficient." It said these bridges have "deteriorated conditions of significant bridge elements and reduced load carrying capacity." In addition, the agency reported that an additional 13.6% of bridges were "functionally obsolete," meaning they do not meet current design standards.

Transportation officials have to know that many of the nation's 600,000 bridges are in need of repair or replacement. About one in eight has been deemed "structurally deficient," a term that typically means a component of the bridge's structure has been rated poor or worse, but does not necessarily warn of imminent collapse. Most deficient bridges, which included the span of Interstate 35W over the Mississippi River in Minneapolis, Minnesota, remain open to traffic. A study by the Federal Highway Administration found that visual inspections, the primary method used by bridge inspectors, only rarely detect cracks from metal fatigue. In the study, completed in 2001, 49 bridge

inspectors from across the country examined test bridges in Virginia and Pennsylvania. Only 4% correctly identified a fatigue crack. Worse, many inspectors identified nonexistent problems, suggesting that bridges sometimes undergo unnecessary repairs while some serious conditions are not detected. Inspectors now sometimes employ tools like ultrasound, but those add time and cost to their work. Nevertheless, that sort of thing is needed because of the serious consequences when a major bridge collapses.

The bottom line is that public officials can't wait until disasters take place to deal with the multitude of problems caused by an aging infrastructure in this country. The major reason that we haven't dealt with the problem is the recurring political promises of "no new taxes." Eventually, funds must be found that can be used to identify and fix the existing problems. The drain on federal dollars resulting from the war in Iraq and the no new taxes promises by politicians makes finding funds very complicated if not impossible. It is estimated that \$1.6 trillion is needed over a five-year period to bring our nations infrastructure to good condition.

Source: *New York Times*

POTENTIAL FLAW SEEN IN DESIGN OF FALLEN BRIDGE

Investigators in Minnesota have found what may be a design flaw in the bridge that collapsed in that state resulting in the loss of lives. The flaw in the steel parts that connected girders raises safety concerns for other bridges around the country. As a result, the Federal Highway Administration has urged all states to take extra care with how much weight they place on bridges of any design when sending construction crews to work on them. Crews were doing work on the deck of the Interstate 35W bridge when it gave way. It should be noted that the National Transportation Safety Board's

investigation is months from completion. Investigators are working to confirm the design flaw in the so-called gusset plates. They are attempting to determine what, if any, role the plates had in the collapse of the bridge.

The investigators have indicated that they considered their preliminary findings to be a potentially crucial discovery and also a safety concern for other bridges. Gusset plates are used in the construction of many bridges, not just those with a similar design to the one in Minnesota. Since the collapse, the concern among investigators has focused on "fracture critical" bridges, which can collapse if even a single part fails. But thus far, neither the safety board nor the federal Department of Transportation has singled out any particular design of bridge in raising its new concerns about gusset plates and the weight of construction equipment. Concerns about the plates emerged from scrutiny of the vast design records related to the steel truss bridge. In

A friend of mine in the steel business told me that gusset plates are the steel connectors used to hold together the girders on the truss of a bridge. On the Minnesota bridge, completed in 1967, there would have been hundreds of them, according to Minnesota officials. Safety board investigators are "verifying the loads and stresses" on the plates as well as checking what they were made of and how strong they were. It has been reported that the use of these plates is common in bridges. It's a way to attach several girders together.

I understand that a consultant, hired by the State of Minnesota in the days after the collapse to conduct an investigation of what had gone wrong, discovered the potential flaw. According to Federal authorities, one added stress on the gusset plates may have been the weight of construction equipment and nearly 100 tons of gravel on the bridge, where maintenance work was proceeding when the collapse occurred. A construction crew had removed part of the

deck with 45-pound jackhammers, in preparation for replacing the two-inch top layer, and that may also have altered the stresses on the bridge, according to experts. It will take a great deal of more hard work to determine exactly what caused the bridge to collapse. The tragedy has certainly been a wakeup call for governmental officials across the country.

Sources: *New York Times* and *Associated Press*

AMERICAN CITIZENS PAY THE HIGHEST DRUG PRICES IN THE WORLD

I am sure millions of Americans watched "60 Minutes" on July 23rd and most of those who watched were most likely shocked at what they heard about the Medicare prescription drug bill that the Bush Administration and the drug company lobbyists pushed through Congress about 3-1/2 years ago. I have written in previous reports that the drug companies wrote the drug bill and that was verified by the CBS news team on 60 Minutes. The final vote in Congress on the drug bill took place at 3:00 a.m., which is rather odd, but clearly not an unplanned happening. I suspect few members of the House of Representatives who voted on the bill even knew what was in it. The cost at the time was estimated to be about \$400 billion over 10 years. Rep. Billy Tauzin, who carried water for the drug company lobbyists, steered the bill through to final passage. Are you surprised to learn that now he works "full time" for the drug companies? I suggest that our readers ask this question to their members of Congress—"what is the cost of the program now projected to be?" I believe you will find that we are now talking in terms of trillions of dollars.

It's now quite evident that the pharmaceutical companies and the insurance companies are the real beneficiaries under the drug bill. Consumers and retail drug stores have been hurt badly and in the long run, the hurt will increase. Some individuals will

benefit, but the costs involved will negate any real benefit to seniors. Recently, I asked a member of Congress from Alabama about the drug program at a local Chamber of Commerce meeting. I was shocked at this lack of knowledge about a bill he supported and voted for. The costs of prescription drugs in the United State are the highest in the world. Folks should be asking the politicians—why?

One reason might be the \$100 Million a year in campaign contributions and lobbying expenses the companies spend to protect their profits. Another is that we have members of Congress, such as Mr. Tauzin, who feather their own nests while serving in Congress. I suggest that you read the report by the Center for Public Integrity which can be found on their website, www.publicintegrity.org. One of my doctor friends asked me once if I realized that American Citizens actually subsidize people in the rest of the world when it comes to the costs of prescription drugs. I hadn't thought about the issue in that context, but now I understand what he was telling me. The high prices we pay in this country allow drug companies to sell the same drugs at very cheap prices in all other countries. Canada—our neighbor—is the classic example.

LOBBYISTS—THE NEW PIRATES OF THE CARIBBEAN—ARE BAD NEWS FOR TAXPAYERS

The Republican Congress' cozy affiliation with the pharmaceutical industry has a long history. Although the Republican platform calls for smaller government, in 2003 the administration helped pass the Medicare Prescription Drug Bill as mentioned above, which is the largest entitlement program in 40 years. Much of the credit for passing this bill can be passed around to the 1,000 lobbyists working for the pharmaceutical industry in getting this windfall bill passed. After the bill passed, many individuals left their jobs in government and

became employed as lobbyists. I mentioned Congressman Billy Tauzan from Louisiana who within six weeks of this bill passing became president of Pharma and is making \$2 million a year in salary. Just before the bill was passed, Tauzan gave credit to individuals who had been key in getting the bill passed. It is interesting to note what they did after the bill was passed.

Where did all of these folks who helped the drug companies land? From the Ways and Means Committee, John McManus left Congress and started his own lobbying firm and his clients now included Pharma, Pfizer, Eli Lilly, and Merck. From the majority side of the Finance Committee, Linda Fishman left her position and became a lobbyist for Amgen. Energy and Commerce Committee staffer Pat Morrissey left and went to work lobbying for Novartis and Hoffman-LaRoche. Jeremy Allen left to lobby for Johnson & Johnson. Kathleen Weldon and Jim Barnett left to lobby for Biogen and Hoffman-LaRoche respectfully. Tauzan commended all these individuals for their great work at the House. But the question is: Was this great work for the House or was it great work for the pharmaceutical industry and for themselves? It begs the question, are lobbyists the new pirates of the Caribbean?

Source: CBS News

FAMILIES OF VIRGINIA TECH VICTIMS TO BE OFFERED UP TO \$180,000

Virginia Tech will offer the families of the 32 students and faculty members killed in the April 16th massacre a one-time payment of \$180,000 from a fund created to receive private donations. The fund, called the Hokie Spirit Memorial Fund, has raised \$7.1 million. The University plans to distribute the entire fund to the families of those killed and to the 27 people wounded. Those who were wounded will each receive between \$40,000 to \$90,000, depending on the severity of their injuries, as

well as free tuition at Virginia Tech.

Not everybody is happy with the situation. Some family members believe the amounts are much too low to compensate them for their losses and cover outstanding bills. Several relatives of slain and wounded Virginia Tech students believe that the school was negligent in its response to the tragedy. A taxpayer-financed compensation fund has been recommended, a proposal which Governor Timothy M. Kaine and Virginia legislators said they will consider.

It would be difficult for the families to sue the state, because of the protection afforded by sovereign immunity. Potential damages would be capped at \$100,000, although there are no caps on awards if the Virginia attorney general decides to settle a suit out of court. Several state lawmakers said recently that creation of a state compensation fund might be the best solution to avoid lawsuits. I sincerely hope that all of the issues can be resolved so that the families can be adequately compensated.

Source: *The Washington Post*

PAYDAY LENDING INDUSTRY GIVES BIG BUCKS TO POLITICIANS

MAPLight.org, a nonprofit, nonpartisan research group, has found that the payday lending industry has dramatically increased its state campaign contributions over the last eight years. Interestingly, this increase coincides with favorable state laws that allow these high-interest lenders to continue to operate. A report examines, in-depth, the states that received the most campaign contributions from the payday loan industry, as a percentage of overall campaign giving in the state. These states are: Idaho, Illinois, Kansas, South Carolina, Tennessee, Texas, and Utah. The report reveals that as total industry campaign contributions in these states increased, state laws allowed the industry to continue operating without significant restrictions.

The report found that many industry

contributions came from out of state. In Idaho, virtually all industry contributions to state legislators—97%—came from outside Idaho. Other states with high levels of out-of-state contributions included: Utah (84%), and Illinois (50%). The payday lending industry contributed \$3.2 million to legislators and political parties in these states during 1996 to 2006. Borrowers in these states paid \$1 billion in loan fees in 2005 alone. Across all 50 states, the industry contributed \$8 million during 1996 to 2006. Borrowers across the U.S. paid \$4.6 billion in loan fees in 2005 alone.

In several states, large majorities of legislators received funds from the payday loan industry, coinciding with legislation that was either favorable or only minimally restrictive to industry. In Texas, for example, the payday lending industry gave campaign contributions to every Texas Senator, an average of \$8,269 to each Senator. No legislation passed in Texas during the eight years studied that significantly restricted payday lending. In Illinois, a bill favorable to the industry passed unanimously in the House, and nearly unanimously in the Senate, where 84% of House members and 88% of Senators received industry funds. Governor Blagojevich, who signed the bill into law, received \$172,250 from the industry.

As all of our readers should know, payday loans, also known as cash advances or deferred deposit loans, are short-term loans secured by a post-dated check. Borrowers living from paycheck to paycheck become trapped in debt. Unable to pay back a short-term loan, they extend the loan repeatedly, accruing effective annual rates that may exceed 400%. The U.S. payday lending industry has grown from an estimated \$8 billion in loan volume in 2000 to \$28 billion in 2005. The report's findings are based on a MAPLight.org analysis of contribution data from the National Institute on Money in State Politics and public records of legislative votes in each state. The full report is available at

the MAPLight.org website: www.maplight.org. MAPLight.org is a nonprofit, nonpartisan organization illuminating the connection between money and politics. They shine a light on campaign contributions and related legislative outcomes, which leads to a more informed public and election reform. Pay day lenders are making record profits and with the economy under the Bush Administration becoming so bad, it's my belief that they will be doing even better in the future.

Source: MapLight.org

V. THE CORPORATE WORLD

SOLICITOR GENERAL FAILS TO SUPPORT THE SEC

I wasn't surprised to learn that Solicitor General Paul Clement has sided with corporate interests over investors in the securities case that has had so much media attention. Clement filed an amicus brief for defendants in this Supreme Court case that could decide whether accountants, bankers, lawyers, and others can be sued by private investors for activities that go beyond merely aiding and abetting corporate fraud. The case has exposed a rift between the Securities and Exchange Commission and the Bush administration and its Department of Justice. The SEC had voted to support investors, a position that Clement has failed to support.

The Stoneridge case will be heard by the Supreme Court on October 9th. The issue is whether third parties can be sued by private investors if they participate in a fraudulent scheme with a company. The 8th U.S. Circuit Court of Appeals ruled that they cannot be subject to this "scheme liability" under §10b-5 of the Securities Exchange Act of 1934 unless they make a public statement about the targeted activity. The

case arises from securities fraud that took place at Charter Communications Inc., a major cable television provider that was accused of inflating revenue through sham transactions.

Clement faced political pressure from the White House not to support the investors. That was confirmed after the deadline passed by Allan Hubbard, Bush's chief economic adviser, who told *The Associated Press* that the president conveyed to Clement that he believed it's important to reduce "unnecessary lawsuits because that's a very big burden to the economy." This is an example of how political the Bush White House has been. This case will be watched with great intent.

Source: *The American Lawyer*

ENRON SETTLEMENT APPEARS NEAR

The lead plaintiff in the massive Enron shareholder lawsuit, which was dealt a blow by an appeals ruling last March, has proposed a plan to distribute the \$7.2 billion collected so far in the largest settlement ever reached in securities litigation. The next-largest was WorldCom's \$6.1 billion, according to the Securities Class Action Clearinghouse at Stanford University. The University of California, the lead plaintiff in the \$40 billion lawsuit, is seeking public comments on a complicated proposal to calculate distributions to shareholders who bought Enron stock in the years before the company crashed in an unparalleled scandal.

It has been estimated that there are 1.5 million Enron stock and bond buyers in the class. The class includes shareholders who bought Enron stock between September 9, 1997, and December 2, 2001, the day Enron went bankrupt. It should be noted that the class doesn't include people who bought shares before that time or who have opted out of the settlement. After a public comment period ended on August 20th, plaintiffs asked Judge Harmon's permission to mail notices to

shareholders represented in the suit to invite additional input. At a later date, the Judge will consider approval of a final plan. Once it is approved and shareholders' claims are verified, distributions can begin. That is not likely to take place prior to late 2008.

The effort to distribute settlement funds already obtained won't stop the plaintiffs' efforts to address remaining defendants in the case. The bulk of the \$7.2 billion already recovered came from the following banks: Citigroup, JPMorganChase, and the Canadian Imperial Bank of Commerce. Others that have settled include Lehman Bros., Bank of America, Enron's directors, and Arthur Andersen, the accounting firm. The remaining defendants in the lawsuit are Merrill Lynch & Co., Barclays and Credit Suisse First Boston, and two individuals, former Enron CEO Jeff Skilling and former accounting chief Richard Causey. As you know, Skilling and Causey are in prison for Enron crimes. Skilling was convicted last year of 19 criminal counts, while Causey pleaded guilty to securities fraud.

The shareholder lawsuit's April trial was put on hold when the 5th U.S. Circuit Court of Appeals blocked the plaintiffs from alleging the banks were primary players in fraud that helped fuel Enron's failure. The plaintiffs say the banks were on the front lines of fraud, structuring deals they knew Enron would use to manipulate financial statements. Under that theory, the banks would be held liable for their actions as well as those of everyone else involved. Ability to hold the banks responsible for the entire fraud could result in a multi-billion-dollar judgment. The plaintiffs appealed the 5th Circuit's ruling to the U.S. Supreme Court. Thus far, the high court hasn't taken any action on the appeal. However, the court is scheduled to hear arguments in another case this fall that involves the same issue of whether shareholders can sue banks or others that aid fraud committed by their clients. In that case, investors are trying

to get approval to sue Motorola and a division of Cisco Systems for allegedly working with cable television provider Charter Communications to post fake revenue. As we reported in April, the Bush administration, acting through the U.S. solicitor general, failed to file a brief supporting investors in the Charter case. That came despite the SEC's recommendation to do so. The Enron plaintiffs hope the Bush administration won't file a brief supporting the corporate defendants in the Charter case. Unfortunately, that is likely to happen based on previous actions by the White House.

Source: *Houston Chronicle*

MEDICAL PRODUCTS FIRM SETTLES ACCOUNTING PROBE

Cardinal Health Inc. has agreed to hire an independent consultant and pay a \$35 million fine to resolve an investigation by the U.S. Securities and Exchange Commission, accusing the medical products and services firm of accounting irregularities and inflating earnings reports. The SEC began investigating the company in October 2003 over its accounting treatment of money it got from vitamin manufacturers. This is just another example of how many in Corporate America cheat, get caught, and pay their way out of trouble.

Source: *The National Law Journal*

CONAGRA FOODS SETTLES SEC PROBE

In another case of corporate fraud, packaged-food company ConAgra Foods Inc. will pay a \$45 million civil fine as part of a settlement with federal regulators who accused the company of using improper accounting to help it meet Wall Street expectations. The U.S. Securities and Exchange Commission filed a civil complaint in a Colorado federal court, accusing ConAgra of "improper, and in certain instances fraudulent" accounting in fiscal 1999 through 2001. The complaint alleged "numerous"

income tax errors, understating of income tax expenses, and improper reductions of reserves. That caused ConAgra to misstate reported income before income taxes by nearly \$218.5 million and to misstate its reported income tax expense by \$105 million.

Source: *The National Law Journal*

JUDGE APPROVES SUITS AGAINST H&R BLOCK

A federal judge has denied H&R Block Inc.'s attempt to dismiss a series of lawsuits claiming the company defrauded customers in its marketing for its Express IRA product. U.S. District Judge Richard Dorr ruled that the plaintiffs had provided enough evidence to allow the case to proceed, denying a series of motions by the Kansas City-based tax preparation giant. H&R Block quickly pointed out in a news release that the judge didn't rule on the "validity of the plaintiff's claims." Twelve cases were consolidated by the court last year, all of which contended the company had used deceptive practices when it marketed the retirement vehicle. The lawsuits claimed H&R Block failed to explain to customers the multiple fees they'd have to pay, which in some cases was higher than what the funds generated in interest.

Source: *Associated Press*

CONTRACTOR SETTLES WHISTLE-BLOWER SUIT

A government contractor has agreed to settle a whistle-blower lawsuit filed by a man who was fired after he raised concerns about parts supplied to the U.S. Navy. Walter Klepacz, a Houston area resident, had worked as a quality assistance manager for a Crane Co.'s plant for almost two years when he told his superiors in 2004 about problems with corroded parts. The lawsuit, filed in February 2005 in federal court in Houston, was settled for \$7.6 million. Crane was alerted that inspections were

not being performed.

Crane employees at another facility told him that Navy officials had conducted on-site inspections. He was fired months after he first sent e-mails to company officials about the lapses. After the U.S. Justice Department intervened, it accused the company of submitting false claims and unlawfully manufacturing valves for the Navy using foreign metals. Interestingly, the company continues to provide parts to the Navy. Crane maintained that its parts were safe and the issues raised were “administrative oversights.” As a result of the case the Navy says it has imposed more stringent rules for Crane. I believe that the best way to deter “cheaters” is to ban any corporation that is caught cheating and make that “cheater” an example. I have to wonder—how many corporations doing business with the federal government are cheating the taxpayers?

Source: *The Houston Chronicle*

VI. CONGRESSIONAL UPDATE

CONGRESS DELIVERS ON LOBBYING AND ETHICS REFORMS

The 110th Congress is to be commended for delivering on its promise to enact far-reaching lobbying and ethics reforms. On August 2nd, the Senate, following a vote in the House of Representatives, overwhelming approved S. 1—the “Honest Leadership and Open Government Act of 2007”—whose bill number reflects the Senate’s professed priority for this legislation. The bill now awaits the signature of President Bush to become the law of the land. Laura MacCleery, director of Public Citizen’s Congress Watch division, made this observation:

This is landmark legislation that addresses head-on the lobbying and ethics scandals that have

engulfed Capitol Hill. The 110th Congress deserves praise for recognizing that there is a problem and for enacting meaningful new regulations on codes governing the conduct and disclosure of influence-peddling in Washington.

The new legislation imposes a wide array of lobbying laws and ethics rules designed to shed light on the potentially corrupting nexus between lobbyists, money and lawmakers. It also imposes a series of new ethics restrictions on Congress. Specifically, the legislation does the following:

- It requires disclosure on the Internet of lobbyist fundraising for lawmakers, including the amount of direct campaign contributions and bundled contributions, who raised them, which lobbyists hosted fundraising events and how much was raised;
- It prohibits members of Congress from attending lavish parties sponsored by lobbyists at the national party conventions;
- It requires lobbyists to report their lobbying activities every three months in an electronic format, to be immediately posted on the Internet;
- All gifts from lobbyists to lawmakers and their staffs are prohibited;
- It bans travel junkets for members of Congress by prohibiting any organization that employs a lobbyist from sponsoring trips for members longer than one day. Pre-approval of all trips is required. Disclosure of all trips on the Internet is required. It restricts the use of private corporate jets to fly members around the globe. The bill prohibits lobbyists from going along on any of these trips;
- It requires disclosure of the names of the sponsor and recipient of earmarks to be posted on the Internet 48 hours before final approval of appropriations and tax bills, and allows any senator to remove by a point-of-order

challenge an earmark “air-dropped” into a conference report; and

- The bill slows the revolving door between Congress and high-paying lobbying firms by extending the “cooling-off” period for senators from one year to two and by requiring all members to publicly disclose any job negotiations they engage in while serving in Congress.

The House of Representatives had approved the legislation by a vote of 411-8. The Senate vote was 83-14. Public Citizen is due a great deal of credit for bringing about the passage of this critically important legislation. The consumer advocacy group energized the public and pressure was put on lawmakers and it certainly paid off. I am convinced that keeping the issue before the public was the key to this victory. Craig Holman, lobbyist for Public Citizen, commented on this major accomplishment:

While this measure is significant, there is always room for improvement. For example, the revolving door restriction should apply to the House and Senate equally and include a ban on any lobbying activity, rather than just lobbying contacts, during the two-year cooling-off period. But the few weaknesses should in no way distract from the great accomplishments of this legislation.

After the president signs the bill into law—assuming that he doesn’t yield to pressure from powerful special interests—Public Citizen will turn its attention to the next step necessary to clean up Washington. That would be full public financing of federal elections. Legislation to do this has been introduced by Senators Richard Durbin (D-IL) and Arlen Specter (R-PA). If the public doesn’t realize now that public financing is the only way to guarantee free elections and give real people a voice in elections, they never

will. However, I truly believe the time has come!

Source: Public Citizen News Release

SENATOR KYL SHOULD STOP OBSTRUCTING NEEDED LEGISLATION

Most of us don't really understand how important the Freedom of Information Act (FOIA) is when it comes to keeping governmental officials honest. The obstructive tactics of a Republican Senator have gone pretty much unnoticed by the media. Public Citizen sent a letter to Senator Jon Kyl urging him to allow an important "open government" measure to proceed in the U.S. Senate. The Republican senator from Arizona has blocked the badly needed legislation for months. The bill, the bipartisan Openness Promotes Effectiveness in our National Government Act of 2007 [the OPEN Government Act (S.849)], is designed to bring the Freedom of Information Act into the 21st century. Fortunately, it's a priority of the Senate Democratic leadership. When Democratic Senators tried to bring up the legislation, which required unanimous consent, on July 26th, it was blocked by unnamed GOP objectors. It's been obvious that Senator Kyl has worked hard to weaken this bill, which has wide support in the Senate, and that's not a good thing for honest government.

The OPEN Government Act passed the House as H.R. 1309 and there is overwhelming support in the Senate for its commonsense reforms of the Freedom of Information Act, a landmark law that allows ordinary citizens access to vital government information, but which is badly in need of a tune-up to ensure it functions properly. Supporters of the OPEN Government Act reforms to FOIA come from across the political spectrum and include a number of groups that want good government. Nonetheless, the Senate has been stopped by Senator Kyl, who placed a secret hold on the openness bill.

Although he has been unmasked by a grassroots and "blogosphere campaign" led by Public Citizen and its allies, Senator Kyl and the Republican leadership in the Senate are continuing to impede a vote. The Arizona Republican is "carrying water for Attorney General Alberto Gonzales' Justice Department," according to Public Citizen's legislative counsel, Linda Andros, who is on top of the issue.

People who seek information under FOIA face delay and backlogs often lasting for years. According to Public Citizen, several FOIA requests, still pending before the federal government, date back to the 1980s. The OPEN Government Act would expedite FOIA requests and increase transparency by:

- Restoring meaningful deadlines for agency action under FOIA;
- Clarifying that FOIA applies to agency records held by outside private contractors;
- Establishing a FOIA hotline service for all federal agencies;
- Authorizing recovery of attorney fees for requesters if the government agrees to provide the information after suit but before a court ruling; and
- Creating a FOIA ombudsman as an alternative to litigation.

The FOIA is a vital tool for any democracy because it allows the press, businesses and most importantly, ordinary citizens, access to government records. The transparency that FOIA affords is essential to make sure—to the extent possible—that government is working in the public interest. Time and again, documents obtained through FOIA requests have exposed government waste, abuse and corruption that otherwise never would have seen the light of day. Senator Kyl should allow the Senate to vote on FOIA and stop trying to weaken the bill. The OPEN Government Act should be passed

promptly and sent to the President for his signature.

Source: Public Citizen News Release

VII. CAMPAIGN FINANCE REFORM

BUNDLERS PLAY THE POLITICAL GAME

There is a web site that will allow you to follow the money trail created by what are referred to as Campaign Bundlers." I must confess that up until a few years ago, I didn't know what a bundler was. I learned they are folks who funnel money to campaigns as they collect thousands, and in some cases, millions of dollars from other folks and companies. The obscene amounts of money being spent by the 2008 presidential candidates don't grow on trees and the bundling of campaign contributions is part a growing problem. Bundling gives powerful lobbyists for special interests the power to raise millions for candidates.

The bundler uses business and political connections to pressure folks into donating to candidates of the bundler's choice. Lobbyists use this method to carry a big stick for special interest groups in presidential and congressional races. If you want to keep up with what is going on go to www.WhiteHouseForSale.org and you can figure out who the players are and what their games are. Public Citizen has urged the presidential candidates who use campaign bundlers to disclose more information about the activities of these super-fundraisers. All of the Democratic candidates indicated their support for public funding of elections. Large corporations use donations to buy influence in Washington at the expense of average citizens and that is a political fact of life in our nation's capital.

The candidates should lift the veil that is keeping details of their bundling operations secret. Public Citizen has

asked each presidential candidate to take three simple steps to shed light on bundling. They were asked to:

- Disclose their bundlers' identities, including their cities and states of residence and the names of their employers, in a place on their campaign Web sites that will be easy for the public to find;
- Disclose the amounts raised by each bundler using \$50,000 increments or some similar threshold and promptly update such information each time a bundler's fundraising exceeds the reported threshold; and
- Disclose the identities of individuals from whom the bundlers raise money and the amounts they contributed.

It's time for all of the candidates to act on their promises and let the sunlight concerning campaign financing. Thus far, none of the candidates have made their campaign disclosures transparent insofar as the bundling issue is concerned. All Americans—except the powerful special interests—would benefit if that happened before Election Day next year.

Source: Public Citizen News Release

CONGRESS DUCKS CAMPAIGN FINANCE REFORM

While Congress did a good thing on the Lobbying and Ethics Reform Bill, it has failed miserably in another area of major concern. Just one month after President Bush's new Supreme Court muddled the legal barriers for corporate-funded political TV ads, long-term foes of campaign finance reform in the House of Representatives took advantage of the confusion by passing a bill to allow those who flout the law to get off without penalty. The mastermind of this "clemency" for front groups that hide behind sham issue ads is Rep. Mike Pence (R-IN), who managed to leverage enough support in the House for a 215-205 passage. This was an obvious step

in the wrong direction. Rolling back limits on corporate funding for negative campaign ads is not what Congress should be doing. It's certainly not what the voters expected when they went to the polls in 2006.

Failing to address the issue is not what was expected from the new Congress that promised to clean up the laws governing the political process. If the Pence bill becomes law, Congress will de-fund the Department of Justice's ability to enforce electioneering rules. AS a result, we will see a flood of shallow attack ads paid for by wealthy and powerful special interests that go well beyond what is legal. Without criminal enforcement, little stands in the way of those who are intent on breaking the law. Public Citizen has once again called on citizens back home to take action. Contacting members of congress on this issue is a necessity. Find out how your member of Congress voted on this bill and let them know how you feel. Maybe it can be derailed before it sneaks through the Senate.

Source: Public Citizen

BOTH POLITICAL PARTIES SHOULD LISTEN

John Edwards, who has a policy of not accepting money from federal lobbyists, wants the Democratic Party's top fundraising organizations to adhere to a similar ban. The Edwards campaign called on Senator Barack Obama to co-sign a letter to party leaders decrying the connection between political donations and Washington's lobbying industry. John pointed out there are now more than 60 lobbyists for every member of Congress. He believes the system is clearly rigged against the people who make our country great.

By putting the challenge to the Democratic Party committees, John has effectively distanced himself from the party establishment. But he hasn't lost anything because the party's Washington leadership doesn't represent Edwards' core support. Neither John nor Senator

Obama accepts money from lobbyists or political action committees. Since lobbyists are at the core of the way the system is rigged against ordinary citizens, taking their money out of the equation is very important. Lobbyists—as we all know—get their money from powerful special interests and they put it to good use. I believe that John's proposal should be adopted as a rule by the Democratic National Committee.

Source: Associated Press

VIII. PRODUCT LIABILITY UPDATE

FORD IS RECALLING 3.6 MILLION VEHICLES BECAUSE OF FAULTY CRUISE CONTROL SWITCH

Ford Motor Co. is recalling 3.6 million passenger cars, trucks, sport utility vehicles and vans to address concerns about a cruise control switch that has led to previous recalls based on reports of fires. Ford says the recall will cover more than a dozen vehicle models built from 1992-2007. The recall is in response to concerns from owners about the safety of their cars. Questions about the speed control deactivation switch in the vehicles that is powered at all times have been raised. The automaker previously had recalled nearly 6 million vehicles beginning in January 2005 because of engine fires linked to the cruise control systems in trucks, SUVs and vans. The automaker says it has received "a few reports of fires" in Ford Crown Victoria passenger cars prior to the recall, but they have not given a precise number. There is no telling how many folks have been killed in house fires caused by a Ford vehicle burning and the cause not being known.

The recall involves the following vehicles: 1998-2002 Ford Ranger, 1992-1997 Lincoln Town Car, 1992-1997 Ford Crown Victoria, 1992-1997 Mercury

Grand Marquis, 1993-1998 Lincoln Mark VIII, 1993-1995 Taurus SHO, 1999-2001 Ford Explorer and Mercury Mountaineer. Also covered are the 2001-2002 Ford Explorer Sport, 2001-2002 Ford Explorer Sport Trac, 1992-1993 E150-350 vans, 1997-2002 E150-350 vans, 1993 Ford F-Series pickups, 1993 Ford Bronco, 1994 Mercury Capri, 2003-2004 Ford F-150 Lightning, and 1995-2002 Ford F53 motor homes. An additional 177,000 vehicles in Canada, Mexico and Europe are covered by the recall. Obviously, this recall deals with a potentially serious safety issue. Owners should have started receiving recall notices on August 13th. Dealers will install a fused wiring harness into the speed control electrical system or replace the deactivation switch if it is found to be leaking. Owners with questions about the recall can contact Ford at (888) 222-2751 or visit their Web site, <http://www.ford.com>.

Source: Associated Press

JURY VERDICT RETURNED AGAINST FORD IN AEROSTAR CRASH

A jury in Florida ruled against Ford Motor Co. in a recent case. The verdict required Ford to pay \$6 million to a Florida man who was paralyzed when the Ford Aerostar van he was in rolled over. Julian Felipe, a Florida resident, was 17-years-old when he was a passenger in the van his mother was driving to Sarasota for a family vacation in 2002. A tire on the vehicle blew out and the van rolled over and the roof caved in. The teenager's neck was broken. The jury heard evidence that Ford knew there was a propensity for vans and trucks to roll over, especially after a tire blew out, and that the company failed to provide adequate engineering and safety measures to protect consumers. After a six-week trial, the jury found that Ford failed to use reasonable care by placing the Aerostar on the market with a defect. The money awarded is for economic losses, pain and suffering and

loss of potential income. Ford says it will appeal.

Source: Associated Press

JURY VERDICT AGAINST EVENFLO IN CAR-SEAT SUIT

A jury has ordered child safety seat maker Evenflo Co. to pay \$10.4 million to the parents of a 4-month-old boy who died of head injuries in a car crash. The jury awarded \$3.7 million in punitive damages to Chad and Jessica Malcolm on July 26th. This came a day after the jury awarded the couple \$6.7 million in compensatory damages for the death of their son, Tyler. Tragically, this is not the first case involving Evenflo car seats. The company has lost at least three cases involving its car seats.

Young Tyler was killed in July 2000. He struck his head on his car seat's hard plastic shell when the seat was ejected from the vehicle in a rollover crash. Evenflo had considered lining the shell of the "On My Way" car seats with foam. Unfortunately, the company decided not to do it. Tyler's seat was ejected from the vehicle because a hook broke loose from the seat. There had been five similar instances involving the Evenflo car seats. The company said it would appeal the latest verdict to the state Supreme Court.

Source: Associated Press

IX. MASS TORTS UPDATE

MDL JUDGE DENIES MERCK'S MOTION FOR NEW TRIAL

On August 17, 2006, a jury in a New Orleans federal court rendered a verdict in favor of Plaintiff Jerry Barnett and against Merck & Co. The plaintiff claimed Vioxx caused his heart attack and that Merck had hidden information from consumers and doctors about the risks of Vioxx. The jury agreed and

awarded Mr. Barnett \$51 million in compensatory and punitive damages to compensate him for his injuries and to punish Merck for failing to tell the truth about Vioxx. The plaintiff was represented by Mark Robinson from California. Andy Birchfield and Leigh O'Dell of our firm served as co-counsel for Mr. Barnett and helped try the case. In June of this year, Judge Eldon E. Fallon, the United States District Judge presiding over the Vioxx MDL, reduced the amount of the verdict to \$1.6 million dollars - \$1 million of which was punitive damages for Merck's conduct. Merck, still refusing to accept responsibility for its actions, sought a new trial for a second time. On August 21, 2008, Judge Fallon denied Merck's motion for new trial. This is a major victory in the overall Vioxx litigation.

MERCK LOSES BID FOR NEW TRIAL IN NEW JERSEY VIOXX CASE

A New Jersey judge has upheld a \$13.5 million verdict against drugmaker Merck & Co. in a Vioxx case. The August 7th ruling by Atlantic County Superior Court Judge Carol Higbee denied Merck's request for a new trial or a reduction in the verdict, which included punitive damages of \$9 million. Judge Higbee also awarded the couple \$2 million in attorneys' fees and costs and an additional \$2,552 per day in interest. John and Irma McDarby had sued Merck in 2005 after John McDarby, who used Vioxx for four years, suffered a heart attack.

The jury awarded the couple \$4.5 million in compensatory damages and \$9 million in punitive damages. In her order, Judge Higbee said she was entering a \$15.7 million judgment for the couple in the court's docket. Interest on that amount starts to run on August 13th. This ruling is a stinging defeat for Merck. This is the second judge—one federal and one state—who have found that Merck's conduct rises to a level that justifies punitive damages.

Source: Bloomberg News

VIOXX TRIALS IN THE MDL WILL FOCUS ON STROKE VICTIMS

It appears that next year's federal Vioxx trials will focus on people who had strokes after taking the painkiller. U.S. District Judge Eldon E. Fallon, the judge assigned to handle pretrial matters in all 8,575 federal lawsuits, told our firm's Andy Birchfield and the other lawyers present at a hearing in New Orleans that the court will likely carve out five or six stroke cases and try them next year. Merck & Co., which pulled the blockbuster drug from the market in 2004 after studies indicated that it doubled cardiovascular risks, will have to deal with the stroke cases. The five cases heard so far in federal court all involved people who had heart attacks after taking Vioxx. The science on Vioxx-caused strokes is developing extremely well from our perspective. As a result, the stroke case will be very strong. Juries will be able to visually evaluate the effects of strokes on Vioxx victims.

Merck faces about 26,950 lawsuits from people who claim had heart attacks or strokes after taking Vioxx. There are 16,400 cases in state court in New Jersey, with additional cases in other states. The suits include about 45,225 plaintiffs. Merck has also agreed to let another 14,450 potential claimants file suit after their statute of limitation expires. This is the result of tolling agreements entered into by the parties.

Source: *Associated Press*

FDA ADVISORY PANEL REJECTS ADVICE OF EXPERTS TO PULL AVANDIA

Despite the recommendation of a Food and Drug Administration safety scientist and Public Citizen medical experts, an FDA advisory panel has taken the position that the diabetes drug Avandia should remain on the market. Dr. David Graham from the FDA told the agency's advisors that the drug appears to increase risks of a heart attack, but his

warnings were ignored. In addition, Dr. Sidney Wolfe, director of the Health Research Group at Public Citizen, detailed pre-approval and post-approval evidence of cardiac toxicity, liver toxicity and anemia. This well-respected medical professional also discussed post-approval evidence of increased bone fractures in women and damage to patients' vision associated with the drug. Dr. Wolfe posed this query: "Does the overall risk-benefit profile of Avandia support its continued marketing in the United States?" The well-respected Dr. Wolfe strongly believes the answer is a resounding "no."

According to Dr. Wolfe's testimony, found in FDA adverse reaction reports filed since marketing began for the drug in 1999 through the end of last year, there was a 15.2 times higher adjusted rate of heart failure reported with Avandia than for the older diabetes drug Glucotrol. In the reports, the adjusted rate of liver toxicity with Avandia was 9.5 times higher, and 14.8 times higher for liver failure. In addition, the adjusted rate of post-approval adverse reaction reports for anemia in patients was 13.3 times higher for Avandia than with Glucotrol. Dr. Wolfe warns that in patients already damaged by heart failure or other cardiac risks associated with the drug, the addition of anemia could significantly worsen their clinical condition. He also cited in his testimony a recently completed study finding statistically significant increases in bone fractures in women using Avandia compared to those using another diabetes drug.

Source: *Public Citizen*

FDA REQUIRES AVANDIA AND ACTOS TO HAVE 'BLACK BOX' WARNING

The Food and Drug Administration will require a class of diabetes drugs that includes Avandia and Actos to carry the agency's toughest "black box" warning that the drugs are linked to an increase in heart failure. The makers of

the drugs, GlaxoSmithKline PLC, of England, and Takeda Pharmaceutical Co., of Japan, have agreed to add the warnings. The black-box warning doesn't address the more recent concerns discussed above that Glaxo's Avandia could increase the risk of heart attacks. However, thus far, Takeda's Actos hasn't been linked to an increase in heart attacks. Avandia and Actos have long been shown to increase the risk of heart failure, a condition that develops over time and is characterized by the heart's inability to properly pump blood and is different from a heart attack. In June, the FDA proposed strengthening existing heart-failure warnings on the drugs by adding a black box to the drugs' labels.

Source: *Wall Street Journal*

MEDTRONIC REACHES A \$75 MILLION DEFIBRILLATOR SETTLEMENT

Medtronic Inc., the world's largest maker of electronic heart devices, has agreed to pay more than \$75 million to settle lawsuits claiming it hid defects in its defibrillators. The settlement will resolve about 2,000 claims over battery defects in Medtronic's implantable defibrillators, which automatically send electric jolts to correct heart rhythms that are potentially fatal. The settlement is conditioned on Medtronic's being able to get about 90% of the claimants to sign onto the settlement. Battery failures and other glitches in the devices prompted voluntary recalls by Medtronic and rivals Guidant Corp. and St. Jude Medical Inc. starting in 2005. Boston Scientific Corp., Guidant's parent, has agreed to pay \$195 million to satisfy about 4,000 claims that its defibrillators were defective.

The Medtronic settlement is designed to end more than 1,400 defibrillator suits that have been consolidated before Chief U.S. District Judge James Rosenbaum in federal court in Minneapolis. The settlement also aims to end suits filed in Minnesota state courts, as well

as claims not yet filed. Medtronic wanted to keep the settlement confidential so that claimants could have time to decide whether to participate. The company reserved the right under the settlement agreement to pull out if it is unable to resolve more than 90% of all claims. The devices, which cost as much as \$30,000, are implanted in patients' chests and wired directly to the heart. More than 1 million people in the U.S. have heart conditions that make them susceptible to sudden cardiac death. Studies show defibrillators can reduce such fatalities by about 7% over five years.

Medtronic recalled 87,000 defibrillators because of battery failures. No deaths were linked to failures of the devices, according to the company. After the recall, it was reported that 19,000 people had surgery to replace the defibrillators. It appears that Medtronic officials hid defects in the defibrillators to protect their share of the market. Medtronic documents made public in July 2006 showed that batteries in the recalled devices tended to swell with age, crowding or tearing other components and increasing the likelihood of a short-circuit failure. Those documents reveal that Medtronic officials continued selling flawed products for two years after learning in September 2003 about battery-failure glitches.

Another company, Guidant, voluntarily began a recall in June 2005 that was eventually expanded to include 109,000 defibrillators. That company knew as early as June 2002 that the devices were flawed and hid the defects to protect sales. The devices were linked to at least seven deaths. In addition, St. Jude, the third-largest heart device maker, voluntarily recalled a total of 75,000 defibrillators starting in 2005. The St. Paul, Minnesota-based company launched two separate recalls, one for software errors and the other for battery failures caused by cosmic rays. According to St. Jude officials, none involved deaths.

Source: Bloomberg News

SCIENTIFIC DEBATE CONTINUES OVER BPA

A federal panel of scientists has concluded that an estrogen-like compound in plastic could be posing some risk to the brain development of babies and children. It should be noted that bisphenol A, or BPA, is found in low levels in virtually every human body. A component of polycarbonate plastic, it can leach from baby bottles and other hard plastic beverage containers, food can linings and other consumer products. Culminating months of scientific debate, the decision by the 12 advisors of the Center for the Evaluation of Risks to Human Reproduction—part of the National Institutes of Health—is the first official government action related to the chemical. Their recommendation, which was released on August 8th, will be reviewed for a federal report that could lead to regulations restricting one of the most used chemicals.

The scientists ranked their concerns about BPA, concluding they had “some concern” about neurological and behavioral effects in fetuses, infants and children, but “minimal” or “negligible” concern about reproductive effects. As expected, the chemical industry worked hard in its defense of BPA. The findings put the panel roughly in the middle—between the chemical industry, which has long said there is no evidence of danger to humans—and the environmental activists and scientists who say it is probably harming people. No study has looked for effects in people exposed to the plastic products, which have contained BPA for 50 years. The panel had five rankings for its findings: negligible concern, minimal concern, some concern, concern and severe concern. In its conclusion, the level was “some concern.”

For fetuses, pregnant women, infants and children, the panel reported there was “some concern that exposure to bisphenol A causes neural and behavioral effects.” In studies of newborn animals, low doses of BPA cause structural changes in the brain that trigger

learning deficits and hyperactivity. For fetuses and children, the panel said there was “minimal concern” that BPA harms the prostate gland and causes premature puberty, and “negligible concern” that it causes birth defects. For adults, they reported “negligible concern about adverse reproductive effects.”

There has been concern in some quarters over the make-up of the panel. The Environmental Working Group was most criticized of the work of the panel. Two of the panel's scientists are from private pharmaceutical companies, six from universities and two from federal agencies. It was chaired by Robert Chapin, head of developmental toxicology at Pfizer Inc. It has been pointed out that none has expertise in BPA. Their recommendations will go to the National Toxicology Program, the federal scientists who help regulators form policy about toxic substances. Those scientists will send their report out for review by other scientists before deciding whether to declare BPA toxic to humans. The scientific debate over BPA is over.

Source: Los Angeles Times

MORE PROOF THAT PREMPRO CAUSES BREAST CANCER

Another study has confirmed that the recent drop in breast cancer rates is due to reduced use of combination hormone therapy (CHT) such as Prempro. In the past, Wyeth, the maker of Prempro, has criticized similar studies by claiming they fail to account for a decline in screening mammography. However, lead researcher in the study, Dr. Karla Kerlikowske, who is with the Veterans' Administration and the University of California, San Francisco, says this is “the only study that has looked at a purely screened population.” She believes the study definitely says “it's not because of screening.” Dr. Kerlikowske and her team published their findings in the *Journal of the*

National Cancer Institute.

It was estimated that the declining use of CHT could account for 17,500 fewer hormone positive breast cancer cases each year. While this is encouraging news for the future, it is sad to realize how many hormone positive breast cancers have been caused by CHT over the past 30 plus years.

The recent drop in breast cancer rates coincide with a rapid decline in CHT usage starting in 2002 when the Women's Health Initiative (WHI) was halted early after researchers found elevated risks, including breast cancer. This led to a black box warning being put on CHT drugs such as Prempro. It's important to note that WHI was a government funded study. Wyeth has never conducted a long-term study to look at the breast cancer risk from CHT. Had Wyeth done so in the 1970s, when they knew of a relationship between their hormone drugs and cancer, clearly there would have been many fewer hormone positive breast cancers. Dr. Jay Brooks, chairman of oncology at the Ochsner Health System in Baton Rouge, Louisiana, says:

The problem is, we've grown so used in the past forty or fifty years to having women take hormones that it is hard to break that paradigm shift. A lot of women and a lot of doctors think that if I take hormones, I'm going to stay youthful, and that is a hard thing to break. But, the data is the data.

As I've reported in previous issues, our firm represents a number of women who have been diagnosed with hormone positive breast cancer as a result of CHT, including Prempro. Our CHT team continues to prepare for a trial, which has now been rescheduled to January 2008 in Minnesota. Ted Meadows, Russ Abney and Melissa Prickett are the primary lawyers handling the CHT cases for our firm. They will try the case with lawyers from the firms of Pearson, Randall, Schumacher, P.A.,

located in Minneapolis, Minnesota and Littlepage, Booth from Houston, Texas. Ted, Russ and Melissa are also in the process of preparing other CHT cases for trial. We will keep you advised of all future developments.

STEVENS JOHNSON SYNDROME AWARENESS MONTH

August 2007 was designated last month as Stevens Johnson Syndrome Awareness Month by Governor Ritter of Colorado. Stevens Johnson Syndrome (SJS) is an allergic reaction that is caused by various drugs, many of which are over-the-counter. More than 140,000 deaths are caused each year by SJS and it annually affects more than two million Americans. Colorado has been joined by Arizona, Alabama, Connecticut and Tennessee in recognizing SJS Awareness Month.

SJS can be caused by almost any medication, including anti-biotics, anti-convulsants and pain killers. It is a deadly reaction causing severe burning, blistering and sloughing of skin and involved tissue. SJS frequently causes blindness and results in death in up to 30% of the cases. Recognizing early symptoms of SJS and providing prompt medical attention are the most valuable tools to minimizing long-term damage. Almost any drug can cause SJS, even ibuprofen. Other drugs that have been linked to SJS are Bactrim, Bextra, Celebrex, Allopurinol and sulfa antibiotics.

To recognize SJS in its earliest stage, the SJS foundation urges patients and physicians to watch for the following symptoms when taking medications, especially sulfa-based drugs:

- persistent fever;
- burning or blistering of the mucous membranes in the eyes, ears, mouth, nose and genital area;
- rash, blisters or red splotches on skin;
- flu like symptoms; and

- history of a reaction to prescribed drugs or over-the-counter medications.

Our firm has handled a number of cases where our clients had received injuries as a result of SJS. In each case the injury was most severe leaving our client with a significant disabling impairment. To learn more about SJS, visit our Web site at www.beasleyallen.com. You can also contact Frank Woodson, one of the lawyers in our Mass Torts Section, for more information.

Source Forbes.com

IX. BUSINESS LITIGATION

MORGAN STANLEY SETTLES SECURITIES CASE

Morgan Stanley will pay \$6.1 million under a settlement agreement reached with securities regulators. The Wall Street investment firm was charged with overcharging retail brokerage customers on bond sales in 2001. The case involves \$3.9 million in overcharges on \$59 million in corporate bond sales. The Financial Industry Regulatory Authority, known as FINRA, also levied a \$40,000 civil fine on the Morgan Stanley corporate bond trader who was said to be responsible for setting the prices. He also was suspended for 15 business days. Morgan Stanley was fined \$1.5 million and ordered to pay \$4.6 million in restitution to customers who paid markups as high as almost 18% for bonds issued by Kemper Lumbermens Mutual Casualty Co., a unit of Kemper Insurance Cos., according to FINRA's statement. FINRA is the securities-industry regulator formed as a result of the merger of the NASD and the regulatory arm of the New York Stock Exchange.

The case demonstrates that it can be difficult for ordinary investors to know

what they should pay for bonds, which lack the price transparency of stocks in the marketplace. Susan Merrill, FINRA's chief of enforcement, said in a statement:

Firms have a fundamental obligation to their customers to offer securities at prices that are fair and reasonable. In this case, Morgan Stanley and its bond trader breached that obligation.

FINRA alleged that from February through June 2001, Morgan Stanley overcharged customers of its retail brokerage division in 2,807 separate sales of the Kemper Lumbermens bonds, with a total value of more than \$59 million. The firm charged the customers markups—premiums over what it had paid for the bonds—ranging from 5.88 percent to 17.86 percent, according to FINRA. The markups were in addition to brokerage commissions. Under securities-industry guidelines, brokerage firms' markups on corporate bonds generally should be less than 5%. According to, FINRA said Morgan Stanley marked up the \$59 million in bonds by a total of \$6.5 million, of which \$3.9 million was in markups exceeding the 5% level. The firm failed to have a supervisory system in place that would have detected the excessive markups.

Source: *Associated Press*

COURT APPROVES \$74.25 MILLION SETTLEMENT BY FIRST BANCORP

A U.S. federal court judge has issued a preliminary order approving the settlement of a shareholder class-action lawsuit against First BanCorp for \$74.25 million. The bank holding company had previously set aside the full amount for the settlement. The lawsuit filed in 2005 had accused the company of inflating its stock price by accounting improperly for mortgage transactions. The lawsuit came after First Bancorp announced an internal review of its accounting for mortgage-related transac-

tions. The settlement should receive final approval on October 15th. The company says it will to comply with the \$61 million payment requirement within the timeframe set forth in the terms of the settlement. The remaining amount will be paid before December 31st. First BanCorp will attempt to recover about \$14.75 million from its insurance companies and former executives.

Source: *Reuters*

FIRM MUST PAY \$521 MILLION IN DAMAGES OVER BAD AUDITS

A jury has ordered BDO Seidman, the nation's fifth-ranked accounting firm, to pay more than \$351 million in punitive damages in a lawsuit, bringing BDO's potential liability in the case to roughly \$521 million. The jury had found BDO at fault for failing to find massive fraud in its audits of a financial services company backed by a Portuguese bank. The amount of punitive damages will be added to the same jury's award of \$170 million in compensation to the bank, Banco Espirito Santo. BDO Seidman had warned a loss of \$170 million could trigger massive layoffs and cause the company to lose its standing as the fifth-largest accounting firm. The jury was barred from issuing damages that could destroy the company.

The jury decided that BDO Seidman must compensate the bank and provide punitive damages for failing to reveal massive fraud at the bank's former partner, E.S. Bankest LLC. The same jury found the accounting firm grossly negligent in June. BDO Seidman will post a \$50 million bond as it appeals. This was the second trial in the dispute, with the first ending in a mistrial in March. The fraud also led to prison time for former E.S. Bankest executives. For the fiscal year ended June 30th, BDO Seidman reported revenue of \$589 million according to a news release on its Web site. The company has 2,800 employees in 34 offices nationwide. The jury was

shown financial statements for the fiscal year 2006, which showed the firm's total equity of \$171 million. BDO Seidman argued that the punitive damages should be based on that number, but the bank contended it should be based on revenues. The blame was placed by BDO's lawyers on "thieves" at E.S. Bankest who defrauded the bank. They claim that the accounting firm didn't intentionally bungle the audits.

E.S. Bankest was engaged in a business called "factoring," in which firms buy companies' accounts receivable for less than they are worth, then keep the difference when they collect. During trial, Banco Espirito Santo said it partnered with Bankest Capital to form E.S. Bankest in the late 1990s in part because of faulty audits showing that Bankest Capital's income had nearly tripled from 1995 to 1996. The bank also relied on later audits from BDO Seidman, which certified audits for E.S. Bankest accounts totaling some \$225 million, of which only \$5 million represented legitimate income. At least seven people, including two E.S. Bankest directors have already been convicted or pleaded guilty to federal criminal charges related to the fraud and sentenced to prison. In criminal trials, E.S. Bankest was accused of inflating the value of the accounts it bought and presenting fake audited financial statements. BDO Seidman is allied with BDO International, which coordinates companies with about 30,000 partners and staff and reported total fee income of \$3.91 billion in 2006, according to the firm's Web site. Banco Espirito Santo, which was founded in Portugal in 1920, expanded to Portuguese-speaking Brazil and bought a Miami-based bank in the early 1980s.

Source: *The Miami Herald*

XI. INSURANCE AND FINANCE UPDATE

GROUPS WANT ALLSTATE TRIAL RECORDS KEPT OPEN

Consumer groups have called on a U.S. District Court judge in New Orleans to keep open to the public key Allstate Insurance Co. documents from the first federal insurance trial in Louisiana from Hurricane Katrina. Public Citizen, joined by the Foundation for Taxpayer and Consumer Rights, filed a motion in court opposing Allstate's request to seal the key documents from the case. In April, jurors awarded a Los Angeles doctor, Dr. Robert Weiss, a \$2.8 million judgment against Allstate. Dr. Weiss settled the case on confidential terms after trial.

The documents in question include Allstate's Katrina claims-handling manual and other instructions to adjusters. The involvement of the Public Citizen and Foundation for Taxpayer and Consumer Rights highlight the national interest in the Katrina insurance litigation. The groups say that there is a national public interest in keeping the records open. The groups asking for public disclosure contend:

They provide insight into Allstate's decision-making process whereby it evaluated claims entered by homeowners in Katrina's wake. Blocking public access to these documents would directly impede FTCCR's mission of educating the public about Allstate's practices—in particular, its handling of claims for damage to policyholders' homes due to natural disasters.

Sealing records in insurance cases creates unnecessary obstacles for anyone trying to bring suit or research insurance industry business practices because it bogs them down with extra legal requests to produce documents

that would otherwise be in the public realm. The court is considering the record sealing issues and questions of whether the consumer groups can intervene.

Source: *The Times-Picayune*

LAWSUIT ACCUSES INSURERS OF DEFRAUDING GOVERNMENT

In another Katrina-related matter, a federal judge in Gulfport, Mississippi, has ordered a 2006 lawsuit involving insurance companies unsealed, saying that the Department of Justice is considering whether to intervene in the case. The "whistleblower" lawsuit was filed in April 2006 on behalf of two sisters who worked for a company that helped State Farm Insurance adjust policyholder claims on the Mississippi Gulf Coast after the August 2005 storm. But the suit was legally required to remain under seal so federal authorities could investigate and consider intervening in the case. When the case was unsealed, U.S. Magistrate Judge Robert Walker confirmed that federal authorities were considering whether to intervene. The federal government had argued that its disclosure would compromise the federal government's ability to conduct an adequate civil investigation of this case. Judge Walker wrote in his order that the government had given no explanation for how the investigation would be compromised by unsealing the case.

Source: *Associated Press*

KATRINA VICTIMS LOSE IN APPEALS COURT

In another Katrina-related topic, on August 2nd, a federal appeals court ruled that Hurricane Katrina victims whose homes and businesses were destroyed when floodwaters breached levees in the 2005 storm cannot recover money from their insurance companies for the damages. The ruling in this case could potentially affect thousands of rebuilding residents and business owners on

the Gulf Coast. Robert Hartwig, chief economist at the industry-funded Insurance Information Institute in New York, had estimated in June that a ruling against the industry could cost insurers \$1 billion. Judge Carolyn King, writing for a three-judge panel of the 5th U.S. Circuit Court of Appeals, stated:

This event was excluded from coverage under the plaintiffs' insurance policies, and under Louisiana law, we are bound to enforce the unambiguous terms of their insurance contracts as written.

As a result, the panel found those who filed the suit "are not entitled to recover under their policies." More than a dozen insurance companies, including Allstate and Travelers, were involved in the appeal. The decision overturns a ruling by U.S. District Judge Stanwood Duval Jr., who in November ruled for policyholders in the case. They contended that language excluding water damage from some of their insurance policies was ambiguous. Judge Duval said the policies failed to distinguish between floods caused by an act of God—such as excessive rainfall—and floods caused by an act of man, which would include the levee breaches following Katrina's landfall. But the appeals panel concluded:

Even if the plaintiffs can prove that the levees were negligently designed, constructed, or maintained and that the breaches were due to this negligence, the flood exclusions in the plaintiffs' policies unambiguously preclude their recovery. Regardless of what caused the failure of the flood-control structures that were put in place to prevent such a catastrophe, their failure resulted in a widespread flood that damaged the plaintiffs' property and policies clearly excluded water damage caused by floods.

This was a consolidated case, includ-

ing about 40 named plaintiffs, including Xavier University, and more than a dozen insurance companies. It is just one of the many cases pending in federal court over Katrina damage. The Army Corps of Engineers faces thousands of claims for damage resulting after the levees breached. Judge King noted in her opinion that dozens more cases, some consolidated and involving property owners suing insurers, are pending in federal court in New Orleans.

Source: *Associated Press*

STATE FARM PAYS NEARLY \$30 MILLION IN MISSISSIPPI TO SETTLE KATRINA CLAIMS

State Farm Insurance Co. agreed to voluntarily re-evaluate Mississippi Hurricane Katrina slab cases in April, and since then has paid more than \$29.8 million in additional claims payments since the re-evaluation process began. As of August 13th, 934 affected Mississippians in Harrison, Hancock, and Jackson counties who were affected have requested re-evaluation of slab claims. Of those requests, State Farm reevaluated 904 claims and made an additional \$23.7 million in settlement offers to those policyholders. The company has paid out \$13.9 million to 552 policyholders who have accepted the offer.

In regard to non-slab claims, 2,660 policyholders have requested reevaluation. The company reevaluated 2,579 of those claims and made offers totaling over \$23.8 million. Some 1,591 policyholders accepted those offers and have been paid over \$15.9 million. Commissioner of Insurance, George Dale, observed:

As I have stated before, there is no one process that is going to work for everyone and some individuals are going to have to endure lengthy litigation. However, as these numbers show, people are being helped everyday.

It's difficult to assess just how good this has been for the policy holders who accepted the offers. I suspect many of them were just plain "worn out" and were ready to get on with their lives in

post-Katrina times along the Mississippi Gulf Coast.

Source: Mississippi Insurance Department

INSURANCE AGENCY FAILS TO INSURE BUSINESS

An insurance agency will have to pay \$5.8 million to a small business that discovered it lacked workers' compensation coverage after a burned employee sued. A California judge found that an agent for Hilb, Rogal and Hamilton Insurance Services improperly failed to tell the company that it wasn't covered. On July 2nd, the judge ruled in favor the owners of a company that lines pickup trucks with plastic. The suit by the owners said they only learned about their lack of coverage after a jury in 2004 found against them in a workers compensation personal injury suit. They were ordered to pay \$5.6 million to an employee who suffered second-degree and third-degree burns in an explosion.

Another insurer paid \$1 million but the remainder, including interest, totaled \$5.8 million. The company claimed their agent told Rhino owners they should get workers compensation insurance and they didn't want it. Intently, there was never anything in writing to indicate that this even occurred. You would expect something of that significance to be in writing. At the least, there should have been a letter confirming that the business didn't want this coverage. In any event, the judge ruled for the business owners.

Source: *Associated Press*

THE SCOOTER STORE SETTLES FALSE CLAIM LAWSUIT

As a result of a lawsuit filed by the United States, the SCOOTER Store Inc. will pay the government \$4 million. The corporation will also give up many millions more in pending claims for reimbursement to Medicare. It was alleged that the company violated the civil False Claims Act and defrauded the United States. The settlement resolves a lawsuit

brought by the United States in 2005, in which the government alleged that The SCOOTER Store engaged in a multi-media advertising campaign to entice beneficiaries to obtain power scooters paid for by Medicare, Medicaid, and other insurers. Instead of the "zippy" power scooters that were advertised, The SCOOTER Store actually sold the beneficiaries more expensive power wheelchairs that they did not want or need. In some cases the buyer could not use the wheelchair at all.

The Scooter Store allegedly perpetrated the scheme by representing to physicians that their patients wanted and needed power wheelchairs, The SCOOTER Store obtained thousands of "Certificates of Medical Necessity" from physicians who did not know about the company's fraudulent practices. The Scooter Store then billed government and private health care insurers for power wheelchairs, which were far more expensive. As a result of this scheme, the Scooter Store received \$5,000 to \$7,000 in reimbursement for each power wheelchair it sold, more than twice the amount for a scooter, which sold for around \$1,500 to \$2,000. In fact, many beneficiaries had no idea what kind of equipment they were getting, until it was delivered by The Scooter Store. The government's lawsuit also alleged that the Scooter Store violated another Medicare violation when it knowingly sold used power mobility equipment to beneficiaries and billed Medicare as if the equipment were new. In addition, the U.S. alleged that The Scooter Store charged Medicare millions for unnecessary power mobility accessories.

The civil settlement also resolves claims in a suit brought by a whistleblower who was a former employee of The Scooter Store. As a result, the whistleblowers' suit will be dismissed. Under the qui tam provisions of the False Claims Act, private parties can file an action on behalf of the United States and receive a portion of the settlement if the government reaches a monetary

agreement with the defendants like the one reached in this case. As we have repeatedly stated, this Act provides incentives for whistleblowers to come forward and report fraudulent activity perpetrated against the United States Government. This results in the government being able to catch “cheaters” and to recover funds that were literally “stolen” from the taxpayers.

Source: *U.S. Federal News*

XII. PREMISES LIABILITY UPDATE

LAWSUITS FILED AGAINST CON EDISON

A tow-truck driver and his passenger, who were burned in a massive steam-pipe explosion in New York City in July, have filed lawsuits against Consolidated Edison, accusing the utility of misconduct. Gregory McCullough and Judith Bailey were riding in the truck when the pipe burst near Grand Central Terminal on July 18th, causing the ground below them to give way and create a deadly sinkhole. The truck was sucked into the crater and engulfed in a blanket of 200-degree steam, mud and asbestos that soared stories into the air. The driver was taken to a burn center, where he was placed in a medically induced coma to control his pain. He suffered third-degree burns to more than 80% of his body. The passenger, a mother with two little girls, who suffered burns to about 30% of her body, was also taken to the burn center. Lawsuits were filed by the two plaintiffs in State Supreme Court in Brooklyn, claiming that the utility was at fault in allowing the explosion.

Source: *Associated Press*

SAFETY VIOLATIONS RESPONSIBLE FOR SUBWAY DEATHS

It now appears that the deaths of two

subway workers in New York resulted primarily from flawed safety procedures and a lax “organizational culture” in which track workers and supervisors flouted basic safety rules and failed to alert operators of oncoming trains to the presence of workers on the tracks. Reports released last month by New York City Transit described a broad indictment of safety practices on the subway tracks. A major overhaul of safety procedures was called for in the report. In one of the accidents, workers carried heavy equipment across live tracks without covering the electrified third rail or even setting up warning lights to alert oncoming trains. In the same accident, a supervisor assured the two workers he would act as a flagman, watching for trains, but he left his post. Moments later, one worker was dragged under a train and died, and another was seriously injured when he was pinned between the train and a wall.

The reports, conducted by a board of inquiry made up of transit officials and a union representative, have been submitted to New York City Transit. The reports offer the first detailed account of the events leading up to the deaths of the two workers in April. The report, relating to one of the deaths, cataloging a long list of safety violations and asserting that “organizational culture was such that critical safety rules were not practiced in day-to-day operations, was especially critical. Workplace safety is critically important for employers and workers alike. Of course, safety is the first and foremost the responsibility of the employer who sets safety policies and must see that the policies are then enforced.

Source: *New York Times*

FAMILY OF BOY ASSAULTED AT WAL-MART FILES LAWSUIT

The family of a boy who was sexually abused at a Wal-Mart store by an employee has filed suit against the retail giant. The lawsuit states Wal-Mart was at

fault in hiring and supervising the employee, and that it did not keep the store safe. The suit asks for damages for the boy’s pain and suffering, as well as medical expenses. The lawsuit further seeks punitive damages alleging that Wal-Mart was indifferent to the boy’s safety and welfare. While Wal-Mart prides itself on being a family store, the family’s lawyer, Mike Lowenberg, says the evidence is going to show that what occurred on that date can be described as “anything but a family friendly environment.”

The suit states that on August 4, 2005, the boy, who was 13 at the time and is not identified because he is a minor, had gone with his mother to a Wal-Mart Supercenter. The teenager went into a restroom, where the employee, a 61-year-old store janitor, pushed him into a stall and sexually assaulted him. The boy told his mother and she alerted authorities, who arrested the employee after the boy identified him. The employee has pleaded guilty to indecency with a child, a second-degree felony, and was sentenced to eight years in prison. However, the civil suit against Wal-Mart is a separate matter and is still pending.

Source: *The Houston Chronicle*

GLUE MAKER FOR BIG DIG HAS BEEN INDICTED

We have reported on the multiple problems related to the Big Dig tunnel in Boston. Now, we learn that the supplier of the epoxy that federal officials have blamed for the collapse of a tunnel was indicted last month in the death of a woman crushed by falling ceiling panels. The company, Powers Fasteners Inc., was charged with one count of involuntary manslaughter. It is the first criminal charge in the tunnel collapse. The charges stem from the fact that Powers, based in Brewster, N.Y., produced two kinds of epoxy—standard set and fast set. The standard-set one would have been adequate for the ceiling but fast-set epoxy was incapable

of suspending such heavy panels for a long time. The Attorney General's office says that Powers "blurred the distinction" between the two epoxies, and that the fast-set one was used for that section of the tunnel, even though the company's testing indicated it was inappropriate for such a job.

Paul Ware, a special assistant attorney general, reported that in 1999, when bolts were seen to be pulling out within months after the ceiling had been installed, a Powers representative who had been called to the tunnel, failed to disclose that fast-setting epoxy could cause "creep" which could weaken the hold of the bolts. The National Transportation Safety Board faulted Powers Fasteners in the tunnel collapse. The Safety Board issued a recommendation that the company specify on packaging that fast-set epoxy was good only for "short-term loads." Massachusetts officials are also investigating other companies involved in the tunnel construction, and a wrongful-death lawsuit has been filed by the family of the woman who was killed against the Massachusetts Turnpike Authority and eight other companies. Powers has denied that it violated any criminal laws and says that the company had reported the problem to state officials at an early stage.

Source: *New York Times*

JURY AWARDS \$4 MILLION IN LEAD CASE

The recent Chinese toy recalls have brought the lead poison issue in sharp focus to the public's attention. However, the biggest lead problem comes from lead paint. A Maryland jury returned a \$4 million verdict against the Housing Authority of Baltimore City in a recent lead paint case. Two siblings poisoned by lead paint in their publicly owned rowhouse in the 1980s were the plaintiffs in the case. As we have reported in prior issues, lead poisoning, which often occurs when children put chipped household paint in their mouths, can cause mental problems, including cogni-

tive deficits and aggressive behavior. The siblings in the Maryland case showed symptoms of lead poisoning. Both were in special education, and neither earned a high school diploma. The family in this case had moved into a rowhouse in 1984. The housing authority had built the home in 1940 with specifications that indicated that lead paint was to be used. In 1986 and 1987, the two children were tested for lead and found to have levels that were acceptable at the time but later considered poisonous by Centers for Disease Control and Prevention standards. Lead paint in older buildings — especially public housing — presents a very big and most serious safety and health issue for children in this country.

Source: *Baltimore Sun*

XIII. WORKPLACE HAZARDS

EL PASO CORPORATION SETTLES EXPLOSION CASE

El Paso Corp. will pay a \$15.5 million fine as part of a settlement with the Department of Justice and pipeline safety regulators related to a 2000 natural gas pipeline explosion in Carlsbad, New Mexico, that killed 12 people. El Paso has also committed to spend \$86 million to modify the 10,000-mile pipeline system that was part of the incident. The Houston-based company has already spent \$225 million on methods to better monitor and repair internal corrosion, which investigators say was the probable cause of the accident. The pipeline modifications El Paso will complete as part of the settlement "will help to ensure that the severe internal corrosion that resulted in such a tragic accident will not be repeated," according to Ronald Tenpas, acting assistant attorney general for the Justice Department's Environment and Natural Resources Division.

Apparently, the agreement resolves all outstanding issues raised by government officials following the accident. It appears that Justice Department officials have decided not to file criminal charges. The accident occurred on August 19, 2000, when a 30-inch pipeline operated by El Paso ruptured along the Pecos River in New Mexico. The gas ignited, producing a 1,200-degree fireball, resulting in the explosion. The gas escaping from the 50-year-old pipeline burned for 55 minutes.

At the time of the blast, 12 people were camping out about 350 yards away, under a concrete and steel bridge that supports the pipeline as it crosses the river. The campers were killed and their three vehicles destroyed. Two other pipeline bridges nearby were also destroyed. All of the property damage caused by the explosion and fire totaled nearly \$1 million. The probable cause of the rupture, according to investigators, was a reduction in pipe wall thickness because of internal corrosion. Pipeline safety regulators believe a combination of microbes, moisture and contaminants such as chlorides, oxygen, carbon dioxide and hydrogen sulfide caused the corrosion. To clean out such contaminants, the pipeline industry often uses mechanical devices known as "pigs," which typically feature brushes or scrapers inserted in a pipeline and are sent downstream with the flowing gas. The company has claimed this segment of the pipeline could not accommodate a pig because of turns and bends in it. Among the requirements of the settlement, El Paso must:

- Modify its system to allow for better in-line inspections of pipeline wall thickness;
- Collect and analyze liquid samples whenever a part of the pipeline is opened;
- Conduct annual reviews of the company's plans and monitoring data; and

- Develop a training program for corrosion control specialists and engineers.

Apparently, the company has already complied with many of the requirements and has reached settlements with families of the blast victims, including making a \$10 million contribution to a Carlsbad foundation “for the benefit of the community.” One other civil case against El Paso, brought by firefighters who responded to the blast, is still pending.

Source: *Houston Chronicle*

NORTH CAROLINA PLANT EXPLOSION CAUSED BY INADEQUATE SAFETY CONTROLS

According to federal safety investigators, inadequate safety controls for chemical reaction hazards led to an explosion at a North Carolina chemical plant that killed one worker and injured 14 others last year in Morganton, North Carolina. On January 31, 2006, employees at the Synthron Inc. plant were making a paint additive in a 1,500-gallon reactor when chemical vapor escaped, creating a subsequent vapor cloud explosion and fires, according to the agency’s report. The blast leveled much of the plant, blew out windows several blocks away, and injured all 12 employees on duty and some passers-by. The maintenance head over the plant’s facilities died after suffering severe burns. The plant was about 75 miles northwest of Charlotte, North Carolina.

In its final report, the board said the reactor “lacked basic safeguards to prevent, detect and mitigate runaway reactions, and that essential safety management practices were not in place.” The agency also said ineffective corporate oversight by Synthron’s parent company, Protex International, contributed to the likelihood and severity of the accident. Jim Lay, lead investigator with the U.S. Chemical Safety and Hazard Investigation Board, stated that if the proper safety practices and policies had been in place, the incident would have never happened.

Synthron manufactured acrylic polymers for use as paint and coating additives. The accident occurred when plant managers attempted to fulfill an order for acrylic polymer that exceeded the normal batch size for the product. Instead of making two smaller batches, managers decided to make a single, larger batch. The board recommended that Protex establish a program to follow “good industry safety practices” at all its remaining U.S. facilities. Following the accident, the company filed for bankruptcy and thus far the facility in Morganton, North Carolina has not been rebuilt. In addition to the Synthron facility, which was located in Burke County, Protex operates chemical-related businesses in Massachusetts, New Jersey and Florida.

Source: *Associated Press*

ROOFING FIRM PLEADS GUILTY IN ELECTROCUTION OF WORKER

A Pennsylvania roofing company has pleaded guilty to violating a federal workplace safety regulation in the case of a worker who was electrocuted as a result of his scaffold coming into contact with a power line. The company, Zeke & Son Roofing and Siding Specialist, entered the plea before a federal judge. As you may know, under federal law, corporations can be charged with crimes as though they were persons. The 24 year old worker died on March 10th while working on a roofing job. Federal Occupational Safety and Health Administration investigators said a power line fell onto an aluminum ladder that employees had been using to climb onto the scaffolding earlier that day. After utility workers repaired the line, they told the company to move the scaffold because it was too close to the power lines. The company’s workers started tearing down the scaffold, but put it back up after the utility workers left. Even though the worker fell 30 feet to the ground, he was killed by the electric shock.

The company, since renamed Zeke & Son Contractors Inc., pleaded guilty to a willful violation of an OSHA regulation causing the death of an employee. The firm faces up to one year on probation and \$500,000 in fines and will be sentenced in January of next year. OSHA cited the company for several violations and proposed \$102,000 in separate workplace safety fines as a result. The company initially contested the citations, but later agreed to pay \$50,000 in fines as part of a settlement.

Source: *Associated Press*

WAL-MART FACES CLASS ACTION LAWSUIT

Another class action lawsuit has been filed against Wal-Mart Stores Inc., the world’s largest retailer, in South Carolina. The suit, filed by employees in that state, alleges that the company forced them to work through breaks and off the clock. Current and former hourly workers from July 31, 1999, forward will be allowed to join in the case as a result of the court’s ruling. The employees allege that they were not paid for work performed off-the-clock and were denied rest and meal breaks. Currently, Wal-Mart faces more than 70 U.S. wage-and-hour suits by employees claiming it failed to pay for all hours worked.

Source: *Bloomberg News*

PARENTS SUE HOTEL OVER DEATH OF WORKER

The parents of a teenager, who was killed in a car crash after working a 16-hour shift, have filed suit against the Pennsylvania hotel where he worked. The lawsuit alleges the owners of the Ramada Inn of Historic Ligonier were at fault when they allowed the 17-year-old to work 16 hours, have access to alcohol while working and then drive home drunk. The teenager, who worked as a dishwasher and waiter at the hotel, was killed on his way home the morning of February 19, 2006. The

hotel's owner, Hospitality Group Services, agreed in August 2006 to pay more than \$4,200 in fines after being charged by the state with violating child-labor laws.

Police determined the teen was driving drunk when he crashed through a fence and into a pond, but authorities were not able to prove where he actually got the alcohol. The decedent had worked a double shift at the hotel and clocked out just after 3:00 a.m. He was involved in the crash a short time later. In their lawsuit, the parents contend the hotel should not have allowed their son to work such a long shift. They also allege the hotel knew the teen had unfettered access to alcohol while working. It will be interesting to follow the progress of this lawsuit.

SOURCE: ASSOCIATED PRESS ASBESTOS ILLNESSES AFFECT FIFTEEN PERSONS LINKED TO DALLAS PLANT

At least 15 people who worked at or lived near a West Dallas vermiculite plant suffer from symptoms of asbestos-related illnesses, according to preliminary findings from X-ray screenings. Doctors have so far analyzed about 250 of 421 chest X-rays conducted this summer on former employees of the Texas Vermiculite plant, as well as their families. Neighborhood residents and former students at nearby schools also received X-rays. Fifteen people, or about 6% of those so far analyzed, show signs of asbestos-related illnesses. A few more showed spots on their lungs that will require additional study, doctors said.

In 2005, the federal government determined that the Texas Vermiculite plant could have exposed its employees and neighbors to asbestos. It produced fire-retardant materials extracted from vermiculite. The process released asbestos fibers, which are small enough to be inhaled, into the air and the surrounding area. Human exposure to the fibers increases the risk of lung cancer and other disorders, including asbesto-

sis, a condition that makes breathing difficult. Most cases occur 15 or more years after initial exposure. W.R. Grace & Co. operated the plant from 1953 to 1992 before it was demolished between 2001 and 2002. Health officials screened 25 people with chest X-rays in May. Eight of them showed signs of asbestos-related disease. Further testing is needed to confirm those results.

Source: Associated Press

FORMER TYSON WORKER IN ALABAMA WINS RACE BIAS SUIT

An Alabama man has won his lawsuit against Tyson Foods in a racial bias case, which was tried for a second time. The lawsuit began in 1995 and has gone all the way to the U.S. Supreme Court. A federal court jury awarded John Hithon a total of \$1.3 million in damages which included \$1 million in punitive damages, \$300,000 for emotional distress, and \$35,000 in lost wages. Mr. Hithon sued Tyson in 1995, contending he was passed over for a promotion at the plant by a manager who had referred to him as "boy." It was contended that a less qualified white man got the position. A Birmingham-based jury awarded Hithon and another plaintiff \$1.5 million each in 2002, but the judge later threw out the verdict. The 11th Circuit Court of Appeals upheld that decision, but the U.S. Supreme Court revived the case in 2006.

It was proven at trial to the jury's satisfaction that black workers at Tyson were promoted to the superintendent level, but never to the shift manager position. Tyson violated its own policy and procedures in promotions. Mr. Hithon, who was a superintendent, had 13 years with Tyson and 11 years of managerial experience when he applied for shift manager. According to reports from the trial, Tyson promoted a white man who had two years of experience and Hithon had to train him. Alicia Haynes, a very good lawyer from Birmingham, represented Mr. Hithon and did

a tremendous job. These cases are extremely difficult to win and this result was very impressive.

Source: Associated Press

TIRE MAKER TO PAY HEALTH PREMIUMS

A lawsuit was filed recently by union members in federal court against Continental Tire Co. after the company reduced benefits for retirees from plants in Kentucky and North Carolina. U.S. District Judge Jack Zouhary ordered Continental to pay the premiums for health insurance it had agreed to in its contract. The United Steelworkers Union contended that the contract required Continental to pay \$18,000 a year for premiums for retirees not eligible for Medicare, and \$4,200 for those old enough to receive Medicare. It was alleged that Continental only wanted to pay \$3,000 for everyone. About 2,000 retirees are affected by the court's ruling.

Source: Associated Press

XIV. TRANSPORTATION

ALABAMA BRIDGES RATED AS STRUCTURALLY DEFICIENT

The tragic bridge collapse in Minnesota has caused officials around the country to take a more serious look at the safety of bridges. It has been reported that about 2,100 of Alabama's nearly 16,000 highway bridges are classified by the Federal Highway Administration as being structurally deficient. That is the same ranking given the bridge that collapsed into the Mississippi River in Minnesota. A federal database reveals that of 15,879 bridges in Alabama, a total of 2,102 were considered to have structural problems and did not meet all federal standards as of December 2006. That amount 13% of the number of bridges in our state. According to federal officials, these

bridges aren't considered to be an imminent danger to motorists. But, it's clear that the bridges need maintenance attention or even replacement. The largest number of problem bridges—276—were built between 1937 and 1941, statistics show. But another 40 were constructed since 1992, meaning they are relatively young insofar as bridges are concerned.

Transportation Director Joe McInnes met with bridge inspectors after the Minnesota collapse and is very much aware of the need for inspections and remedial action where needed. However, there is not much work that can be done until the cause of the disaster in Minnesota is determined. Federal statistics also show that 2,205 Alabama bridges were considered functionally obsolete, meaning they are too small for the number and types of vehicles they carry or might flood occasionally. Of those, 48 were built since 1992 and the largest number—315—were constructed between 1957 and 1961. The Washington-based Government Performance Project, which is funded by the Pew Charitable Trusts and analyzes public management, in 2005 said Alabama's roads and bridges were in "alarming" shape, with a maintenance backlog of \$1.6 billion that gets worse by about \$50 million worth of work annually. This is a safety problem that we in Alabama can't afford to ignore. Hopefully, adequate funds will be made available soon so that remedial action can start.

Source: Associated Press

SAFETY FLAWS BLAMED FOR COMAIR CRASH

According to a lead investigator of last summer's deadly Comair plane crash in Kentucky that killed 49 people, the accident exposed "latent failures" across the nation's aviation system. In an eight-page concurring opinion obtained by The Associated Press, National Transportation Safety Board member Deborah Hersman agreed that the pilots' failure to notice clues they were

going down a runway too short for takeoff was the primary cause. However, Ms. Hersman suggested her colleagues may have overlooked nine other critical errors that she says should have been included as contributing factors in the NTSB's final report. Among the factors that contributed to the crash, according to Ms. Hersman, were a fatigued air traffic controller, a short-staffed control tower, outdated airport charts and missing paperwork that would have warned the pilots about a construction project that changed the taxiway route.

The Comair jet crashed in the predawn darkness August 27, 2006, shortly after taking off from the wrong runway—an unlit general aviation strip too short for commercial flights. Of the 50 people onboard, only the co-pilot survived. Comair, a regional carrier, is based in Erlanger, Kentucky, near the Cincinnati/Northern Kentucky International Airport. The NTSB decided that pilot error was the primary cause, and attributed a lesser role to the Federal Aviation Administration. The NTSB findings were released last month, along with the concurring opinion. Ms. Hersman wrote in the concurring opinion:

The system the pilots were operating in had multiple holes. Not one of these latent failures was significant enough to eclipse the actions of the pilots as the probable cause of this accident, but viewed as a group, they illuminate safety weaknesses that, if eliminated, may very well prevent another accident like this one.

More than 30 lawsuits have been filed against Comair by families of victims; 10 families have settled their cases. Several of the suits have been settled. Comair itself has named the federal government, Blue Grass Airport and an airport administrator in federal lawsuits filed against the airline by the crash victims' families.

Source: Associated Press

SAFETY TEAMS TO REVIEW RUNWAYS AT 20 AIRPORTS

Special teams of regulators, airline and airport personnel will be sent to study runway safety over the next two months at more than 20 airports with the most runway problems. The Federal Aviation Administrator took this step as the result of what was described as "some incidents of late that concern us." The concerns include the Comair jet crash referred to above. The FAA has been studying 117 reports submitted over the last decade in which pilots and flight crew members had reported some confusion while taxiing. Agency officials are still assembling the list of airports to be studied. A closed-door conference was convened last month by the FAA with 40 representatives of airlines, airplane manufacturers, avionics executives, FAA inspectors, and air traffic controllers in attendance. Included in a five-step program were:

- Improving communication and training, including adding taxiway scenarios to flight simulators used to train pilots;
- Urging that 73 large airports under orders to improve painted runway markings complete the work in the next two months rather than by the September 2008 deadline;
- Studying whether more airports should improve markings;
- Reviewing cockpit taxi and clearance procedures to reduce the tasks required of pilots while the plane is moving on the ground and to see how the instructions controllers give to planes on the way to takeoff can be improved; and
- Adding air traffic controllers and safety workers to the groups that can use an FAA voluntary, non-punitive system for reporting safety concerns.

The FAA-industry teams will also "evaluate all aspects of the runway and surface environment, standard operating

procedures, markings and signage” at the airports. The FAA has gone part of the way toward implementing the NTSB’s recommendation that planes not be cleared for takeoff until they finish crossing other runways. In July, the FAA ordered that takeoff clearances should list all runways left to cross. The group will study whether to adopt the full NTSB recommendation. Hopefully, all of this means that the FAA is working to improve airport safety in a number of areas.

Source: *Associated Press*

\$53 MILLION AWARDED IN CRASH OF A CESSNA 150

A jury found in favor of the plaintiffs and against two component part manufacturers in a lawsuit arising out of a plane crash in Florida. A flight instructor and a former student pilot were awarded a \$53 million by the jury in the suit against the two manufacturers. The manufacturers were at fault and caused a 1999 airplane crash that seriously injured the two men. The jury found the companies responsible for the Ormond Beach crash of a Cessna 150 because they had known about defects in the carburetor that could cause engine failure. Obviously, a manufacturer of component parts for an airplane can’t be allowed to put a component on a plane that it knows is likely to cause serious injury or death. Because airplane crashes involve deaths in most instances, safety considerations can never be ignored or compromised. The jury also ruled that the carburetor manufacturer, Precision Airmotive Corp. of Marysville, Washington, should pay an additional \$1.5 million in punitive damages because the defect had been reported numerous times during the course of 40 years, but was never fixed.

The plaintiffs in the case were flying a Cessna 150 on the night of July 24, 1999, when the engine failed, causing the plane to crash nose-first near the Ormond Beach airport. Investigators

with the National Transportation Safety Board determined that an exhaust valve got stuck, which caused a loss in engine power. The evidence at trial revealed that the carburetor tended to run very rich, causing the engine to become overloaded with fuel, which can cause the valves to stick. The crash left both men with extensive injuries, including facial fractures and brain injuries. Under the jury verdict, the two men were awarded \$32 million and \$21 million respectively. The carburetor manufacturer will be required to pay 70% of the verdict, while the engine manufacturer, Teledyne Technologies Inc., is 30% liable.

Source: *The Orlando Sentinel*

STATE LAWSUITS AGAINST RAILROADS MAY HAVE NEW LIFE

There is a provision in the new homeland security legislation, which was signed into law by President Bush, that the Federal Railroad Safety Act of 1970 does not preclude state lawsuits against railroads by injured persons. It specifically covers claims by the residents of a small city in North Dakota. The provision, entitled “Railroad Pre-emption Clarification,” is in the new law implementing the recommendations of the 9/11 Commission. The impetus for the provision being included can be traced to an event involving a Canadian Pacific train that derailed on the western edge of Minot, North Dakota, releasing a cloud of anhydrous ammonia, a toxic farm fertilizer. One person died and hundreds were treated for burns and breathing difficulties in the 2002 accident. A class action was filed in federal district court in North Dakota, alleging a variety of state law claims.

A federal district judge certified an injury class action, but Canadian Pacific Railway Ltd. moved to dismiss the claims, arguing they were pre-empted by the Federal Railroad Safety Act (FRSA). The judge agreed and because the act itself creates no cause of action,

the plaintiffs were left without a remedy. The federal judge in the Minot case said that while the FRSA has ensured national uniformity of railroad safety regulations, “it has also absolved railroads from any common law liability for failure to comply with the [federal] safety regulations.” The act, he added, is “unfair to innocent bystanders and property owners who may be injured by the negligent actions of railroad companies.”

The new law’s pre-emption provision makes clear that nothing in the FRSA shall be construed to pre-empt an action under state law seeking damages for personal injury, death or property damage. It also establishes that states may adopt additional or more stringent laws, regulations or orders relating to railroad safety or security under certain specified circumstances. And, the provision is retroactive, applying to all pending state law causes of action arising from events or activities occurring on or after January 18, 2002. Congress never intended to wipe out state causes of action unless certain circumstances existed, like a federal provision that explicitly covered this topic. This new law corrects the courts’ interpretation of the old law. The final language was the work of Senator Daniel Inouye (D-HI) chairman of the Senate Commerce, Science and Transportation Committee. I believe that this new law will require railroads to make safety a top priority. It will give states the right to protect people from injury and possible death in crossing accidents and other accidents involving railroads.

Source: *National Law Journal*

ALABAMA TO CONDUCT THREE-YEAR STUDY OF SCHOOL BUS SEAT BELTS

There will be a study on the important question of whether Alabama school buses should be equipped with seat belts. A study panel appointed by Governor Riley voted unanimously on August 20th to seek proposals from

Alabama universities to do a three-year study. Some 10 to 15 school buses equipped with safety belts, which would go over shoulders and across laps, will be utilized in the study. The selected university will have to complete the work by September 30, 2010. Why this study would require three years to finish is beyond me.

The Governor's Study Group on School Bus Seat Belts was created after four Huntsville students died in a school bus wreck on November 20, 2006. Currently, California, Florida, Louisiana, New Jersey and New York have seat belt requirements for school buses. Texas enacted a law in June that requires buses purchased after August 31, 2010, to have lap and shoulder belts. North Carolina is conducting a study similar to the one being started in Alabama. The Alabama Legislature has allocated \$750,000 to start the study and universities must submit their proposals by October 19th.

The study will involve buses that run urban routes with busy highways and frequent stops, as well as buses that run rural routes along county roads with miles between stops. The buses will have cameras front and rear to see whether students use the belts and what effects they have. Equipping buses with safety belts takes more room for each student, and the buses carry about 30% fewer students than traditional buses without belts. The school bus manufacturers don't want seatbelts and have done a good job of convincing public officials that their safety features aren't needed. The school systems that will use the buses in the study have not been selected. Based on what we have learned over the years in handling product liability cases, I believe that seat belts should be required. But, I guess we will have to wait for a long time before anything is done along those lines.

Source: Associated Press

XVI. ARBITRATION UPDATE

CONGRESS SHOULD BAN MANDATORY PRE-DISPUTE CONSUMER ARBITRATION

Every person in the United States who has a credit card, buys a car, signs up for a cell-phone plan, or enters into any other kind of consumer transaction has a mandatory arbitration agreement that is binding on them if a dispute arises. Most all consumer contracts now include mandatory arbitration clauses that force individuals to go through arbitration rather than civil a court if a dispute subsequently arises. All decisions by an arbitrator who hears the claim are binding. Some of these clauses also ban customers from joining class-action lawsuits. For years, consumer advocates have rightfully claimed these clauses to be grossly unfair. Congress is presently considering a blanket negation of pre-dispute mandatory arbitration agreements. If passed, the Arbitration Fairness Act of 2007, which was recently introduced in the U.S. Senate and House of Representatives, would make the clauses unenforceable. Paul Bland, a staff attorney with Public Justice, a national non-profit public-interest law firm in Washington, D.C., made this observation relating to the legislation:

This is, by far, the most comprehensive bill that has been introduced. There have been bills that ban arbitration in the employment section or the banking section.

The legislation highlights consumers' vulnerability when it comes to arbitration. Mandatory arbitration clauses give corporations—not consumers—protection because the arbitration process can be costly and the time to prepare and present a case is limited. Corporations tend to always win in arbitrations and that is undisputed. Many people don't realize that arbitration was never

intended by Congress to be used to settle consumer disputes. The Arbitration Fairness Act, introduced in the Senate and the House on July 12th, would amend the Federal Arbitration Act passed in the 1920s. This act was intended to settle disputes between companies of similar size and power, but the U.S. Supreme Court broadened the law to include consumer disputes.

Private arbitration companies are pressured to rule in favor of corporations—which are or can be repeat arbitration customers—and that is very obvious. "If arbitrators rule against companies too often, they get blackballed. Decisions by arbitrators are final and cannot be appealed. It will take an act of congress to remedy the situation. If you agree that mandatory, binding arbitration is unfair for consumers, let your Senators and House members know how you feel. Ask them to support the pending bills so that a ban can be put on mandatory, binding arbitration in consumer transactions. If they balk, remind them that Congress has amended the FAA so that car dealers don't have to face forced arbitration in their contracts with car manufacturers. The reason given by lobbyists for the car dealers was that arbitration between dealers and the powerful manufacturers was unfair.

ARBITRATION IN NURSING HOME DISPUTES IS BAD FOR RESIDENT CARE

We are still seeing mandatory, binding arbitration clauses being put in admission forms for Alabama nursing home residents. In my opinion, this is impossible to justify and will result in poor care and treatment for persons who have to be placed in a nursing home in Alabama. It's difficult to understand how a nursing home boss can force arbitration on residents of their facility and get away with it. No segment of our population is more vulnerable. It's my judgment that these folks deserve to be protected from the evils of arbitration

and to receive the very best in medical care and treatment.

SUPREME COURT RACE IN ALABAMA

The single race for the Alabama Supreme Court next year will be an ideal time for the arbitration issue to be debated openly by candidates. I believe that any person running for the Court should have to disclose their beliefs on mandatory, binding arbitration. While they shouldn't have to respond to inquiries about any specific case, the issue is one that affects all Alabama citizens and it should be fair game in a judicial race. There are obvious issues relating to arbitration that state courts deal with. Arbitration can't be banned by state court, but its application can certainly be restricted. The public needs to know where candidates stand on the issue.

A COURT VICTORY FOR CELL USERS

A federal appeals court has ruled that Cingular Wireless can't compel customers to sign away their right to file class-action lawsuits against the company. Calling the clause in Cingular's contract "unconscionable," the U.S. 9th Circuit Court of Appeals paved the way for a consumer class-action suit to go to trial in Los Angeles. That's a most important decision and one that could affect to other companies. By banding together, consumers who have claims have a better hope of getting wireless providers to change disputed practices.

Source: *Los Angeles Times*

XVII. HEALTHCARE ISSUES

FDA REVIEWING POPULAR HEARTBURN DRUGS

Federal regulators have opened a safety investigation of two popular heartburn drugs—Nexium, widely mar-

keted as the "purple pill," and Prilosec, its older chemical cousin—after receiving clinical data that appeared to link them to serious heart problems. But the Food and Drug Administration emphasized that it had found no firm evidence of such a connection. Nexium and Prilosec are part of a family of drugs that reduce production of stomach acid. Intended to relieve chronic heartburn and acid reflux disease, which can damage the esophagus, they are also widely taken for routine stomach upset. The two drugs have been taken by more than 1 billion patients worldwide. Doctors and patients were advised not to change medication practices. The agency promised a more complete answer within three months.

The data were supplied to the FDA and drug regulators in other countries by AstraZeneca, maker of both medications. In a statement, the company said that based on all data available, Prilosec and Nexium "are not associated with an increased risk of cardiac events." Nonetheless, the FDA said it was notifying the public of the safety review in keeping with efforts to foster greater openness at the agency, which has been criticized for keeping a lid on problems with painkillers, antidepressants and, most recently, the diabetes drug Avandia.

Source: *Los Angeles Times*

WAL-MART SETTLES WRONGFUL DEATH SUIT DUE TO INSULIN OVERDOSE

Wal-Mart Stores Inc. has settled a wrongful death lawsuit claiming a pharmacist at a Frederick store sold a too-strong insulin drug to a diabetic man who died after taking it. Terms of the settlement reached during a mediation session are confidential. The decedent used over-the-counter medications to treat his Type 2 diabetes and did not require prescription-strength insulin. On December 13, 2005, the decedent visited a Wal-Mart pharmacy in Frederick and ordered Humulin R (u-100), an over-the-counter insulin medication.

Instead, he was given Humulin R (u-500), a drug available by prescription only that contains five times the insulin of the requested medication. The drug was injected on December 20, 2005 and the man lapsed into a diabetic coma and died on January 2, 2006. The lawsuit was filed in May of this year in a Baltimore federal court by the decedent's mother and other family members.

Source: *Associated Press*

PHARMACIST INDICTED IN CASE OF LETHAL CHEMOTHERAPY DOSE

Our firm has handled a number of cases involving errors in the filling of prescriptions for drugs. Interestingly, each of the cases involved prescriptions being filled by technicians. Recently, a former pharmacist was indicted on charges of involuntary manslaughter and reckless homicide in the case of a 2-year-old girl who died after receiving an improperly mixed dose of chemotherapy. The pharmacist failed to catch a mistake in a saline solution that was administered to the child along with her chemotherapy treatments. The solution, mixed by a pharmacy technician, contained concentrated sodium chloride, a 23.4% solution, instead of a saline solution with 1 percent sodium chloride. The child died three days after receiving the lethal dose. The pharmacist was fired by Cleveland's Rainbow Babies and Children's Hospital. The Ohio Board of Pharmacy revoked his license in April 2007.

The pharmacy technician, who resigned after the girl died, is expected to testify against the pharmacist in the criminal trial. At a pharmacy board hearing, she testified that she told the pharmacist something was wrong with the mixture, but he approved the dose anyway. The child's death prompted requests in Ohio for greater oversight of pharmacy technicians, who are not currently regulated by the state. The girl's parents are now pushing for legislation requiring pharmacy technicians to be trained, tested and certified by the pharmacy board.

Obviously, pharmacists have a most important role in the chain of medical care in a community. They have a tremendous responsibility to make sure medications are handled in a safe and responsible manner. If a technician is to be involved in the filling of prescriptions, those persons must be properly trained and must work under the direct supervision of a registered pharmacist. I believe doing business with a pharmacist in a real drug store makes sense. Most of the problems we have seen involved large stores where the pharmacy department wasn't the "main thing" in their stores.

Source: *Associated Press*

VERDICT AGAINST WALGREENS IN MISFILLED PRESCRIPTION CASE

A jury has awarded \$25.8 million to the family of a cancer patient who was given a wrong prescription, had a stroke and died several years later. The woman was prescribed Warfarin, a blood thinner, in 2002 to treat breast cancer. The prescription filled at a Walgreens pharmacy was 10 times what her doctor prescribed. The jury found the prescription error caused a cerebral hemorrhage resulting in permanent bodily injury, disability and physical pain. The mother of three died in January at the age of 46. A 19-year-old pharmacy technician, with little training, misfiled the prescription.

My brother, Billy, who owns two retail drug stores in Barbour County, and I discussed this case in detail. Billy's stores have a system in place that assures that all prescriptions are correctly filled. It's a three-step plan that Billy devised years ago and it works. I encouraged him to let other store owners know how his system works.

Source: *Associated Press*

EYE INFECTIONS FROM SOLUTION CONTINUING TO HARM USERS

More than a fourth of the contact lens users who suffered serious eye infec-

tions linked to Advanced Medical Optics' recalled Complete MoisturePlus lens cleaner have required corneal transplants, according to an update on the outbreak released by federal health care authorities. According to a spokesperson for the Centers for Disease Control and Prevention, this is just as "serious as the fusarium outbreak." You will recall that there was an outbreak of fungal eye infections last year that was linked to Bausch & Lomb's ReNu with MoistureLoc lens cleaners. The recall by Advanced Medical stemmed from MoisturePlus's apparent inability to adequately protect some soft lens users from a different infectious microbe called acanthamoeba.

Source: *New York Times*

XVII. ENVIRONMENTAL CONCERNS

KANSAS TOWN SUFFERS EFFECTS OF OIL SPILL

Citizens in Coffeyville, Kansas, are worried about the long-term effects of a 72,000 gallon oil spill in their town. Many homes in the town must be demolished as a result of the spill, and in other areas the soil in yards and farms must be aerated and treated to allow the oil to degrade. Because emergency workers became sick with signs of oil-related toxicity, the town was cordoned off by emergency workers. Residents are advised not to return to their homes, based on the danger of possible ill-effects to the nervous system, blood and kidneys.

The people of Coffeyville want to know more specifics about clean up efforts. Contaminated soil is being removed and replaced, but residents want to know where the removed contaminated soil is being taken for disposal. There is also concern that the waste may be deposited in local landfills, as one resident reported witnessing

oil-stained asphalt being dumped into an abandoned quarry. Coffeyville residents are concerned that, without a properly supervised cleanup, they will end up with a 57-year clean up, such as the Exxon Mobil efforts still ongoing from a 1950 spill in Brooklyn.

Source: Lawyersandsettlements.com

HOME DEPOT SETTLES WASTE CASE

Home Depot agreed last month to pay nearly \$10 million to settle a civil case filed by state and Los Angeles County prosecutors over the retailer's failure to properly store and transport hazardous sludge. The case stems from the explosion of a 55-gallon drum at one of Home Depot's stores in 2004 that caused a fire and forced the evacuation of customers and employees. Investigators discovered that chemicals were mixed together into an explosive brew. Companies like Home Depot, referred to as "Big Box Stores," store large quantities of chemicals and other substances. Obviously, this type storage can prove to be hazardous and present dangers.

Source: *Los Angeles Times*

XVIII. THE CONSUMER CORNER

ALABAMA ATTORNEY GENERAL WARNS ABOUT DANGEROUS TIRES

Alabama Attorney General Troy King has alerted Alabama citizens to the fact that the federal government is warning drivers that they may have faulty tires that could be vulnerable to belt and or tread separation. As reported, the tires in question are for light trucks, sport utility vehicles and vans. In June, Foreign Tire Sales informed federal highway officials that some tires manufactured in China under the names Westlake, Compass, and YKS may not hold belts in place. So far, there has not been a recall, but one surely will come very soon.

The Attorney General, in a statement, said the affected tires have a tire size starting with "LT" or light truck, as well as a DOT number that starts with "7D" and ends in either "02", "03", "04", or "05". Additional information can be obtained from the Federal Trade Commission web site at <http://www-dot-four-eight-tire-dot-com>. You may also contact the Attorney General's Office of Consumer Protection at 1-800-392-5658. It's good to see Alabama's top law enforcement officer getting involved with a safety issue on behalf of Alabama citizens.

Source: *Associated Press*

JOE BORG ADDRESSES NATIONAL CONFERENCE OF STATE LEGISLATURES

Joseph P. Borg, who is North American Securities Administrators Association (NASAA) President, represented state securities regulators at a recent meeting of the National Conference of State Legislatures' (NCSL) in Boston. In testimony given at the meeting, Joe, Director of the Alabama Securities Commission, expressed the belief NASAA that NCSL's policy statement on State Sovereignty in Financial Services opposing federal preemption of state securities laws and regulations was very good. Noting that NCSL has specific policy statements for banking and insurance regulation, Joe suggested the organization adopt a specific securities regulatory policy statement as well. He called on the NCSL to tell Congress and the federal financial service regulators to keep intact a system of regulation that has vigorously protected U.S. investors for decades.

NASAA is the oldest international organization devoted to investor protection. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the provinces and territories of Canada, and Mexico. NCSL is a bipartisan organization that serves the legislators and staffs of the states, commonwealths and territories. It's good to have a person from

Alabama like Joe Borg in such an important position.

Source: News Release From NASAA

RECALLS OF TOYS PUT BIG PRESSURE ON THE CPSC

When I first started writing about the recall of Chinese toys, I never expected to include Mattel, a well-respected American company, in the story. However, things are changing constantly—almost on a daily basis—relating to the Chinese imports issue. Mattel's announcement that it was recalling millions of toys came as a shock. It may have the effect of a re-examination of how the \$22 billion toy industry is overseen by the Consumer Product Safety Commission. The CPSC largely has to rely on companies to self-report problems and that poses a major problem. The reports and recalls of manufactured toys from China containing too much lead have put the CPSC's capacity to regulate in question. Safety problems with other Chinese products, such as seafood and tires, have also raised questions about the U.S. government's ability to oversee imports.

It is obvious that the American public has no concept of how heavily the Chinese companies are involved in the American toy market. Currently, about 80% of the toys bought in the United States and about 65% of Mattel's toys are made in China. According to the CPSC, about 60% of all product recalls in the U.S. this year have been for goods manufactured in China. Obviously, lead has been a particular problem. The agency has issued 18 recall notices for 6.7 million pieces of jewelry for children this year because of dangerous levels of lead, and nearly all of them were from China. There were 10 lead-related recalls in 2006. It has become very clear that the CPSC must change the way it deals with foreign imports. It's equally obvious that there has been a breakdown of the current system.

The CPSC has proposed legislation to give it more legal authority to make it

illegal to sell recalled products. They also want to raise the maximum civil penalty for violations from \$1.8 million to \$10 million. Congress has an obligation to give the agency all of the tools it needs to get the job done. The problems with the Chinese imports may force Congress to act promptly.

Source: *The Washington Post*

CHILDREN'S JEWELRY AND THE LEAD POISONING PROBLEM

Despite a two-year effort to eliminate the threat of poisonous lead in inexpensive children's jewelry, hundreds of thousands of tainted items are still being sold across the United States. Inspections by the Consumer Product Safety Commission of 85 pieces of jewelry collected since last fall from retailers and importers determined that 20% still posed a potential poisoning hazard. Separate surveys by health officials or lead experts in Ohio, Massachusetts and Maryland found even higher percentages. The unannounced federal inspections also left no doubt about the primary source of the threat: of the 17.9 million pieces of jewelry items pulled from the market since the start of 2005, 95% were made in China. Numerous hazardous products imported from China—including toxic ingredients put into dog food, tainted toothpaste, faulty tires and toys coated in lead paint—have been recalled. But the problem with the children's jewelry, persisting after two years, reveals just how difficult it may be to resolve such problems.

Children's advocates say that neither the federal government nor the private sector has done enough to ensure that jewelry entering the market is not contaminated with lead. Far broader federal tests are necessary, they say, backed up by stiff penalties and even criminal charges if companies, seeking to maximize profits by buying from the lowest-cost suppliers, continue to import contaminated children's jewelry. Rachel Weintraub, director of product safety for the Consumer Federation of America,

says that “if a company is going to put their label on it, they need to be able to guarantee these products are not going to cause harm to consumers.” The Consumer Product Safety Commission has been trying to crack down on lead jewelry since February 2005, when it announced that any children’s jewelry that had more than .06 percent lead by weight—and that was accessible to a child who might suck on the item or simply touch it—would be considered a hazard, and subject to recall.

Source: *New York Times*

MORE PROBLEMS BROUGHT IN FROM CHINA

At least one million pounds of suspect Chinese seafood have come into American stores. This is in spite of a Food and Drug Administration order that the shipments must first be screened for banned drugs or chemicals. The frozen shrimp, catfish and eel arrived at U.S. ports under an “import alert,” which meant the FDA was supposed to hold every shipment until it had passed a laboratory test. But a check of shipments by the *Associated Press* since last fall reveals that did not happen. One of every four shipments the news agency reviewed got through without being stopped and tested. The seafood, valued at \$2.5 million, was equal to the amount 66,000 Americans eat in a year. FDA officials put the pond-raised seafood on their watch list because of concerns that it contained suspected carcinogens or antibiotics not approved for seafood. This is just another example of how lax our efforts have been in dealing with the problem of food imports from China.

Source: *Associated Press*

\$32.7 MILLION JURY VERDICT IN PONZI SCHEME CASE UPHOLD

A federal judge has once again refused to overturn a jury’s verdict of more than \$32.7 million in a suit brought on behalf of the victims of a \$1 billion Ponzi scheme operated by Robert L. Bentley, a

Pennsylvania businessman, who is now in prison. The jury found in its verdict that Bentley and his Foundation for New Era Philanthropy were aided by a bank and a broker who helped him secure a series of loans that kept the Ponzi scheme alive. The case involved a fraudulent scheme that took advantage of lots of good folks. At the time of its collapse in 1995, The Foundation for New Era Philanthropy was the biggest financial scandal in the history of American charities. Most of the money was stolen from Christian religious organizations and other Philadelphia-area charities. The court found that the continued financing by the bank and the involvement of the broker—after warning signs were evident—allowed the fraudulent scheme to continue for a much longer period of time.

Source: *The Legal Intelligencer*

LAWNMOWER ACCIDENTS CAN RESULT IN SERIOUS INJURIES AND EVEN DEATH

As expected, lawnmower accidents always increase dramatically in the spring and summer months. An estimated 9,400 children are injured each year. Many of the accidents result in amputations of legs, hands, fingers, feet and toes. Experts say that the most serious accidents occur when operators back up rider mowers with the mower blades engaged and run over small children they can’t see. According to the American Academy of Pediatrics, back-over accidents alone account for 560 injuries to children each year. The lawnmower industry has known for years that there was a real problem with back-overs of riding mowers. Numerous studies revealed this information to the industry. When these back-over cases occur, the consequences are usually very serious for young children.

In 2003, the lawn mower industry adopted a voluntary industry safety standard requiring new rider mowers to have a “no-mow-in-reverse feature” to prevent the mower from backing up

with powered blades. But the safety standard allows manufacturers to install a device that overrides that feature. It has been pointed out that the override device defeats the purpose of the no-mow-in-reverse system. A recent study by the American Academy of Pediatrics found that the rate of lawn-mower related injuries to children remained constant from 1990 through 2004. The study concluded:

Current safety features on these products are not adequate to prevent lawn mower-related injuries.

Most override switches are located on the front control of the mower. The academy recommended that manufacturers locate the override switches on either the posterior wheel well or behind the seat, which would force the operator to look behind the mower before disengaging the no-mow-in-reverse feature. The manufacturers of lawnmowers have an obligation to incorporate the needed safety features on their products. Protecting children has to be considered by the design engineers in their decision-making.

Source: *Lawyers USA*

SKIN BURN RISK FROM CLEANING PRODUCT

Mr. Clean Magic Eraser, Scotchbrite (3M) Easy Erasing pad, and similar products are designed to remove crayon marks, scuff marks, and other marks commonly left by small children on walls, desks and other surfaces. Originally, the packages did not include a warning of any sort about possible skin burn hazards. Some parents have allowed their children to use the cleaning pads to remove marks from surfaces. Unfortunately, by doing so, many children suffered fairly serious skin burns.

Chemical burns occur when living tissue is exposed to a reactive chemical substance such as a strong acid or base. These types of burns have been known to cause extensive tissue

damage. These products include an alkaline or base chemical that is potentially caustic in nature. The substance has been known to cause very painful abrasions and blisters on some children. As of this writing, Mr. Clean had included a warning label against using the product on human skin. 3M has indicated that it should not be used in this fashion and can irritate skin, but apparently has not included a warning label.

Parents should be cautious in allowing their children to use these products. If burns do occur, it is best to promptly seek medical care and/or call Poison Control for guidance on treatment. Also, immediately begin flushing the affected area with cool running water. Do not attempt to rub or scrub the area, but allow the water to run over the affected area for up to 30 minutes. Apply a cool, wet compress, but do not use any ointments or other substances on the affected area without first talking to your physician.

ON-CAMPUS FIRES ARE A GROWING DANGER

New government figures, recently released, show on-campus fires at colleges and universities have almost doubled since 1998. With young people heading off to school, it's a good time to look at this problem. Parents and students should be made aware of the fire hazards. It's a big cause for concern for students and their parents. Fire safety laws vary significantly from state-to-state and that's why experts say, "if your child is leaving for school, fire prevention needs to be a top priority." Parents must make sure the dormitories where students will live have a sprinkler system. Unfortunately, many colleges still don't have them in their residence halls.

According to the Consumer Product Safety Commission, on-campus fires are on the rise, spiking from more than 1,800 in 1998 to nearly 3,300 in 2005. A spokesperson from the CPSC says:

Students should know where the risks occur: in cooking, in smoking, in candles, and overloaded power cords are really the places where the biggest risk of fire when kids go off to school.

Parents should also find out if all places of residence—both on and off campus—are equipped with an alarm system. Students and their parents must make sure all rooms have working smoke detectors. They must also have two ways to get out if there ever is a fire regardless of whether dorms or off-campus housing is the place of residence. It should be noted that the majority of fire deaths occur off-campus. Unfortunately, most parents really don't think about fire safety for their children who are in college. This year, the start of the school year is a good time to start being concerned.

Source: CBS News

CARBON MONOXIDE IS THE SILENT KILLER

Carbon monoxide is an odorless, colorless gas that can cause sudden illness and death, by taking the place of oxygen in a person's bloodstream, starving tissues of the oxygen they need. The result is brain damage and degradation of other parts of the body and eventually death. It's found all over American homes in things like cars, generators, lawn mowers, snow blowers, portable stoves, grills, and household appliances like gas ranges, furnaces and home heating systems. People who are exposed to carbon monoxide may have trouble breathing, headaches, fatigue, nausea, chest pain or suffer from confusion. Sometimes the gas may overtake people so quickly that they don't even realize that something is happening until too late. If a person senses that this is happening to them, or to a friend or family member, they need to seek medical help immediately.

According to the Centers for Disease Control and Prevention, nearly 500 Americans die from carbon monoxide

poisoning in a typical year, and more than 15,000 need treatment at emergency rooms. Folks can protect themselves by installing a carbon monoxide detector in their home and making sure the batteries are fresh. The National Institutes of Health recommends that there should be at least one detector for each level of the home. Install a detector near any gas burning appliance and have gas-burning appliances inspected regularly. Also, be sure to clean chimneys vents and flues at least once a year.

Although we are still dealing with 100 degree heat in Alabama, it's not too early to take winter safety precautions. I suggest that all of our readers go to the CPSC website, www.cpsc.gov, and find out all you can do about the dangers and risks of carbon monoxide poisoning and also learn how to guard against it.

Source: CBS News

XIX. RECALLS UPDATE

HYUNDAI MOTOR Co. ORDERED To RECALL SUVs

Last month, the South Korean government ordered Hyundai Motor Co. to recall more than 6,000 sport utility vehicles because of a faulty fuel pump that could cause a fire in a head-on collision. The Ministry of Construction and Transportation issued the recall order for 6,286 Veracruz SUVs. The models subject to the recall were all equipped with diesel engines, which, according to the company, are only sold in South Korea. Hyundai began selling the Veracruz in South Korea in October. It began U.S. sales in March with a gasoline engine. The ministry said that the recall is for Veracruz models built between January 13th and June 12th. The government also fined the automaker \$212,000. It should be noted that no Hyundai vehicles sold in the U.S. are under this recall.

Source: Associated Press

255,000 CHINESE-MADE TIRES RECALLED

A tire importer is recalling 255,000 Chinese-made tires it claims were defective because they lack a safety feature that prevents tread separation. The recall involves half the number of tires that the importer, Foreign Tire Sales Inc., had identified in June as possibly posing a risk. The models involved are steel-belted radial replacement tires for pickups, vans and sport utility vehicles that consumers bought from early 2004 through mid-2006, according to the importer Foreign Tire Sales. The small company, based in Union, was ordered by the National Highway Traffic Safety Administration in June to recall as many as 450,000 tires that it bought from Hangzhou Zhongce Rubber Co. since 2002. Information on the tire recall was to be posted at Foreign Tire Sale's Web site, <http://www.foreigntire.com>. Consumers can also call a toll-free number, 888-899-9293.

Source: *Associated Press*

FISHER-PRICE RECALLS TOYS WORLDWIDE BECAUSE OF LEAD IN PAINT

As mentioned in a previous section of this issue, toy-maker Fisher-Price has recalled 83 types of toys—including the popular Big Bird, Elmo, Dora and Diego characters—because their paint contains excessive amounts of lead. The worldwide recall involves 967,000 plastic preschool toys made by a Chinese vendor and sold in the United States between May and August. It is the latest in a wave of recalls that has heightened global concern about the safety of Chinese-made products. The recall is the first for Fisher-Price Inc. and parent company Mattel Inc. involving lead paint. It is the largest for Mattel since 1998 when Fisher-Price had to yank about 10 million Power Wheels from toy stores. The problem was apparently detected by an internal probe and reported to the Consumer Product Safety Commission. Parents should keep suspect toys away from children and

contact the company immediately.

The toy giant has recalled 18.2 million Chinese-made toys worldwide—9.5 million in the United States—and more recalls may be coming. Owners of a recalled toy can exchange it for a voucher for another product of the same value. To see pictures of the recalled toys, visit <http://www.service.mattel.com>. For more information, call Mattel's recall hot line at 800-916-4498. A list of model names and product numbers for the nearly 1 million recalled Fisher-Price toys can be found at CPSC's Web site, www.cpsc.gov.

Source: Consumer Product Safety Commission

BLACK AND DECKER TRIMMER RECALL

Black and Decker has recalled some of its gas powered trimmers that were manufactured in China. Roughly 202,000 GH1000/GH1000-CA Grasshog XP String Trimmers/Edgers from Black and Decker have been recalled after company officials received reports that pieces of the product can come loose during use. The problem can pose a laceration hazard to users and bystanders. Also, the product apparently suffers from overheating problems and could burn users. Black and Decker has received over 700 reports related to the product including 58 injury reports. Only those trimmers with black spools are under recall. Those with orange spools have already been repaired and are not under recall. Persons who have the product affected by this recall should stop using the trimmers immediately. You can call Black and Decker toll free at 1-888-742-9158, Monday through Friday, between 8:00 am and 5:00 pm Eastern time for a free repair kit.

TOY PLANE RECALL

The Estes-Cox Corporation has recalled 21,000 Sky Rangers Park Flyer Radio Controlled Airplanes. There have been 45 reports of the hand-launched plane exploding, causing burns and eye

injuries as well as temporary hearing loss. The planes were made in China and sold by Estes Rockets. For more information, contact Estesrockets.com or call 1-800-576-5811.

CRIB BUMPERS RECALL

Pottery Barn Kids is recalling 31,000 Diamond Matelasse Crib Bumpers because the decorative stitching can come undone and pose a choking hazard. There have been two reports of the stitching coming loose, but no reports of injuries. For more information, contact Potterybarnkids.com or call 1-877-800-9720.

Source: 11Alive.com

COFFEEMAKERS RECALLED DUE TO FIRE HAZARD

Atico International USA has recalled Signature Gourmet™ and Kitchen Gourmet® 12-Cup Coffeemakers. Consumers should stop using the recalled products immediately. The recall affects about 392,000 units distributed by Atico International USA Inc., of Fort Lauderdale, Fla. The coffeemaker can ignite due to an electrical failure, posing a fire hazard. Atico International USA, Inc. has received 14 reports of electrical failures, including six reports in which the unit ignited causing minor property damage. Thus far, no injuries have been reported.

The coffeemaker was manufactured in China and is white with a glass coffee pot. Signature Gourmet™ or Kitchen Gourmet® is printed on the front of the unit. The Model Number (XQ-673B), Item Number (W14A4984) and date code are located on the bottom of the unit. Only units with date codes from May 2003 (0503) through July 2006 (0706) are affected by this recall. The coffeemakers were sold at Walgreens stores nationwide from August 2003 through December 2006. The Signature Gourmet™ model sold for about \$16 and the Kitchen Gourmet® model sold for about \$10.

Consumers should stop using the recalled coffeemakers immediately and contact Atico International USA for instructions on returning the product for a full refund. Consumers should call Atico International USA toll-free at (877) 546-4835 between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, or visit the company's Web site at www.ati-cousa.com.

Source: U.S. Consumer Product Safety Commission

SARA LEE RECALLS WHOLE WHEAT BREAD PRODUCTS

Sara Lee Food & Beverage issued a recall several weeks ago for some of its' whole wheat bread products. The recalled products, which may contain small pieces of metal, are stamped "best if purchased by" between the dates of July 25th and August 7th. They also must include the code "222." The company's Meridian, Mississippi bakery produced the products. The recall pertains to most of the state of Arkansas, the entire states of Mississippi and Alabama, far South-eastern Missouri, Western Georgia, Southwestern Tennessee, Southeastern Louisiana, and the panhandle of Florida. The products were sold to a variety of retail grocery and mass merchant retailers and are listed below. You can get the product description UPC codes for the recalled products by going to Sara Lee's Web site, www.saralee.com. Consumers with questions or concerns can call (800) 683-3466.

CANNED FRENCH STYLE GREEN BEANS RECALLED

Lakeside Foods Inc. of Manitowoc, Wisconsin, is recalling 15,000 cases of its 14.5-ounce French style green beans because some of the cans may have been under-processed and some may have leaked. This could have lead to the beans being contaminated with *Clostridium botulinum*, which causes botulism, a potentially fatal form of food poisoning. According to the company, no illnesses have been reported, and no

botulinum toxin has been found in any cans tested to date. The cans with the following code in the top line should be returned to place of purchase: EAA5247, EAA5257, EAA5267, EAA5277, EAB5247, EAB5257, ECA5207, ECA5217, ECA5227, ECA5297, ECB5207, ECB5217, ECB5227 and ECB5307. Consumers may contact Lakeside Foods for additional details: by phone at 800-466-3834 ext. 4090; by Web at <http://www.lakeside-foods.com>.

Source: Associated Press

CASTLEBERRY RECALLS FOOD PRODUCTS

Castleberry's Food Company has recalled more than 80 brands of chili sauce, hash and other canned meat products since the Food and Drug Administration released a warning about the suspected source of a botulism outbreak. The recall of canned meat products was expanded to include some dog foods. The recall doesn't only include products that contain the Castleberry label, but also other products that Castleberry manufactures for places like Kroger and Steak 'N Shake. Exposure to botulinum toxin can be fatal. Two people in Texas and two people in Indiana became seriously ill and had to be hospitalized for botulism poisoning associated with eating Castleberry's Hot Dog Chili Sauce.

While the previous recall and the known illnesses are linked to production dates of April 30 to May 22, 2007, the firm has now extended the recall to include all products listed irrespective of "best by" date. The firm has ceased processing and distribution. In addition, Castleberry is recalling other products containing meat, which are regulated by the U.S. Department of Agriculture. The USDA is also warning the public not to eat certain brands of Castleberry products containing meat. The number of items recalled is extensive. You can get a list of the recalled products from Castleberry's Web site: http://www.castleberrys.com/news_pressRelease0721.asp. Consumers with questions about the

recall should contact Castleberry's consumer hot line at 1-888-203-8446.

Source: Associated Press

WORLD MARKET RECALL

Cost Plus World Market, a leading retailer of casual home living and entertaining products, is recalling a number of consumer products. The recall covers red, blue, green, and yellow speckleware beverage containers with SKU numbers 370549, 391163, 378321, 378322; and glass water tank retro w/spout with SKU number 378251. These numbers appear on the customer sales receipt. These items are being recalled because the metal spigot used in these containers can leach lead into lemonade and other acidic beverages stored in them. Apparently, this does not occur if water is used in the beverage containers. According to the company, no illnesses have been reported to date. There were approximately 12,592 units sold at Cost Plus/World Market stores nationwide from May 2005 through July 2007 for between \$19.98 and \$39.99.

Lead is very toxic and dangerous to humans, especially children, women of childbearing age, pregnant women and their unborn children. Although people with lead in their blood often do not exhibit the symptoms of lead toxicity, such symptoms include the following: stomach aches, colic, nausea, vomiting, abnormal irritability, and insomnia. Lead can also permanently damage the central nervous system, resulting in learning difficulties in school children as well as cause other long-term health problems.

Customers who have purchased the beverage containers in this recall should return them to any Cost Plus World Market store for a full refund. Consumers can contact Cost Plus Inc. at (877) 967-5362 between 7:00 a.m. and 12:00 a.m. EDT any day or at www.worldmarket.com for more information.

SPRAY PAINT RECALL

Sherwin-Williams is recalling its High-Heat Aerosol Coating paint because the cans could explode. One person suffered serious facial injuries when the can exploded. The spray paint was sold nationwide in car supply stores, repair shops and parts stores. Persons who have a can, should not handle the can and should call Sherwin-Williams immediately at 888-304-3769. The hours for this hotline are 8:00 am to 5:00 pm EST, Monday through Friday.

Source: Consumer Product Safety Commission

CLUB CAR INC. RECALLS GOLF CARS AND OTHER VEHICLES

Club Car Inc. is recalling about 1,900 of its golf cars, rough terrain vehicles, hospital and utility vehicles. The steering gear assembly can fail, resulting in an unexpected loss of steering control, posing a risk of injury to the driver and passenger. The recall involves various 2007 model year gasoline or electric-powered vehicles used for transportation around golf courses, hotels, resorts, airports and residential communities. Vehicles can be identified by the serial number located above and to the right of the accelerator pedal. The vehicles were sold by Club Car dealers nationwide between April 2007 and July 2007 for between \$4,000 and \$12,000. The cars are made in the United States; steering gear assemblies were manufactured in Korea.

Not all 2007 model year vehicles are included in this recall. Owners who have not already been contacted by Club Car should check the vehicle's model and serial number on the firm's Web site or by calling Club Car to determine if their vehicle is included in the recall. Owners should stop using the recalled vehicles immediately. Club Car will inspect the vehicle to determine whether a free replacement of the steering gear assembly is needed. Consumer Contact: For further information,

contact Club Car at (800) 227-0739 extension 3580 between 8:00 a.m. and 5:00 p.m. ET Monday through Friday, or visit the firm's Web site at www.clubcar.com.

Source: Consumer Product Safety Commission

BAXTER EXPANDS PUMP RECALL

Baxter International Inc. has expanded a recall of its troubled Colleague brand infusion pump to include an additional 986 pumps that were worked on by three Phoenix service center employees who were fired earlier this year after the company accused them of falsifying safety reports. The Deerfield-based medical products giant has recalled about 1,500 Colleague and Flo-Gard pumps because the company believes employees falsified repair test and inspection data sheets for routine service and maintenance. Baxter, which first disclosed the dismissal of the employees July 25th, said in a statement:

The expansion of the recall represents pumps serviced by all three employees previously mentioned who have been dismissed. Baxter's investigation into the matter is continuing.

The Food and Drug Administration designated the recall as a Class I, the agency's most serious, because of potential risk of serious injury or death to patients. The issues surrounding the Phoenix service employees are separate from previously reported design flaws and related problems Baxter has had in returning Colleague to the market. The pump has been subject to a variety of problems and has not been sold since 2005. In 2004 Colleague generated \$170 million in worldwide sales. On July 19th, Baxter surprised investors on its second-quarter earnings call with news that 4,500 Colleague brand pumps have been removed from use, largely in the U.S. Although the number of pumps recalled is a fraction of the more than

250,000 Colleague brand pumps in use worldwide, investors and company observers were largely under the impression that Baxter was close to resolving problems with the pumps.

The company has not sold the pumps since 2005 after reports were received of injuries brought on by software defects, battery issues and other potentially life-threatening problems with the drug-delivery devices. Baxter has said the pump problems disclosed on July 19th are fixable, involving an error that can lead to interruption of the medication getting to the patient from all three fluid-carrying channels. Such a problem can lead to death or serious injury, and Baxter said it has received reports of 16 serious injuries linked to the "triple-channel" version of the Colleague.

Source: *Chicago Tribune*

ROBERT BOSCH TOOL CORP. RECALLS SAWS DUE TO LACERATION HAZARD

Robert Bosch Tool Corp. is recalling Skil® brand Circular Saws. Consumers should stop using the recalled product immediately. The recall, which is due to a faulty switch on the saw, affects about 811,000 Skil® brand Circular Saws. The trigger switch on the circular saw can be locked on or the switch can be turned on without the use of the safety lock-out. This can cause unexpected operation of the saw, posing a risk of laceration. Robert Bosch Tool Corp. has received five reports of the saw staying on after the user released the trigger. According to the company, there have been no injuries have been reported. The recall involves Skil® brand circular saws with model numbers 5650, 5700, 5750 and 5755. The model number and date code are printed on the nameplate located on the front of the saw. The recall includes the following date codes: 28101—29231; 38101—39231; 48101—49231; 58101—59231; and 68101—69231.

No other models or date codes are included in this recall. The saws were

manufactured in the U.S. and were sold at home centers and independent hardware retailers nationwide from January 2002 through December 2006 for between \$70 and \$80. Consumers should immediately stop using the recalled saws and contact the firm for instructions on obtaining a free repair. For additional information, contact the Robert Bosch Tool Corp. toll-free at 866-761-5572 between 7:00 a.m. and 7:00 p.m. Central Time, Monday through Friday, or visit the firm's Web site at www.skil.com.

Source: Consumer Product Safety Commission

MAKER RECALLS TOOTHPASTE SOLD TO STORES IN SEVERAL STATES

A New York company is recalling two kinds of toothpaste that may be on store shelves in Mississippi. The products in question are DentaPro brand Cavity Fighting Fluoride Toothpaste Fresh Spearmint Flavor and Bright Max Toothpaste. New York-based Donnamax said the products were made in China and may contain a chemical found in antifreeze that is toxic to the kidneys and liver. According to the company, no illnesses have been reported. The products were sold to retail stores in Mississippi, Michigan, New York, Pennsylvania, Massachusetts, Ohio, Illinois, South Carolina, Georgia, Florida and Idaho.

Source: Associated Press

CHINESE-MADE HOTEL TOOTHPASTE RECALLED

It appears that the China imports problem will never end. Now a leading supplier of toiletries for hotels and resorts is recalling worldwide complimentary tubes of toothpaste made in China after tests showed some may contain a potentially toxic chemical. This appears to be another example of the dangerous manufacturing methods and lack of control in China. Gilchrist & Soames is recalling its 18-milliliter or 0.65-ounce tubes with the name

Gilchrist & Soames on it. Some samples showed the tubes contained diethylene glycol, a chemical found in antifreeze and can be toxic to the kidneys and liver. Gilchrist & Soames bills itself as "the only branded toiletries company dedicated to the luxury hotel market," according to its Web site. It serves The Greenbrier in West Virginia, The Properties at Pebble Beach in California and Plaza on the River in London, among other locations. The toothpaste was made China by Ming Fai Enterprises International Co. Ltd.

Source: Associated Press

XX. SPECIAL RECOGNITIONS

HANK WILLIAMS WAS ONE OF THE GREATEST EVER

Hank Williams is the featured artist in Alabama for the month of September, resulting in a number of special "Hank Williams events" scheduled to be held during the month. You can get more information on these events by going to www.thehankwilliamsmuseum.com. If living today, Hank would be 84 years old. Other than perhaps Elvis Presley, I don't know of another singer or songwriter whose legend could match that of the country music giant from Alabama. Hiram "Hank" Williams' career began at the age of 14 when he won a talent show in 1937 at the old Empire Theater in Montgomery and the rest is musical history. Hank Williams accomplished so much more in the 29 years he spent on this earth that it's hard to even imagine.

Containing the most complete collection of memorabilia available anywhere, the Official Hank Williams Museum is located in Downtown Montgomery where Hank lived from 1937 to 1953. You can visit the place where the man, who left his mark on the musical world like few others have done, lived and

relive history. The Museum houses Hank's 1952 Cadillac in which he made his final journey, along with clothing, albums, and much more. It's definitely a place to see and thousands of people come to Alabama each year for a visit to the Museum as well as Oakwood Cemetery, where the graves of Hank and Audrey Williams are located. A life size statue of Hank is located in Lister Hill Park in Downtown Montgomery, just across from the City Auditorium where Hank's funeral service was held. I have been a fan of Hank Williams and his music for years and sorta take for granted the fact that Hank was a native Alabamian. I grew up in Barbour County listening to Hank Williams' songs. I doubt if many city folks would remember songs like "Howling at the Moon," "Settin' the Woods on Fire," and "I'll Never Get Out of This World Alive."

Hank Williams, the father of contemporary country music, was a superstar by the age of 25 and was dead at the age of 29. In those four short years, he established the standard for all the country performers that followed him and, in the process, much of popular music. Hank wrote a body of songs that became popular classics, again setting the standard for most popular performers. It is said that Hank's music mirrored his life. Interestingly, the last song Hank wrote was "I'll Never Get Out of This World Alive." He died shortly after that song came out. Hank was buried in Montgomery, Alabama, and his funeral drew a record crowd, larger than any crowd since Jefferson Davis was inaugurated as the President of the Confederacy in 1861. Dozens of country music stars attended as well as public officials. More importantly, regular folks came in droves because they considered Hank Williams to be one of their own.

"I'll Never Get Out of This World Alive," reached number one on the charts immediately after Hank's death. It was followed by a number of hit records throughout 1953, including the number ones "Your Cheatin' Heart," "Kaw-Liga," and "Take These Chains from

My Heart.” Hank Williams’ impact on music has never diminished. His songs have become classics—his recordings have stood the test of time—and his life story is legendary. It’s easy to see why Hank Williams is considered by many to be the defining figure of country music. I am proud to say that Hank Williams was from the State of Alabama.

Sources: The Hank Williams Museum and Music Hall Of Fame

BEASLEY ALLEN LAWYER NOMINATED FOR PRO BONO AWARD

The Alabama State Bar Association Volunteer Lawyers Program (VLP) nominated Rhon Jones from our firm for its Pro Bono Attorney of the Year. The nomination was based on Rhon’s work on a case referred to him by the VLP, in which he obtained a favorable outcome for an elderly widow, who lives alone, and who paid a contractor for repairs to her floor that were not performed adequately, leaving her home in a unsafe condition. Rhon credits his fellow lawyers, Kim Ward and Alyce Robertson, for helping obtain the judgment. Kim, who formerly worked with Beasley Allen, volunteered many hours in which she worked with Rhon in inspecting the client’s home, meeting with the client at her home, and obtaining estimates for the costs of completing and/or repairing the work performed by the contractor. Kim and Rhon also worked to prepare a complaint that they filed in the District Court of Montgomery County, Alabama, and arranged for a member of the firm’s investigation team to take photographs documenting the conditions of the client’s home.

Alyce Robertson also assisted Rhon in this matter in working on preparing for and trying this case in the District Court of Montgomery County. After hearing the evidence, the Judge found for the plaintiff and awarded her approximately \$3,500—the amount of the estimate for repair of her floors, which were by that time a serious safety concern. Rhon’s response, on being nominated for the

award, is that he is honored, but that he was just doing what the lawyers at the Beasley Allen firm do every day. Even more important than receiving any honor, Rhon said, is that he is fortunate enough to work with a firm that supports and encourages volunteer service.

LAWYER SERVES ON BOARD OF LANDMARKS FOUNDATION OF MONTGOMERY

Our firm is very fortunate to have lawyers, who are not only very good at their craft, but who are also heavily involved in serving their community. One such lawyer is Ben Baker, a Shareholder in our firm’s Personal Injury section, who serves on the board of the Landmarks Foundation of Montgomery. The Foundation is a non-profit organization committed to preserving historic structures in the Montgomery area. It was organized in 1967 for the purposes of fostering, encouraging, and leading the preservation movement in the city. Since that time the Foundation, acting as an administrative agency for the City of Montgomery, has developed Old Alabama Town and as an independent entity has worked in the community for restoration and preservation.

The Foundation operates in partnership with the City of Montgomery by procuring property, structures and furnishings which it promptly deeds to the City. Landmarks Foundation also researches, plans, carries out the restoration, and interprets the structures. Landmarks Foundation’s focus includes preservation activities in Old Alabama Town, tourism, and educational programs for adults and youth. The Foundation continues its dedication to preservation, restoration, education, and interpretation of 19th and early 20th century life in central Alabama at Old Alabama Town, the Southeast’s most unique outdoor museum. For more information on the Landmarks Foundation and Old Alabama Town, visit www.oldalabamatown.com.

COMMON GROUND MONTGOMERY

There is an organization located in the Capital City, Common ground Montgomery (CGM), that is doing very good work. The mission of CGM is to glorify God by being instrumental in redeeming impoverished and under-resourced communities through spiritual and community development. In a nutshell, the organization has as its goal neighborhood community re-development. While many organizations are actively involved through various initiatives and programs in serving our communities, CGM is seeking to implement a strategy that fosters long-term transformation utilizing Christian principles. They are actually moving into the neighborhoods with their ministry and actually living places where most of us just “talk” about “helping” the folks who live there. Their strategy is to move into and become part of the fabric of under-resourced neighborhoods in order to serve and help create, develop, and empower local leaders, and to build healthy families through biblical “discipleship.” That includes the “life-on-life” training of people to be what God has designed them to be as the “image of God”.

The example of how Jesus carried out his ministry while on earth is about as good of a pattern as could ever be devised. In fact, it’s the very best since God devised the pattern. CGM is busy building healthy leaders in all walks of life in the communities. Their ministries of mercy and caring demonstrate what Christianity is really all about. Developing godly leaders, in our communities is the right approach. CGM is doing good work in the Capital City and all concerned are to be commended. These folks and those who are being ministered to, need your prayers. If you want to support them financially, go to their website, www.cgmal.org, for more information.

**THE ANNUAL PARTNER WITH YOUTH
CAMPAIGN OF THE CLEVELAND AVENUE
YMCA**

One of our lawyers, LaBarron Boone, is serving as Co-Chair of The Cleveland Avenue YMCA Youth Campaign. The Cleveland Avenue YMCA serves many of the inner city and rural youth who come from areas that are sometimes neglected. Quite often, the communities can't afford program costs and equipment purchases. LaBarron has chaired or co-chaired the annual drive for five years and has helped to raise over \$500,000.00 in the campaigns. All money raised goes toward scholarships for participants in the Arts & education classes, Athletic program, and After School Program at the Cleveland Avenue YMCA. This organization, under the excellent leadership of my long time good friend, Willie "Fats" Jones, has a history of taking care of the needs of the under-served and under-privileged youth of our community. LaBarron is helping to see that the tradition continues.

XXI. FIRM ACTIVITIES

JULIE BEASLEY

Julia Anne Beasley, a graduate of Cumberland School of Law, joined the firm in 1992. Julia is a Shareholder in the firm's Product Liability/Personal Injury Section and handles motor vehicle accident litigation as well as other types of personal injury and wrongful death cases. The majority of her cases involve individuals who have been injured or killed in accidents involving commercial vehicles. Julia has obtained numerous multi-million dollar recoveries from logging companies and truck companies for her injured clients and for families of those who had loved ones killed in highway collisions. She has also successfully handled many cases for construction workers who were severely

and permanently injured on construction sites due to the negligent acts of others.

In her spare time, Julia competes in cutting horse shows on the local and national level with her 7-year-old mare, Docs Dual Jae, and her 6-year-old gelding, Peponitas Top Gun. She recently competed with Peponitas Top Gun in the NCHA Summer Cutting Spectacular in Fort Worth, Texas, where her horse made the finals and finished 25th out of 204 horses in the Amateur Class. Julia also is a partner in Double B Ranch where she currently keeps three other horses. She enjoys spending time at the barn and on her tractor which keeps her pretty busy.

Julia is very active in her church, Fresh Anointing International Church, located in Montgomery. She is involved in many local charitable events as well as various ministries. Julia enjoys her work and is thankful that she can help make a difference in the lives of her clients as most of them are going through very tragic situations. She is an outstanding lawyer who is well liked by her clients and extremely well-respected by opposing lawyers and judges. Julia is a tremendous asset to our firm.

CHAD COOK

Chad is a lawyer in our Mass Torts Section and is currently responsible for a number of cases including Welding Rod litigation, Ortho Evra, Fosamax, Bausch & Lomb, Viagra, Paxil and Zithromax litigation. Chad also assists in investigating new drugs and medical devices which present a serious danger to consumers. Chad received his Bachelor of Science degree in Criminal Justice from Auburn University at Montgomery in 1998. While attending college, Chad was a member of Sigma Phi Epsilon Fraternity and was selected to represent AUM's first Mock Trial Team in the Southeastern Intercollegiate Mock Trial Competition at Kennesaw State University. After graduating, Chad pursued his Juris Doctor degree at Thomas Goode Jones School of Law. Chad was placed

on the Dean's Honors List and given the Scholastic Achievement Award for Employment Law in 2001. In addition, he was a member of Sigma Kappa Delta Law Fraternity and the Christian Legal Society. While attending law school, Chad also worked as a staff assistant in the Mass Torts Section of the firm. After graduating in 2002, he was hired as a staff attorney for the firm, working on defective construction cases, as well as probate and estate matters, bankruptcy issues and subrogation liens.

Presently, Chad is on the Plaintiff's Discovery Committee for the Fosamax Products Liability Litigation, MDL-1789 which is venued in the Southern District of New York Federal Court before Judge John F. Keenan. Chad also serves on the Fosamax Science and Administrative Committees. He is in the Mass Torts Section of the firm, focusing his practice on pharmaceutical litigation, representing victims of defective prescription drugs and medical devices. In addition to his work at the firm, Chad has served as an instructor in Civil Procedure and Evidence at Jones School of Law and as a member of the Legal Studies Advisory Committee. Chad and his wife, the former Sharon Broadfoot, are both from the Montgomery area and have a two-year-old son, Parker. They are members of First Baptist Church in Montgomery where Chad serves on the board of the Nehemiah Project, a program designed to bring church leaders, businesses, civic organizations and city officials together to address the spiritual and social needs of Montgomery's inner city. Chad is also serving on the Alabama Chapter's Cystic Fibrosis Foundation Young Professionals Leadership Committee. Chad is an excellent lawyer who does a great job for his clients and for our firm.

LARRY GOLSTON

Larry Golston, a Shareholder in our firm's Fraud Section, does a outstanding job for his clients. Larry obtained his Bachelor of Arts and Juris Doctor degrees at the University of Alabama.

Before coming to work at our firm, Larry worked for the Honorable Judge Sue Bell Cobb, who at the time was a Judge on the Alabama Court of Criminal Appeals. As you know, Judge Cobb now serves with distinction as the first woman ever elected as the Chief Justice of the Alabama Supreme Court. Larry also worked for Circuit Judge James P. Smith in Madison County, Alabama.

Since coming to the firm Larry has assisted clients in obtaining million dollar settlements or verdicts in Fraud Litigation. In September 2002, he tried a case of against John Deere Construction Equipment Co., Inc., which resulted in a \$1.785 million verdict in favor of his client. Larry has been a speaker at numerous seminars and is the author of "HIPAA In a Nutshell: A Synopsis of How the HIPAA Privacy Rules Impact Ex Parte Communications." He currently serves as the President of the Capital City Bar Association. Larry is also Chairman of the Alabama Trial Lawyers Association's Minority Caucus and serves on the ATLA Board of Governors. In the April 2007 issue of Mocha Magazine, Larry was featured as one of the 25 most prominent professionals in the Montgomery and the River Region.

Larry is married to Danielle Golston and they have two children. The Golstons attend Fresh Anointing International Church in Montgomery, Alabama. Larry is an outstanding lawyer who does a great job representing his clients and our firm. He has developed a specialty in employment law and that presents some challenging cases.

TRACIE HARRISON

Tracie Harrison, who has been with our firm for eight years, works in the Toxic Torts Section as Rhon Jones' legal assistant. She started as a legal secretary before moving to become Rhon's legal assistant. Tracy's primary responsibilities are investigating new cases as they are received and maintaining logistics for several multi-plaintiff cases. Tracie also assists with trial preparation and attends trials when needed. She researches and assists Rhon with the design and main-

tenance of the Websites designed specifically for the Section. Tracie has been married to Nick Harrison for 12 years, and they are the proud parents of a 6-year-old son, Hayden. We are most fortunate to have Tracie, who does outstanding work, with the firm.

BOBBY MOZINGO

Our firm currently employs six full-time investigators. One of the investigators, Bobby Mozingo, has been employed in that capacity with the firm for 15 years. Before coming to the firm, Bobby was employed by the Montgomery Police Department for 10 years, with five of those years being in the Detective Division. He has been married to his wife, Vicki, a registered nurse who works in a local pediatrician's office, for 22 years. Bobby and Vicki have two daughters, Amy, 19 and Paige, 16. Amy is a sophomore at Troy University and Paige, a cheerleader, is a junior at Stanhope Elmore High School.

Before moving to Alabama, Bobby grew up in Chattanooga, Tennessee, where he graduated from Lakeview High School. Bobby attended the University of Tennessee at Chattanooga. His hobbies include camping, NASCAR racing, golf, and attending his daughters' ballgames and activities. Bobby and Greg Allen have worked hard in their part-time roles as members of Grant Enfinger's racing team. In fact, Bobby claims to be largely responsible for all of Grant's wins, which might be a "little suspect," but we will take his word for it. As members of Eastmont Baptist Church, Bobby and his family are involved in several ministries there. Bobby is doing an outstanding job for the firm. We are most fortunate to have him with us. He works hard for and is very popular with our clients.

TANYA PEETE

Tanya Peete began working with the firm in August 2004. Since then she has served in many capacities. She has worked in the call center, as a mail clerk, as a scanner, and she now serves as Staff Assistant in the firm's Mass Torts

Section. Her current duties include communicating with clients to make sure we have all necessary documentation for their claim, ordering medical records, preliminary evaluation of claims, and assisting with any special projects for the Celebrix/Bextra team.

Tanya graduated from Ultrasound Diagnostic School of Atlanta, Georgia as a Medical Assistant. She worked in a private practice for two years prior to moving to Alabama. Tanya says that she never intended on being with the firm this long but she came, loved it, and stayed. She plans to will go back to school in 2008 for Legal Studies. According to Tanya, working with youth, keeping them positively motivated, and walking the straight and narrow is her biggest accomplishment.

Tanya is one of four children. She has one sister and two brothers who are very close in age. Her sister was in the Navy and is now pursuing a career in law enforcement, one brother is an artist, and the other brother is still in the process of determining what the future holds for him. Tanya loves to read and watch movies. In her spare time, she enjoys working with children as a mentor through her church. She teaches them to dream big, have a vision, and follow through with God as their primary focus. Tanya is a very hard worker and we are grateful to have her with the firm.

THERESA PERKINS

Theresa Perkins, who came to Beasley Allen in October of 1999, started as Graham Esdale's Legal Assistant, a position she still holds today. Theresa works in the Personal Injury/Products Liability Division. As a Legal Assistant, she spends most of her time assisting in the drafting of complaints and other pleadings, drafting discovery and answering discovery requests. Theresa also spends a lot of time in trial preparation, and enjoys going to trial with Graham. She has a Bachelor of Science degree in Justice and Public Safety from Auburn University at Montgomery and has also received Legal Assistant Technician and

Legal Assistant Administrator Certificates.

Theresa and her husband Scott, who is a probation and parole supervisor for the State of Alabama, have been married for 12 years. They have a 5-year-old daughter, Katie Rose, who just started kindergarten this year at Montgomery Catholic Preparatory School. Theresa and her family are active members of St. Bede Catholic Church. Their black Lab, "Montana," is also a very big part of their family, which is very good in my opinion. Anybody who likes dogs gets an A+ from me. Theresa is an exceptionally good employee who does outstanding work. We are blessed to have her with the firm.

GENIE PRUETT

Genie Pruett, who has been with the firm since 1998, is invaluable to the Mass Torts Section. She serves as secretary to Andy Birchfield and Leigh O'Dell. In that capacity, she provides the assurance that daily operations will run smoothly. In the recent Vioxx trials that the firm has been involved in, Genie has proven to be an integral part of the trial team. Since Andy serves as Section Head in the Mass Torts Section, Genie's performance is critically important.

Genie has three children, Patti Brewer, Michael Prickett and Jennifer Ayers. Michael's wife, Melissa, is a lawyer in our Mass Torts Section. Genie is the proud grandmother of seven grandchildren and one great-grandchild. She lives on Lake Mitchell with her husband John and their two dogs—Abbie and Happy. She spends her spare time kayaking and relaxing with her family and friends. Genie is a vital member of the Mass Torts family and we are so fortunate to have her. She does outstanding work and is a motivating force in the section for others. We are most fortunate to have Genie in the firm.

XXII. SOME CLOSING OBSERVATIONS

WE MAKE CHOICES IN LIFE THAT AFFECT OTHERS

I have had a real busy year thus far and it doesn't appear that things will let up a great deal over the final months of the year. As of August 20th, I had started 8 trials involving significant lawsuits and fortunately all of them but one settled at some stage during the trial before they went to verdict. One of the cases took 7 trial days before it settled and another in Georgia settled after jury selection—two extremes. It appears that because of the current judicial climate, defendants are more prone to take cases to the courtroom before they are willing to settle. For that reason, we are taking more cases to trial. Even the cases that should have settled early in the process are handled in this fashion and that means prolonged trial preparation resulting in lots of additional expenses.

All of the propaganda designed to destroy the jury system and also to influence potential jurors, is responsible for defendant corporations' trial strategies, in my opinion. I must confess that I enjoy trying lawsuits, and for that reason, the defendants' strategy really doesn't bother me. I do wonder, however, how the corporate bosses can justify the additional fees and expenses the defendants incur. But I learned long ago that compassion and caring about the plight of others doesn't always factor into the decisions made by insurance companies and by some in Corporate America.

The thing that really made me become a trial lawyer happened when I was a very young lawyer starting out in Tuscaloosa. The firm I was with for 3 years there did nothing but insurance defense. We were told by several of the insurance companies that the firm represented that we were never to pay out the full amount of the settlement

authority that they gave to us and I must confess that we never did. I really never felt very good about that dubious record.

When I decided to leave Tuscaloosa and return to my hometown of Clayton, Mr. Aubrey Dominick, who was the senior partner in a very good law firm, called me in to discuss my future. He offered me a pretty good job with his firm, but told me I had to make a critical decision. Mr. Aubrey said I could be a "Little Fish in a Big Pond" if I stayed in Tuscaloosa with his firm or I could "go on down to that little country town in Barbour County and be a Big Fish in that Little Pond." I respectfully told Mr. Aubrey that I would take my chances in that Little Pond and I did just that. I must say that I am very glad that I did make the move to Clayton. I am also very proud to now be called a trial lawyer because I know that I am helping folks who badly need help!

AVALA IS A WOLF IN SHEEP'S CLOTHING

Every now and then I read something in a news paper or magazine that I wish I had written. The following, a letter to the editor of a news paper written by Andy Citrin, a very good lawyer from south Alabama, who expresses Andy's feelings on a critically important issue in a most powerful manner. This is one that I do wish I had written.

I almost fell out of my chair laughing by Lewis Fuller's August 5th response to my July 27th editorial ("Tort Reformers Really Jury Haters"). In his response, Mr. Fuller falls all over himself professing AVALA's undying "love for the jury system", and even claims "I have been chairman of AVALA for more than five years and have never heard a word even whispered against the jury system." Oh, really? Perhaps Mr. Fuller should visit his own Website.

On its website, in a section entitled, "Examples of Lawsuit Abuse

in Alabama”, AVALA cites the Exxon verdict as it flagship example of lawsuit abuse. Problem is, the Exxon case was tried to two separate juries, both of which (without any knowledge of the other) found Exxon guilty of INTENTIONALLY lying to the State of Alabama about the amount of royalties it owed Alabama on natural gas pumped out of the Gulf. The evidence included several “smoking gun” memos between Exxon executives acknowledging their deception and calculating that the state employees were overworked and stretched too thin to catch the fraud.

If AVALA really loves juries, perhaps Mr. Fuller can explain why the its website has a link to the Institute for Legal Reform, which cites a Forbes article entitled, “The Best and Worst States to Get Sued In” where Delaware is ranked the best state to get sued in because “business cases are decided by judges, not juries, a big reason why hundreds of the country’s biggest companies incorporate there.”

Problem for Mr. Fuller and AVALA is they can’t stand the truth about their agenda. They don’t like or trust ordinary citizens sitting on juries and having power to award damages. They know they can’t sell that, because even your staunchest conservative won’t support that agenda. So what do they do? They bait and switch. They whip the public into a frenzy with their unrestrained hatred for our legal system and accountability, create a myth about Alabama being a “tort bell,” and then blame it not on the juries who return verdicts, but on the “trial lawyers” who presented the evidence. AVALA’s lawyer bashing is the intellectual equivalent of clubbing baby seals. Not only is it easy to pick on lawyers

(lawyer bashing is old as the law itself), but even a third grader knows lawyers don’t return verdicts, juries do. I defy AVALA to cite a single case where a trial lawyer got to vote on a jury’s verdict. They can’t and they know it. But that has never stopped them.

AVALA constantly cries wolf about our justice system by whipping up hatred for lawyers and creating a myth about a crises, when, in fact, AVALA’s objective is to destroy our jury system.

We are seeing a full court press by groups like AVALA, whose goal and mission in life is to destroy the jury system, and in the process protect the wrongdoers in Corporate America. These groups have spent millions of dollars spreading the myth of so-called tort reform and now their “chickens are coming home to roost.” Andy is to be commended for alerting the public to how badly AVALA and others mislead the media and people in general on our state’s court system. More folks are figuring out how grossly misleading the information put out by the tort-reformers—better called the court destroyers—has been over the past several years. They are also realizing how important the jury system in this country really is and that regular folks can’t afford to lose the protection it affords!

XXIII. PARTING WORDS

SOME FOLKS NEVER STOP TRYING TO TELL GOD WHAT TO DO

Walter Albritton is one of the pastors at St. James United Methodist Church where Sara and I are members. Walter is a godly man, who has had a tremendous influence on me both personally and spiritually, and who works hard at spreading the “good news.” He publishes

a Sunday lesson each week, which is always very good, and I always pass the lesson on to all of our employees when I get it. The following is one of these lessons which speaks to the times in which we live. It is an extremely powerful message.

Some folks have a bad habit. They never learn to listen to God. All their lives they insist on telling God what to do. For whatever reason they just assume they are smarter than God. There are stories in the Bible about these folks. One such story is in the biblical book named Samuel or to be more specific, First Samuel.

Samuel was a circuit judge who provided wise counsel for the Israelites nearly all his life. The people benefited from his skillful leadership for many years. But Samuel’s decision to appoint his sons as judges was a mistake, a big mistake. His sons refused to follow the spiritual example of their father. They used their authority for personal gain, accepting bribes and perverting justice.

The people became restless, demanding that Samuel appoint them a king. They were envious of other nations that had kings and felt that having a king would solve all their problems. So insistent were they in having a king that they refused to listen to Samuel’s warnings against demanding a king. Their attitude was not unlike our own sometimes. We want what we want, and we want it now! Never mind what God wants; we know better than God what we need.

God let the Israelites have their way, instructing Samuel to give them a king, but not without warning them of the severe consequences they would face from the tyranny of a king. Samuel’s warn-

ings fell on deaf ears. A new era thus began and Samuel became known as the last judge of Israel. The lesson in this story is significant. We can become too smart for our own britches. We can become so spiritual as to presume we know better than God what we need. It is then that our arrogance becomes like wax in our ears, causing us not to hear, much less heed, God's warnings.

So instead of worshipping God, we begin to worship our own minds. What we think becomes more important than what God says. To worship our own way of thinking becomes then the worst sort of idolatry. One example of this kind of idolatry is the muddled thinking of some people regarding the sexuality issues of our culture. Adultery becomes permissible because "my spouse no longer makes me happy." Watching pornography is acceptable because "I am not harming anyone and no one will know because I do it

secretly." Having multiple sex partners is "my personal business." And the biggest absurdity of all: "If it feels good then I can do it because it is my life and nobody has the right to tell me what to do."

Ignored or forgotten is what God thinks about all this. The Bible, after all, is an ancient book with "commandments" that are obsolete. To think like this, as millions of us do, is to presume to be smarter than God. Clearly it is to worship the conclusions of one's own mind rather than acknowledge the wisdom of God revealed in the holy scriptures. In his merciful patience God sometimes allows us to have what we want or to have our own way. Nonetheless, sober thinking should remind us that what is always best for us is what God wants for us.

While we wallow in our own selfish ways, God waits, and waits. He waits while our perverted ideas are destroying families and

ruining the lives of our children. He waits for us to stop worshipping our own ideas and come to grip with the truths he has given us. He longs for us to learn, before it is too late, that our needs will never be fully met until we accept his way of thinking and make it our own. Trying to tell God what to do is a bad habit that our hurting, broken society needs to give up. If only we could learn that Father knows best.

Pastor Walter Albritton
St. James United Methodist Church

This message by Walter speaks volumes to me because, on occasion, I tend to do things "my way" and fail to include God in my efforts. Sometimes I think God's way is too slow and sometimes I just ignore His plan altogether and that's when I really get into trouble. We must keep our focus on God and His plan for our lives and that has to be a daily thing. Trusting Him and being obedient—while sometimes hard to do—is the only answer!

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