



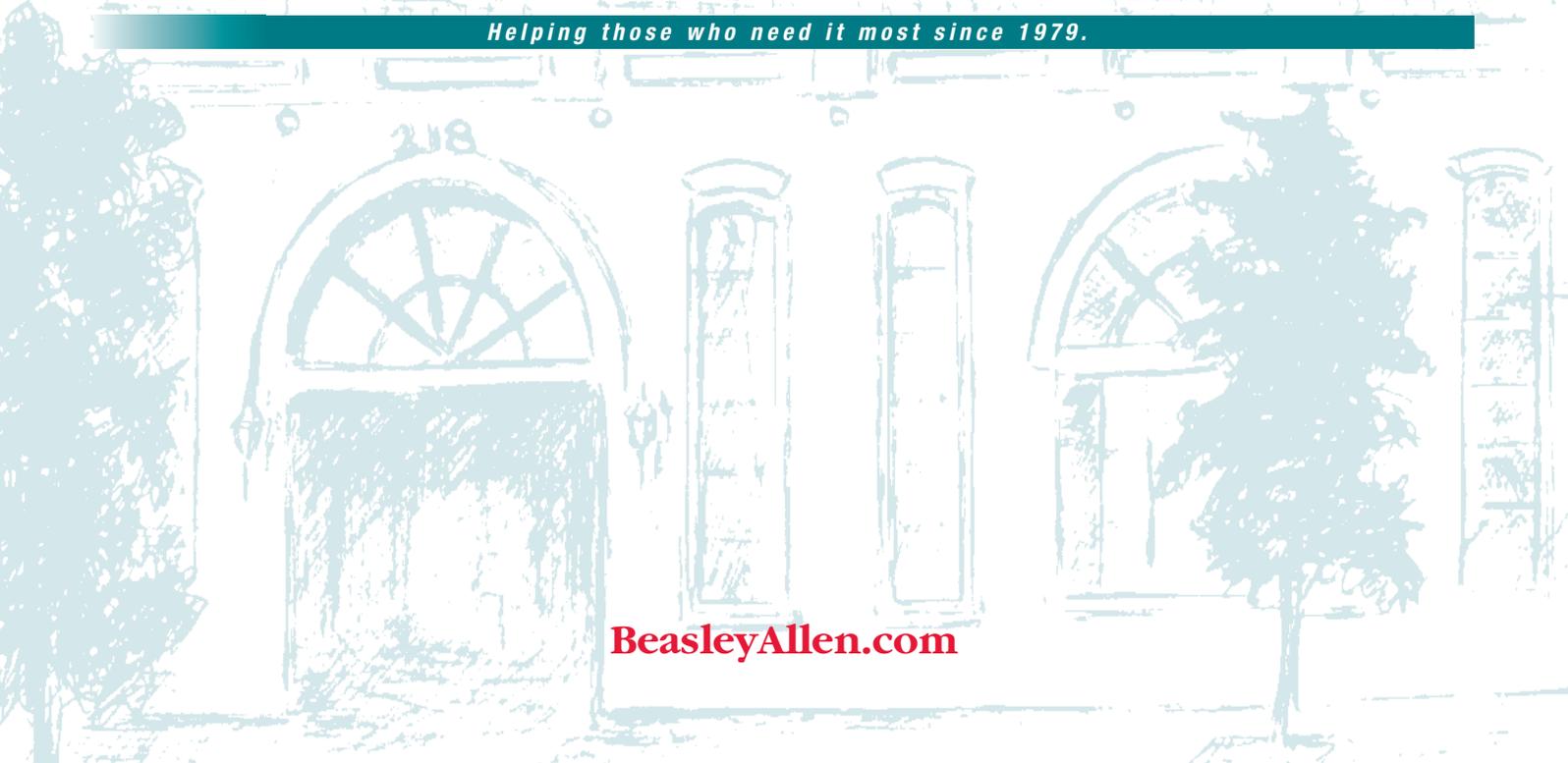
THE
JERE BEASLEY REPORT

DECEMBER 2007

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A NATIONAL LAW FIRM LOCATED IN MONTGOMERY, ALABAMA

Helping those who need it most since 1979.



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I. CAPITOL OBSERVATIONS

A GLOBAL SETTLEMENT INVOLVING VIOXX CASES

A global settlement has been reached in the Vioxx litigation after more than 10 months of intense negotiations. Merck & Co. has agreed to pay \$4.85 billion to resolve all Vioxx-related claims in which a claimant has suffered a heart attack, sudden cardiac death, or stroke. This will be the largest settlement ever in the history of mass torts pharmaceutical litigation. The litigation involving product liability claims related to the pain reliever Vioxx has been going on for over six years. During that time, thousands of personal injury lawsuits have been filed. Actually, I believe that our firm filed the first Vioxx case in the country. The suit was filed in Mississippi in 2001. It had been referred to us by a lawyer who had read about problems with Vioxx in an issue that year of this Report. We had learned of the heart attack risks associated with Vioxx from Public Citizen. It has been a long tough battle since that time, but the end result is a very good one for our clients.

Discovery in the cases has been ongoing in consolidated cases throughout the country for the past several years. Over 50 million pages of documents were produced and reviewed. More than 2005 general depositions were taken before the settlement was reached. Thousands of motions have been filed and considered by several courts. Hundreds of experts in cardiology, pharmacology, neurology and other disciplines were consulted. Moreover, over 19 trials took place between August 2005 and September 2007 with mixed results, including plaintiffs' verdicts, defense verdicts, hung juries, and retrials. Our firm tried six of these cases.

It became quite apparent early on that in this litigation, our firm was sort

of like David in his epic battle with Goliath. Merck set aside \$1.9 billion in a special fund to pay defense lawyers and experts and made it clear, at the time, that none of this money was to pay Vioxx victims. In the first case we tried, which was in Texas, we had four lawyers on our side. On the other side, Merck had over 100 show up in Houston for the trial. There is no telling how many support staff they brought in. After each trial, Merck would replenish their defense fund and let us know they had done so. Nevertheless, we never gave up, we refused to be intimidated, and stayed the course.

More than 11 months ago in December 2006, U.S. District Judge Eldon E. Fallon of the federal court in New Orleans, in consultation with coordinating Judges Victoria Chaney of the Los Angeles Superior Court, Judge Carol Higbee of the New Jersey Superior Court, and Judge Randy Wilson of the Harris County, Texas District Court, directed the lawyers for Merck and the plaintiffs to begin continuous and frequent confidential negotiations. The judges appointed a six-member negotiating committee for the plaintiffs, which included representatives from each coordinating state, the MDL Executive Committee, and a member of the MDL Steering Committee at large. Merck designated a like number of negotiators. The two groups were directed to seek a potential resolution of filed and tolled cases in which folks alleged that they or loved ones had suffered heart attacks, ischemic strokes, or sudden cardiac death as a result of Vioxx ingestion.

Negotiating teams met in more than 50 sessions in New Orleans, Montgomery, Washington, D.C., New York, Philadelphia, Los Angeles, St. Louis, and Houston. Several hundred phone conferences augmented the face-to-face negotiations. The coordinating judges, during frequently scheduled meetings and phone calls, monitored the progress of the negotiations while at the same time managing dockets of thousands of cases.

From the plaintiffs' perspective, many lawyers were involved in conducting discovery about Vioxx, developing the science liability case, and trying cases before juries. These lawyers demonstrated great tenacity and excellence in their efforts to secure compensation for Vioxx victims who suffered heart attacks or strokes as a result of taking Vioxx. Andy Birchfield from our firm was a leader in bringing the negotiations to a successful conclusion. He was actually involved in every phase of the settlement negotiations right up to the signing of the agreement in New

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Orleans on November 9, 2007 at 4:15 a.m. The settlement will guarantee that Vioxx victims receive fair and just compensation. In my opinion, it is an excellent settlement for our clients and other Vioxx victims.

The \$4.85 billion settlement resolved litigation that was hard-fought and portended risks for all parties. In light of significant costs and delay that would result in protracted litigation, the agreed-upon Settlement Program will ensure that those who suffered injuries as a result of Vioxx are compensated fairly and efficiently. There is a well-designed mechanism set out in the settlement agreement to make sure that all claimants who have valid claims will be fairly compensated.

We committed a tremendous number of lawyers and staff personnel to the Vioxx project. Andy Birchfield, Leigh O'Dell, and Roger Smith devoted virtually their full attention to Vioxx. In addition, Frank Woodson, Ben Locklar, Greg Allen, Russ Abney and I also worked on the project as needed. We also had dedicated staff personnel who put in endless hours working on this project and did a tremendous job. We are very proud of them. I can say without reservation, however, that without the hard work of Andy, Leigh, and Roger, this settlement would not have happened. Andy was a leader in the negotiations, and we are proud of what was accomplished for our clients. This was a monumental settlement and one that we believe is fair and just to all concerned. Our goal was to represent our clients to the best of our collective ability and secure a settlement that would be in their best interest, and that was accomplished. We are thankful that we were able to bring the Vioxx saga to a successful conclusion for the folks we were blessed to have represented.

A SAD DAY FOR ALABAMA

The Alabama Supreme Court, after a long delay, has finally ruled in the Exxon case. This was a case where Exxon cheated the State of Alabama and was convinced it could get away with its intentional wrongdoing. When a powerful and politically influential corporate giant can get away with what Exxon did to the citizens of our State, it truly is a sad day for Alabama. This wasn't just a case where the terms of a contract were not lived up to—it was outright fraud committed at the highest levels of the corporate structure of Exxon. Two separate juries found the conduct of Exxon to be fraudulent and reprehensible. In my career, I have never been involved in a stronger case on both the facts and applicable law. Nevertheless, the Supreme Court ruled in favor of Exxon on the fraud claims. The state will collect the compensatory damages due plus the 12% post-judgment interest. In addition, since Exxon is still not paying according to the lease terms, the company will have to pay the amount of royalties due since 2002 plus the 12% statutory penalty up to the date of payment.

Frankly, it's impossible to justify the outcome of this appeal. Exxon was clearly guilty of fraud designed to cheat the State out of about \$900 million. In fact, its plan was set out in internal company memos and e-mail messages. I regret to say that we won't ask the Supreme Court to rehear this appeal because it would be no more than an exercise in futility with this court. As you will recall, the case was last tried in the fall of 2003 and remained in the Supreme Court until a decision was announced on November 8th. Without a doubt, the losers in this case were the people of Alabama!

JIM MARTIN SPEAKS OUT ON EXXON

Jim Martin, who served as Commissioner of the Alabama Department of

Conservation and Natural Resources when Exxon was caught cheating the State, is fully aware of what he describes as the giant oil company's "fraudulent conduct." Jim told Phil Rawls, who is with Associated Press, that "this was a case where Exxon cheated the State of Alabama and believed it could get away with intentional wrongdoing." In this regard, he made this observation:

When a powerful and politically influential corporate giant can get away with what Exxon did to the citizens of our State, it's truly a sad day for Alabama. This wasn't just a case where the terms of a contract were not lived up to—it was outright fraud committed at the highest levels of the corporate structure of Exxon. This was a total miscarriage of justice. I was shocked at what the Supreme Court did in this case.

Jim Martin is a well-respected and highly successful businessman, who served in Congress as a Republican, and was appointed to a cabinet post by Fob James. He feels strongly that the Alabama Supreme Court totally ignored the fraudulent conduct of Exxon in the case. This courageous man fought a good fight against Exxon and deserves a great deal of credit for never giving up. He has been an inspiration to all of us who believed in the State's case and did our best to seek justice for Alabama citizens. As you may recall, the case was first filed at the direction of then-Attorney General Bill Pryor, who supported the State's case fully for as long as he served as Attorney General.

Source: Associated Press

THE FIGHT OVER WATER IS REAL AND WILL CONTINUE FOR YEARS

The states of Alabama, Georgia, and Florida have been battling over water rights for the past several years. This year's drought has caused this fight to

take on even greater significance. We in the southeastern United States have taken for granted the abundance of water available. Now we are facing a real crisis and one that will likely get much worse. Water flow issues at the heart of a dispute between the three states involve the Alabama—Coosa—Tallapoosa basin and the Apalachicola—Chattahoochee—Flint basin.

The three states in our region are facing a severe water shortage crisis, and it's difficult to say which state is in the worst shape. Because of the complexity of the issues facing the federal and state governments, I am not going to say much more at this point. I frankly don't have enough knowledge on this subject to do much more than say we are facing a most severe problem. It appears that the overall picture changes daily. There also appears to be no relief in sight because of the drought. We can only pray for a great deal of rain at this point and for an end to the drought. Unfortunately, we will be involved in this water battle for years. I hope a satisfactory solution can be worked out between the states. Failing to do so is not an alternative.

Source: *Associated Press*

SAFETY ISSUES FOUND AT FARLEY NUCLEAR PLANT

According to the Nuclear Regulatory Commission (NRC), a valve problem with the Unit 2 reactor at the Farley Nuclear Power Plant near Dothan is potentially a substantial safety issue. The NRC staff gave the reactor a "yellow" rating—the next-to-worst in its color coding—and that's most significant. The agency says the Farley reactor joins 10 other nuclear units in the country that fall in that column. This is clearly a matter of concern. NRC regional administrator William Travers in Atlanta says that while the plant is operating safely, the valve failures need to be addressed. I hope this matter was dealt with and the problems remedied. The federal inspec-

tors reportedly have left the plant. But, the NRC will continue to monitor the plant's safety practices.

Source: *Associated Press*

ALFA CORP. MERGES WITH ALFA MUTUAL GROUP

The board of directors of Alfa Corp. has approved a definitive merger agreement for the company to be acquired by one of its subsidiaries. Alfa Mutual Group, the largest shareholder of Alfa Corp., will apparently pay \$22 for the shares in the company it doesn't already own. According to a news release from Alfa, the price, a total of \$840 million, is a good deal for the minority stockholders. As a result of the deal, Alfa Corp. will become a private company. Alfa said its board approved the transaction after receiving a recommendation from a "special committee" comprised of four independent directors.

Alfa Corp. CEO Jerry Newby is said to be leading the group behind this merger and says he is pleased with it. However, there is pending litigation that, in my opinion, won't go away. Our firm is involved in the Delaware litigation and there are two cases pending in Montgomery County Circuit Court. Based on what we have learned, it doesn't appear that the \$22 per share is a fair price, and I believe the minority shareholders are justified in holding Alfa's "corporate feet" to the fire.

There is a great deal of opposition to the current leadership at Alfa these days—especially from the so-called old guard—and that opposition seems to be gathering strength. I wouldn't be too surprised to see President Newby having strong opposition in his reelection bid.

Source: *Birmingham News*

ARTHUR BREMER RELEASED FROM PRISON

Arthur H. Bremer, the man who shot Alabama Governor George Wallace

during a presidential campaign stop in Maryland in 1972, was released from the Maryland state prison system on November 9th. Governor Wallace, who died in 1998, was paralyzed and abandoned his bid for the Democratic presidential nomination after he was wounded on May 15, 1972, in the shooting in Laurel, Maryland. Three other people were also injured—one being my friend Col. E.C. Dothard, who headed up the governor's security detail. I was serving as Lt. Governor of Alabama at the time and know firsthand how difficult things were in Alabama during the weeks and months that followed. Governor Wallace's family went through some very difficult days, which stretched into months, because of what Bremer had done.

Bremer served about 35 years of a 53-year sentence and was said to have earned his release through what was described as good behavior and by working jobs in prison. I don't believe this man should have been released from prison. If a person commits a heinous crime of this sort, he or she should serve the time that is handed down by a court and jury. The fact that a public figure was the victim makes no difference. I believe that we must deal harshly with persons like Bremer regardless of who their victims happen to be.

The United States has turned into a nation where recounts of violence have become a nightly feature on the national and local news programs. It's time for us to quit worrying about the well-being of criminals and start getting tougher on those who are committing these violent crimes. Our elected officials must realize that all of the gross violence—including graphic displays of homicides and the like—that young folks and individuals with emotional problems are exposed to on television and in the movies must be curtailed. I am firmly convinced that this sort of thing has played a major role in causing today's violent society.

Source: *Associated Press*

ALABAMA UNEMPLOYMENT RATE DROPS TO NEW RECORD LOW

Alabama citizens got some good news when Governor Bob Riley announced recently that Alabama's unemployment rate fell to a new record low in October. The state's unemployment rate declined from 3.7% in September to 3.1% in October, the lowest monthly unemployment rate ever, and that's good news. A year ago, Alabama's unemployment rate stood at 3.6%. Alabama's unemployment rate is still well below the national rate, which stood at 4.7% in October. During the past 12 months, employment gains in Alabama totaled 24,800. I am hopeful that Alabama will continue to do well economically. With the national picture not looking too good, it's encouraging that at least our state is on the right path.

AIRPLANE CRASH CASE SETTLED

On September 23, 2006, a Beech F-33A, operating as a sightseeing airplane ride at an air show collided with the ground and an airport fence after departure. Our client was present on the ground at the time of the crash. Her husband and son, along with the pilot, were fatally injured as a result of the crash. Our firm filed a wrongful death lawsuit in the Circuit Court of Jefferson County, Alabama, on behalf of our client. Our investigation of the incident had revealed that liability was clear. Passengers who rode in the sightseeing airplane prior to the crash observed the fuel gauge and questioned the pilot who responded, "we have plenty of gas." Witnesses of the crash stated they heard the engine sputter, stop and start again. The plane took a steep left turn, pitched down, and fell to the ground.

The National Transportation Safety Board conducted an investigation and determined that a factor in the accident was the pilot's improper fuel management resulting in a total loss of engine

power due to fuel exhaustion. No fuel leakage was observed in the area where the plane crashed. During mediation, the sponsor of the air show and the estate for the pilot settled with our client for a confidential amount. Cole Portis and I handled this case and were pleased to have been able to work out a satisfactory settlement for our client who suffered a loss that no monetary award could ever replace. Handling this case reminded me that we should make sure that all of our family members have a personal relationship with our Heavenly Father. Fortunately in this case—as tragic as it was for our client—her husband and son had such a relationship. I thank God for that!

II. LEGISLATIVE HAPPENINGS

ALABAMA'S GENERAL FUND IS IN TROUBLE

The revenue-starved General Fund will be a major problem for Alabama legislators when they come to the Capital next year. The job of funding state agencies adequately won't be an easy task. State Rep. John Knight (D-Montgomery) and State Senator Roger Bedford (D-Russellville), who Chair the House Government Appropriations Committee (which oversees the General Fund), and the Senate's Finance and Taxation General Fund Committee (which works on the General Fund budget), respectively, are fully aware of the crisis. Senator Bedford pointed out recently that the Alabama Medicaid Agency will be one area of major concern next year.

Medicaid will lose hundreds of millions of dollars in federal money in the next fiscal year. The exact amount was still unknown as of late November. Senator Bedford predicts that a train wreck is coming in Medicaid. State Medicaid Commissioner Carol Hermann-Steckel told the members of the

legislative subcommittee that agency officials are still calculating their needs for the next fiscal year. Finance Director Jim Main, who is fully aware of the situation with Medicaid, says the budgeting process has just begun for all state agencies. Jim knows that finding adequate revenues for the general fund agencies will be very difficult next year. In any event, the time has come to deal with the general fund's problems and not just put more patches on an old tire! The state had counted on the funds from the Exxon case to help solve the general fund's fiscal problems. Unfortunately, because of the Alabama Supreme Court's decision, that won't happen.

ALABAMA LEGISLATURE WON'T REDRAW CONGRESSIONAL DISTRICTS NEXT YEAR

I was glad to hear that the Alabama House of Representatives won't attempt to redraw Alabama's Congressional districts during the upcoming regular session. Speaker Seth Hammett's public statement on this subject made it very clear. In the event that were to happen, it would result in the failure of the entire session. There is too much else that must be dealt with in the Legislature next year to have the session derailed in a battle over redistricting. Although the Legislature will be required to redraw Congressional and legislative lines after the 2010 U.S. Census, I believe, it can wait until 2009. Now that the Speaker has put his foot down, it would be an exercise in futility for anybody in either the House or Senate to attempt to inject this issue into the 2008 session.

Source: *Associated Press*

III.

COURT WATCH

JUDGE DEBORAH BELL PASEUR KICKS OFF HER CAMPAIGN

Judge Deborah Bell Paseur, who is from Lauderdale County in voter-rich north Alabama, kicked off her campaign for the Alabama Supreme Court last month. Ending the perception that justice is for sale in Alabama will obviously be a keystone in her race. Standing on the steps of the Supreme Court building, Judge Paseur became the first Democrat to enter the race for the Supreme Court seat being vacated by Harold See. In her remarks, Judge Paseur discussed the increased polarization between the political parties in Alabama, which has spilled over to the courts and affected the public's perceptions. She has signed a pledge to conduct her campaign with "appropriate decorum and dignity" in hopes of reversing the trend. Hopefully, all other candidates will sign this pledge. Concerning her pledge, Judge Paseur observed: "The integrity of the system is in crisis. People have a perception justice is for sale."

Since being elected as Lauderdale County's first female judge in 1980, Judge Paseur has won re-election four times without opposition. She attributed that to exhibiting fairness rather than partisanship and getting support from the business community in her circuit. Interestingly, none of the justices on the Supreme Court are from north of Birmingham. That will likely be an issue for north Alabama voters. It's pretty hard to justify that large a segment of our state's population not having a single member on an elected court. If elected, Judge Paseur would be the first justice from the Shoals area since the late Chief Justice Howell Heflin of Tusculumbia. Party Chairman Joe Turnham and Stewart Burkhalter, president of the Alabama Labor Council and a Democra-

tic Party vice-chairman, were present with Judge Paseur at her kickoff. It will be interesting to see how her candidacy is received by the people of Alabama.

THERE WILL BE OTHER CANDIDATES ON THE REPUBLICAN SIDE

Thus far, only one Republican, state Finance Director Jim Main, has said he will go after the See seat. Jim enjoyed a most distinguished career as a lawyer, including a tenure with our firm, before going to work for the state. Currently, he is one of Governor Riley's closest and most trusted advisors. In addition to Jim, several others have said they are considering making the race next year, including Circuit Judge Scott Donaldson from Tuscaloosa, Opelika lawyer Ben Hand, and Montgomery lawyer Doug McElvy. Even though she says that her name won't be on the ballot, I hear that there are a number of prominent Republicans who are still encouraging Court of Criminal Appeals Judge Kelli Wise to reconsider her decision and get in the race. I am also told by some very good sources that key supporters of Judge Roy Moore have been testing the water—so to speak—to see whether there is still strong support in the state for the former chief justice. The rumor is that Judge Moore may elect to run as an independent. If that occurs, it will be most interesting to watch this race next year.

ANOTHER HOT SEASON FOR JUDICIAL ELECTIONS

Alabama is not the only place when judicial races are getting a jump-start long before qualifying times. The battles for state Supreme Court seats have already started to heat up in at least six states. It appears that another year of expensive and hotly contested elections is in store. Some believe the upcoming races in Alabama, Washington, West Virginia and Wisconsin, to be held next year, will likely be a repeat of 2006 elec-

tions. If that holds true, private special interest groups will pour large sums of money into these races. However, legislative proposals in a few states planned for next year could overhaul the way in which judges are selected in those states. Hopefully, the Alabama Legislature will address this issue and make Alabama one of those states. Justice at Stake Campaign, a bipartisan group in Washington that tracks state judicial elections, is taking a hard look at the upcoming races.

Voters are expected to select nearly 40 state Supreme Court seats next year. Unfortunately, Alabama, where record amounts of money have been poured into our Supreme Court races, with much of it coming from out-of-state, is being singled out. Currently, Alabama has an all-white Supreme Court, with 8 of the 9 members being Republicans. There has been a great deal of support—especially from the editorial staffs at daily newspapers—for a drastic change in the way appellate judges in Alabama are selected. Legislators in Alabama will have to deal with proposals next year designed to give regular people a voice on the Supreme Court. A number of proposals are being discussed. I have always felt that controlling the money available for judicial races was the best answer to a most serious problem. However, non-partisan elections will certainly be better for regular folks, who currently have little real influence in judicial elections, than is our current system.

As pointed out in a previous section, the winner in the Alabama race will replace Justice Harold See, a Republican, who announced this past summer that he would retire rather than seek a third term. It will be most interesting to see where Justice See winds up after he leaves the court. Karl Rove was the mastermind responsible for putting him on the court and for keeping him there. For some reason, the See campaigns seemed to be a magnet for special interests money. Now that he is retiring, maybe

Justice See will see fit to join his old mentor in some official capacity.

JUSTICES TO HEAR EXXON'S CHALLENGE TO PUNITIVE DAMAGES

The U.S. Supreme Court has agreed to hear ExxonMobil's challenge to the \$2.5 billion in punitive damages that the company was ordered to pay to thousands of fishermen, landowners, and businesses in Alaska. As you will recall, a jury in U.S. District Court in Alaska had awarded \$5 billion, which the United States Court of Appeals for the Ninth Circuit cut in half in a decision issued last December. It was the largest punitive damages award ever ordered by a federal appeals court, but it was only five times the economic damage of \$500 million suffered by the class of 32,000 plaintiffs. It's significant that, in accepting the appeal the justices granted review only on three statutory questions focused on maritime law. As a result, while the case will be of interest to the shipping industry, the decision will shed very little light on any constitutional framework that the Supreme Court might see fit to apply to the question of punitive damages. The case is scheduled to be argued in February and decided by early summer.

The fate of the fundamental constitutional issue relating to the due process argument remains uncertain because justices in the Philip Morris decision avoided the question of whether the award was unconstitutionally excessive. Rather, the court found only that the jury in that case might have improperly calculated the award on the basis of harm to smokers other than to the man whose widow brought the case. To conclude that a damage award is so excessive as to violate due process, the court must first conclude that the Constitution's due process guarantee includes a substantive as well as a merely procedural component. In my opinion, that's a tough burden for future challenges.

Source: *New York Times*

JURY AWARDS FATHER NEARLY \$11 MILLION IN FUNERAL PROTESTERS CASE

The father of a Marine who was killed in action in Iraq was awarded nearly \$11 million in damages last month by a jury that found leaders of a fundamentalist church had invaded the family's privacy and inflicted emotional distress on the family. In a shocking display of insensitivity, the defendants had picketed the Marine's funeral. The jury awarded \$2.9 million in compensatory damages, \$6 million in punitive damages for invasion of privacy, and \$2 million for causing emotional distress to the Marine's father. The father had sued the Kansas-based Westboro Baptist Church for unspecified monetary damages after members staged a demonstration at the March 2006 funeral of his son. It was reported that members of the church believe that U.S. deaths in the war in Iraq are punishment for the nation's tolerance of homosexuality.

Church members have routinely picketed funerals of military personnel killed in Iraq and Afghanistan, carrying signs such as "Thank God for dead soldiers" and "God hates fags." A number of states have passed laws regarding funeral protests, and Congress has passed a law prohibiting such protests at federal cemeteries. The Maryland lawsuit is the first filed by the family of a fallen serviceman. The suit named the church, Fred Phelps, its founder; and his two daughters. The father correctly and with complete justification contended that the protests intruded upon what should have been a private ceremony and sullied his memory of the event. Conduct of this sort deserves to be dealt with, harshly, and that would require appropriate punishment for the wrongdoers.

Source: *Associated Press*

SECRECY IN THE JUDICIAL SYSTEM SHOULD BE VERY LIMITED

It's my belief that secrecy in our court system—as a general rule—is not a

good thing. For one thing, it's not good public policy to allow secrecy in judicial proceedings. The UCLA Law School and the Rand Corp. formed an alliance last month to study secrecy in the nation's civil justice system. Even though transparency in our civil justice system is vitally important, there can be a few times when privacy can override transparency. Clearly, those occasions should be the exception and not the rule. In recent years, the civil justice system has moved away from public scrutiny, with fewer trials being held, and more "private judges" operating outside the normal court system.

Added to that is a proliferation of cases that are settled with confidentiality agreements being included. As I have pointed out, quite often defendants will make confidentiality a condition of their settlement offers when negotiations are under way. That really puts both the lawyer and client on a spot. On many occasions, the client badly needs financial help and is in no position to turn down a confidential settlement offer with conditions of that sort. In fact, I can relay only one time in my career when a client turned down such an offer of the request for confidentiality. That was in the Spivey tractor case where Mrs. Dixie Spivey refused a \$10 million offer from Kubota that not only had amount confidentiality, but a return of all documents and a sealing of the record.

The effect of "private judging," known as alternative dispute resolution, is also most troubling. The use of mandatory binding arbitration results in more secrecy and very little public scrutiny. Many in Corporate America want "private judging" to replace the civil justice system. In fact, that has been one of their major thrusts over the past 10 years. It was sort of like the Chinese water torture in that it slowly evolved without a great deal of public attention and resulted in something very bad for all consumers.

In any event, I believe that secrecy should be kept to a bare minimum

regardless of how it comes into play in the court system. In fact, I would like to see confidentially in settlements banned. The public is entitled to know about bad conduct, as well as about such things as unsafe products and bad food, and that's good public policy. Keeping that sort of thing confidential is bad public policy and allows wrongdoers to keep information from the public that could save lives and deter bad conduct generally.

Source: *Los Angeles Times*

ALABAMA COURT CERTIFIES CLASS ACTION AGAINST HOSPITAL

The Circuit Court of Barbour County, Alabama has recently certified a class action in a lawsuit that our firm is handling against Community Health Systems, the previous owner of Lakeview Community Hospital, located in Eufaula, Alabama. We allege that the hospital overcharged uninsured patients for medical care and services as compared to patients of the hospital who have insurance. We will prove the hospital collects payments from uninsured patients that are hundreds times more than what they collect from insured patients. The hospital takes the position that they must seek much higher reimbursement levels from uninsured patients because Medicare/Medicaid and private insurance carriers (such as Blue Cross Blue Shield of Alabama) either pay less than the costs of rendering services or just above costs.

This case is similar to a number of other class actions filed against various hospitals around the country that are overcharging uninsured patients. Many guilty hospitals have reached settlements in order to compensate the uninsured for overcharges, offer charity care to those patients who are unable to afford the hospital prices, and/or changed their hospital billing practices and charge uninsured patients at a more reasonable level and more in line with what government insurance programs and private

insurance carriers are charged.

The defendants in the Lakeview Hospital case have taken the position that they do not believe their billing practices for uninsured patients are inappropriate. The class sought a court declaration that the hospital admission contract, which patients must sign upon entering the hospital, does not spell out a price term for services. The law in Alabama states that where no price term is defined in a contract, the court can supply a reasonable price. Since Lakeview's overall patient population consists of roughly 85% insured patients and 15% uninsured patients, the position of the class members is that "a reasonable price" is more along the lines of what 85% of the patients pay, not 15%. The plaintiff class asked the court to certify the class based on a formula that would set charges for medical services at 15% above costs. The court granted the plaintiff's request and certified the class.

This is a great victory for the working poor of this state who are unable to afford decent health care coverage for their families. Jay Aughtman and I from our firm, along with Walter Calton of Eufaula, will handle this most important case. We will keep you advised as the case goes forward.

GOVERNMENT CONTRACTOR MUST PAY FOR DEATH OF U.S. SOLDIER

A federal court has ordered Kuwait and Gulf Link Transport Company, a Kuwait-based contractor, to pay \$4,907,048 in damages to the family of Col. Rocky Baragona. This is a most significant case involving the death of a U.S. soldier who was killed in Iraq. That's because a contracting company is being held accountable in a U.S. Court for its actions in the war. A tractor-trailer operated by an employee of the contractor crashed into the Colonel's Humvee in 2003 killing him instantly. A wrongful death action was filed in a Georgia

federal court. The Judge, who heard the case found the contractor to be at fault and assessed damages. Interestingly, the contractor has received millions of dollars in government contracts and has supplied vehicles and equipment to the U.S. Army.

Source: *Associated Press*

IV. THE NATIONAL SCENE

OUR COUNTRY'S CHINA CONNECTION HAS MANY SERIOUS RAMIFICATIONS

China has become a major player in the worldwide economy and is contributing to global growth in a very big way. Actually, this year is the first time that China is contributing more to global growth than any other country, measured according to market GDP weights. It is being projected by many economists that China will do even better in 2008 insofar as expansion is concerned. Interestingly, half of what China buys from other countries are raw materials and parts to make goods that it then sells as a finished product in other countries. The United States has been a big purchaser of Chinese products and goods, with the total reaching \$288 billion in 2006. When you add to our trade imbalance, the fact that the federal government owes China a bundle of money in outstanding loans, you can see we have a big time China connection. So we are not only buying heavily from China, we are borrowing huge sums from them—and that in combination is most disturbing.

Of course, there is another factor causing great concern in the U.S.—China is sending a tremendous number of unsafe products into our country. Unsafe drugs, toys, and food products top the growing list. When you consider that Chinese companies don't have to meet any real safety or health standards,

it puts a terrific burden on our regulatory agencies to catch the bad stuff when it comes in. For example, chemical companies in China are not required to meet even minimal drug-manufacturing standards. That means they can export unapproved, adulterated, or counterfeit ingredients. This creates a real problem in this country, especially when you consider that many citizens are buying drugs on the Internet. Then we have witnessed the vast number of toys containing unsafe levels of lead coming in from China. This is creating major health and safety issues.

We certainly appear to be on a collision course with China because of our dependence on them and their aggressive behavior on several fronts. I'm not sure that our leaders on the national level have a very good grasp of the magnitude of the overall problem. In any event, the Bush Administration surely doesn't seem to be willing to do anything that would upset Chinese officials. The America people are beginning to realize that while our national attention is focused on the war in Iraq—with all of its many-faceted problems—we have a most serious problem at home because of our China connection. I just hope and pray that the banks in China won't get mad and start calling our debts.

THE PRESIDENT FINALLY REALIZES THAT UNSAFE AND DANGEROUS IMPORTS ARE A PROBLEM

The Bush Administration has finally realized that unsafe and dangerous products being shipped into the U.S. from foreign countries pose major concerns. Although it has taken a while, at least the Administration is coming up with proposals to better police imports. I hope these proposals—in combination with congressional efforts—will help to make the food and products that are being imported safer. I wonder what it costs U.S. taxpayers for the folks to come up with proposals that consumer groups

like Public Citizen have been urging for years!

The ideas in the Bush plan aren't new and are simply either variations of some of the proposals that have already appeared in legislation on Capitol Hill or recommendations from agencies such as the Food and Drug Administration. In fact some of the earlier ideas actually came from business groups. The planners could have talked with Joan Claybrook, the president of Public Citizen, and saved lots of time and money. I'm sure Joan would have been happy to give the government planners access to the proposals Public Citizen has been making for years. But with the White House finally getting on board, maybe Congress will respond favorably and get something done. Unfortunately, the White House didn't attach budget and personnel numbers to their plan. Instead, the plan will use the normal funding-request process through Congress.

Source: Wall Street Journal

FORMER AIDE SAYS THE PRESIDENT DIDN'T TELL THE TRUTH

Former White House press secretary Scott McClellan is blaming President Bush and Vice President Dick Cheney for "misleading" the public about the role of White House aides in leaking the identity of a CIA operative. As I understand it the leak violated federal law. It now appears all of the information that McClellan put out to the media and the public concerning the involvement of Karl Rove and Scooter Libby was totally false. The former Bush aide now says that he had "unknowingly passed along false information" to the media and the American people.

McClellan names five of the highest-ranking officials in the Administration who were involved in the leak. They include Karl Rove, Libby, Andrew Card (who was the president's chief of staff at the time) the Vice-President and the President himself. This is most disturbing news and I am afraid it tells us lots

about this President and his Administration. I don't believe we have ever had an Administration that has done as much damage to this country as this one has done. The American people have every right to be fed up!

WEALTHY TELEVANGELIST BACKS GIULIANI

In a move that came as a real shock last month, televangelist Pat Robertson, founder of the Christian Coalition, endorsed Republican presidential candidate Rudy Giuliani. When I first heard that announcement on the nightly news, I thought the reporter had her names mixed up. It also crossed my mind that it was already "April Fool's Day." After I overcame my initial shock, I realized that the politically astute Robertson had actually endorsed the former Mayor of New York City, calling him "a proven leader who is not afraid of what lies ahead and who will cast a hopeful vision for all Americans." Robertson, who I suspect has always been motivated by money and a need for power, appeared at a news conference with Giuliani in Washington to make the endorsement.

The former New York mayor's backing of abortion rights and gay rights—positions that put him in direct conflict with conservative GOP orthodoxy—made this political marriage one that deserves a better explanation than we have gotten thus far. Giuliani has been trying to persuade evangelical conservatives like Robertson to overlook their differences on those issues. It's pretty hard to figure this endorsement out. But, when you consider that Pat Robertson, who has always been pretty much a political opportunist, has always had a nose for smelling out money sources, I guess he would endorse almost anybody if the price is right. In fact, when I was watching Robertson hug Rudy, I immediately thought of the movie with Tom Cruise, "Show me the Money." Regardless of Pat Robertson's involvement, Rudy Giuliani

is a man who really scares me when I consider that he could be President of this country. He is a master flip-flopper and his record is proof of that. Giuliani's record is totally in conflict with what Robertson professes to believe. It will be interesting to see what effect Robertson's endorsement will have. I predict it will have very little.

Source: NBC News and Associated Press

V. THE CORPORATE WORLD

CORPORATE BOSSES GET FIRED AND STILL DO WELL FINANCIALLY

The fact that Stanley O'Neal, a native of Alabama, was forced out as CEO at Merrill Lynch & Co., Inc. didn't come as a big surprise. However, some were surprised that he was rewarded rather well financially as he got the "corporate boot." O'Neal "retired" on October 30th after the company suffered the biggest quarterly loss in its 93-year history. Interestingly, O'Neal, who had been chief executive since December 2002, didn't have an employment contract. But because he was allowed to retire, instead of being officially fired, O'Neal was eligible to receive the \$160 million he has accumulated in an employee pension plan. That includes \$30 million in retirement benefits and \$129 million in stock and option holdings. Under O'Neal's leadership the company just lost \$2.24 billion. So I guess paying him \$160 million isn't too bad.

Interestingly, O'Neal isn't the "lone ranger" in the annals of really big walking-away pay packages for ousted CEOs. Although O'Neal did some good things for Merrill Lynch, he will be remembered best for presiding over a big push to increase the firm's proprietary risk-taking, and losing big as a result. Clearly, the severance package for O'Neal is not unique. During the period starting during the late 1990s, several

financial chief executives were awarded huge severance packages after driving their companies into the ground on risky strategies. Some of those were:

- Stephen Hilbert of **Conseco**, who took home an estimated \$72 million even though the value of the company's stock during his tenure sank from \$57 to \$5 a share and the company ultimately ended up bankrupt. Conseco's misstep, on Hilbert's watch, was buying home finance company Greenpoint Financial just before the last great subprime lending blowup.
- Frank Newman, the ex-chief executive of **Bankers Trust**, whose aggressive push into technology banking and lending, coupled with an unfortunately large position in Russian government bonds in the summer of 1998, brought the investment bank to the brink before it was rescued in an acquisition by **Deutsche Bank**. He walked away with \$55 million.
- Philip Purcell, who left **Morgan Stanley** after a shareholder revolt against him in 2005, and took with him \$43.9 million plus \$250,000 a year for life.
- Richard Grasso, who headed up the **New York Stock Exchange**, took \$140 million in deferred compensation and the disclosure of that payment sparked a furor that led to his departure. The pay also provoked an investigation and lawsuits, which are still being worked out.
- Douglas Ivester of **Coca-Cola** took \$120 million when he stepped down in 2000 in his mid-50s. The departure was deemed a "retirement," but Ivester had presided over a period of stagnant growth, declining earnings and bad publicity.
- Robert Nardelli was the big winner in the severance derby. He walked away from **Home Depot** with \$210 million. He fixed up the home prod-

ucts retailer using techniques he learned as an executive at **General Electric** but by 2006, he was starting to seriously irritate shareholders. The final straw was when he told the board to skip the annual shareholder meeting and curtailed the right of shareholders to speak at the meeting. He was ousted in January 2007.

- **Citigroup Inc's** Charles Prince was kicked out because of tremendous losses incurred by this powerful and politically influential company. We are now learning about how this company is in real financial difficulty.
- **Bear Stearns Cos Inc's** James Cayne and **Countrywide Financial Corp's** Angelo Mozilo are among other prominent U.S. chief executives currently under fire for failing to avoid losses from mortgages and this summer's seizing up of credit markets. There may be others in the banking industry who may lose their jobs because of the U.S. subprime mortgage crisis. But, they might do real well financially unless the current trends are reversed.

When you consider that most working families in this country pay their bills—pay their taxes—try to save a little bit for future needs—and are generally having a pretty tough time financially—the corporate greed that is evident in many of the corporate board rooms of America is sickening. It's time for a "political revolution" in America that will give regular folks some influence over issues that affect them daily!

Source: *Forbes*

FEDERAL JUDGE DOUBLES DAMAGES IN DRUG PRICING CASE

Pharmaceutical companies AstraZeneca and Bristol-Myers Squibb Company have been ordered to pay double damages in a case over false mark-ups of U.S. drug prices through 2003. U.S. District Judge Patti Saris, who sits in Massachusetts

District Court, found that the companies had acted willfully, and ordered AstraZeneca to pay more than \$12.9 million in total damages and Bristol-Myers to pay \$695,594. Plaintiffs in the class action lawsuit contended that the drug makers boosted published **average wholesale prices**, which until 2003 were the basis for reimbursements from Medicare, state governments, and private insurers.

In an earlier ruling in June, Judge Saris found that the two companies and Schering Plough Corp subsidiary, Warrick Pharmaceuticals, had grossly inflated the prices of drugs, including chemotherapy agents, to the detriment of the U.S. government's Medicare program for the elderly, insurance companies, and individuals. In the most recent ruling, Judge Saris wrote that the companies "knew that Medicare beneficiaries, and thus their insurer, were locked by statute into paying 20% of grossly inflated phony AWP's, which bore no relation to any average of wholesale prices in the marketplace." The judge did not double damages against Warrick.

The marked-up prices created what is referred to as a spread between a doctor or pharmacy's real cost and the drug's published cost. When their drugs faced competition, companies used spreads to make their drugs more attractive to doctors, who could pocket excess cash resulting from the scheme. The court has invited the plaintiffs to expand this case to a nationwide class action for the next trial. If that happens, it would give consumers across the country the same remedies this single-state case affords. As we have previously reported, several claims in the case have already been settled. GlaxoSmithKline, which is a defendant in the case our firm filed in Alabama, settled all claims before the trial. AstraZeneca also settled claims involving Medicare beneficiaries before the trial.

Source: Reuters

EX-BODY ARMOR CEO INDICTED FOR INSIDER TRADING

The former CEO of the nation's leading supplier of body armor to the U.S. military was indicted recently on charges of insider trading, fraud and tax evasion. The scheme, according to prosecutors, netted David H. Brooks, the founder and former chief executive of DHB Industries, more than \$185 million. The charges were outlined in a superseding indictment that named Sandra Hatfield, the former chief operating officer of DHB. Brooks and Hatfield were accused of falsely inflating the value of the inventory of DHB's top product, the Interceptor vest, to help meet profit margin projections. The vest, designed to withstand rifle fire and shrapnel, was made for the Marine Corps and other branches of the military. This appears to be another example of how some folks have profited tremendously in the Bush war.

Last year, Ms. Hatfield and Dawn Schlegel, the former Chief Financial Officer were indicted on charges of insider trading in the same scheme to inflate the value of the vests. Authorities allege the scheme propelled the company's stock from \$2 a share in early 2003 to nearly \$20 a share in late 2004. When they sold several million DHB shares at that time, Brooks made more than \$185 million and Hatfield more than \$5 million, according to the U.S. Attorney's office.

Brooks and Hatfield also are accused of failing to report to the IRS more than \$10 million in bonus payments to themselves and other DHB employees. In addition, Brooks is accused of using DHB funds to buy or lease luxury vehicles for himself and family members, and to pay for vacations, jewelry, cosmetic surgery, country club bills, and family celebrations. Prosecutors say he threw lavish parties for his children at which entertainers like Tom Petty, Aerosmith, and the Eagles performed. Brooks, who owns more than 100

horses and races them at harness tracks around the country, also used DHB funds for his private horse racing business, according to prosecutors.

Brooks resigned from DHB in July 2006, and Hatfield left the company in November 2005. The federal Securities and Exchange Commission (SEC) filed related civil charges against Brooks, accusing him of manipulating DHB's earnings and funneling millions of dollars out of the company through fraudulent transactions with an entity that he controlled. In a civil lawsuit filed in federal court in Miami, the SEC alleged that Brooks profited from selling his DHB stock at the end of 2004 when the stock price was at its height, and that he did so while possessing significant non-public information, in violation of insider trading laws. The SEC is seeking unspecified fines against Brooks, restitution of any ill-gotten gains, return to DHB of his bonuses and profits from stock sales, and a prohibition against him serving as an officer or director of any public company. If convicted, Brooks and Hatfield could face up to 70 years in prison.

How anybody could do the sort of thing these individuals did, while the men and women depending on them to supply body armor in Iraq were fighting a war, is beyond my comprehension. The fraud and corruption that has occurred during the Iraq war will go down in history as perhaps the worst ever. Profiting because of the war is one thing, but committing criminal acts and outright fraud is quite another. I have to wonder how many others who have lucrative military contracts are doing similar things?

Source: USA Today

NEW YORK ATTORNEY GENERAL TAKES ACTION TO PROTECT CONSUMERS

The office of the New York State Attorney General filed a civil lawsuit recently contending that the nation's largest mortgage and property services

corporation, its home appraisal subsidiary, and the nation's largest savings and loan giant conspired to inflate the value of home appraisals. The suit alleged that these defendants earned higher profits for the bank but left homeowners with mortgages that have balances larger than the home's market value. According to the complaint in a New York City court, at least 50 e-mails between executives from the mortgage and property services conglomerate, First American Corporation, its wholly owned subsidiary, eAppraiseIT, and Washington Mutual document a "raise the value" scheme. According to the Attorney General's office, the scheme was a response to the demands of savings and loan giant Washington Mutual. The bogus appraisals would in turn allow IT to write an increased amount of loans for more money than the collateral would justify. Attorney General Andrew Cuomo says:

The independence of the appraiser is essential to maintaining the integrity of the mortgage industry. First American and eAppraiseIT violated that independence when Washington Mutual strong-armed them into a system designed to rip off homeowners and investors alike. The blatant actions of First American and eAppraiseIT have contributed to the growing foreclosure crisis and turmoil in the housing market. By allowing Washington Mutual to hand-pick appraisers who inflated values, First American helped set the current mortgage crisis in motion.

These loans were profitable for Washington Mutual. To carry out the scheme, Washington Mutual allegedly asked that eAppraiseIT—which performs about 50,000 appraisals a month nationally—to use a "preferred list" of independent appraisers rather than appraisers from its own staff of more than 12,500. It is alleged in the complaint that their own

appraisers weren't putting the property values at levels that Washington Mutual was seeking.

First American's title insurance and services company is the largest in this country. It's one of several market-leading companies in the First American family. Others include Specialty Insurance, Mortgage Information, Property Information, and Risk Mitigation and Business Solutions. Currently, Washington Mutual is not a party to the civil suit. However, the attorney general doesn't have the authority to file suit against a federally chartered bank. Interestingly, Washington Mutual has suspended its relationship with eAppraiseIT—at least for now.

Source: *Wall Street Journal*

OUTLANDISH FEES ARE BEING CHARGED TO BORROWERS

As record numbers of homeowners default on their mortgages, questionable practices among a number of lenders have come to light. It was reported in the *New York Times* recently that questionable fees are being added to these loans. While many of the fees are for less than \$200 each, collectively they could result in millions of dollars going into the coffers of loan servicers. Considering that home foreclosures are becoming a national crisis, lenders taking advantage of borrowers is unconscionable and must be dealt with by folks in authority. It is being estimated that two million families would lose their homes by the end of the current mortgage crisis. While that's a sad state of affairs, it's equally sad that many of the lenders have charged fees to the borrowers that are either illegal or at best questionable.

Questionable practices by loan servicers are such a problem that the Office of the United States Trustee, a division of the Justice Department that monitors the bankruptcy system, is getting involved. Mortgage servicing companies that file false or inaccurate

claims, assess unreasonable fees, or fail to account properly for loan payments should be prosecuted. Those who are found guilty should be put in jail if possible, and fined to the full limits of applicable laws.

It appears that loan servicing is extremely lucrative. Servicers, which collect payments from borrowers and pass them on to investors who own the loans, generally receive a percentage of income from a loan. These payments range from 0.25% on a prime mortgage to 0.50% on a subprime loan. Servicers typically generate profit margins of about 20%. Servicers typically keep late fees and certain other charges assessed on delinquent or defaulted loans. This results in tremendous income and profits to the servicers. If default by a borrower can present a servicer with an opportunity for additional profit, the system is broken. *The Times* reported that there is little oversight of foreclosure practices and the fees that are being charged when foreclosures occur. As a result, as you can imagine, the potential for abuse is quite evident.

The amounts that are being charged on loans are significant. For example, late fees accounted for 11.5% of servicing revenues in 2006 at Ocwen Financial, a big servicing company. At Countrywide, \$285 million came from late fees last year, up 20% from 2005. Late fees accounted for 7.5% of Countrywide's servicing revenue last year. Unfortunately, these aren't the only charges borrowers face. Others include \$145 in something called "demand fees;" \$137 in overnight delivery fees; fax fees of \$50; and payoff statement charges of \$60.

Property inspection fees can be levied every month or so, and fees can be imposed every two months to cover assessments of a home's worth. It was reported that mortgage servicers are extracting millions of dollars from debtors that may be unlawful and illegal. In our firm, we have seen a number of cases where the fees, insur-

ance charges, and high interest rates on loans made it literally impossible for the borrower to make the required monthly payments.

In one such case—involving the purchase of a used car—the buyer wound up owing over \$11,000 on a car that on the lot was priced at only \$3,000. In addition, the insurance policy the young man was required to purchase at a rate of \$750 annually only covered the lender in the event the car was repossessed. Also, an origination fee of \$1,000 was added to the purchase price and was paid by the seller to the lender. When it became apparent that the young man—who was paying about 40% of his monthly check to the finance company—couldn't make his monthly payments, the car was turned in by agreement to the lender. The borrower was told that his debt was satisfied. However, a deficiency balance of over \$10,000 was later charged to him. We filed suit against the finance company and a jury awarded the borrower \$50 million.

We badly need to clean up what appears to be a corrupt subprime lending system. If you agree, please take time to contact your U.S. Senators and members of Congress. Ask them to make sure that immediate action is taken to remedy a very bad set of problems.

Source: *New York Times*

LAWSUIT FILED AGAINST CITIGROUP OVER SUBPRIME MORTGAGE LOSSES

A shareholder derivative lawsuit was filed last month against Citigroup Inc., former CEO Charles Prince, and other executives. The suit, filed in federal court in New York, involved losses related to the bank's subprime mortgage-backed securities portfolio. The lawsuit alleged that Citigroup executives recklessly purchased subprime loans to be used for future collateralized debt obligations and then made improper statements regarding the financial services company's exposure

to the subprime market meltdown. The suit also alleges some executives sold their own shares in the company while in possession of "material nonpublic information" about its exposure, securing more than \$36 million in proceeds. The suit further alleged:

Citigroup, under defendants' direction, recklessly spent billions of dollars purchasing subprime loans to be warehoused for future collateralized debt obligations. These actions were reckless due to the impending subprime mortgage crisis and increasing delinquency rates among subprime borrowers.'

The derivative suit follows a separate lawsuit filed earlier in New York on behalf of participants or beneficiaries of Citigroup's retirement plans, which alleged the company's stock was an "imprudent investment" for the plans because of mismanagement and improper business practices at the company. The derivative lawsuit, which was filed by a Citigroup shareholder, is seeking a judgment against the individual defendants for the amount of damages sustained by the company as a result of their alleged breaches of fiduciary duties. The suit also seeks to improve the corporate governance and internal procedures at Citigroup. It's significant that the company will write off between \$8 billion and \$11 billion to reflect declines in the value of its subprime-mortgage-related securities since September 30th. Citigroup is now trying to borrow enough money at high interest rates in order to keep its operations afloat. The bad news for the industry is there will likely be many more similar lawsuits filed against other companies operating in the subprime lending industry.

Source: *Insurance Journal*

JURY WILL HEAR TAPES OF EX-GENERAL RE EXECUTIVES

Last month we wrote about the multifaceted problems involving General Reinsurance Corp. (GenRe) and the reinsurance industry. Now it appears that jurors at the fraud trial of four former GenRe executives will get to hear a taped conversation in which a witness said American International Group Inc. (AIG) will "find ways to cook the books." A federal judge ruled that federal prosecutors will be allowed to play tapes at the criminal trial of former GenRe Chief Executive Officer Ronald Ferguson, three of his former colleagues, and Christian Milton, the former head of reinsurance at AIG. The five are accused of using a sham reinsurance contract to inflate AIG's reported reserves for claims by \$500 million. Jury selection was scheduled to begin on the 3rd of this month.

The actual trial of the case involving Ferguson, Monrad and Milton trial will begin on January 7th. The other defendants are Christopher Garand, a former senior vice president in charge of finite reinsurance, and Robert Graham, former assistant general counsel. While we will watch the criminal cases with interest, our firm's efforts will be focused on the civil case we are handling for the State of Tennessee. All of this would make a John Grisham novel look sort of tame—the sad part of this saga is that it's all true!

Source: *Bloomberg News*

ENRON HAD A BAD CASE OF FLEAS

My mama told me when I was about 10 years old that when you lie down with a pack of dogs that have "fleas," you will always get up "scratching." It took me a long time to really comprehend what she was trying to tell me. Now I realize that if you get involved with a bunch of con-artists or outlaws, it will cost you in a big way! That principle applies in spades to the companies that

helped Enron carry out a massive fraud. A prime example is Canadian Imperial Bank of Commerce (CIBC). This bank's decision to sell its U.S. investment-banking operations to Oppenheimer & Co. for a greatly reduced value—a minimum of \$50 million—is more than just interesting. It's a classic example of what can happen when greed takes over, resulting in a company doing stupid things.

The CIBC story points out how the Enron scandal has affected many others in the corporate world. You don't have to look any further than CIBC's involvement with Enron Corp to see why the company is now having all sorts of problems. From 1998 to 2001, according to the SEC, CIBC aided and abetted fraud at the energy trader by structuring 34 Enron financings as "asset sales" instead of loans. The SEC says that the transactions let Enron boost earnings by more than \$1 billion and avoid disclosing more than \$2.6 billion in debt. You may recall that in 2005, CIBC settled civil lawsuits related to its Enron entanglement for about \$3 billion.

CIBC wasn't the only company that took a financial hit because of Enron. Several big U.S. banks, including J.P. Morgan Chase & Co., also let corporate greed get them in big trouble. The problems for CIBC, however, may have been the worst of all. The settlement value was more than CIBC's annual profit. CIBC's arm in this country never fully recovered. CIBC will keep its Canadian investment-banking arm and will continue to operate a number of businesses in the U.S., including real-estate finance, merchant banking, and its oil and natural-gas advisory arm. The consequences of falling into the "Enron Trap" were tremendously damaging to CIBC. The sale of the U.S. business, which operates as CIBC World Markets, is a prime example of why it's important to do right. CIBC acquired the operation in 1997 when it bought Oppenheimer Holdings Inc. for \$525 million. In 2003, CIBC sold Oppenheimer's retail-broker-

age business and name for \$257 million to Fahnstock Viner Holdings, which changed its name to Oppenheimer. Let us just hope the new owners remember not to play with matches around a fire.

Source: *Wall Street Journal*

VI. PRODUCT LIABILITY UPDATE

EARLY WARNING RULE LEAVES PUBLIC IN THE DARK ABOUT HAZARDS

The National Highway Traffic Safety Administration issued a final rule a few weeks back, restricting public access to much of the "early warning" data that the auto and tire industry is required to submit by law to assist in the early identification of motor vehicle safety defects. As we have learned, the Bush Administration is addicted to secrecy, and that addiction has spread throughout the regulatory agencies. Despite losing in the courts, the Bush White House insists on trying once again to produce a rule that will keep the public in the dark about potential defects and other safety hazards in the cars they drive. What this final rule means is that President Bush and his advisors would rather protect the automobile and tire industries than the public. The early warning database is intended to give the public exactly what the name indicates: an early warning about potential hazards, so that it can protect itself and hold the Administration and industries accountable. If we don't know of potential dangers, however, we can't demand something be done to stop emerging problems from becoming widespread catastrophes.

Congress required NHTSA to create the early warning database in the wake of the Ford-Firestone deaths. In hearings in 2000, legislators were outraged to learn that an insurance investigator had compiled evidence of 20 cases of Ford-

Firestone problems and presented it to NHTSA in 1998—and that the agency then sat on its hands until the death toll had mounted so high that it made headlines. Congress wanted to protect the public's right to know about developing evidence of safety concerns, so it passed the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act in 2000.

NHTSA attempted to thwart the will of Congress by issuing a rule in 2003 that would keep early warning data a secret. Public Citizen challenged that rule in court, and in March 2006, won on the basis that NHTSA had not given the public an adequate opportunity to weigh in on this important decision. Although NHTSA finally gave the public an opportunity to voice its concerns, the agency refused to listen. NHTSA has just issued a rule that is basically a clone of the 2003 one. The bottom line is that the final rule relies on the implausible claim that release of the information will cause commercial harm to the industry. But on the other hand, keeping this information hidden will certainly cause great harm to the public.

NHTSA does make available information about death, injury, and property damage by make and model. But even that disclosure is being threatened by corporate interests. The Rubber Manufacturers of America have filed suit to demand that all early warning data be exempt from disclosure under the Freedom of Information Act. Public Citizen is opposing this effort and hopefully will be successful.

Source: *Public Citizen*

RV TIRE LITIGATION UPDATE

It's been several months since I wrote about the litigation our firm is handling involving the G159/70 22.5 RV tires. Since then we have learned even more about Goodyear and the RV Industry's knowledge about how dangerous these tires are when used on the

big, Class A motor homes. One of the major problems with the G159 tire is that it was not designed for use on Class A motor homes being operated at highway speeds. Instead, the tire was designed for use on “regional” and “metro” delivery trucks. To accommodate that use, it was made with a thick tread package designed for vehicles that constantly face curbs, potholes, debris and constant stop-and-go driving. The tire belts were also widened for this use. The problem with this design, when used on the big Class A motor homes, is that the tread package and wide belt design makes the tire run too hot at highway speeds. This can result in failures and separations, leading to accidents, injuries, and death. There have been instances where this very thing has happened.

After much work, and several court orders, we have obtained numerous documents and depositions that show knowledge of Goodyear and the RV industry of the problems with the G159 tire. The documents and testimony have been placed under seal so we can not specifically discuss them or disclose their contents at this point in time. We have also discovered the identification of over 30 lawsuits which have been filed against Goodyear and RV manufacturers over the past 7 to 8 years. In one case, which Goodyear settled in 2003, we filed a motion to intervene in a California federal court to try to lift the protective order and given access to some potentially damaging testimony against Goodyear. The judge has granted our motion. Hopefully, this will allow us to unseal the record. The G159 tire is no longer marketed as an RV tire. It was replaced by the G70V. Unfortunately, there are still thousands of G159 tires in use today. Based on their long track record of failures, these potentially dangerous tires must be recalled.

BAD CHINESE TIRES ARE STILL BEING SOLD

Since all of the Chinese toy recalls and related problems have dominated the news over the past several weeks, the safety hazard created by bad tires from China has been likely ignored. As you will recall, about 255,000 Chinese-made tires, imported by Foreign Tire Sales Inc. of Union, New Jersey, were recalled after the company's owner said he had discovered the tires may lack a layer of rubber designed to make them more durable. The tires were produced by China's Hangzhou Zhongce Rubber Co., which has defended the quality of its products.

The public assumes that the recall got these tires off the highways, but unfortunately there are tires for sale that are identical to the ones that were recalled. It has been reported that the DOT number has been taken off those tires. As you may know, the DOT number is used to identify the factory where a tire is made, as well as the week and year that a tire is made. NHTSA should make every effort to get all of the bad tires off the market. Hopefully, they haven't forgotten about this serious safety hazard.

Source: Wall Street Journal

DEFECTS MAY HAVE BEEN HIDDEN AT TOYOTA-GM PLANT

A whistle blower recently filed a lawsuit in California that will be watched closely by consumer groups. An employee at a plant in that state run jointly by General Motors and Toyota has accused her managers of allowing serious defects to go unchecked, including faulty seat belts and braking, and retaliating when she resisted. Katy Cameron, a certified auditor who has worked for 23 years at New United Motor Manufacturing, says management routinely deleted or downgraded defects from her reports on vehicles beginning in 2005.

The lawsuit requests unspecified damages for retaliating against the

whistle-blower and intentional infliction of emotional distress from NUMMI, Toyota Motor, Toyota in North America and General Motors. Defects that were intentionally passed over, according to the complaint, included broken seat belts, faulty headlights, inadequate braking, mirrors falling off, engine oil leaks, and steering wheel alignment problems—all in an effort to decrease the number of defects. While it's not clear whether any defects actually resulted in accidents, since safety would definitely be compromised if the allegations are true, I suspect there were. In fact, I am aware of at least two lawsuits where the vehicles involved came from this plant.

NUMMI, set up as a joint venture in 1984, produces the Corolla subcompact, Tacoma pickup, and Pontiac Vibe wagon. One of the plant's purposes was to have American workers learn Toyota's production methods. Numerous labor relations studies have studied the plant, and the company says teamwork and safety are among its “core values.” However, more and more quality problems are being experienced at Toyota, which traditionally has a good reputation for reliability. Toyota's recalls have increased sharply over the last couple of years, and the company has promised to beef up quality control. It's alleged in the complaint that GM is having to do things the “Toyota Way” and as a result safety is being compromised. This case will be watched very closely.

Source: Associated Press

VII. MASS TORTS UPDATE

A BREAKDOWN ON THE VIOXX CLAIMS PROCESS

As pointed out in the Capital Comments Section, the Vioxx claims have been settled for \$4.85 billion. Because

we have received a good number of inquiries about how the settlement process will work, I will briefly explain it. First, the Settlement Program is limited to cases that were filed in court or tolled through the MDL tolling mechanism as of November 9, 2007, and applies only to those cases where a heart attack, stroke, or sudden cardiac death was alleged in the complaint or tolling profile form. These are referred to as the “eligible” claims. Eighty-five percent of all eligible claims must agree to participate in the Settlement Program to trigger Merck’s duty to fund the settlement.

The Vioxx Settlement Program will evaluate individual cases based upon objective criteria only. In most cases, only injury “event” records, pharmacy records, and cardiology/neurology follow-up records are required for a claim to be processed. The submission of medical records for 10, 5, or even 3 years preceding an injury is not necessary. To qualify for compensation through the Settlement Program, eligible claimants must satisfy three threshold criteria:

- The medical records submitted must confirm the injury as alleged.
- Pharmacy records or other medical records must confirm the dispensation of 30 Vioxx pills in a 60 day period prior to the injury.
- Pharmacy records or other medical records must confirm Vioxx use within 14 days of the injury.

Once the three threshold criteria are established, an eligible claimant qualifies for compensation through the Settlement Program. But if the three threshold requirements can’t be established, the claim will be excluded from the Settlement Program. In that event, that claimant will then be required to pursue his or her claim through the tort system.

Once a claim qualifies for compensa-

tion through the Settlement Program, the Claims Administrator will objectively review the event records, pharmacy records, and follow-up records to determine the level of injury and duration of usage. The claimant’s age, level of injury, and duration of usage will determine the basis points to be assigned to the claim. The basis points will be adjusted upward or downward based upon the date of the injury. It will be determined whether the injury was post-Vigor, pre-Vigor label change, or post label change. The consistency of Vioxx usage by the claimant will be determined.

The Claims Administrator will then review the medical records for preexisting medical conditions (co-morbidities) that predisposed the claimant to a heart attack or stroke absent Vioxx ingestion. The existence of certain co-morbidities further reduces the award points by varying percentages, depending upon the severity of the risk. For instance, if the event records document a history of controlled diabetes, award points will be reduced by 20%. If, however, event records document a history of uncontrolled diabetes, award points would be reduced by 30%.

The Claims Administrator will provide written documentation of the points to be awarded each claimant. There is a limited right of appeal to a Committee as well as to a Special Master. The decisions of the Claims Administrator, the Committee, and/or the Special Master are final. There is no option to reject the award points and to return to the tort system for a trial by jury. Once a victim elects to stay in the settlement, that person must stay in.

Because the value of each award point cannot be determined until each claim has been evaluated by the Claims Administrator, final settlement amounts will not be available until the resolution of the entire claims process. However, to allow claimants to receive some settlement funds quickly, many claimants will be entitled to an early, initial payment of

40% of the estimated final settlement value of the claim. Those initial payments are anticipated to begin in August 2008. Only claimants who meet the deadlines in submitting all necessary materials to the Claims Administrator will be entitled to the initial payments.

A Lien Administrator has been retained to resolve all third-party government liens such as Medicaid and Medicare. Claimants and their lawyers are responsible for resolving any other third-party lien. We feel real good about this Settlement Program. It was designed to compensate qualified claimants quickly and efficiently and, most importantly, to pay very fair settlement values. If you have questions about the program, please call Roger Smith or Leigh O’Dell in our office at (334) 269-2343.

SOME OF THE DRUGS AND MEDICAL DEVICES THAT THE FIRM IS LOOKING AT

Even though the Vioxx settlement has gotten a great deal of media attention over the past few months, our firm still has lots more going on in the Mass Torts Section. We are currently working on a great number of cases involving drugs other than Vioxx, medical devices, and other products that fall in what we call the mass torts category. We have been able to keep the ship afloat—so to speak—even though by necessity Vioxx has gotten a great deal of attention in the Section. Some of what we are currently doing is set out below.

MESOTHELIOMA CASES

As you know, Mesothelioma is a deadly disease that comes only from exposure to asbestos. We are handling a good number of these cases. Mike Andrews is the contact lawyer at the firm on Mesothelioma cases. His email address is Mike.Andrews@beasleyallen.com. Tina Nix, who is Mike’s legal assis-

tant, can be reached at Tina.Nix@beasleyallen.com.

GADOLINIUM LITIGATION

Gadolinium, a chemical used to help treat diseased kidneys, causes a painful and incurable disease known as nephrogenic system fibrosis (NSF) or Nephrogenic Fibrosing Dermopathy (NFD), which hardens the skin. Gadolinium, a heavy metal, is injected into patients to help doctors capture medical images. The drug, manufactured by Bayer Corp., is distributed by McKesson Corp. and other companies. A recent warning from the Food and Drug Administration relates to NSF. As we recently reported, the FDA has asked manufacturers of all Gadolinium-based contrast agents to include a new boxed warning on the product label. As more and more people are becoming aware of the dangers of Gadolinium-containing contrast agents, more reports of these serious conditions are surfacing.

People who develop NSF or NFD may experience a thickening of the skin and other organs, which can limit their ability to move, extend joints and can lead to significant pain and even death. Other problems may include dark patches on the skin that appear rough and hard with raised plaques or papules, which are elevations of the skin. Joint and bone pain, as well as swelling of the feet and hands have also been reported. The FDA first warned about NSF and NFD associated with Gadolinium in June of 2006 and again in December of 2006. As of April of this year, the FDA had received a considerable number of additional cases involving these problems.

There are five Gadolinium-based

contrast agents which are FDA-approved. One is the Omniscan Contrast Dye, manufactured by GE Healthcare. It is designed for intravenous use in MRI for the brain and the spine. In a recent study, five of the nine patients diagnosed with NSF received an MRI involving Omniscan Contrast Dye. Other studies have shown similar results. The other Gadolinium-based agents include OptiMARK, Magnevist, MultiHance and Prohance. Manufacturers of these products include Bayer Schering Pharma, GE Healthcare, Tyco Healthcare and Bracco Diagnostic, Inc. We are currently investigating claims by patients involving these Gadolinium-based contrast agents. The patients have developed NSF or NFD. Chad Cook, who is the contact lawyer looking into these cases for the firm, can be reached at (334) 269-2343 or at his email address, chad.cook@beasleyallen.com. Chad's legal assistant is Tabitha Dean, and her email address is Tabitha.Dean@beasleyallen.com. If you need more information on this litigation feel free to contact either Chad or Tabitha.

FOSOMAX CASES

Fosamax is a prescription drug that has been linked to jaw bone decay. It is prescribed to women in an effort to treat or prevent osteoporosis. Frank Woodson, Leigh O'Dell and Chad Cook are the lawyers who are working on these cases for the firm. We have a number of clients who took Fosamax and who had significant injuries. We are heavily involved in the Fosamax Multi-District litigation. Chad Cook has been designated as the contact person on these claims. If you need more information on this drug and the related litigation, feel free to contact Chad or his legal assistant.

ORTHO-EVRA CASES

OrthoEvra is a birth control patch. Recently, the FDA disclosed that excessive levels of estrogen delivered by this patch can cause serious injuries and even death. The contact lawyer on these cases is Chad Cook. If you need more information on this drug and the related litigation, feel free to contact Chad or his legal assistant.

HORMONE REPLACEMENT THERAPY (HRT) CASES

For years, women have taken HRT to reduce the symptoms of menopause. Studies now show that HRT medications such as Prempro and Premarin can increase the risk of breast cancer, ovarian cancer, stroke and heart disease. Ted Meadows, who is the contact lawyer for the firm on these cases, is a member of the HRT Multi-District litigation team. You can contact Ted at Ted.Meadows@beasleyallen.com. His legal assistant is Amy Brown, whose email address is Amy.Brown@beasleyallen.com. Amy is also available to discuss these potential claims. We will be glad to discuss the HRT litigation with anybody who has such a need.

AVANDIA CLAIMS

GlaxoSmith Kline has sold Avandia, a diabetes drug, for years to a population of people who have problems with cardiovascular events from the disease. Studies now reveal that the drug itself substantially increases the risk of heart attacks on this unknowing, but highly susceptible population of patients. Last month, the FDA has finally required a black box warning for Avandia. Frank

Woodson, one of our lawyers in the Mass Torts Section, is the contact lawyer for the firm. We believe that a significant number of women will be adversely affected because of Avandia. Frank can be reached at frank.woodson@beasleyallen.com. You can also contact Cathy Perry who is Frank's legal assistant at cathy.perry@beasleyallen.com. We will be glad to discuss these claims if anybody has a need. Feel free to contact either Frank or Cathy.

PAIN PUMPS AND PAGCL

A study published by *The American Journal of Sports Medicine* (Postarthroscopic Glenohumeral Chondrolysis, July 2007) has identified intra-articular pain pumps (various manufacturers) as the likely cause of a condition known as Postarthroscopic Glenohumeral Chondrolysis (PAGCL). This is a devastating condition that can cause severe pain and stiffness in the affected shoulder, along with limitations on range of motion, reduced strength and the need for constant pain management. It is not uncommon for patients afflicted with PAGCL to require repeat surgical procedures. In many cases, the condition will ultimately require shoulder joint replacement surgery. We are presently working with a firm in Portland, Oregon and have a trial setting in the summer of 2008. We are also investigating a number of other potential claims and will likely file suit for a number of claims very soon. Ted Meadows is the contact lawyer on these claims. If you need additional information or would like to discuss any aspect of this litigation, feel free to contact Ted or his legal assistant.

KETEK CLAIMS

According to the U.S. Food and Drug Administration (FDA), the drug maker Aventis failed to act on reports of serious problems with a clinical trial on its antibiotic Ketek. It was also reported that the company didn't properly oversee the trial's conduct. The FDA detailed its concerns in a letter sent to Sanofi-Aventis SA, the successor company to Aventis, after a merger. The letter was posted on the agency's Web site. Ketek, which has been linked to a risk of liver damage, was approved by the FDA in 2004. Interestingly, the agency has said it didn't rely on the questionable safety study in approving the drug. Interestingly, the doctor who ran the site that enrolled the most patients in the study pleaded guilty to fraud. The study was supposed to answer questions about whether the drug was tied to side effects, including liver damage. It clearly appears to have fallen short of that goal.

The FDA said in the letter that visits from an Aventis contractor and the drug maker's own audits documented "serious protocol violations and regulatory noncompliance by multiple clinical investigators." The agency said it was "unable to find evidence" that the company either fixed the problems or threw the problematic doctors out of the study or informed the FDA. Aventis was also faulted for failing to make sure the study was properly conducted and for allowing unqualified investigators to participate in the trial. Ketek and the safety study have been the subject of investigations by Congress. Sanofi-Aventis added a warning to last year Ketek's label about the potential for liver risk. Our firm is looking at potential claims involving Ketek.

For more information, you can contact Frank Woodson who is the primary lawyer on these cases for the firm. You can also contact his legal assistant.

Source: *Wall Street Journal*

MEDTRONIC HEART DEVICES

As we have reported, the FDA has announced the recall of numerous implantable defibrillators manufactured by Medtronic, Inc. Two of the devices recalled on April 16, 2004, Micro Jewell II 7223Cx and GEM DR 7271, were implanted in 1997 and 1998. The Micro Jewell II 7223Cx is no longer being sold. These devices are considered a Class I recall, which is the highest priority recall. This recall is one in which there is a reasonable probability that, if a particular device is malfunctioning, the malfunctioning device will cause serious adverse health consequences or death.

Another recall was issued on February 10, 2005 for devices whose batteries were manufactured between April 2001 and December 2003. The devices included in this recall are the Marquis VR 7230, Marquis DR 7274, Maximo VR 7232, Maximo DR 7278, InSync Marquis 7277, InSync II Marquis 7289, InSync III Marquis 7279, and InSync III Protect 7285. According to Medtronic, Inc., none of the InSync III Protect devices were implanted in the United States. Ted Meadows is the contact lawyer on these claims. If you need additional information on these claims, you can contact Ted or his legal assistant.

BAYER TRASYLOL TRIAL HALTED

A clinical trial of Trasylool, which is Bayer AG's heart surgery drug, was halted recently after an increased risk of

death from bleeding was linked to the treatment. The drug, approved in 1993 and known generically as aprotinin, has been under a cloud for more than a year because of data suggesting it may boost the risk of death, serious kidney damage, and stroke. The Food and Drug Administration advised doctors in a notice posted on its Web site to be aware of the accumulating data suggesting an increased mortality risk.

The FDA says it will revisit the drug's safety issues, which may include label changes or other regulatory actions. Trasylol is aimed at preventing blood loss in patients with an increased risk for blood loss during heart bypass surgery. Bayer backs the safety of the drug and says that it is cooperating with the FDA and other health regulators to "reevaluate" its risks and benefits. The FDA said in its notice to doctors that the 30-day mortality risk in the Trasylol group in the trial was nearing statistical significance, compared with other treatments it was tested against. The drug was linked to less serious bleeding but more deaths from hemorrhage in an initial analysis.

An FDA advisory panel had recommended in September that the drug stay on the market despite its risks. The company was urged to conduct a randomly-controlled clinical trial, which is considered the "gold standard" for evaluating a drug. The drug's labeling was revised last year to narrow its use to patients with an increased risk of blood loss and transfusion, a warning that has substantially cut its use. Interestingly, Bayer has previously said it mistakenly withheld a study of 67,000 hospital records suggesting Trasylol may boost the risk of death, serious kidney damage, congestive heart failure, and stroke. Obviously, that is disturbing and is difficult to understand.

Source: Reuters

J&J SETTLES WRONGFUL DEATH SUIT INVOLVING A CHILD

Johnson & Johnson (J&J) has agreed

to pay \$1.25 million to settle a lawsuit over the death of a 14-year-old girl who used the company's Ortho Evra birth-control patch. The confidential agreement involved a Wisconsin resident who suffered two blood clots in her lungs on May 7, 2004, after using the patch for several weeks. J&J, the world's largest maker of health-care products, faces lawsuits by 2,400 of the 5 million women who used the patch. Most claim they suffered strokes or clots in their legs or lungs. The company settled dozens of cases before trial without releasing financial details. Our firm is currently handling a number of the patch cases.

The Wisconsin agreement, dated April 21st, and entered in a federal court in Ohio, was in the file of another Ortho Evra case in state court in Manhattan. The agreement was made available to Bloomberg News by a court clerk. J&J says it can't discuss the case because of a confidentiality order. The Wisconsin agreement was in the file of a lawsuit by survivors of an 18-year-old female who died on April 2, 2004, after using the patch. A confidential settlement was reached in that case on October 11th, but apparently the agreement was not part of a sealed court file. The next scheduled trial involves the death of a 17-year-old who died in late 2003. It is slated for state court in St. Louis in February of next year.

J&J failed to heed warning signs about the patch, which delivers the hormones progesterin and estrogen through the skin into the bloodstream. The company, based in New Brunswick, New Jersey, knew that the patch, which went on the market in 2002, caused more blood clots and deaths than the birth-control pill. The Food and Drug Administration warned in November 2005 that the patch may cause clots and expose women to 60% more estrogen than oral contraceptives. In February 2006, another study found a twofold increase in the risk of clots compared with women who took the pill. J&J

faces numerous product liability cases across the country. The company says in a regulatory filing that there is liability insurance available to pay claims.

Source: Bloomberg

FDA'S SCRUTINY OF DRUG MAKERS ABROAD FAULTED

Congressional investigators have found that the Food and Drug Administration has inspection records for only about one-third of the foreign manufacturers that may be making drugs for U.S. consumers. The Government Accountability Office (GAO), which as you know is the investigative arm of Congress, has found that the FDA "could not identify a previous inspection" for 2,133 facilities out of 3,249 on a list the agency used to set its inspection priorities. According to the agency, it does 241 annual examinations. As a result, the FDA only checks on 7% of the manufacturers each year—taking more than 13 years to give each one a single inspection—which is grossly inadequate. The GAO, in a preliminary report, said the FDA also is struggling to calculate precisely how many foreign drug makers it actually oversees. According to the GAO, the FDA inspected just 13 of China's 714 drug makers in fiscal year 2007, which were potentially supplying the U.S. with drugs. India had 410 facilities and 65 inspections for the year ending on September 30th. In its defense, the agency has struggled with budget constraints on its inspection force, a problem that has worsened under the Bush Administration and the Republican minority Congress.

Clearly, the FDA has failed to fulfill its duty to protect the public insofar as regulating the drug industry is concerned. It should be noted, however, that Congress has to share a great deal of the blame for the shortcomings. With the volume of prescription drugs and drug ingredients coming into the country from foreign manufacturers in developing nations such as India and China, the

FDA's budget for foreign inspections must be increased. Most of our readers will be shocked to learn the inspection budget is lower for 2008 than it was back in 2002. The public largely has been in the dark about the performance of the FDA. Up until the withdrawal of Vioxx from the market, and the vast amount of media attention that followed, most America citizens believed that drugs approved by the regulatory agency were safe for use. That belief no longer exists and certainly shouldn't when it comes to foreign imports.

Source: *Wall Street Journal*

SUIT AGAINST DRUG RESEARCH FIRM WILL PROCEED

A federal judge has refused to dismiss negligence and fraud claims against a research firm that allegedly conspired with a drug manufacturer to mislead the Food and Drug Administration. The judge rejected the argument that a research firm owes no duty of care to a patient who was later harmed by a drug that won FDA approval as a result of falsified test results. Instead, the judge found that when a research firm oversees the clinical studies and is aware of the drug's potential side effects, the firm may be held liable to patients. This is a sound decision because of the importance of clinical trials. The FDA depends on the information received from the drug companies relating to clinical trials. Significantly, the judge in this case also concluded that the plaintiff's state tort claims were not pre-empted by federal law.

Source: *Legal Intelligencer*

JURY VERDICT UPHELD IN INFANTS' TYLENOL CASE

A judge in Philadelphia has upheld a \$5 million jury verdict rendered over a 1-year-old's death allegedly due to liver failure from an overdose of Infants' Tylenol. According to the opinion, the

infant died March 2002 after being administered Infants' Tylenol for three days to treat his cold symptoms. The parents contended that their son died from acetaminophen toxicity and that the warning labels and directions on the Infants' Tylenol label were not clear that an overdose from acetaminophen, Tylenol's active ingredient, can lead to liver toxicity.

The defense lawyers claimed the infant's death was from an unrelated viral hepatic injury and that the parents had failed to follow the medicine's instructions and warnings. The jury, in deciding for the parents, found that the Infants' Tylenol warning labels were defective and contributed to the infant's death. The parents testified they would not have given the medicine to their son had the product included a warning that Tylenol for infants could cause liver damage or death. The trial judge ruled that parents had sufficiently proved that Infants' Tylenol is "unreasonably dangerous." The judge also ruled that federal law didn't preempt the state law warning claims.

Source: *Legal Intelligencer*

A SERIOUS GAP IN MEDICAL SAFETY EXISTS

At a time when powerful corporate interests and the Bush White House are joined at the hip, pushing hard for rules of preemption in federal regulatory agencies, it has become apparent that a serious gap in medical safety exists. Although this gap has been known to some of us who handle product liability litigation, it surfaced again when the Sprint Fidelis 6949 defibrillator's problems became public. As has been reported, the Minnesota Heart Institute found 6 cases where a broken lead wire caused serious problems to persons with the defibrillators made by Medtronic, Inc., a leading medical-device manufacturer. Soon thereafter, doctors around the country reported similar problems and many stopped

using the product. Medtronic finally admitted in October there was a serious problem and pulled all Sprint Fidelis models from the market, citing 5 deaths in the 3 years that the devices had been on the market.

The events leading up to the Medtronic recall exposed a most serious hole in the medical safety system in this country. Currently, medical devices are regulated under different standards than those applied to prescription drugs. While the regulation of drugs leaves lots to be desired, there is very little done in the way of regulation for medical devices, and therein lies the problem. Considering the potential for a major public health threat because of the recalled devices, it is difficult to understand how this gap could be allowed to exist. Instead of working to remedy the problem, the Administration in power in Washington views closing the court system to victims as the answer. That approach is just plain wrong, and we should be closing the gap when it comes to public health and safety. For that to happen we must do a better job of regulation. The court system also must be kept open and viable so that wrongdoers can be brought to justice and victims compensated.

BOSTON SCIENTIFIC INCREASES SETTLEMENT FUND

As you know, there is another company with serious defibrillator problems. Boston Scientific Corp. will increase by \$45 million the amount it will pay to settle thousands of heart patients' claims involving potentially faulty defibrillators. The medical device maker will now pay as much as \$240 million in settlement of the claims. The previous settlement announced in July involved a least 4,000 patients' claims involving Guidant Corp. defibrillators that were subject to recalls and safety warnings in 2005 and 2006. The expanded settlement covers 8,500

claims, including claims that had been consolidated into a multi-district litigation proceeding case in U.S. District Court in Minnesota, and other claims nationwide.

Proceedings in state court in Minnesota have been stayed because of the expanded settlement, reached in mediation conducted before a federal magistrate judge in Minneapolis. Boston Scientific, which acquired Guidant in April 2006, believes the expanded agreement covers "substantially all" U.S. cases arising from the recalls and warnings. The new settlement total is in addition to \$16.75 million that Boston Scientific announced in August it would pay to settle investigations into the defibrillator problems by Attorneys General in 35 states and Washington, D.C.

Source: *Associated Press*

VIII. BUSINESS LITIGATION

VISA AND AMERICAN EXPRESS SETTLE ANTITRUST LAWSUIT

Visa Inc. has agreed to pay American Express Co. \$2.25 billion to settle an antitrust lawsuit. As part of the agreement, which will have to be approved by its member banks, Visa will make an upfront payment of \$1.13 billion. The remainder, payable in installments of as much as \$70 million each quarter over the next four years, is contingent upon American Express's achieving certain quarterly performance criteria within its U.S. network-services business. Visa's U.S. member banks will ultimately pay for the settlement, in part through the proceeds the banks will get from the company's initial public offering, expected in 2008.

American Express sued Visa, MasterCard Inc., and eight of their member banks in 2004 for imposing rules that had prohibited financial institutions

from issuing credit cards through American Express. The lawsuit was filed shortly after the U.S. Supreme Court let stand a lower-court ruling that forced Visa and MasterCard to allow their member banks to issue credit cards on rival networks. Under terms of the settlement agreement, American Express will drop the remaining banks that were named as defendants in the original lawsuit. Those banks include J.P. Morgan Chase, Capital One Financial Corp., U.S. Bancorp, Wells Fargo & Co., and Provident Financial Corp., which is now owned by Washington Mutual Inc. American Express will proceed with the litigation against MasterCard.

Bank of America Corp., Household International Inc., which is now part of HSBC Holdings PLC, and USAA's USAA Federal Savings Bank also were named as defendants in the original lawsuit. They have since been dismissed from the case. The lawsuit stemmed from rules that Visa and MasterCard had in place from 1996 to 2004 that prohibited their 20,000 member banks from issuing American Express cards. The dismissed defendants had signed agreements with American Express since 2004. This appears to be a very good settlement. Significantly, it also tells us that when corporations become victims, they need for the court system to remain open to hear their claims.

Source: *Wall Street Journal*

AQUILA WINS \$24 MILLION JUDGMENT AGAINST MINING COMPANY

A federal judge has ordered C.W. Mining Co., a Utah coal mining company, to pay Aquila Inc. \$24.8 million in damages. This suit involved a purchase agreement that went bad. The judgment in a Utah federal court is the approximate cost of the coal Aquila had to purchase when the mine operator halted its delivery of coal. Aquila claimed in the lawsuit it had to implement more environmental controls on the coal it bought from other Utah

mines because the coal contained a higher level of sulfur.

C.W. Mining, also known as **CoOp Mining Co.**, had entered into a three-year agreement in 2003 with options to extend into 2008. C.W. Mining informed Aquila in 2005 that it would withdraw from the agreement because of labor and production issues. According to the agreement, Aquila was to pay C.W. Mining between \$19.40 and \$22.72 a ton for coal. When Aquila sought deals with other coal mines, the prices were as much as \$37 a ton. It's expected that C.W. Mining will appeal.

Source: *Kansas City Business Journal*

UNIT OF MORGAN STANLEY FILES SUIT

There is bound to be a great deal of litigation arising out of the sub-prime lending crisis because so many persons and even companies have been damaged. There will likely be a number of companies suing other companies who file suits against other companies. One such lawsuit involves a unit of Morgan Stanley, which has filed a breach-of-contract lawsuit seeking at least \$10 million against a Fremont General Corp. subsidiary. The suit was related to a series of agreements to purchase residential mortgages. The lawsuit, filed in federal court in Manhattan, alleges Fremont Investment & Loan breached a series of written agreements under which Morgan Stanley Mortgage Capital Inc. purchased hundreds of residential mortgages between May 1, 2005, and December 28, 2006. It's alleged in the suit that the breaches caused damages exceeding \$10 million. The complaint was filed by Morgan Stanley Mortgage Capital Holdings LLC, the successor-in-interest to the mortgage unit. The company exited its sub-prime mortgage business earlier this year and sold its commercial real estate lending business, following subprime market problems.

Source: *Wall Street Journal*

REAL ESTATE FUND FILES SUIT AGAINST HSBC

Another type lawsuit arising out of the subprime lending crisis involves a U.S. real-estate fund that believes it was victimized. Luminent Mortgage Capital Inc., a San Francisco firm that invests in residential-mortgage securities, filed suit against HSBC Holdings PLC, alleging that the British bank's U.S. mortgage-trading operations took advantage of the crisis to profit at the expense of the fund. The plaintiff contends that the New York office of HSBC placed an improperly low valuation on nine subprime-mortgage bonds, which the fund's subsidiaries had put up as collateral for loans. According to the complaint, HSBC bought the bonds at a deep discount to their fair value, in at least one case employing an auction that included only one other bidder. The complaint, filed in U.S. District Court in New York, seeks damages for HSBC's cynical use of the recent disarray in the capital markets to take advantage of its trading counterparts. The total face value of the bonds in question was \$24 million.

Just before the lawsuit was filed, Luminent's stock price had fallen more than 70% in a three month period. Many banks and investors faced serious problems this summer because of troubles in subprime mortgages. This triggered a much broader credit crisis. Market prices for many types of securities all but disappeared, forcing holders of the securities to come up with estimates of their value. Because those estimates often involved subjective criteria, they left a great deal of room for possible dispute. Real-estate investment trusts such as Luminent have suffered, as defaults on riskier mortgage loans have shot up and the value of bonds backed by those loans has been in a free fall.

According to the complaint, Luminent's problems with HSBC stem from transactions made in late July and early August, in which Luminent subsidiaries provided securities to the bank in

return for loans. In such repurchase deals, the borrower later repurchases the securities at the original cost plus interest. I suspect we will be seeing a great deal more lawsuits like the one filed by Luminent.

Source: *Wall Street Journal*

METROPCS SUES MERRILL LYNCH OVER RISKY INVESTMENT

Another example of the subprime lending crisis litigation involves big corporate clients, which also lost money on risky investments, and are now going to the courts for relief. One of them, MetroPCS Communications Inc., a Dallas wireless-phone-service provider, has filed suit against Merrill Lynch & Co., charging that Merrill brokers invested \$133.9 million of its cash in 10 auction-rate securities, which are considered low-risk investments and commonly used by companies to manage spare cash. Nine of them were issued by collateralized debt obligations (CDO's), underwritten by Merrill, and backed by pools of mortgage and other assets.

The lawsuit, filed in state court in Dallas, Texas, charged Merrill with fraud, negligence and breach of fiduciary duty in making the risky investments in violation of the client's stated goal of holding low-risk, highly liquid assets. Merrill, which has more than \$25 billion in the mortgage-related securities on its own balance sheet, disclosed a \$4.5 billion third-quarter write-down related to CDOs it held on October 5th. MetroPCS went public in April 2007 in a \$1.15 billion initial public offering with Merrill as one of its underwriters. MetroPCS shares have fallen by over 50% from mid-July.

Source: *Wall Street Journal*

SHAREHOLDER LAWSUIT FILED AGAINST MERRILL LYNCH OVER SUBPRIME INVESTMENTS

There is still another type of case being filed arising out of the subprime

lending mess—shareholder litigation. Life Enrichment Foundation, an international investor, has filed an investor lawsuit against Merrill Lynch & Co. The complaint contends that Merrill issued false and misleading statements about its exposure to risky mortgage investments. The lawsuit, filed in U.S. District Court for the Southern District of New York, seeks class action status. The complaint accuses Merrill of issuing materially false and misleading statements about its financial exposure to collateralized debt obligations (CDOs) containing subprime mortgage securities.

The suit alleges that the company's statements "were materially false due to their failure to inform the market of the ticking time bomb in the company's CDO portfolio due to the deteriorating subprime mortgage market." Also named as defendants are Stanley O'Neal, who was ousted as Merrill chairman and chief executive; firm Co-Presidents Ahmass Fakahany and Gregory Fleming; and Chief Financial Officer Jeffrey Edwards. The complaint was brought on behalf of those who purchased Merrill stock between February 26th and October 23rd of this year.

Source: *Reuters*

3M SETTLES LITHIUM-ION BATTERY SUIT AGAINST SANYO

3M Co. has settled a patent-infringement suit against Sanyo Electric Co. involving lithium-ion batteries used in computers and other electronics. The financial terms of the settlement are confidential. Sanyo, the world's biggest maker of rechargeable batteries, will license the technology from St. Paul, Minnesota-based 3M as part of the settlement. 3M, the maker of thousands of products including Post-it Notes and road signs, filed a lawsuit and U.S. trade complaint against Sanyo and other electronics companies in March. 3M has settled with Sony Corp., the world's second-largest consumer electronics maker; bigger rival Matsushita Electric

Industrial Co., maker of the Panasonic brand of electronics; and computer maker Lenovo Group Ltd.

All of the major battery manufacturing companies named in the complaint have now settled with 3M. Hitachi Koki Co., which makes electric tools, and CDW Corp., accused of selling infringing batteries used in Lenovo computers, remain as defendants in the case, which is pending in Duluth, Minnesota. The trade complaint is before the U.S. International Trade Commission in Washington.

3M has said it spent 10 years developing a technology that makes the batteries longer-lasting and less likely to overheat. Lithium-ion batteries are the most widely used power source in computers, mobile phones, and other portable devices. The batteries are rechargeable because of the movement of lithium ions out of the cathode, or positive electrode, and into the anode, or negative electrode. The patents relate to cathode material.

Source: *Bloomberg*

SETTLEMENT REACHED IN CONCRETE PRICE-FIXING SUIT

A second concrete company has settled with plaintiffs suing over a central Indiana concrete price-fixing scandal. The proposed settlement of \$4.7 million by Shelby Gravel will go into a fund for as many as 5,000 buyers of concrete who may be eligible for compensation from eight concrete companies and their executives who are defendants in the civil lawsuit. The Shelbyville-Indiana, based company does business as Shelby Materials.

In the federal government's criminal case against the concrete companies, which ended earlier this year, Shelby was granted immunity from prosecution in exchange for helping prosecutors build their case. Judge Sarah Evans Barker, who is overseeing the civil case in U.S. District Court in Indianapolis, has not certified it as a class action. The settlement is larger than the first one in the

case, a \$368,000 payment by American Concrete Co. Unlike Shelby Gravel, American is no longer in business. Plaintiffs could not seek triple damages against Shelby, unlike other corporate defendants, because of the amnesty it had been granted in the criminal case.

Source: *IndyStar.com*

FORMER EXECUTIVE FILES WHISTLEBLOWER SUIT AGAINST IASIS

A whistleblower lawsuit has been filed against Iasis Healthcare by Jerre Frazier, its former vice president for ethics and compliance. The company, which is based in Franklin, Tennessee, owns or leases 16 acute care hospitals and one behavioral health hospital with a total of 2,693 beds in service, and has total annual net revenue of approximately \$1.8 billion. During his tenure, Frazier served as Iasis' chief compliance officer and as chairman of its corporate compliance committee. Obviously, this put him in an ideal position to uncover corporate wrong-doing. The lawsuit, filed on behalf of the government in federal court under the False Claims Act, had been under seal until just recently.

Several of the top executives of Iasis formerly worked for Nashville-based HCA, the for-profit hospital chain that has paid the government a total of \$1.7 billion to settle multiple Medicare fraud cases. The lawsuit alleges that Iasis Healthcare illegally compensated doctors to refer patients to Iasis hospitals, and performed unnecessary medical services, including interventional cardiology procedures, to boost its profits. The complaint also alleges that Iasis Healthcare paid doctors for referrals in various hidden ways, including entering into contracts with doctors for sham medical directorships for which the doctors did little, if any, work to earn their pay; giving doctors below-market rent for office and lab space; making lease payments at above fair-market rates for catheter labs or other diagnostic equipment owned or controlled by

physicians; and offering other improper incentives and payments to doctors.

The lawsuit also alleges that many medically unnecessary procedures, including interventional cardiology, radiology and other procedures, have been performed at Mesa General Hospital at Mesa, Arizona; St. Luke's Hospital in Phoenix; Park Place Hospital in Port Arthur, Texas; Odessa Regional Hospital in Odessa, Texas; and Memorial Hospital in Tampa, Florida; as well as at other Iasis hospitals. This is an indication of how widespread this scheme was. As I have repeatedly stated, cheating the government appears to be a common practice on the part of governmental contractors. It must be stopped and the guilty must be punished severely.

Source: *The Nashville City Paper*

IX. INSURANCE AND FINANCE UPDATE

LOAN INSURANCE CLASS ACTION SETTLES FOR \$45 MILLION

A nationwide class action over credit life and disability policies, which are insurance policies that consumers buy when they take out retail loans, has been settled for \$45 million in a Georgia state court. Muscogee County Superior Court Judge Douglas C. Pullen gave the settlement preliminary approval last month. Consumers who are owed a refund of a part of their insurance premiums by JMIC Life Insurance Co. will receive payments. This is one of several similar cases still pending.

Purchasers of products on credit, such as cars, often are required by the seller to take out credit life and credit disability insurance policies as a part of the purchase. Consumers don't have a choice when they take out a loan to buy for such consumer items. The policies cover payment of the loans in case the consumer dies or is disabled before he

or she can pay off the loan. The premiums for such policies usually are paid once up front and rolled into the loan. The seller is most often the agent for the insurance company. The industry has been keeping hundreds of millions of dollars for years. When a borrower pays off a loan, the company fails to return the unearned premium, and therein lies the problem.

JMIC acknowledged in court filings that if insurance coverage ceases before its scheduled expiration date, customers can get back unearned premiums. JMIC allows an insured to cancel coverage for any reason at any time. Many states, including Georgia, require the customer to notify the insurer before a refund must be paid. Until a customer makes a claim, according to JMIC, the insurance company doesn't have the need—or right—to monitor the insured's financing information. If that's the law, it should be changed. The company should have the burden of notifying the borrower when the policy term ends prematurely for any reason. Most folks wouldn't even think about being owed a refund.

Credit life insurance is purchased to protect the creditor and borrower. If the borrower dies, the insurance company pays off the loan. A vast majority of credit insurance is prepaid in one premium, and many car loans are paid off early. Early termination means there's a part of the premium that the insurance company can't earn, because the risk insured against has ended. The suit contended that many of the borrowers with credit life or disability insurance don't get the unearned premium refunded to them. A fairness hearing in this case is scheduled for April of next year. The judge will then determine whether the settlement agreement should be approved.

The case was certified as a class action in 2005. Last year, a panel of the Georgia Court of Appeals upheld those rulings and the Georgia Supreme Court refused to review that decision. The

group of plaintiffs' lawyers included Jim Butler and Sammy Oates of Columbus, Georgia, and a host of others. It appeared these lawyers did a good job for the class.

Source: *Fulton County Daily Report*

ACE INSURANCE SETTLES MULTI-STATE BID-RIGGING CLAIMS

ACE Group Holdings has agreed to pay \$4.5 million to end a bid-rigging and price-fixing case brought by several states and the District of Columbia. The settlement funds will be divided among eight states and the District of Columbia. ACE Group Holdings Inc. and its subsidiaries are paying the multi-state task force to resolve allegations of bid-rigging and price-fixing in the commercial insurance market in their dealings with insurance broker Marsh & McLennan. The states of Florida, Hawaii, Maryland, Massachusetts, Michigan, Oregon, Texas, and West Virginia and the District of Columbia participated in the investigation and resulting settlement.

The multi-state investigation revealed that ACE participated in fictitious quoting and steering of business and other schemes in the commercial insurance market, orchestrated by Marsh & McLennan of New York. In the process, large and small companies, nonprofit organizations, and public entities that purchased commercial lines of insurance from ACE were misled into believing they were receiving the most competitive commercial premiums available.

Before the settlement, ACE provided reimbursement to a nationwide group of policyholders, and adopted business reforms that govern its bidding and underwriting practices. Under the consent decree and final judgment, ACE will be required to abide by those reforms and, upon the request of its customers, disclose the actual amount of payments made to insurance brokers. ACE said it has cooperated with the multi-state task force and will provide assistance to the states as they continue

their investigation of insurance brokers and other insurers. This settlement is the second in the state of Florida has reached with insurance carriers involved with Marsh & McLennan and other insurance brokers using "pay-to-play" tactics. Oregon had also reached an earlier settlement.

Source: *Insurance Journal*

COURT UPHOLDS STATE FARM POLICY LANGUAGE IN KATRINA CASE

A federal appeals court has upheld policy language that State Farm has used to deny hundreds of policyholders' claims on the Gulf Coast after Hurricane Katrina. Last month, the U.S. Court of Appeals for the Fifth Circuit overturned a federal district judge's ruling that a key clause in State Farm Fire and Casualty Company's homeowner policies is ambiguous and therefore cannot be enforced. State Farm contended that its policies cover damage from a hurricane's wind, but not its rising water. The insurer also says damage from a combination of wind and flood water can be excluded from coverage by "anti-concurrent cause" language in its policies.

A three-judge panel from the Fifth Circuit disagreed with the trial judge, siding with State Farm. The Fifth Circuit's ruling came in lawsuit filed by John and Claire Tuepker, State Farm policyholders whose home in Long Beach, Mississippi, was demolished by the 2005 storm. The Fifth Circuit also upheld the trial judge's ruling in the case that State Farm policies do not cover damage from storm surge, which is a hurricane's wind-driven water. This was a victory for State Farm and a bitter defeat for homeowners on the Gulf Coast.

Source: *Associated Press*

FLORIDA TITLE CO. TO PAY \$5 MILLION IN PENALTIES

Because of violations of the Florida Insurance Code and federal law, First American Title Insurance Company has

agreed to pay \$5 million in penalties and costs. Florida regulators alleged that First America paid “kickbacks” to builders, bankers, real estate agents, and brokers for the referral of business. First American will have to sever its business relationships with 87 of its limited partnership title insurance agencies in Florida. It will also have to conduct future business activities under strict requirements subject to review of a monitor who will report inspection results on a monthly basis for a period of one year.

Following a year-long investigation by the Florida Department of Financial Services (DFS), both the U.S. Department of House and Urban Development and the Florida Office of Insurance Regulation were invited to join DFS in obtaining sanctions against First American. The three regulatory agencies reached an agreement with First American last month. The investigation looked into whether First American had created and utilized limited partnership entities to act as sham title insurance agencies as a means of funneling prohibited payments for the referral of business. These entities enlisted real estate agents, mortgage brokers, banks, and homebuilders, all of whom referred business to First American’s sham title insurance agencies. This resulted in unfair financial gains to First American and its affiliated title insurance agencies.

Source: *Insurance Journal*

HEALTH NET FINED FOR NOT BEING TRUTHFUL

The State of California has fined Health Net Inc., the Woodland Hills, California-based insurer, a total of one million dollars. Health Net acknowledged that it set goals for cancellations and paid bonuses in part based on how many policyholders were dropped and how much money was saved. The fine was levied after the state found that the company misled investigators about such bonuses on two occasions during

interviews. At press time, Health Net’s cancellation practices were still under investigation by the State. If any violations of state regulations are found, the company will likely face additional fines. In a consent agreement, Health Net agreed to pay the fine—one of the largest in the history of the Department of Managed Health Care—and to no longer engage in compensation practices linked to coverage cancellations.

The State started looking into how frequently insurers cancel policyholders’ health coverage after they get sick and run up large medical bills. The fine comes as a result of the investigation. Although these rescissions affect only a small portion of the companies’ overall business, they can leave sick patients with huge medical bills and unable to obtain needed treatment. Retroactive cancellations have been the focus recently of intense scrutiny by lawmakers, state regulators, and consumer advocates in California. The managed-care agency is currently reviewing the coverage policies of five health maintenance organizations: Kaiser Foundation Health Plan Inc., PacifiCare Health Systems Inc., Blue Cross of California, Blue Shield of California, and Health Net.

California law forbids insurance companies from tying compensation for claims reviewers to their decisions on those claims. Insurers maintain that cancellations are necessary to root out fraud and keep premiums affordable. Individual coverage is issued only to the healthiest applicants, who must disclose preexisting conditions.

Source: *Los Angeles Times*

ALLSTATE PAPERS SHOULD BE MADE PUBLIC

A judge has ruled that secret company documents uncovered during a civil trial challenging Allstate Insurance Co.’s claims practices should be made public. In 1992, Allstate hired international consulting firm McKinsey & Co. to overhaul how the insurance giant handles claims. Allstate has fought

to keep the documents generated as a result of this work secret. The insurer has defied court orders in three states requiring it to produce these documents without protective orders. Allstate says the documents contain valuable trade secrets.

The judge ruled that the several dozen documents introduced at the recent trial were shown in a public hearing and should not be covered by a protective order. But the documents that were not introduced will remain under seal. I believe the public is entitled to have access to the documents. Allstate will appeal the ruling.

Source: *Herald-Ledger.com*

X. PREDATORY LENDING

MERRILL LYNCH SHOULD HAVE KNOWN BETTER

A great deal of attention was paid in this issue to the subprime lending scandal, and much of it deals with some very large companies. It’s difficult to understand how a company like Merrill Lynch & Co. could have fallen into the dark hole of subprime lending with all of its related problems. Until just a few weeks ago, the term “Collateralized Debt Obligations” didn’t mean much to most folks. Now the entry of Merrill Lynch into subprime mortgages and CDOs resulted in losses that are said to be about \$8 billion.

That is a sad state of affairs for a company that should have known better than to have risked its reputation and financial well-being on such an undertaking. Merrill has reduced its holdings of CDOs, which are full of asset-backed securities, to \$15 billion. When you consider that the company’s net worth is \$39 billion, the extremely serious nature of this problem for Merrill and its shareholders is most evident. When a company like Merrill Lynch is put in the

same category as the payday lenders, you can safely say the company's reputation has taken a really big hit.

SEC INVESTIGATES MERRILL'S PORTFOLIO

In a related matter, the U.S. Securities and Exchange Commission has launched an inquiry into Merrill Lynch's subprime mortgage portfolio. In its third-quarter report filed with the SEC, Merrill said it is cooperating with the government. The SEC staff initiated the inquiry on October 24th, the same day Merrill reported a \$2.3 billion loss for the third quarter, resulting mostly from write-downs of subprime mortgage-related assets. Regulators are trying to find out whether Merrill knew its problem was larger than what it represented to investors throughout the summer. I suspect the regulators will learn that Merrill did in fact know it had a serious problem. If Merrill didn't know, I would have to ask why not? If it develops that Merrill's bosses did know and withheld that information, there will be severe legal ramifications for the company.

Source: *Wall Street Journal*

XI. PREMISES LIABILITY UPDATE

SETTLEMENT IN RHODE ISLAND NIGHTCLUB FIRE LAWSUIT

Home Depot Inc. and a Connecticut insulation company have tentatively agreed to a \$5 million settlement in lawsuits brought by survivors of a 2003 nightclub fire and relatives of the 100 people killed. Atlanta-based Home Depot and Polar Industries Inc. and other defendants have agreed to settle with more than 300 people who filed suit arising out of the fire at The Station nightclub in West Warwick, Rhode Island. Even with this settlement, about

90 defendants remain in the suit. The agreement brings to \$18.5 million the total amount of settlement money available so far.

The fire began when pyrotechnics ignited by the rock band Great White set fire to flammable soundproofing foam around the stage. It appears that Polar Industries, based in Prospect, Connecticut, made insulation that was dangerous and defective. The material, called PolarGuard, was placed in the ceiling of the drummer's alcove by a previous club owner, presumably for soundproofing purposes. Home Depot, the world's largest home improvement store chain, sold the material. Several other defendants, including a pyrotechnic maker and vendor, an alarm company, and the realty company that leased the club to the owners, Jeffrey and Michael Derderian, agreed to settle earlier this year for \$13.5 million.

Mark Mandell, one of the lawyers for the families, has asked for the appointment of a law school professor to oversee the distribution of settlement proceeds in the case. Francis McGovern, a Duke University law school professor, will be appointed as special master by the trial judge. As you may recall, Professor McGovern taught at the University of Alabama School of Law and is recognized as a constitutional law scholar.

Source: *Associated Press*

WRONGFUL DEATH LAWSUITS IN CHICAGO FIRE SETTLED

The families of six children who died in a 2006 apartment fire on the North Side of Chicago have reached a \$6 million settlement with the owners and managers of the building. A lawsuit, filed last year by the victims' parents alleged the building's owners and managers failed to keep the building in a safe condition. It appears that a candle used for light in an apartment without electricity caused the September 2006 fire. Officials have reported that the apartment failed to have a working smoke detector.

The complaint alleged that a smoke detector located in the hallway outside of the three-bedroom, third-floor apartment did not work and had been recalled by the manufacturer in 1992. The family's electricity was off because they could not pay mounting bills. The lawsuit named Marshway Limited Partnership, Marshway LLC, and CIG Management LLC as defendants.

Source: *Associated Press*

CLASS ACTION FILED RELATING TO TRAIN DERAILMENT

A class action lawsuit was filed recently in Ohio against CSX Railroad on behalf of all evacuated residents and businesses in the area. The derailment of a freight train gave rise to the suit. CSX is being asked to pay for the home inspections, disruptions to businesses, and other expenses that were incurred after over 1,300 homes and businesses were evacuated when a freight train derailed in Painesville, Ohio on October 10th. At least eight of the 30 cars involved in the derailment were carrying potentially hazardous materials. Fires that started in several of the train cars were left to burn themselves out over a period of 60 hours, and residents had to find other sources for food, shelter, and clothing, until they were allowed to return home approximately four days after the derailment.

Source: *NewsNet5.com*

PARENTS OF BOY WHO DROWNED NEAR SCHOOL FILE LAWSUIT

A wrongful death lawsuit has been filed by the parents of a child who was a drowning victim. The 9-year-old was walking with friends through a field near a school in Kansas City, when rainwater swept him off his feet and into a drainage ditch. The child died on May 30th. In the lawsuit, filed against Kansas City and the North Kansas City School District officials, it was alleged that offi-

cials neglected the property around the drainage ditch. The ditch was unguarded and overgrown with vegetation. There were no sidewalks or shoulders along the street where the incident occurred and it was alleged that the child was “forced to walk across a field.” It was alleged that “the tall grass and murky water concealed a dangerous, unguarded entrapment,” and “that the defendants knew that children were frequently on the premises.”

The ditch runs along the street about 190 feet from a playground. It was filled with rainwater at the time. A strong current pulled the child under water and trapped him at the opening of a drainage tube. He was submerged for several minutes before neighbors pulled him out and tried unsuccessfully to revive him. The lawsuit says that the drainage ditch is on school district property, but that the city is responsible for maintaining it, including the streets, sidewalks and storm-water sewer. Within days of the death, school district officials acknowledged that the ditch is on North Kansas City School District property and took measures to make the area safer. Citing sovereign immunity and the district’s acknowledgment, the city has filed a motion to dismiss the suit.

Source: *The Kansas City Star*

FAMILIES OF FIREFIGHTERS WHO WERE KILLED FILE NOTICE OF CLAIM

The families of two firefighters, who were killed this summer fighting a fire at the former Deutsche Bank building, located near ground zero in New York City, have filed notices of claims contending that “dangerous conditions” and a failure to inspect for them turned the site into “a veritable tinderbox.” In the notices of claims the potential defendants are six government agencies, including New York State, the Empire State Development Corporation and the Port Authority of New York and New Jersey. In one of the notice of claim forms it was stated: “Routine inspections

would have revealed that the premises were a textbook firetrap” and “a looming deathtrap for those sent in to quell the inevitable blaze.” The filing of the notice is a prerequisite to the filings of wrongful death lawsuits.

Source: *New York Times*

FAMILY OF GIRL BADLY INJURED BY POOL DRAIN FILES SUIT

The family of a 6-year-old girl, who lost part of her intestinal tract after sitting on an open drain in a wading pool, has filed suit against the pool manufacturer and the country club where the accident happened. The child faces a small intestine transplant that will keep her hospitalized for six months. It is estimated that her lifetime medical expenses could total \$30 million. Named as defendants in the complaint were the Minneapolis Golf Club and Sta-Rite Industries, the pool equipment manufacturer, which is owned by Pentair Corp. Pentair has accused the country club of failing to maintain its pool equipment, but the Minneapolis Golf Club says its pools consistently pass city inspections.

The lawsuit alleges that the little girl was playing in the kiddie pool when she fell and landed on the uncovered suction outlet. She became trapped when the pump created a vacuum and her intestines were pulled out through her rectum. The child’s father wants the manufacturer of the pool cover to change their product and “take this one off the market.” It alleges in the complaint that Sta-Rite knew that its suction cover was a hazard, but failed to come up with a safer product. The lawsuit cites three previous dismemberments caused by Sta-Rite equipment. The manufacturer accuses the Minneapolis Golf Club of failing to properly install the cover and frame, failing to inspect it and failing to close the pool when the cover came off on the day of the accident.

It should be noted that several states acted responsibly and passed pool-

safety laws after children drowned or were disemboweled by drain suction. North Carolina, for instance, requires pools to have dual drains to diffuse the force of the suction and prevent children from being trapped. As you may recall, at the federal level, Congress has failed miserably to pass safety legislation. All of the bills were killed by the lobbyists for swimming pool manufacturers. Hopefully, the federal legislation will now pass since there is new leadership in the House and Senate. However, I must confess that there hasn’t been any real effort to get this done thus far. Meanwhile, until action is taken to mandate safety, there will likely be more incidents like the one described above. How many more deaths and disabling injuries will it take?

Source: *Associated Press*

XII. WORKPLACE HAZARDS

COURTS ARE SPLIT ON “TAKE HOME” ASBESTOS CASES

There have been a number of lawsuits filed by family members of workers who have worked around asbestos. These “take home” asbestos cases typically involve an employee exposed to asbestos at work who carries the dust and fibers home on his clothes, where other family members, such as a spouse or a child, are exposed and then become ill. Courts across the country are divided on whether to allow these cases to proceed. The central issue in all of these cases involves duty under state common law. The latency period in developing mesothelioma explains the increase in cases over the last few years. Mesothelioma has a 40 to 50 year latency period. Most of the exposure in these cases took place in the 1950s and 60s.

The primary issue in these cases is generally one of duty that involves

foreseeability. Some states have declined to find a duty, reasoning that no relationship exists between the employer and a non-employee family member. There also is an additional issue of causation. A common defense is “alternative causation,” i.e., whether there were other sources of asbestos exposure? For example, the spouse of a refinery worker who was exposed to asbestos and got mesothelioma may have also worked on cars and changed brakes. Or perhaps she was at home during major renovations and was exposed to asbestos in floor tile or joint compound. There are other sources of asbestos, but common sense dictates a finding that continuous exposure in the “take home” setting is a likely cause of Mesothelioma.

To date, the courts are almost evenly divided on whether to allow take home cases to proceed. The highest courts in Georgia, Michigan and New York have rejected these suits, while courts in New Jersey and Indiana have allowed them. Thus far Alabama has not had an opportunity for a case involving the take home issue to make it to the Supreme Court.

Source: *Lawyers USA*

MORGAN STANLEY TO PAY \$46 MILLION IN SETTLEMENT

Morgan Stanley has agreed to pay \$46 million in cash to settle a gender discrimination class action lawsuit filed by female financial advisers and trainees employed by the New York-based investment bank. The settlement has already received court-approval. The terms of the settlement included increasing female financial advisers' earnings by at least \$16 million over the next five years. The company is also expected to spend \$7.5 million on diversity-related programs. The suit was filed on charges of gender discrimination of female financial advisers and registered financial adviser trainees employed by Morgan Stanley's global wealth management group from August

5, 2003 through June 30, 2007. The settlement also calls for the company to make changes to its compensation policies and promotions. Morgan Stanley will also name two independent outside experts to develop a program aimed at increasing business opportunities for female financial advisers.

Source: *Associated Press*

OSHA FINES AGAINST CINTAS EXCEED \$3 MILLION

Proposed job-safety fines against Cintas Corp., the nation's largest uniform supplier, exceed \$3 million after federal regulators cited the Ohio company last month with 15 alleged violations at its Mobile plant similar to those at other sites. The federal Occupational Safety and Health Administration called for \$196,000 in fines, saying it was “disappointed to find so many of the same or similar hazards” at the Mobile plant after a number of safety problems, including the dryer death of a worker in Tulsa, Oklahoma. In August the agency proposed \$2.78 million in penalties against Cincinnati, Ohio-based Cintas following the death of the Tulsa worker who fell into an industrial dryer. OSHA inspectors also proposed \$117,000 in penalties against Cintas for worker safety hazards in Ohio and \$13,650 in penalties in Washington state. All the various fines are being appealed. Cintas has 34,000 workers at more than 400 plants.

In Tulsa, an employee fell into an operating industrial dryer and died while clearing a jam of wet laundry on a conveyor that carries the laundry from the washer into the dryer. Harris Raynor of Atlanta, vice president and Southern region director of a union representing laundry and service industry workers, said Cintas should try to prevent workplace tragedies instead of appealing OSHA fines and hiring costly health and safety lobbyists. Raynor's organization, New York-based Unite Here International, and the Teamsters, represent

about 400 Cintas workers.

In Mobile, where Cintas employs 126 workers, OSHA proposed penalties totaling \$112,500 for four repeat violations, including failure to protect employees from electrical shocks and failing to provide adequate machine guards and procedures to prevent inadvertent machine startups. OSHA said those four conditions are substantially similar to conditions discovered in other Cintas plants in New York state in 2004 and 2005. The agency also proposed a \$55,000 penalty for a potential fall hazard to the Mobile workers who periodically unjammed a conveyor. It called for \$27,500 in fines for eight serious violations, including unguarded pits and floor holes and a broken emergency stop button. A \$1,000 fine was proposed for two less serious violations of failing to record a work-related injury and for allowing an exit door to be partially blocked. OSHA says that over the past three years, Cintas has had about 36 government inspections at its facilities, which can be prompted by an accident, a fatality or a worker complaint, among other reasons.

Source: *Associated Press*

TROY MINE FOUND TO BE AT FAULT

Federal investigators have concluded mine management was at fault regarding worker safety at Troy Mine, an underground copper and silver operation, located in Troy, Montana, where an employee died during a cave-in last summer. The mine manager and a shift supervisor engaged in aggravated conduct constituting more than “ordinary negligence,” according to an investigative report relating to the July 30th accident. Revitt Minerals is the majority owner of Genesis, Inc., which operates the mine.

The report resulted from two Mine Safety and Health Administration inspections, both initiated just days after the cave-in that killed a 55-year-old mechanic. The first, a regular safety

inspection, resulted in 27 violations found at the mine. The other, a “complaint inspection” initiated by worker whistle-blowers, concluded with 24 additional violations. A third inspection, specific to the roof collapse that killed the employee, was not complete at press time, but the first two investigations include several citations relative to loose and dangerous rock conditions similar to those that crushed the employee’s truck. Of the 24 problems noted in the complaint inspection, 14 were directly related to inadequate “scaling,” which is the process of pulling loose rock off mine ceilings and walls, or insufficient support, the process of propping up potentially loose rock.

Source: Gazette News Service

TOXIC FUMES BLAMED IN DEATHS OF WORKERS

Toxic fumes are believed to have killed four workers whose bodies were pulled from a 20-foot deep well near a blacktop demolition company. Rescuers recovered the bodies from the well, which is located in Superior, Wisconsin, on the night of November 1st. The victims are believed to be employees of the company that owns the site. It was not known at press time why the victims were in the well or what they were doing. A sign near the site identified the business as Lakehead Blacktop Demolition Landfill. The well contained water and hydrogen sulfide fumes, which are commonly released with sewer products. The victims apparently were overcome, although autopsies will be performed in order to determine the cause of their deaths.

We are currently investigating a similar claim in Georgia where an employee was killed. Julia Beasley and Kendall Dunson from our firm are handling that potential claim. As you may know, hydrogen sulfide gas is poisonous, flammable and colorless and gives off a strong odor of rotten eggs. At high concentrations, people can lose the

ability to smell this gas, making it extremely dangerous. Brief exposure to high concentrations can cause difficulty breathing and loss of consciousness. In this incident, firefighters with breathing equipment led the recovery effort, and workers pumped water out to assist in the recovery. The victims died before the rescuers arrived. If you need additional information relating to hydrogen sulfide gas, go to the Web site of the Centers for Disease Control and Prevention, www.cdc.gov.

Source: *Associated Press*

CHEVRON TO PAY \$5.5 MILLION IN WRONGFUL TERMINATION SUIT

After a recent trial, a federal court jury found Chevron Corp. to be liable for retaliation and wrongful termination of Kiran Pande, a former petroleum engineer with the energy giant, and awarded \$5.5 million in damages. The San Francisco jury awarded \$3 million in compensatory damages and \$2.5 million in punitive damages to Ms. Pande. She said that her 15-year career with Chevron went downhill after she reported her supervisor, who is now Chevron’s chief compliance officer, for sexist conduct. According to trial testimony, Chevron deprived Ms. Pande of a promotion, a merit raise, and ultimately her job and benefits. It appears that the employee, who holds a Ph.D. from Stanford University in petroleum engineering, had received nothing but great performance reviews and Chevron considered her an expert in her field. All companies must take adequate steps to make sure that the workplace is free of the sort of thing that got Chevron in hot water in this case.

Source: *Contra Costa Times*

DOLE MUST PAY FARMWORKERS \$5.7 MILLION

A Los Angeles jury returned a verdict last month against Dole Food Co., Inc. and Dow Chemical Co. and awarded

\$3.2 million in compensatory damages to six Nicaraguan farmworkers. It was contended the workers had been rendered sterile some three decades ago by the international corporate giant’s application of a banned pesticide on the plantations where they worked. In the second phase of the trial the jury found that Dole acted maliciously in failing to warn its workers of the danger and awarded \$2.5 million in punitive damages against Dole. The California verdict marked the first case of foreign farmworkers prevailing in a U.S. court against Dole and Dow over harm resulting from the pesticide, DBCP. Four more lawsuits are pending in Los Angeles in which thousands of workers from Costa Rica, Honduras, Guatemala and Panama allege that they also were injured from the use of DBCP on plantations. Tens of thousands have sued worldwide over the chemical.

DBCP has been banned in most parts of the world. The chemical fights pests that attack the roots of fruit trees. It allegedly rendered sterile the workers who produced it. DBCP was suspended for most uses in the United States in 1977 after workers at a plant in Lathrop, Calif., were found to have low or zero sperm counts after working with the compound. Lawsuits against the manufacturer in those cases were successful. The chemical boosts the weight of banana harvests by 20%, which puts the issue of worker safety in direct conflict with corporate profits.

It’s significant that the verdict in this case came in a lawsuit involving field workers, not production workers. The point at which exposure becomes dangerous to field workers—through contact with the skin or inhalation—was a key issue in the trial. In the mid-1970s, Dow warned Dole of dangers associated with human contact with the chemical, and ended production. But Dole threatened to sue if Dow did not honor an earlier production contract. The company then accepted about 500,000 gallons of the chemical, includ-

ing quantities that Dow had reclaimed from other users, and sent much of it to banana plantations in Central America.

The jurors in the recent trial saw a 1963 warning from a Dole pineapple researcher that DBCP is hazardous. A 1960 Dow report concluding that spraying DBCP could cause “serious adverse effects” was also put in evidence. A memo, written in 1978 by a senior Dole executive, reflected a proposed policy that “people in the areas to be treated will be notified to the effect in the language of the workers involved.” But a comment found on the draft pretty well undercut any good intentions. That comment read: “This is not operationally feasible and does not need to be implemented.” It was obvious that the company had no real regard for the health and welfare of the workers. I suspect the litigation against Dole is far from over.

Source: *Los Angeles Times*

LINEVILLE LUMBER COMPANY CITED FOR SERIOUS VIOLATIONS

The Occupational Safety and Health Administration assessed more than \$45,500 in fines recently against Lumber One Company, a Lineville lumber company. The company exposed workers to safety hazards that were discovered after a worker died at its plant in May. The penalties were proposed by OSHA against the company after it was cited for 22 serious violations. OSHA launched the investigation after it learned that a piece of lumber was thrown from a rip saw that hit an operator and caused a fatal bruise to his heart. Inspectors uncovered numerous problems with the rip saw, including safety features that were worn and broken. Similar violations were found on two other rip saws. According to OSHA, the problems at the facility have since been corrected.

Source: *Associated Press*

MOTHER OF MASONRY WORKER SETTLES WRONGFUL-DEATH SUIT

The mother of a masonry worker killed in an explosion at a nearly completed pork-processing plant has settled a wrongful-death lawsuit for \$2.25 million. The worker, who was 24 years old, died on October 12, 2005, as he finished a wall at the Triumph Foods plant. Investigators determined that gas leaking from an uncapped valve fueled the explosion, which left 14 others injured. The settlement has been approved by the court. Plumbing contractor IHP Industrial, of St. Joseph, will pay \$1.5 million, which is the largest portion of the settlement. The other defendants are Triumph Foods, construction management firm Epstein and Sons and Southern Union Co., the parent company of Missouri Gas Energy. Each of these defendants agreed to pay \$250,000

Lawsuits, filed against these same defendants by the injured survivors of the blast, are still pending. It's claimed that the companies were negligent in failing to follow procedural safeguards that could have prevented the explosion. In addition to the lawsuit mentioned above, Triumph has several pending lawsuits. One of those cases, filed in Jackson County Circuit Court, is against Epstein and Sons, Missouri Gas Energy and about 20 other defendants, mostly insurance companies.

Source: *Associated Press*

XIII. TRANSPORTATION

SCHOOL BUS SAFETY IS THE ISSUE

The U.S. Department of Transportation has finally set seat belts standards for school buses. The National Highway Traffic Safety Administration should now act quickly to provide “guidance to the states,” on this important issue. New rules have been proposed by NHTSA to

improve the safety of school bus seats and expand the use of shoulder belts. States will have the option of using federal highway safety funds to retrofit its buses with seat belts. Unfortunately, NHTSA didn't provide any new money to cover those costs.

It's been a full year since the school bus crash in Huntsville killed four students and injured dozens of others. That incident caused the state of Alabama and other states to take a look at the problem. In addition, the DOT also got involved. Safety experts have been calling for seat belts on school buses for years. However, political influence and heavy lobbying have been successful in keeping seat belts out of the picture for buses thus far. Our firm is involved in the litigation arising out of the bus crash in Huntsville. In my opinion, it's time to stop studying and take action. It's my considered opinion that seat belts should be required for passengers in all school buses.

Source: *Associated Press*

NASA SHOULD REVEAL AVIATION SAFETY PROBLEMS

NASA is abandoning its secrecy claims and has promised to reveal results of an unprecedented federal aviation survey that found aircraft near collisions, runway interference and other safety problems occur far more often than previously recognized. The agency's chief also told Congress last month, however, that before any release NASA would “scrub the data” to ensure that none of the 24,000 pilots interviewed anonymously could be identified. The project will apparently take until the end of the year to do what a survey expert told Congress could be done in a week.

You might wonder what NASA has to do with safety issues other than those associated with space flight. But, it appears that the agency has a long history of aviation safety research. Its experts study atmospheric science and

airplane materials and design, among other areas. NASA had been under fire for withholding the information about near collisions. It is being reported that the agency was concerned that it would upset air travelers and hurt airline profits. NASA cited those reasons in refusing to turn over the survey data to The Associated Press, which sought the information for 14 months under the federal Freedom of Information Act. NASA's administrator, Michael Griffin, admitted at a hearing:

We did say that, and that was the wrong thing to have said, testified during an oversight hearing. I apologize. ... People make mistakes. This was a mistake.

Lawmakers from both sides of the aisle were harshly critical. According to Mr. Griffin, his agency will release the research data that does not contain what he described as confidential commercial information. NASA apparently spent \$11.3 million on the research. Many in Congress are not too happy with NASA's release timetable. Since safety issues are involved, the information should be released as soon as possible. NASA's research project showed many types of safety incidents occurring more frequently than were reported by other U.S. government monitoring programs.

Experts who worked on the study say it adhered to the highest survey industry standards. According to Jon Krosnick, a Stanford University professor who helped create the survey questions, the research was "state of the art." Dr. Krosnick told Congress that aviation experts from NASA and the Federal Aviation Administration, and the White House Office of Management and Budget and other groups reviewed the research plans. NASA's former head of the research project, Robert Dodd, told lawmakers the survey was based on "outstanding science," extensively tested and ready for meaningful analysis. He says that NASA's earlier explanations for

withholding the information were "without merit."

Interestingly, officials who have worked on the survey have said it contains no pilot or airline names. The questionnaire asked pilots to state how many times in the previous 60 days they had encountered a wide range of problems with equipment, weather, tower communication and other safety issues. There has been a great deal of interest on Capitol Hill to make NASA release the safety research. Also, there has been considerable pressure on NASA in the editorial pages of dozens of leading newspapers—among them *USA Today*, *The New York Times* and the *Chicago Tribune*—all urging the agency to release its research. The *Times* described NASA's reasons for withholding the information as "lame excuses." The survey project, called the National Aviation Operations Monitoring Service, was launched after a White House commission in the late 1990s recommended government efforts to reduce the incidence of fatal aircraft accidents significantly. Frankly, I can see no reason for NASA refusing to make this information public.

Source: *Insurance Journal*

STUDENTS AWARDED \$5.25 MILLION IN TB EXPOSURE CASE

A Texas jury has awarded \$5.25 million to six high school students and an adult chaperone in a lawsuit against a charter bus company that negligently exposed them to a bus driver with tuberculosis. The driver's employer claimed to not be aware of his illness. For six weeks, the driver had a chronic cough, coughing up blood, night sweats—all symptoms indicative of TB—and his employer never tried to find out what was causing all of this.

In the spring of 2004, health officials sent letters to the homes of the nearly 1,600 students at Alice High School in Alice, Texas, concerning possible exposure to tuberculosis. Tests showed that seven students were exposed to the

disease, and all were members of the school band. It didn't take long to identify the possible source. The band had recently taken its annual trip to San Antonio on a bus provided by Garcia Holiday Tours, and several of the students said the driver, was coughing violently throughout the drive. During his testimony, the driver admitted that his family had a history of tuberculosis and took full responsibility for the students' exposure. The key issue for the plaintiffs was whether Garcia Holiday Tours should have prevented the sick driver from coming to work and subjecting the children to such a contagious illness.

During discovery, the plaintiffs obtained Garcia's medical certification, which was registered in 1999, and was expired in 2001—three years before the trip. The company had not scheduled the driver to have his recertification physical until December of 2004—seven months after the bus trip. A week after the trip, the driver went to the doctor for his chronic cough and night sweats, and tested positive for tuberculosis. The pivotal testimony came on cross-examination when the owner of Garcia Holiday Tours said that although the company was not aware of the driver's sickness, someone should have taken into consideration his recurring illnesses.

Each victim was awarded \$750,000, which included \$125,000 in past damages and \$625,000 in future damages. The plaintiffs' were represented by Jason P. Hoelscher and David E. Harris of Sico, White and Braugh who are in Corpus Christi, Texas. The case was tried in the U.S. District Court for the Southern District of Texas.

Source: *Lawyers USA*

STUDENT'S WRONGFUL DEATH LAWSUIT CAN PROCEED

A court in Dayton, Ohio, has ruled that a lawsuit involving the death of a high school student killed while on a field trip to Wright-Patterson Air Force

Base can proceed. The issue before the trial judge was whether the duty owed by two bus companies Klug Bus Service and Queen City Transportation LLC, to the student ended once he left the bus during the field trip. The defendants contended that his fatal injuries came when he was hit by a car, and that they shared none of the liability for his death. The trial judge ruled, that at this stage of the case, the court didn't have sufficient information to determine liability or the bus companies' duties with regard to the student.

The 14-year-old student was killed in December 2006, as he tried to cross a five-lane highway in a Dayton suburb. The bus was returning from the Air Force base, and had stopped to let students get something to eat at a nearby restaurant. In the lawsuit, the student's parents contended that the bus driver should have known that at least some of the students aboard would try to cross the highway. The Kenton County Schools was not named in the lawsuit, but the district and the family reached a confidential settlement with the district's insurance carrier. The family also made an out-of-court settlement with the driver of the car that hit the student.

Source: *The Cincinnati Post*

UNION PACIFIC IS SAID TO HAVE PRESSURED FAMILIES INTO SETTLEMENTS

A lawsuit filed in Arkansas against Union Pacific Railroad contends that company officials pressured families of those injured or killed by trains to quickly settle for amounts lower than what they may have received with a lawyer's help. The suit alleges that officials came to families in emergency rooms or while they were still upset and grieving. Three Arkansas residents sued the company, asking for class action status to involve anyone injured or who lost a family member in crashes at crossings, on a rail or near one from 1992 to February 15, 2005. If granted class action status, as many as 300

people who settled cases with Delaware-based Union Pacific without a lawyer could be included as plaintiffs.

One of the plaintiff's daughter was killed in an incident involving a Union Pacific train. Two other plaintiffs suffered injuries in separate incidents. A hearing was held, lasting two days in late October. According to the three Arkansas residents, Union Pacific officials would tell those with claims that hiring a lawyer would do nothing but cost them money. Officials also would say hiring a lawyer would cause a lengthy delay in receiving settlement money. It is alleged that some company officials even told families that the company had tall buildings "full of experienced lawyers sure to win any injury or wrongful death case brought to court."

If these allegations are true, this sort of thing can't be allowed to go on. Lawyers for Union Pacific claim the company did nothing wrong, but also argues that if it did, the cases would be so different that they would have to be dealt with incident by incident, not in a class action lawsuit. The court will determine whether the suit will deal solely with the three Arkansas residents or whether it will receive class status so as to include others.

Source: *Insurance Journal*

LAWSUIT FILED OVER FATAL BALLOON ACCIDENT

The sister of a California woman who fell at least 70 feet to her death during the Albuquerque, New Mexico, International Balloon Fiesta in October has filed a wrongful death lawsuit against the balloon pilot, his employers and the Fiesta. The lawsuit, filed in a state district court, alleges that the defendants were reckless and caused the accident that led to the death of the 60 year old California woman. Three of her friends, who were in the balloon and were injured that morning, also are plaintiffs in the case.

The balloon the women were in—named "Heavenly Ride"—snagged a

utility line. The pilot threw down a tether to a pickup truck on the ground in an apparent attempt to reel the balloon down and free it, according to state police. The tether broke and the balloon bounced back up, causing its gondola to tip and the woman to fall out. Witnesses reported that the lady was screaming and flailing her arms as she fell. Paramedics tried to revive her but she was pronounced dead a short time later at University of New Mexico Hospital. The balloon, meanwhile, came free and drifted across a road near an interstate highway. It crash-landed, injuring the other women and the pilot. Two of the women had broken legs and another had lesser injuries.

The lawsuit names as defendants the fiesta pilot, his employer Star Trail, Inc. and Rainbow Ryders, the company the pilot was contracting with during the fiesta. The women had booked the flight with Rainbow Ryders. At press time, the accident was still under investigation by federal officials.

Source: *Insurance Journal*

BNSF WORKER WINS HIS LAWSUIT

A former engineer for BNSF Railway who was injured when five coal cars slammed into a locomotive has been awarded \$1.7 million in damages. The plaintiff sued BNSF, claiming he suffered career-ending injuries from two on-the-job mishaps. The jury awarded \$1,761,222 in damages after finding that BNSF's negligence caused the plaintiff's injuries in January of 2005, when the brakes on five linked coal cars failed at a rail yard near Gillette, Wyoming. The cars rolled down a side track and slammed into the locomotive where the employee was working.

The plaintiff, who was 52-years-old, suffered serious back and neck injuries that ended his 26-year career on the railroad. The verdict is the largest amount awarded by a Montana jury in a personal-injury case against a railroad

company. Just before the trial began, BNSF admitted liability for the incident. The lawsuit was filed under the Federal Employers' Liability Act.

Source: *The Gazette*

PARENTS OF FLORIDA GIRL KILLED IN ATV CRASH AWARDED \$3.6 MILLION

A jury awarded \$3.6 million last month to the parents of a 13-year-old girl killed in an ATV crash. The jurors found the family that owned the vehicle to be at fault. The parents of the teenager, who live west of Boca Raton, Florida, filed suit after their daughter was killed riding an ATV that should only have been operated by someone at least 16 years old. The jury found that the owners, along with their now 17-year-old son, were at fault in the 2003 crash in a gated community west of Delray Beach. The jury assigned most of the liability to the owners, along with 15% to a third party and 5% to the deceased child.

During the trial, the owners testified they were aware of the warning stickers on the ATV and had gone over the owner's manual with their son. The manual said riders had to be at least 16. The child was allowed to take a joy ride on the ATV and it was alleged she had no idea what she was doing. The little girl, who was wearing a helmet at the time of the crash, lost control of the vehicle as it veered off a grass shoulder and hit a tree. The impact threw her and a passenger off the vehicle. This was a tragic result that should never have happened.

Source: *South Florida Sun-Sentinel*

CONSTRUCTION ZONE ACCIDENTS OCCUR ALL TOO OFTEN

Motorists must be especially cautious when driving through construction zones on public highways. The large numbers of accidents occurring in these locations because of the hazards that exist indicate there is a serious

problem. Because there is always a great deal of activity in a construction zone, the potential for accidents is always great. Recently, a fiery wreck on Interstate 20 in Madison Parish, Louisiana, resulted in the death of two Bogalusa residents. The initial crash occurred about noon when an empty, westbound tanker truck entered a construction zone and hit the rear of a vehicle designed to absorb crashes. After the impact, the tanker crossed the median and struck an eastbound pickup truck hauling a camper-trailer head-on, causing a fire. The results of this incident were devastating. Drivers must be very careful when driving in a construction zone.

Source: *Associated Press*

RAILROAD CREW MISREAD SIGNALS IN TRAIN CRASH

A newly released report has shed light on the cause of a railroad accident that took place near Lincoln, Alabama. Glare from the sun led a conductor to misread a caution signal just before his locomotive slammed into the back of a stopped train at about 50 mph last year, according to the report from the National Transportation Safety Board. The fiery crash injured three crew members and forced several thousand people to evacuate or take shelter from potentially noxious chemicals spewing from a blaze that lasted for hours and could be seen some 40 miles away.

Last month, more than 1,000 people joined in a settlement of a lawsuit against Norfolk Southern Railway. According to the NTSB report, the stopped train—which was being operated by a student engineer—had been directed to pull over to a siding track to allow the other train to pass. But the stopped train did not completely clear the switch circuit, leaving the main track diverted onto the siding track, according to the report. As the following train approached at about 53 mph, the track signals displayed a red caution

light. But the conductor and engineer in the speeding train said they saw a "green over red" signal, with both the green and red lights illuminated. Since they had heard radio conversations indicating that the earlier train had pulled over, they continued at full speed, the report said.

In investigating the crash, which occurred in January of 2006, NTSB investigators said glare from the sun made the green signal appear illuminated in late afternoon, when the crash occurred. But they said there is no such thing as a "green over red" signal, so the conductor should have interpreted the mixed signal as a malfunction to be treated with utmost caution. The safety board recommended that Norfolk Southern do a better job of training its employees in handling errant signals. The report also said a positive control system on the train could have prevented the accident by intervening when the crew did not respond appropriately.

It should be noted that the settlement in the lawsuit hasn't satisfied all of the persons in the class. Settlement amounts are to be awarded based on a class of plaintiffs. The classes are divided by whether residents were evacuated, had the potential to be exposed to hazards or had homes in the evacuation or potential exposure zone. Some area residents have opted out of the settlement, saying the proposed payments are too small and could delay building a road needed for an improved evacuation route.

Source: *Associated Press*

INTERSTATE CRASH CASE SETTLED

A couple seriously injured last year when a tanker truck hit their car on an Interstate highway near Burleson, Texas, have reached a \$5.5 million settlement with United Petroleum Transports, the Oklahoma company that owns the truck. The settlement came after a lengthy mediation conference. Another person in a separate vehicle, who was

also injured in the multivehicle collision, received a separate confidential settlement. That vehicle, a Toyota RAV4, was crumpled to less than half its size in the wreck. All of the persons injured suffered severe and disabling injuries. Each was fortunate, however, not to have been killed in this horrific crash.

Source: *Associated Press*

XIV. HEALTHCARE ISSUES

GLOBAL WARMING IS A THREAT TO THE HEALTH OF CHILDREN

A new report reveals that children may be especially vulnerable to the effects of global warming. The report recommends that steps should be taken to safeguard their health as temperatures rise. The American Academy of Pediatrics has called on the nation's government and physicians to recognize the impact global warming has on children's health and develop strategies to protect children from potential harm. Beyond increasing the risk of heat-related conditions like heat stroke and dehydration, researchers say global warming exacerbates common childhood diseases such as asthma and allergies. Children are also at risk of losing a parent or caregiver due to extreme weather. According to the group's report, the following are examples of the effects global warming could have on children's health:

- Increased susceptibility to injury or death, posttraumatic stress, loss of caregiver, disrupted education and displacement as a result of weather events such as floods, hurricanes, and droughts.
- Damage to lung function and growth due to increased air pollution.
- Increased waterborne and food-borne illnesses, including infectious diar-

rhea, from increased temperatures and disrupted food supplies.

- Increase in infectious diseases spread by mosquitoes and ticks, such as West Nile virus, malaria, and Lyme disease.
- Increased exposure and vulnerability to heat-related conditions such as heat stroke and heat exhaustion.

Researchers say children are often most vulnerable to adverse health effects from environmental hazards. The group encourages pediatricians to be role models for minimizing greenhouse gas emissions linked to global warming by making changes such as switching to compact fluorescent light bulbs, reducing thermostat settings in the winter and increasing them in summer, and using cars less. Their report was presented at a meeting of the American Academy of Pediatrics in San Francisco. For more information on this subject you can go to www.aap.org.

Source: *CBS News*

WALGREENS PRESCRIPTION ERROR SAID TO HAVE KILLED CUSTOMER

Terry Paul Smith was taking methadone, a narcotic pain reliever back and leg pain. Mr. Smith, a 46-year-old roofer, filled the prescription at a Walgreens pharmacy. He took the first pills soon after returning to the long-term-stay motel where he'd been living with his wife and children. Within 36 hours, he was found dead, curled up on the shower floor in the motel room. It's being alleged that a small, yet catastrophic, Walgreens error in the directions on the pill bottle caused the July 2001 tragedy.

Walgreens, a rapidly expanding chain that is competing with industry rivals, has had its prescription-error problems. The case is the fourth prescription-error trial involving a fatality since September 2006 for the nation's largest drugstore chain in sales and profits. Jurors in Illinois, Arizona and Florida have awarded more than \$61 million in

prescription-error verdicts against Walgreens in the three previous trials. The Illinois-based pharmacy chain has challenged those verdicts. These cases could pose a safety and image challenge for the company that calls itself "The Pharmacy America Trusts."

There is a serious shortage of pharmacists in this country today. At the same time, the number of prescriptions for all retail, long-term care and mail-order pharmacies nationally rose from 3.3 billion in 2002 to 3.7 billion in 2006. The trends have resulted in the increased reliance by chain pharmacies on technicians, who have less training and lower salaries than pharmacists, to help fill prescriptions. We have seen that to be the situation in several cases we have handled involving misfill errors at chain stores. My recommendation is to deal with a drug store where you can be sure a trained professional will be filling your prescription.

In the case against Walgreens, there appears to have been lots of problems. Mr. Smith suffered with neuropathy, a disorder of the peripheral nerves that caused pain in his legs and back. He had been taking prescriptions for OxyContin and Neurontin, but he didn't like the way the drugs made him feel. The family's primary care physician prescribed a switch to 10-milligram pills of methadone on July 23, 2001. The prescription contained instructions to take four tablets twice a day for chronic pain. But the Walgreens pharmacy dispensed the prescription with instructions to "take four (4) pills as needed for chronic pain." The medication vial made no mention of any dosage limits.

Neither did anybody from Walgreens counsel Mr. Smith about how to take the painkiller. Instead, an employee handed the prescription out through the pharmacy's drive-through window. Mrs. Smith, the widow, says the employee asked, "You don't have any questions for the pharmacist, do you?" Mr. Smith took the methadone tablets several times over the next day and was found him

dead in the shower. The county medical examiner had the decedent's body exhumed for testing in October 2001. Because the autopsy report showed the man had died of methadone toxicity, it looks like Walgreens has some real legal exposure in this case.

Source: *USA Today*

SAFETY OF MEAT PACKAGING AT ISSUE

I don't believe anybody believes the controversial practice of adding carbon monoxide to meat packages is a good thing. It now appears that federal regulators may have relied on faulty data when deciding to allow the packaging, which keeps meat red even after it has spoiled, and that's very disturbing. A congressional subcommittee has uncovered e-mails from foodmakers in which workers questioned study data that lawmakers say went to government reviewers, who allowed the packaging in 2004.

In the e-mails, a Hormel employee said he was "puzzled" that the data didn't produce a "clear correlation" between microbial counts, gas and odor in tested meats—as would be expected. He was responding to a Cargill employee who, in another e-mail, questioned why meat with more odor had microbial counts similar to less smelly meat. A Hormel Vice President defends the data, which is a typical corporate response to a problem.

The U.S. Department of Agriculture in 2004 first said that the packaging might deceive consumers and that freshness dates weren't sufficient protection. The agency reversed itself six weeks later after Hormel and Cargill convinced then in some way that this sort of thing is fine. Hopefully the USDA will put a stop to the practice immediately. I believe adding carbon monoxide to meats should be banned.

Source: *USA Today*

XV. ENVIRONMENTAL CONCERNS

MOBILE JURY RETURNS A \$108 MILLION VERDICT IN LAND FIELD CASE

A jury in Mobile, Alabama, has ordered two companies to pay \$108 million in damages for dumping hazardous waste. The money was awarded to Dirt, Inc., a company that operates landfills for non-hazardous waste, against Canada-based ShawCor Ltd. and Houston-based Halliburton Corp. It was alleged in the suit, filed in U.S. District Court in Mobile, that hazardous waste was dumped in the landfill. The jury verdict consisted of \$100 million as compensatory damages and \$8 million in punitive damages. Bobo Cunningham, who is with the Mobile firm of Cunningham, Bounds, Crowder, Brown and Breedlove, tried the case and did an excellent job. The defendants say they will appeal the verdict.

Source: *Mobile Press Register*

DANA AGREES TO PAY \$2 MILLION IN AXLE CASE

Dana Corp., a maker of truck and car axles, which is in bankruptcy, has agreed to pay as much as \$2 million to settle about 7,500 personal injury claims related to gaskets that contained asbestos. A document outlining the settlement was filed with the U.S. Bankruptcy Court in New York. Dana estimates that the total payments on account of these settlements, if all claimants are able to submit the required proof to support their claims, would be approximately \$2 million. The company said it expects the payments to be partially reimbursed by their insurers. As of June, the firm faced about 150,000 asbestos personal injury claims related to the auto gaskets. A bankruptcy judge has approved the settlement.

LOTS OF RESPONSES TO LAST MONTH'S STATEMENT BY ADEM

As you know, I included information received from ADEM in the last issue. After the November issue was received, I received a pretty good bit of criticism for defending the agency. Actually, I wasn't really defending ADEM, but simply felt that the agency was entitled to give their side of the story. Even with all of the criticism, I don't regret doing that. Even so, it's pretty clear that lots of environmentalists aren't too happy with ADEM's performance.

It will be interesting to see how the agency performs in the coming months. Clearly, ADEM has an obligation to aggressively enforce the law, protect the environment, and punish polluters. I sincerely hope the agency will live up to its mandate and will work hard to shuck the label that ADEM has been little more than an extension of the industries it is supposed to regulate. There are some good and dedicated employees at ADEM, who, if given adequate direction and support, will get the job done. That direction and support must come from Governor Riley and the persons who make policy for the agency. Many believe that in the past the polluters have set policy and direction for ADEM. Frankly, I fear that has been the case. If so, it must not be allowed to continue by the current leadership at ADEM. Based on what they said last month, it has been stopped. Hopefully, that is an accurate appraisal.

FLOOD DAMAGE PROMPTS CLASS ACTION

Seven more defendants have reached settlements in a class action filed arising out the July 2004 flood in Burlington County, New Jersey. The flood of Rancocas Creek damaged 180 properties, including residences and businesses, and caused an estimated \$25 million in property damage. The property owners filed a class action against the public and private owners of dams that failed

during the flooding, alleging that the dam owners failed to maintain them.

In the most recent settlement, the seven defendants have agreed to pay \$1.85 million in damages, which must be approved by the Superior Court. This is the fourth settlement reached thus far, bringing the settlement total to \$4.9 million. After the settlement is approved, there will be 10 remaining defendants. We will continue to monitor this litigation.

Source: *Courier Post Online*

ASARCO JUDGE APPROVES \$158 MILLION MINING SETTLEMENT

Asarco LLC, a bankrupt Tucson copper miner, will pay the U.S. and three states as much as \$158 million to end litigation about pollution that was spread over 2,500 square miles and affected six American Indian tribes. U.S. Bankruptcy Court Judge Richard S. Schmidt, sitting in Corpus Christi, Texas, has approved the settlement. The states involved are Kansas, Oklahoma and Missouri. Before Asarco can decide how it will reorganize and emerge from bankruptcy, the company and its other environmental and asbestos creditors will settle their differences or Judge Schmidt must determine the value of the claims. Under the settlement, the federal government and the states will be granted unsecured claims in Asarco's bankruptcy case that may be worth as much as \$158 million once the company reorganizes.

Source: *Bloomberg News*

GROUT SEALER RECALLED DUE TO CONSUMER INJURY

The popular grout sealer, Stand 'n Seal, was voluntarily recalled by Roanoke Companies Group, Inc. (now known as BRTT) after numerous consumers experienced respiratory-related illnesses after using the product. The Consumer Product Safety Commission announced that prior to the recall there

were 88 reports of adverse reactions due to overexposure to the aerosol-delivered sealer. Twenty-eight of the reported reactions required medical attention for coughing, irritation, difficulty breathing, dizziness and disorientation. Furthermore, thirteen individuals required overnight hospitalization. The CPSC approximates that there were 300,000 cans of Stand 'n Seal sold before the recall.

Stand 'n Seal was sold by Home Depot without incident from 2003 through 2005. However, in 2005, Stand 'n Seal's manufacturer substituted the original active ingredient with the chemical Flexipel S-22WS, produced by Innovative Chemical Technologies (ICT). Unbelievably, BRTT (formerly Roanoke) made this ingredient change in spite of ICT's instruction that the Flexipel chemical was not, under any circumstances, to be used in an aerosol form for fear of respiratory damage. Affected consumers are particularly outraged that Roanoke did not notify the CPSC until several weeks after the initial respiratory difficulties were reported to the manufacturer. Had the manufacturer reported the early reactions, numerous consumers could have avoided the respiratory illnesses. Instead, the postponement put the safety and welfare of consumers at risk.

Source: *LawyersandSettlements.com*

REILLY PLATING TARGETED FOR TOXIC SPILL

On October 16th of this year, thousands of Melvindale, Michigan residents were evacuated after a toxic leak at a nearby metal finishing plant. Early in the morning hours, 3,000 gallons of hydrochloric acid were released from Reilly Plating carrying a gas plume into surrounding neighborhoods. Nearly 4,000 residents located within a 2 mile radius of the plant were cleared from the area to make sure that the highly corrosive acid did not cause further injury.

As a result of the acid leak, a class action lawsuit was filed on behalf of

Melvindale residents against Reilly Plating. The lawsuit seeks compensation for the inconvenience of the evacuation as well as injuries suffered as a result of human contact with the toxic substance. Nearby residents are also asking the court for injunctive relief to make sure that this type of accident is not repeated. In addition to the class action suit filed by the plant's neighbors, the City of Melvindale is also suing the company. Officials insist that the City should be reimbursed for the costly emergency response which was required after the leak. The city is also seeking damages for possible hydrochloric acid damage to the municipal sewer system.

After the spill, it was reported that Reilly had received several past safety violations and was not currently operating with an air quality permit. Additionally, the community was informed that the facility had a history of water discharge violations as well as similar spill occurrences. It clearly appears that Reilly has a spotty safety record.

Sources: *Detnews.com*, *LawyersandSettlements.com* and *Newsinferno.com*

CANCER LAWSUITS FILED AGAINST MONSANTO

There were 77 lawsuits filed last month against Monsanto, alleging that the negligent release of dioxins caused numerous plaintiffs to suffer from cancer. The toxic chemicals were purportedly emitted from Monsanto's plant located in Nitro, West Virginia. Each complaint seeks \$5 million in compensatory damages and collectively, the plaintiffs ask for \$300 million in punitive damages.

The Nitro facility produced the cancer-causing dioxin from 1949 until approximately 1971. During this time it is alleged that Monsanto engaged in two specific activities which allowed for the release of the dioxins into the surrounding communities. First, the complaints allege that Monsanto dis-

posed of the hazardous waste by using an illegal process called open pit burning. Second, plaintiffs state that Monsanto did not adequately control dust produced during the dioxin manufacturing process. As a result, more than 3,000 pounds of the toxic substance was released into Nitro residents' air. This negligent emission is evidenced by recent sampling of property surrounding the facility the results of which reveal 2,200 parts per trillion of dioxin. The EPA dioxin standard calls for a level less than 4 parts per trillion.

The complaints seek class certification to include "persons with one or more dioxin related cancers and who live or lived in the class defined area...for at least two years during the period 1949 to the present." The class definition is also comprised of individuals with cancer who were employed or attended school within the class defined area. The complaints state that there are approximately 12,503 residents in the area surrounding the Nitro plant. These cases will be watched closely as they progress.

Source: *The West Virginia Record*

CLARKE-MOBILE COUNTIES GAS DISTRICT SETTLES CLAIMS

Our firm, along with the firm of McCorquodale & McCorquodale, which is located in Jackson, Alabama, represented Clarke-Mobile Counties Gas District in a lawsuit against the following companies: Union Gas; Prior Energy Corporation; and ICC Industries; We were pleased to have recently settled all of the claims brought on behalf of the Gas District, which is a local gas district. The district's Board consists of the Mayors of the two cities in Clarke County, Alabama; namely, Jackson and Thomasville, along with the town of Grove Hill. This case has been in the courts for many years and involved allegations of mismanagement and fraud.

In approximately 1994, the Board of

the Gas District was not getting what it believed were proper answers to questions about management of the gas district by a company called Union Gas. At that time, the Gas District hired the McCorquodale law firm to investigate what was going on. After the investigation was completed, a lawsuit, which included counts for fraudulent suppression, conspiracy and breach of contract, was filed.

Union Gas ultimately cancelled the contract they had to manage the Gas District. What we did not know, and what wound up being a major basis for the lawsuit, was that Union Gas had a secret deal with a company known as Prior Energy Corporation, which was owned by ICC Industries, Inc. That company was attempting to buy Union Gas and the contract that Union Gas had with the Gas District increased the value of Union Gas tremendously. We are confident it would have been proved that during the time in question Prior Energy was actually managing the Gas District. Prior Energy directed an employee as to what to do while at the same time selling gas to the Gas District. That was a clear conflict of interest. We alleged that a conspiracy existed between ICC, Prior Energy and Union Gas to defraud the Gas District by taking over its operations. The lawsuit ultimately stopped the purchase of Union Gas by Prior Energy.

The case was resolved by having the defendants pay \$1.5 million to the Gas District and having them forgive a disputed judgment over gas the defendants had sold the Gas District during the time the conflict of interest was in existence. We were pleased that our client, the Gas District, was able to resolve this dispute short of a trial. This was a good settlement for our client and their customers. Rhon Jones and Mac McCorquodale handled this case for the Gas District and did a very good job. Mac, who is an outstanding lawyer, did excellent work on this case and we

enjoyed working with him on this most interesting case.

XVI. TOBACCO LITIGATION UPDATE

APPEALS COURT UPHOLDS \$500,000 VERDICT AGAINST TOBACCO MAKER

The Florida Court of Appeal has upheld a \$500,000 jury award against Liggett Group to a longtime smoker diagnosed with lung cancer. The court upheld the product liability claim, but ruled that the tobacco maker was not negligent for continuing to manufacture cigarettes after it knew they were harmful. Ms. Beverly Davis, the plaintiff, had smoked cigarettes made by Liggett from 1951 to 1974, when she switched to a brand manufactured by another company. She sued Liggett in 2002, one year after she was diagnosed with lung cancer. The trial court had instructed the jury to consider two claims: negligence, based on Liggett's continuing to manufacture cigarettes; and strict product liability. Liggett argued that the negligence claim was preempted and the appellate court agreed.

Edward Sweda, senior staff attorney for the Tobacco Products Liability Project at Northeastern University School of Law in Boston, said the ruling was "obviously a victory" for the plaintiffs. Giving the okay to the design defect claim was significant. The order made it clear that the claim is not preempted by the federal Cigarette Labeling and Advertising Act.

Source: *Lawyers USA*

XVII. THE CONSUMER CORNER

CONSUMER PROTECTION AGENCIES ARE FAILING AMERICAN CITIZENS

Effective consumer protection in America has been sorely lacking at both the federal and state levels for years. It's evident that the federal agencies charged with making America fair and safe have been undercut and underfunded for decades. Interestingly, it appears Congress has just now discovered there is too much work for the staff of the Consumer Product Safety Commission to do since the agency only has 400 employees. You should be shocked to learn that the head of the agency, Bush Administration appointee Nancy Nord, is actually opposing a bill that, if passed, would increase the number of employees at the CPSC. That's impossible to understand from a consumer's perspective. Her stance on a badly needed piece of legislation doesn't meet the "smell test." I will take a brief look at several of the agencies which are supposed to be protecting consumers.

THE CONSUMER PRODUCT SAFETY COMMISSION

When the CPSC was created in the 1970s, it had a staff of 900 and now it's fewer than half that number. At a time of unprecedented growth in world imports, and a record number of product recalls, the agency's staff has never been smaller. For example, *The New York Times* recently reported that the agency has essentially one person assigned to inspect new toys. The CPSC has failed to do its job, which is to protect consumers in this country.

THE FEDERAL TRADE COMMISSION

The Federal Trade Commission is another agency that should be a champion of consumer protection in America. In 1979, the FTC had 1,746 full-time employees. By 2006, that number had shrunk to 1,007—down nearly 40%. Interestingly, the work load at the FTC has shot up drastically. In recent years, in addition to what it was already doing, the FTC picked up a few more duties. Those include Internet fraud, identity theft and the Do Not Call list, just to name a few. Invention of infomercials, digital advertising, and the addition of 75 million more people to the U.S. population has added to the FTC's responsibilities. The FTC has to deal with all sorts of things, including false advertising and other unfair or deceptive trade practices.

But given the massive staffing cutback, it's no wonder that our nation's airwaves are full of questionable if not totally false advertising, and lots of pure filth. The FTC's warning about unfair and deceptive mortgage advertisements was so late that it was totally useless because just about every last potential victim of an exotic mortgage already had one. The FTC files occasional lawsuits and tries to make examples out of as many cheaters as it can, but those serve as little more than putting a thumb on a leaking dam at a large body of water.

THE FOOD AND DRUG ADMINISTRATION

The Food and Drug Administration has 1,000 fewer food inspectors now than it did 10 years ago. That's hard to figure at a time when imports from countries with far different food safety standards than

ours have increased dramatically. The agency's plan to close about half its field inspection office and outsource some of its work hit a road block—the result of all the recent imported food scares. According to a recent *New York Times* story, a typical inspector must review 1,000 "food entries" every day. Congress has heard testimony that the FDA can't even keep track of what foreign firms it inspects, and probably two-thirds of foreign drug makers are never inspected.

Over the years, at the national level, the Republican Party has taken a clearly defined anti-regulation stance. The GOP leadership has worked hard to make American citizens believe that regulation was a dirty word. According to the GOP spin, the federal agencies that formulated and enforced rules and standards were blamed for all of the economic hardships our nation has faced. Most all political candidates who ran under the GOP banner bought into that baloney and made it a part of their platforms. Actually, the result has been a dismantling of regulatory powers and the freedom by some in Corporate America to exploit consumers.

Unsafe products have been one of the obvious consequences. It's apparent that rules, regulations, and standards are needed to maintain fairness and safety in the marketplace. We also need people in positions of authority, who are not controlled by industry, to enforce the rules, regulations, and standards that are promulgated. Regulation is a basic government function—one that's been abdicated for far all too long—and now it's badly needed. Hopefully, the current health and safety crisis created by the "China problem" has waked the public up sufficiently so that Congress will be forced to get involved and take action. People power can override the influence of corporate lobbyists, but only if regular folks will get involved and let the politicians hear from them.

THERE IS AN UNSAFE TOY CRISIS IN THIS COUNTRY

As we approach the Christmas season, we must be concerned over the recent recalls of toys. As pointed out, the CPSC is unable to adequately deal with the current crisis involving unsafe toys that are being imported primarily from China. I feel sure most American citizens were shocked to learn that the CPSC only has one person who inspects toys for any reason—including safety. The number of recalls involving toys with high levels of lead content are so numerous that hardly a day passes without a new toy being added to the growing list. It's inconceivable that our government has done such a poor job of protecting our children from this health and safety hazard. Since we obviously can't depend on the CPSC to protect our children from unsafe toys, parents must be especially diligent when buying children's gifts for Christmas.

Despite the record number of recalls this year, potentially dangerous toys were still on store shelves days before the start of the busy holiday shopping season. The following are among the biggest toy hazards cited by CPSC:

- Riding toys, skateboards and inline skates that could cause dangerous falls for children.
- Toys with small parts that can cause choking hazards, particularly for children under age 3.
- Toys with small magnets, particularly for children under age 6, that can cause serious injury or death if the magnets are swallowed.
- Projectile toys such as air rockets, darts and sling slots for older children that can cause eye injuries.
- Chargers and adapters that can pose burn hazards to children.

It's a sad commentary on the federal government's chief regulator when

private consumer groups are doing a much better job of protecting consumers than does the CPSC. Consumer groups such as Public Citizen, U.S. PIRG, the Center for Environmental Health, and many others should be commended for their diligent work on behalf consumers. Hopefully, Congress will force the CPSC to do its job and will give the agency any needed legislation and funding required to get the job done.

Source: *Forbes*

SAFETY GROUP RELEASES 10 WORST TOYS LIST

One of the toy safety groups, World Against Toys Causing Harm, has released its annual "10 Worst Toys" list. While the group has released the list around the holidays for 35 years, it has taken on a deeper significance this year because of the rash of recent recalls, particularly of toys made in China that have occurred. I will list the toys on the 2007 WATCH list and the companies that make them below:

- **Go Diego Go Animal Rescue boat**, by Fisher Price, contains lead paint.
- **Sticky Stones**, by GeoCentral, contains magnetized stones that, if swallowed, could stick together across the intestines, causing serious infections and death.
- **Jack Sparrow's Spinning Dagger**, by Zizzle, is seen as an eye hazard.
- **Dora The Explorer Lamp**, by Funhouse, has the potential for electric shocks and burns.
- **Lil "Giddy Up" Horse**, by Sassy Pet Saks, Douglas, contains fibers and small parts that could be a choking hazard.
- **Spider Man 3 New Goblin Sword**, by Hasbro, contains rigid plastic which could cause injuries.
- **Hip Hoppa**, by Spin Master Ltd. and Vivid Imaginations, Ltd., is a combina-

tion footboard and bouncing ball that children jump on has the potential for head and other injuries.

- **B'Loonies Party Park**, by Ja-Ru, Inc. Has potential for chemical ingestion. Children blow balloon-like toy out of substance squeezed from tube.
- **My Little Baby Born**, by Entertainment, Inc. and Zapf Creations AG has a hazard since the baby doll comes attached to tiny pacifier that could be swallowed.
- **Rubber Band Shooter**, by Simple Toys LLC., Shoots rubber bands and presents an eye hazard.

We are simply passing this information on to our readers so that they can be more careful when selecting Christmas toys. If you need more information you can contact the Consumer Product Division of the State Attorney General's office in your state or go to the Web site for the CPSC, www.cpsc.gov.

Source: *Associated Press*

TJX BREACH COULD TOP 94 MILLION ACCOUNTS

At least 94 million Visa and MasterCard accounts may have been exposed to potential fraud in a data breach at TJX Cos., nearly double the previous estimate by the discount retailer. This information was revealed in a lawsuit filed by a bank against TJX. It was indicated that fraud-related losses involving Visa cards alone range from \$68 million to \$83 million, spread across 13 countries. The total will likely rise as thieves continue to use data from compromised cards. Joseph Majka, Visa USA's vice president of investigations and fraud management, said in court filings that were unsealed that the problem would be around for a long time.

Depositions of security officials at Visa and MasterCard Inc., the two biggest credit card associations, reveal that the breach was far larger in scope than TJX has indicated. It appears it will be the

largest such ever. It appears that hackers had undetected access to TJX's central databases for a year and a half, starting in July 2005. The lawsuit, filed by banks in U.S. District Court in Boston, is against TJX and Cincinnati-based Fifth Third Bancorp, which processed some payment card transactions for TJX. The plaintiffs include banking associations in Massachusetts, Connecticut and Maine, as well as small banks like Alabama-based Amerifirst Bank, Maryland-based Eagle Bank and Massachusetts-based SaugusBank. The banks are seeking class certification that would allow other banks to join the complaint. A TJX motion by the defendants to dismiss the complaint has been denied.

Lawyers representing consumers, who are part of the same lawsuit, reached a tentative settlement recently with TJX. If that settlement is finalized, consumers would receive benefits including cash or merchandise vouchers and credit. TJX is the owner of about 2,500 stores, including T.J. Maxx and Marshalls and, in Canada, Winners and HomeSense.

Source: *Associated Press*

FINANCIAL FIRMS ARE REQUIRED TO TAKE IDENTITY THEFT PREVENTION STEPS

Federal regulators are now requiring that every financial institution have a program to detect and prevent identity theft on consumer accounts. The federal financial institution regulatory agencies and the Federal Trade Commission have issued final rules on identity theft "red flags" and how firms must incorporate these warnings into their operations. The final rules require each financial institution and creditor that holds any consumer account, or other account for which there is a "reasonably foreseeable risk of identity theft," to develop and implement an Identity Theft Prevention Program for combating identity theft in connection with new and existing accounts. The program must include "reasonable policies and procedures for detecting, preventing, and mitigating

identity theft" and enable a financial institution or creditor to:

- Identify relevant patterns, practices, and specific forms of activity that are "red flags" signaling possible identity theft and incorporate those red flags into the program;
- Detect red flags that have been incorporated into the program;
- Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and
- Ensure the program is updated periodically to reflect changes in risks from identity theft.

The final rules are effective as of January 1, 2008. Covered financial institutions and creditors must comply with the rules by November 1, 2008. As we all now know, identity theft results in billions of dollars in losses each year to individuals and businesses. It's a most serious problem and one that should have been dealt with much earlier. The agencies also issued guidelines to assist financial institutions and creditors in developing and implementing a program, including a supplement that provides examples of red flags.

The final rules also require credit and debit card issuers to develop policies and procedures to assess the validity of a request for a change of address that is followed closely by a request for an additional or replacement card. In addition, the final rules require users of consumer reports to develop reasonable policies and procedures to apply when they receive a notice of address discrepancy from a consumer reporting agency. The final rule was issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

Source: *Insurance Journal*

A LOOK AT THE NATIONAL "DO NOT CALL" LIST

The national Do Not Call list was supposed to be the answer to a very big consumer problem. However, I'm not sure how well it has actually worked. While there has been a definite decrease in marketing calls, some of these calls are still getting through. It's been reported that several major companies have been fined for allegedly violating the registry's rules and making unwanted contact with consumers. The Federal Trade Commission has announced settlements totaling \$7.7 million with companies accused of violating the Do Not Call rules. Included were allegations for companies making calls to individuals on the registry to apparently using promotions to circumvent the rules. Companies that have settled with the FTC include Craftmatic beds, Ameriquest, Guardian Communications, and three private security companies, ADT, Alarm King and Direct Security Services. The Justice Department is pursuing action against another company, Global Mortgage Funding, which has not settled.

On a related subject, folks around the U.S. are still getting unwanted calls almost on a daily basis from firms representing politicians and charities. The loophole in the no call law that allows political and charity calls to households should be closed by Congress. Hopefully, that will be done very soon. There is one thing for certain—political calls at my house around supper time are the best way for a candidate to lose my vote and that of my wife Sara.

Source: *ABC News*

PROBLEMS WITH MEAT AND POULTRY PRODUCTS

U.S. regulators have tightened restrictions on meat and poultry products from Canada because of concerns about testing practices at a Canadian firm that was the likely source of bacteria-con-

taminated meat that sickened 40 people in eight states. The Canadian firm, Rancher's Beef Ltd. of Balzac, Alberta, was linked in October to a multistate outbreak of E. coli infections involving Topps Meat Co. A massive recall, the second largest beef recall in U.S. history, forced the New Jersey-based Topps out of business. Rancher's Beef also ceased operations.

As many citizens have found out, E. coli is harbored in the intestines of cattle. Improper butchering and processing can cause the E. coli to get onto meat. Thorough cooking, to at least 160 degrees internal temperature, can destroy the bacteria. E. coli O157:H7 is a potentially deadly bacterium that can cause bloody diarrhea and dehydration. The very young, seniors and people with compromised immune systems are the most susceptible to E. coli.

ORKIN SETTLES LAWSUIT

A lawsuit filed against Pest control giant Orkin Inc. has been settled out of court with the owners of a Tampa apartment complex. It was alleged that employees Orkin forged inspection forms and failed to notify owners of the extent of termite damage on the property. According to terms of the settlement, Orkin will pay \$2 million to the owners of the apartments. The lawsuit alleged that employees from Orkin's regional offices in Tampa forged documents to "cover up annual re-inspections that weren't done." The earliest incidents date to 1990.

According to the complaint, termite treatments were not performed properly at the company, and on some occasions, not enough pesticide was applied to the structures. It was alleged that Orkin inspectors failed to examine all areas of the complex, including the interior of apartment units. The result was that the complex, which has 10 apartment buildings and 128 units, became overrun with termites and sustained about \$3 million in damage. Money

from the settlement will go toward repairs and renovations at the complex. The property owners' insurance will cover the rest. Orkin, which is based in Atlanta, Georgia, has more than 1.6 million customers and advertises itself as "The World's Best Termite Control." When you advertise in that manner, it better be true!

Source: *The Tampa Tribune*

SPACE HEATER SAFETY TIPS

Since we are finally getting some cold weather, lots of folks are using space heaters in their homes. The U.S. Consumer Product Safety Commission has put out the following safety tips for using space heaters:

- Place heaters at least three feet away from objects such as bedding, furniture and drapes.
- Never wear loose-fitting clothes near a space heater.
- Never place anything on top of a space heater.
- Select a heater with a guard around the heating element to keep children, pets and clothing away from the heat source.
- Purchase heaters with a "tip switch," which will turn the heater off if it is knocked over.
- Select a heater that has been tested and certified by a nationally recognized testing laboratory.
- Be sure wires are not frayed, broken or exposed. Never place a carpet or rug over the wires.
- Read and follow the manufacturer's operating instructions.
- Keep children and pets away from space heaters.
- Never leave a space heater unattended.
- Never use or store flammable liquids

such as gasoline around a space heater.

- Never use heaters to dry clothes or shoes.
- Do not place heaters where towels or other objects could fall on the heater and start a fire.
- Have a working smoke detector.

Source: CPSC

XVIII. RECALLS UPDATE

NOVEMBER RECALLS MAY SET A RECORD

Due to the very large numbers of recalls during November, which may set a new record, I will have to cut back on the amount of information relating to each recall in this issue. The following are some of the more significant recalls with a brief explanation for each.

NISSAN RECALLS 686,500 SEDANS

Nissan is recalling 686,500 Altima and Sentra passenger cars to fix problems with a sensor that could lead to engine stalling. According to Nissan, there have been no reports of crashes or injuries tied to the issue. More than 650,000 of the recalled vehicles are in the United States, with the remainder in Mexico and Canada. The recall affects Altima and Sentra vehicles from the 2002 and 2005-2006 model years equipped with a 2.5 liter engine. Nissan said the crankshaft position sensor could overheat, causing an interruption in the sensor's signal. Under the condition, the engine could stop running without warning while the car is being driven at low speeds. Dealers will reprogram the electronic control module to address the problem. Nissan was to start notify-

ing owners on the 10th of this month. Owners can contact Nissan at (800) 647-7261 with questions about the recall.

TOYOTA RECALLS LEXUS

Toyota is recalling 264,000 luxury passenger vehicles over faulty fuel pipes, including more than 26,000 Lexus models in the U.S. The recall includes 49,000 Lexus GS350s and IS250s made in Japan and sold overseas. The Transport Ministry says faulty fuel pipe design on the recalled models could cause cracks and corrosion and lead to a fuel leak. There have been 39 cases of trouble within Japan but no reports of injuries. Toyota—as pointed out earlier—has been hit with quality control problems in recent years.

U.S. ORDERS NEW CHINA TOY RECALLS

More than four million Chinese-made toys sold in this country as Aqua Dots have been recalled. It has been reported that children swallowed beads containing a chemical found to mimic the effects of the so-called date-rape drug. The Consumer Product Safety Commission has received two reports of children swallowing Aqua Dots and then going into comas. At least three children, who swallowed beads, were hospitalized in Australia, where the product is called Bindeez. Wal-Mart Stores Inc. had listed the product as one of its “Top 12 Toys of Christmas,” but now has instituted an “electronic stop” at its cash registers to prevent further Aqua Dots sales. The giant retailer has also directed employees to remove the toys from its shelves. Toys “R” Us also has pulled the toy in the U.S. The toy was removed from other major Web sites and

stores, including Amazon.com and Target.

The toy’s manufacturer, Moose Enterprise, of Melbourne, Australia, says the problem had been traced to a Chinese factory it contracted with that substituted a toxic chemical for a safe glue during the manufacturing process. The beads contained an adhesive solvent called “1,4 butylene glycol,” which can simulate the so-called date-rape drug gamma hydroxy butyrate when ingested, causing seizures, coma or death. Fortunately, the toy hasn’t been linked to any reported deaths. Hopefully, there haven’t been any that have gone unreported or connected to the beads.

The 4.2 million recalled toys in the U.S. were sold at mass merchandisers nationally from April through November. In North America, the toy is distributed by Spin Master Ltd. Spin Master had requested retailers stop selling the toy. Bindeez’s London-based distributor, Character Group PLC, said it was notified by Moose about the problems with Bindeez and decided to remove the toy from U.K. shelves as a precaution. The company says it is awaiting product-testing results from a toxicologist. Apparently, Character Group does its own testing of toys that goes beyond the testing done by Moose. That company revealed five reports of children who had ingested the product but hadn’t been seriously harmed.

TOYS “R” US RECALLS LEAD-TAINTED TOYS

Toys “R” Us has recalled about 16,000 Chinese-made Elite Operations toys because of lead contamination. The military-style toys are recalled because their surface

paints contain excessive levels of lead, which is toxic if ingested by young children. Under current regulations, children’s products found to have more than 0.06% lead accessible to users are subject to a recall.

In October, the company recalled about 15,000 Totally Me! Funky Room Decor Sets because surface paints on the back of the decorating kits’ mirrors contained high levels of lead. The latest recall included four Elite Operations toy sets: the Command Patrol Center, the Barracuda Helicopter, the Super Rigs set and a three-pack of 8-inch figures. No other Elite Operations toys are included in the recall. The toys were sold at Toys “R” Us stores around the country and on toysrus.com between July and October. They can be returned to any Toys “R” Us store for a full refund or store credit. For more information, call 800-869-7787 or visit www.toysrus.com or www.cpsc.gov.

GALAXY WARRIORS TOYS SOLD AT FAMILY DOLLAR RECALLED

About 380,000 “Galaxy Warriors” toy figures sold by Family Dollar Stores Inc are being recalled because the surface paints contain excessive levels of lead. The Chinese-made toys, space figures about 4.5 inches tall that come accessories, were sold at Family Dollar stores throughout the United States from January 2006 through October 2007 and distributed by Henry Gordy International Inc. Consumers should immediately take the recalled toys from children and return them to the firm for a full refund plus postage. Henry Gordy International can be reached at (888) 790-2700.

CURIOUS GEORGE DOLLS

Toy company Marvel Enterprises Inc. has put a halt on the shipment of Curious George dolls after a non-profit organization has alleged there are illegal amounts of lead in the China-made doll. Marvel Enterprises Inc. has claimed they will issue a recall if testing proves there are illegal amounts of lead linked to the Curious George doll. A legal notice has been sent from The Center for Environmental Health alleging they had purchased a Curious George doll from 'Toys R Us' that had 10 times the legal level of lead.

CHILDREN'S SUNGLASSES RECALLED

Dolgenercorp Inc., of Goodlettsville, Tennessee, has issued a recall on Children's Fashion Sunglasses sold at Dollar General stores. The yellow surface paint on the sunglasses may contain excessive levels of lead, violating the federal lead paint standard. No injuries have been reported. The recall involves yellow children's sunglasses. No other colors of sunglasses are included in this recall. The word "CHINA" is printed on the left side of the frame. The UPC #400007860896 and words "Fashion Sunglasses" and "Time to Play Every Day" are printed on the product's red hangtag. Consumers should take the recalled sunglasses away from young children immediately and return them to any Dollar General store for a full refund. For additional information, contact Dollar General at (800) 678-9258.

METAL JEWELRY AND FLASHING RINGS RECALLED

Greenbriar International Inc. has recalled 198,000 pieces of chil-

dren's metal jewelry because of high levels of lead. The recall involves the Beary Cute, Expressions and Sassy and Chic children's jewelry lines. The products were sold nationwide at Dollar Stores from December 2005 through July 2007 for \$1.00. Also, We-Glow International has recalled about 110,000 children's character flashing rings, because of high levels of lead. The rings were sold in Shrek the Third and Spiderman Three designs and have the item number 920422 printed on the packaging. The rings were sold at Dollar Stores nationwide from December 2005 through August 2007 for \$1.00. This jewelry and rings should be taken away from children immediately.

MATTEL RECALLS OVER 172,000 FISHER-PRICE TOYS

Mattel Inc. has recalled more than 172,000 Fisher-Price kitchen toys in the United States and Europe because several children choked and gagged on small, detachable parts. The company has received 48 reports of small parts separating from these toys, which feature a sink, a refrigerator and a range.

The recall involves 155,000 toys sold in the United States, according to the CPSC. It also includes 7,000 items distributed in Britain, 4,900 in Italy, 4,900 in Germany and 394 in Austria. The Mexican-made toys were sold between May and October. The products concerned are Laugh & Learn and Learning Kitchen Toys, which are part of the Fisher-Price range. For more information, contact Fisher-Price at 888-812-7187. You can also visit www.service.mattel.com or www.cpsc.gov.

TARGET RECALLS HOME PATIO SETS DUE TO FALL HAZARD

Target has recalled 40,000 Home Patio Sets. The chair can collapse when weight is applied to the front end of the arm rests, posing a fall hazard to consumers. Target has received 35 reports of chairs collapsing, resulting in 18 injuries such as bruising to the back, hips, shoulders, arms and finger lacerations. This recall involves six-piece home patio sets sold exclusively at Target. The set consists of a table, an umbrella, and four chairs. The chairs and the umbrella have a black aluminum frame covered with a beige fabric. The chairs were sold at Target stores nationwide and on its Web site from November 2006 through July 2007 for about \$130. Consumers should stop using the recalled patio sets immediately and return the entire six-piece set to any Target store for a full refund. For additional information, contact Target at (800) 440-0680 or visit the firm's Web site at www.target.com.

BUMBO BABY SEATS RECALLED

Nearly a million popular baby seats have been recalled. The molded foam seats are made by "Bumbo" and have been sold by several major retailers. The Consumer Product Safety Commission received 28 reports of children falling out of the seats. There have been 3 reported skull fractures. The CPSC says children can flip out of the seat when it is placed on a hard, elevated surface. For more information, go to www.bumbosafety.com.

CRIBS SOLD AT BABIES R US RECALLED

A recall has been issued for about 9,000 baby cribs that pose a danger of entrapment and/or strangulation. The Wendy Bellissimo Collection Convertible Cribs were manufactured in China and sold by BassettBaby exclusively at Babies R Us stores across the country. Bassettbaby received 85 reports of bolts loosening and one report of a 13-month-old child's hand that became entrapped between the railings. Inspectors said the problem with the cribs is that the bolts connecting the top corners can come loose, creating a gap. The recall involves Wendy Bellissimo Collection convertible cribs, model numbers 5945-0521 and 5545-0521, sold in honey and cherry finishes. The full size cribs have a sleigh design and one of the following purchase order numbers at the bottom rail of the headboard: 272903, 272904, 273904, 276728, 276729, 291081, 323975, 324472, 320318, 323976, 332883 365620, 368466 in honey, and 338535, 338537 and 332884 in cherry. No other Wendy Bellissimo Collection cribs are involved in this recall. Consumers should stop using these cribs immediately and contact Bassettbaby for a free repair kit. For additional information, contact Bassettbaby at 888-897-4689 or visit the firm's Web site at www.bassettbaby.com.

ICEBERG ENTERPRISES LLC RECALLS FOLDING CHAIRS

Iceberg Enterprises LLC, of Park Ridge, Illinois has recalled about 75,000 plastic folding chairs. The plastic folding chairs can collapse during use, posing a fall hazard to consumers. Iceberg Enterprises has received about 15 reports of chairs

collapsing while in use, including three minor injuries. This recall involves Iceberg plastic round leg folding chairs. The metal support of the chair is charcoal and the seat and back support are beige. "Iceberg" is printed on a logo located on the back of the seat. Chairs with oval-shaped legs are not included in this recall. The chairs were sold at office supply retailers nationwide from August 2005 through July 2007 for about \$30. For additional information, contact Iceberg Enterprises at (800) 580-1310 or e-mail the firm at chair-recall@icebergenterprises.com.

NIKE FOOTBALL HELMET CHIN STRAPS RECALLED

Nike Inc. has recalled about 235,000 Football Helmet Chin Straps. The chin strap's plastic cup can break as a result of contact, exposing the player to facial or head injuries. Nike has received 18 reports of the chin strap breaking, including two reports of concussions, two reports of facial lacerations requiring stitches, and a report of a broken nose. The recalled football helmet chin strap consists of a plastic cup with a foam liner, straps and four metal snaps. They were sold in both youth and adult sizes and come in black/gray and white/gray color combinations.

The Nike Swoosh trademark is printed on the outside of the chin cup and DRI-FIT™ is printed on the foam liner. "Made in China" and one of the following four style numbers is printed on the inside of the strap: FA0016 046, FA0016 130, FA0021 046, or FA0021 130. The chin straps were sold at sporting good stores nationwide and on the firm's Web site www.Nike.com from April 2006 through October 2007 for

about \$20. Consumers should stop using the chin strap immediately and contact Nike for a product voucher redeemable at www.nike-store.com. For additional information, contact Nike toll-free at (888) 583-6453 or visit the firm's Web site at www.nikebiz.com.

KID'S STORAGE RACKS BLAMED FOR DEATH

A recall has been issued for storage racks with canvas bins that have been linked to the death of an 8-month-old boy. Jetmax International Ltd., of Irving, Texas, issued the recall for 36,000 boy's and girl's storage racks with canvas totes. The CPSC urged the recall after receiving a report of an 8-month-old boy who was asphyxiated after he pulled on the storage rack and it fell over on him. The top rail landed on the baby's neck. Thus far, no other incidents have been reported.

The storage rack is wooden with three levels and nine removable canvas totes. There are wooden handles on each side of the rack. The boy's storage rack has natural color wood with red, yellow, green, and navy canvas totes. The girl's storage rack has white colored wood with pink, yellow, lime, and purple canvas totes. Wal-Mart sold the storage rack under the brand "Home Trend Kids 9 Canvas Bin Boy's and Girl's Organizers." The storage racks were manufactured in China. They were sold at Wal-Mart stores nationwide from August 2004 through July 2005 and Ollie's stores nationwide from July 2006 through June 2007 for about \$40. Consumers should immediately stop children from using the recalled storage racks and contact Jetmax International to receive a free repair kit that adds stability to the base. For additional information,

contact Jetmax at (800) 689-2168 or visit the firm's Web site at www.jlwoodenmfg.com, or email info@jlwoodenmfg.com.

GRACO RECALLS INFANT CAR SEATS BECAUSE OF CHOKING HAZARD

Graco Children's Products is recalling more than 300,000 infant car seats because they pose a possible choking hazard. The company said the recall affects standalone SnugRide seats manufactured between August 1, 2006, and June 30, 2007. They were sold at mass merchandisers, specialty retail stores and department stores from August 2006 until last week.

According to Graco, the backing of the seat pad may pull away from the seams, exposing the pad filling that could pose a potential choking hazard. The recall does not affect SnugRide models sold as a travel system or those made before August 2006, because the design is different. Customers should stop using the seats immediately. They should not return the seat to the retailer. Instead, consumers can get a replacement seat pad by calling 800-345-4109. The model number and the manufacture date can be found on the back of the car seats. More information about the recall is available at the company's website, www.gracobaby.com.

BARBECUE SAUCE RECALLED

The Dutch Kettle of Bremen, Ind., is recalling 94 cases of pint-size glass jars of Hickory BBQ Sauce, packed under 35 different brand labels, because the sauce contains undeclared anchovy. People who have an allergy or severe sensitivity to fish protein run the risk of serious or life-threatening allergic reactions if

they consume this product. No illnesses have been reported, according to the company. The products were sold in 13 states: Georgia, Tennessee, Michigan, Indiana, New York, Illinois, Arkansas, Iowa, Missouri, New Jersey, Ohio, Pennsylvania, and Utah. For more information, consumers can call the company at 574-546-4033.

GENERAL MILLS FROZEN PIZZA RECALL

Almost five million Totino's and Jenos frozen pizzas with pepperoni toppings are being recalled by General Mills Inc. because the pepperoni may be contaminated with E. coli. General Mills, which owns the Totino's and Jenos brands, said the recall affects about 414,000 cases of pizza products currently in stores and all similar pizza products that might be in consumers' freezers. Each case contains 12 pizzas. The possible E. coli contamination was discovered by state and federal authorities investigating 21 E. coli-related illnesses in 10 states.

According to General Mills, nine of the 21 people reported having eaten Totino's or Jenos pizza with pepperoni topping at some point before becoming ill. The people became ill between July 20th and October 10th. All the patients recovered. The USDA's Food Safety and Inspection Service was involved in the recall. The people did not have packages with dates codes or other information General Mills is trying to narrow down which pizzas might be affected. A company spokesman says General Mills can't determine which of its suppliers provided the pepperoni.

E.coli O157:H7 is a potentially deadly bacteria that can cause bloody diarrhea and dehydration. The very young, seniors and

persons with compromised immune systems are the most vulnerable to food borne disease. The recall includes eight types of Totino's brand frozen pizza and three types of Jenos brand frozen pizza with pepperoni topping, or pepperoni in combination with other toppings. The frozen pizzas were produced in its Wellston, Ohio, plant and distributed throughout the United States. The plant is currently making other pizzas, but not with pepperoni.

COMPANY RECALLS TAINTED BEEF

Cargill Inc. has recalled more than 1 million pounds of ground beef that may be contaminated with E. coli bacteria. The agribusiness giant produced the beef between October 8th and October 11th at a plant in Wyalusing, Pennsylvania, and distributed it to retailers across the country. They include Giant, Shop Rite, Stop & Shop, Wegmans and Weis.

The bacteria is E. coli O157:H7. Ten states are included in the recall—Connecticut, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania and Virginia. The FDA is working with Cargill to track about 1,084,384 pounds of beef that could be contaminated and remove it from store shelves.

On October 6th, Cargill recalled more than 840,000 pounds of ground beef patties distributed at Sam's Club stores nationwide after four Minnesota children and four Wisconsin adults who ate the food developed E. coli illness, which is the same strain that was detected to prompt the latest recall. A lawsuit is pending from that outbreak.

People with questions about these recalls should call Cargill at 877-

455-1034. Cargill Meat Solutions, based in Wichita, Kansas, is the umbrella organization of Cargill's beef, pork and turkey businesses. The Wyalusing plant produces 200 million pounds of ground beef annually. Cargill Inc., based in Wayzata, Minnesota, is one of the nation's largest privately held companies. It makes food ingredients, moves commodities around the world and runs financial commodities trading businesses.

TEXAS COMPANY RECALLS 98,000 POUNDS OF FROZEN SAUSAGE ROLLS

Texas-based Double B Foods is recalling about 98,000 pounds of frozen sausage roll products because of concerns about listeria contamination. The frozen sausage rolls were produced between October 25th and November 6th. The products were distributed to institutions, catalog sales and distribution centers in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Jersey, New Mexico, New York, Oklahoma, Texas and Pennsylvania. According to the company, there have been no reports of illness.

As we have reported, consumption of food containing *Listeria monocytogenes* can cause listeriosis, a rare but potentially fatal disease. It's particularly dangerous for babies or people with weakened immune systems. Symptoms include fever, headache, stiffness, nausea, abdominal pain and diarrhea. Consumers with questions may call 254-435-6575. You can get the exact items covered by the recall by going to the CPSC Web site, www.cpsc.gov.

XIX. FIRM ACTIVITIES

CHRISTMAS CHARITIES ARE SUPPORTED

Over the years, our firm has always tried hard to reach out to our community and help those who are less fortunate than we are. During the Christmas season, we make a special effort to help others. This Christmas season will be no different. All of our employees look forward to helping with the selected projects each year. It's good to share with others during the Christmas season and we are blessed to be able to do so. The following are the groups and charities that were selected this year:

CHISHOLM MINISTRY CENTER

Chisholm Ministry Center is asking for our help by donating new toys for children ages infant to 18 years of age. Gifts were placed in their Toy Store which is designed to help low income families who cannot afford to pay retail prices for these items. The gifts are marked down to an extremely reduced rate, lowest being \$.50 and highest being \$3.00. The Toy Store ministry was established to help place dignity and respect back into the home by affording the parents the opportunity to provide a Christmas for their children. Because there is a price tag does not mean people who cannot afford to pay are turned away. Those who cannot afford to pay are allowed to shop for their children at no cost. Also, whatever money is made on the gifts sold at the Toy Store goes back to the Ministry to provide financial assistance, purchase food, clothing, and other items for the needy. Sherry McHenry handled this project for the firm.

OPERATION CHRISTMAS CHILD

Operation Christmas Child has touched millions of children. It is a unique project of Christian relief and evangelism organization Samaritan's Purse. Employees filled their "shoebox" and with small gifts and other appropriate items for a child. This is a very good cause and one that makes Christmas more enjoyable for children around the world. Kelli Flanagan handled this project for the firm.

FRIENDSHIP MISSIONS

Friendship Mission is a PCA Presbyterian church and shelter located on the western side of town. The church and shelter provides: two worship services a day except Saturday; hot meals for all homeless and poor who attend; counseling and Bible study on weeknights for about 50 men living in the shelter. The donated items will be passed out to homeless people as well. Blankets, clothes, non-prescription drugs and personal hygiene items were among the items distributed. Willa Carpenter handled this project for the firm.

CAPITOL HILL NURSING HOME

Capitol Hill is a nursing home in the Capitol Heights area of Montgomery. Each Christmas personnel at the facility put up an Angel Tree for the residents. Each Angel contains a resident's Christmas wish list. There are usually not more than one or two small items on the list, like lotion and/or slippers. The gifts were delivered to the Nursing Home by our employees. Many residents never receive visitors and these gifts are the only ones they receive for Christmas. Tina Blue handled this project for the firm.

SUPPORTING THE TROOPS

Our firm has adopted four soldiers who are serving in Iraq. These men are with the 82nd Airborne and are in Lt. Leigh Kennedy's platoon. Since it's the policy of the 82nd not to put out the first names of their troops, we only have their ranks and last names. Even though we know Leigh personally since he is the son of Mark and Peggy Kennedy and worked for us while he was in school during the summers, we respect the policy and have not tried to get first names. We sent each of the soldiers a Christmas box filled with items that Leigh told us were badly needed by his troops. Leigh tells us that things have been pretty tough in Iraq for his troops, but that his platoon has hung in there. Our prayers have been with all of the men and women who have served in Iraq and hopefully all of them will be home soon. Our earnest prayer is for their protection and safe return home to their families. Hopefully, we have helped make Christmas a little better for the soldiers we adopted. Willa Carpenter handled this project for the firm.

WEEKLY DEVOTIONS

Our firm has been having weekly devotions for the past several years. While attendance is good each week, it's strictly on a voluntary basis. Each month, we are blessed to have two regular speakers, Pastor Carmen Falcone, a local minister, and Betty Baggot, a noted lecturer and teacher, come and share with us. Carmen and Betty are both tremendous teachers and Godly persons in every respect. Our folks really look forward to their coming each month and certainly receive a blessing from their timely messages. Lawyers from the firm and Willa Carpenter also teach during the year.

During this year, God has really been at work at the firm and we are fully aware of His presence and the blessings we have received. On a personal note, I am learning to trust God more each week as a result of participating in the devotions. Having the devotion time gives all of us an opportunity to reflect on how God provides for us and how He never fails to keep His promises. I encourage other law firms and businesses to consider having devotions for their employees. I consider our devotions to have been a major reason our firm has had very few personnel problems over the years. I also am convinced that they have generated better feelings amongst our employees for each other.

EMPLOYEE SPOTLIGHTS

GREG ALLEN

Greg Allen, who graduated from Jones School of Law in 1983, was admitted to practice law that same year. Thankfully, he hasn't slowed down a bit since that time. The Georgia native practices in our Product Liability Section where he has been involved in numerous cases that have resulted in substantial verdicts and settlements for his clients. Greg is universally recognized as one of the leading product liability lawyers in the country. He has taught products liability courses at a number of national seminars and has been on the cutting edge of litigation in this most challenging field. Not only has Greg taught courses at Jones Law School, but he has been honored by the creation of the "J. Greg Allen Trial Competition for the Future Trial Lawyers Association" at Jones. That is an honor that is well-deserved.

Greg is a past president of the Montgomery Trial Lawyers Association and has been on the Executive Committee for the Alabama Trial Lawyers Association for a number of years. He is also member of the board of directors for the AIEG, which is an alliance of lawyers from all over the country who do prod-

ucts litigation. Greg is currently the chairman of the journal committee of the *Alabama Trial Lawyers Journal*; previously served as chairman of the Steering Committee at Jones School of Law; serves on the school's advisory board; and is also a member of the Trial Lawyers for Public Justice.

Greg is married to the former Jane Anne Howell of Lafayette, Alabama, and they have two children. Tracy, a graduate of Birmingham Southern, is employed by Marriott Corporation in Montgomery. Tracy is married to T.J. Willford and they attend Frazier United Methodist Church. Evan, who is currently attending Birmingham Southern, is a modern day Davey Crockett, enjoying hunting, fishing and the outdoors. Greg and Jane, who are now "home alone," attend Eastern Hills Baptist Church in Montgomery. I can say without exception that Greg is one of the finest lawyers to ever come down the pike. His expertise in product liability litigation is second to none and we are blessed to have him in the firm. Greg is also blessed to have a godly wife in Jane and two exceptional children.

CATHY PERRY

Cathy Perry, who is Frank Woodson's legal assistant, started working at the firm in July 2001. She has worked with Frank in Mass Torts. Cathy enjoys Mass Torts and all the varied duties and challenges of her job. She is kept busy assisting Frank with the many projects his team handles. Cathy began working as a legal secretary with a large defense firm in Denver, Colorado in 1976 and has worked in the legal field since that time. Though she has had the opportunity to work in many areas of law, Mass Torts is her favorite and that's where she wants to stay.

Cathy has been married to Bill Perry for 23 years. They live at Bridge Creek Fishing Club (Prattville's best kept secret) with their son Dow and their three dogs, Lady, Cobe and Maggie. The Perry's are active members at Prattmont Baptist Church. Bill maintains the Harley

motorcycles and works with Vehicle Maintenance with the City of Prattville. Dow is a Fireman (soon to be Fire/Medic) with the Prattville Fire Department. He is also on the Fire Department's Rescue and Dive Team.

Cathy's favorite past time is gardening. Each spring, Cathy and Bill plant a large garden with vegetables, herbs and flowers. Last year she began growing loufa gourds for the first time which proved to be a lot of fun to grow. Cathy also enjoys spending time with their friends at Bridge Creek, Alabama football, "junking around" and she always has a project going on at home. The whole family makes birdhouses, benches, wreaths, stain glass, and other things and participates in several craft shows during the year. In 2006, the family started entering birdhouses, wreaths, angels and stain glass at the Alabama State Fair. Cathy won a blue ribbon in 2006 and 2007 for her wreaths and angels and Bill and Dow won blue ribbons for their birdhouses and stain glass along with a couple of second place ribbons. Cathy is a very good employee who does outstanding work in the Mass Torts Section. We are most fortunate to have her with the firm.

FIRM WINS OUTSTANDING ACHIEVEMENT IN WEBSITE DEVELOPMENT FROM INTERACTIVE MEDIA AWARDS

Our firm was recently awarded Outstanding Achievement in Website Development by the Interactive Media Awards (IMA) for its work on the Beasley Allen Company Website (www.BeasleyAllen.com). The honor recognizes that the website met and surpassed the standards of excellence that comprise the web's most professional work. The site was singled out specifically for excellence in both the Legal and Professional Services categories.

The judging consisted of various criteria, including design, usability, innovative technical features, standards compliance and content. In order to

win this award, the site had to meet strict guidelines in each of these areas—an achievement only a fraction of sites in the IMA competition earn each quarter. Scott Thomas, Director of Internet Services at the firm correctly says that, "It's an honor to have our work recognized by the Interactive Media Awards. We feel strongly that our websites are world-class examples of how the Internet can be used to enhance a company's message. This accolade is further proof of this fact."

The firm's first website was registered in April 2001 and launched shortly after as a 20 page online business card. Today, our folks manage 13 websites comprising over 15,000 pages of legal information on a broad range of topics ranging from auto accidents to consumer fraud to pharmaceutical litigation. During an average week, our websites receive 150,000 combined hits and are viewed by over 18,000 visitors.

Several years ago, Tom Methvin, who is the managing shareholder at the firm, realized the potential of the Internet. His foresight has allowed us to position ourselves at an early date as a leader in the Internet legal space. With the continual support of the lawyers and dedicated staff who work so hard on the websites, we will continue remain at the forefront of legal technology.

XX. SPECIAL RECOGNITIONS

THE FIRM SPONSORS ITS FIRST ANNUAL RETREAT

Our firm sponsored a retreat for lawyers in November and it was a tremendous success. Almost five hundred lawyers from Alabama attended the two-day retreat, which was held at The Legends at Capitol Hill in Prattville. Hopefully, they learned something that will make them better lawyers. Pastor Jay Wolf, Chief Justice

Sue Bell Cobb, Morris Dees, Greg Cusimano, and Paul Finebaum, along with several lawyers from our firm, were speakers during the two-day event. All did a great job. Several of the participants also played golf on Saturday afternoon. We look forward to putting on a similar event next year.

BOB INGRAM LEFT A TREMENDOUS LEGACY

Bob Ingram, who was my friend and truly a most unique individual, died recently. I first met Bob when I was managing U.S. Senator Jim Allen's campaign in 1968 and he was working for the Alabama Medical Association. After that meeting, we became very good friends over the years. While we didn't always agree politically, that never affected our friendship. Bob, who was a respected newspaper reporter for years, had a tremendous knowledge of Alabama's rich political history. The fact that he served as Finance Director during Governor Albert Brewer's Administration gave him a different perspective on the workings of state government. Bob also kept up with current affairs as well as anybody. His regular appearances as a political analyst over a period of years on Montgomery television stations were truly outstanding. Bob's insight and dry wit made him a favorite with viewers. Without a doubt, Bob Ingram was a good man—who lived a good life, and—who left a tremendous legacy. His children and grandchildren have a right to be proud of all that Bob has accomplished and what he stood for. Bob Ingram will be missed!

A VERY SPECIAL LADY SPEAKS TO THE LIONS CLUB

Mrs. Johnnie Carr, who is a very young 96 years old, spoke recently to the Montgomery Lions Club, where I am a member. She did a great job and received a warm welcome. Mrs. Carr, a veteran of the civil rights movement,

motivated all of our members to get more involved and help make our city, state, nation a better place in which to live. She told us about how tough the struggles were back in the old days and how difficult things were for people of her race in the Capital City. Fortunately for all of us, Mrs. Carr, who is an outstanding person in every respect, never gave up. With God's help, this fine lady has helped make our community a better place for all of us. I have known Mrs. Carr for a long time and consider her to be a very special friend. She has been a positive influence in my life and I appreciate that very much. May God continue to bless this great lady and use her to glorify His kingdom!

PEOPLE SAFE IN ROLLOVERS FOUNDATION

People Safe In Rollovers Foundation is a public non-profit organization that is hard at work in the safety field. One of the primary goals of the Foundation is to inform the motoring public of the devastating ramifications of the proposed roof crush standard for automobiles (Federal Motor Vehicle Safety Standard No. 216—Roof Crush Resistance). The proposed standard is much too weak. It won't protect occupants from the crushing of the roof into the occupant's survival space in the event of a rollover accident. An automobile manufacturer which meets the proposed standard would be protected from liability should a passenger in one of their vehicle is killed or catastrophically injured in a rollover roof crush accident. That is unacceptable in today's world.

The Foundation's mission is to bring about a major upgrade in the proposed Roof Crush standard before it is finalized. The major upgrade should include dynamic testing. The Foundation has launched a billboard campaign to deliver the message that **strong roofs save lives**. Each billboard will be in honor of a person who has been seriously injured or killed in a rollover. The

Foundation is able to inform the public and effect a positive change in auto safety because of donations from the public. If you want to help them fight this important battle, you can send checks to People Safe In Rollovers Foundation, 1929 Coast Boulevard, Del Mar, CA 92014. The Foundation should be commended for helping to get the message out on what NATSA needs to do on 216.

SUSAN PARKER IS WORKING FOR ALABAMA CONSUMERS

I asked my friend Dr. Susan Parker, who is now an elected member of the Alabama Public Service Commission, to write a piece for our readers this month. Fortunately, she did so. I have known Susan for a long time and can say without reservation that she is a dedicated public servant. Here's what she had to say:

When I was elected to the Public Service Commission last year, I had little real information about the challenges ahead. Since being elected, I have attended conferences from a cross section of the industry, as well as consumer groups, environmental, and financial organizations. I have learned a great deal and much of it is problematic. Being a former educator, I believe the first thing we must do to address a problem is to inform the participants—in this case the citizens of Alabama. I appreciate this opportunity to try to do that.

During the next ten years, Americans will face tremendous challenges in meeting our energy needs. The U.S. Department of Energy estimates the need for energy will increase 40% by the year 2030. Most Congressional observers agree Congress will pass legislation within two years mandating 10-15% of all energy pro-

duced by 2020 be from renewable sources such as wind, biomass, or solar power. Experts agree increasing demand coupled with the addition of renewable mandates will cause utility prices to rise at an unprecedented rate.

How does Alabama stand in this scenario? We certainly will not face the tremendous increases encountered in the Northeast. However, any increase is a concern to all consumers, and places an especially difficult burden on the poor. When the electric bill goes up by 5% it may not mean so much to those of us paying 4-5% of our overall income for utilities. But for someone like my mother-in-law, who for many years lived on just her Social Security, paying 35-40% of her total income for utilities was difficult. Therefore, in spite of the challenges, my first responsibility will be to work to keep the utility rates as low as possible for everyone.

In addition to working to keep rates as low as possible, I have also developed a program called Consumer Education Initiative, to educate consumers, particularly the poor and elderly, about how they can help prepare for the future. Our office is developing brochures, an enhanced interactive website, and a powerpoint presentation to be shown to thousands of senior citizens and low income groups across the state.

Just a few of the things we will be recommending that are free or cost under \$50:

- Replace old light bulbs with new compact fluorescents which use 65-70% less energy and last for years.
- Use passive solar by letting the sun shine in the south windows in the winter. (If building a new

home, build with windows facing south and overhangs/protection on the north side).

- Install low flow showerheads and sink aerators.
- Cut off lights, computers, and electronics when not in use.
- Adjusting the thermostat a few degrees up or down (depending on the season) while you are at work can save up to 10%.
- Install an insulation blanket on your water heaters and insulate pipes the first 2 feet.

Improvements costing a little more but with big payoffs:

- Seal the ducts in your Heating/ventilation/air conditioning system.
- Seal holes, cracks and penetrations.
- Upgrade insulation in your attic.
- Insulate floors or crawl spaces.
- If your heating/air conditioning system is over 10 years old, consider replacing with a new energy efficient model.

These are things you can do to make your home more energy efficient and also share with others. All of us working together can help to inform, encourage and educate Alabamians about what we can be doing now to best prepare ourselves for future challenges ahead.

Americans have met and overcome many obstacles in the past and we can do it again. But it will require all our ingenuity and creativity to think outside the box. It will mean we must put aside our political agendas and partisan differences. And it will also mean we must not delay in making the small changes in each of our daily

lives so we can meet our future energy needs.

This commentary is presented by Alabama Public Service Commissioner, Susan D. Parker. You can contact Susan by email at susan.parker@psc.alabama.gov, or by phone at 334.242.5191.

ANNUAL SCIENTIFIC SYMPOSIUM HELD IN BIRMINGHAM

The Annual Southern Consortium for Injury Biomechanics Scientific Symposium was held in Birmingham this month. In its fifth annual meeting, the SCIB brought together top scientists in the field of biomechanics in a collaborative setting. The SCIB Symposium provides member scientists the opportunity to present the accomplishments and findings of their research efforts. This symposium is a most unique event, providing an opportunity for open discussion on pertinent issues facing the injury biomechanics community. Outstanding scientists, who are known worldwide, made outstanding presentations. The papers made available at the Symposium were from some of the very best in their field. My friend Dr. Russ Fine, who is with UAB, is the Director of SCIB. If you want to learn more about the Symposium, you can contact Russ at 205 934-7845. You can also go to this website, www.SCIB.net for more information.

As many of you will already know, Biomechanics is the study of the interaction of animate and inanimate objects—such as how the human body reacts to the movement and rapid deceleration of a vehicle in a crash. Thousands of Americans lose their lives every year in motor vehicle crashes, and many thousands more are injured, some permanently and catastrophically. Understanding more about what happens to the human body during a vehicle crash will result in improvements in vehicle design, protective rules and regulations to which automakers must abide, or

other safety measures, which in turn could lower death rates and overall seriousness of injuries sustained. That is— all of this will happen—if your elected officials learn more about what is available from the scientific community and take advantage of it.

SCIB grew out of the realization that much more research was needed to understand the interaction of body and machine in vehicle crashes. Drawing on expertise accumulated over nearly 16 years of research at the ICRC, Dr. Fine and Dr. Jay Goldman, both distinguished scientists and professors in their respective fields, put together a roster of pre-eminent, world-class injury biomechanists. With their assistance, they developed a research agenda targeting injury prevention and improving post-injury recovery. Now, in a relatively short time, SCIB has achieved an international reputation and continues to increase its involvement with top-level scientists throughout the country.

One of the most important objectives the SCIB accomplishes is bringing together scientists to work collaboratively instead of competitively, in a multi-disciplinary environment. By involving scientists who are experts in biomechanics, computer modeling, engineering, pediatric orthopedics, and numerous other highly technical disciplines, the SCIB ensures that injury problem-solving is as comprehensive as possible. Even though not all disciplines are a part of every project, having so many scientific specialties associated with one organization gives each research project's principal investigator and faculty scientists access to a body of proven resources. This will help them solve problems that arise that may be out of their usual areas of expertise. Moreover, regular interaction with a multi-disciplinary group allows each scientist to explore research outside of his or her own field. This can spark new solutions or research direction through understanding how other disciplines approach and resolve problems.

Senator Richard Shelby, who recognized at an early date the potential for what SCIB was attempting to do, has been a tremendous help in securing funding and other support for the group. Recognizing the value of the SCIB's research, the US Department of Transportation has funded the SCIB through the National Highway Traffic Safety Administration and the Federal Highway Administration. Senator Shelby should be commended for his early and continuing support and advocacy of the SCIB's mission and research agenda. We should all be very proud of what Dr. Fine and SCIB have done and UAB is to be commended for its role in the venture.

XXI. CLOSING OBSERVATIONS

It's TIME TO GET SERIOUS

You could argue that every year on television is the season of sex. But this year, the sex on television has gotten more graphic and more exploratory. Much of this sort of stuff is during times when young folks are watching. Many believe that we are becoming ever more perverse and deviant in what we tolerate on television. However, some make the case that, on the contrary, the public is bored—that the depictions of sex are now so pervasive, have so drenched the landscape, that they are becoming commonplace and therefore have little effect. I disagree with that latter assess-

ment. I am convinced that television, and also the Internet, have to share the blame for creating a society that says “anything goes” and “everybody is doing it, so why not try it.”

It doesn't take a doctorate degree to figure out that if young folks are constantly being bombarded with sex and violence on our television screens on a daily basis, it will have an adverse effect on their behavior. When the scenes are depicted as being “norm,” rather than the “exception,” it is bound to influence young minds. All of us have a duty to get involved and help to clean up television programming. If you agree, contact members of Congress and let them know how you feel. Lots of folks will be running for Congress—some for reelection—next year. It's a good time to find out where they stand and get a firm commitment on this important issue.

BIBLE VERSE OF THE MONTH

This month's bible verse comes from my daughter Bee McCollum, who along with her husband Wes and their daughter Maggie, live in Auburn, Alabama. Bee's selection, which is also one of my favorites, is set out below:

For God so loved the World that he gave his only Son, that whosoever believeth in him should not perish but, but have everlasting life.

John 3:16

I really can't think of a better verse from the Bible for us to focus on this

month since Christmas is right around the corner. This time of the year is very special. Each of us and our families should keep our focus on God and His gift to the world. If everybody could find it in their hearts to do this, the many problems facing our nation could be solved or at least we would be able to cope with them.

XXII. SOME PARTING WORDS

I always look forward to the Thanksgiving and Christmas holidays each year. This season is a very special time for families and a time when we can reflect on all of the many blessings and provisions that come to us from God. Also, there is no better time to share with others who may be in need or who may be hurting in some manner. One of the real joys in life is having opportunities to share with others and then taking advantage of them. But, that means “walking the walk” and not just “talking the talk” is required.

I recommend that we all make reading the “Christmas story,” as found in Luke 2:1-20, a family requirement on December 24th. Doing this on Christmas Eve will be a blessing for your family. I sincerely hope and pray that God will bless each of you and your families during this holiday season in a very special and meaningful way!

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