



THE
JERE BEASLEY REPORT

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Beasley Allen

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I. CAPITOL OBSERVATIONS

JUDGE DEBORAH BELL PASEUR IS THE PEOPLE'S CHOICE

Judge Deborah Bell Paseur is, without question, the most qualified person in the race for a seat on the Alabama Supreme Court. She is also the best person for the job. In my opinion, Judge Paseur would be an outstanding justice on the high court. The judge from Lauderdale County, who has years of experience as a trial court judge, is well-respected by lawyers in all areas of practice. These include both Plaintiff and Defense lawyers. All persons who know Judge Paseur believe that she will be a great Supreme Court Justice and will be totally fair and impartial as a member of the court.

I encourage all of our Alabama readers, their families and friends to vote for Judge Deborah Bell Paseur on November 4th. Electing Judge Paseur will guarantee a level playing field to all parties appearing before the Alabama Supreme Court. A vote for Judge Paseur is one you can be proud of. She has refused to take campaign contributions from oil, insurance, and drug companies and that's very important for ordinary citizens. No person elected as a justice should go to the high court with the appearance of being tied to any special interest or to any powerful corporations—especially those who are now or potentially would be appearing before the high court as a party litigant. Judge Paseur will be fair to all and that's the most important thing you can say about a judge.

ELECTION LAWS MUST BE FAIRLY ADMINISTERED

Federal officials have asked election officials in Alabama and five other states to investigate whether citizenship checks are being improperly run on newly-registered voters. Social Security Commissioner Michael Astrue

has sent a letter to the secretaries of state of Alabama, Georgia, Indiana, Nevada, North Carolina and Ohio. The Commissioner said those states had submitted "extraordinarily high levels" of citizenship verification requests. Under the Help America Vote Act of 2002, most states only have to verify the last four digits of the Social Security Number of people seeking to register to vote if they don't have a valid state driver's license. Hopefully, none of these states are trying to influence the outcome of elections in their states by keeping newly registered citizens from voting. Anybody guilty of doing this sort of thing should be held accountable.

Source: *Associated Press*

POLL SHOWS ALABAMA CITIZENS ARE OPPOSED TO BAILOUT

The results of a recent poll concerning the bailout bill passed by Congress doesn't come as a big surprise. The poll shows most Alabamians don't like the federal government's plan which could cost over \$800 billion to rescue the U.S. financial industry. The statewide poll by the *Mobile Press-Register* and the University of South Alabama, released on October 12th, shows that six out of ten of those surveyed were "not very confident" or "not confident at all" that the rescue will succeed. Almost nine out of ten Alabamians rate the economy as at least fairly bad and four out of ten say their personal finances have deteriorated in the past year.

Opposition to the plan stems mainly from the belief that it's a "Wall Street bailout," which does little for ordinary citizens. As some say, the average Alabamian can't see how the bailout helps "Main Street." In a similar statewide survey in late 2004, roughly two out of ten said their personal circumstances had worsened, while 60% labeled the economy's condition as at least fairly good. The latest numbers "show a pretty anxious and pessimistic view of things," according to Keith Nicholls, director of the USA Polling Group.

In another survey, by a separate

polling group, it was revealed that most Alabamians are dissatisfied with how things in their country are going. In fact, 83% of Alabama citizens are dissatisfied with "the way things are going in the United States." I suspect those feelings would be even stronger if Alabamians were polled today.

Source: *Associated Press*

GOVERNOR BREWER MAKES A CASE FOR A NEW CONSTITUTION

Former Governor Albert P. Brewer has been making a compelling argu-

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ment for a new Alabama Constitution. He, along with a number of distinguished state leaders, is pushing for a new document to replace the 1901 Constitution. An example of the old Constitution's antiquity is found in Article IV, Section 93, which provides: "The state shall not engage in works of internal improvements." Governor Brewer recently penned an op-ed piece which addresses the situation and need for change.

THE BREWER ARTICLE

Did you know that the Constitution of Alabama prohibits the state from building roads, bridges, schools, hospitals, docks, parks or other public facilities? All of these are "public improvements" and are expressly prohibited by Section 93 of the 1901 Constitution. Why was this section included in our constitution? Section 93 was brought forward from the 1875 Constitution which was adopted to "redeem" the state from reconstruction and to address the desperate economic conditions that existed then. Also, remember that in 1901 there were no automobiles, roads were unpaved, transportation was either by train or horse and buggy and there was little interest in public improvements.

The restrictions of these provisions led to a host of constitutional amendments to allow the state to build roads and bridges; to authorize the state docks at Mobile; to build hospitals and treatment centers; to construct buildings at colleges, universities and public schools; to develop inland docks; to construct a system of state parks; to support public libraries and to provide economic development incentives. Over the years, literally hundreds of amendments have been adopted so as to allow the state to engage in these important public

improvement projects.

Simply stated, the 1901 Constitution was inadequate to deal with the realities of the 20th century, not to mention our world of 2008. Its prohibitions were so narrow and restrictive that state and local governments could not meet the needs of the state. Of the over 800 amendments, almost half were adopted to relieve the restrictions of Section 93.

The effect of the restrictions of the 1901 Constitution were dramatically illustrated when Mercedes Benz made its decision to locate a manufacturing facility in Tuscaloosa County. An important factor in its decision were commitments to incentives made by state leaders. Imagine their chagrin when they discovered that constitutional issues about the validity of the commitments existed because of the restrictions of Section 93. Fortunately these concerns were satisfactorily resolved, but the situation points up the lurking pitfalls in this obsolete document.

Advocates of constitutional reform usually make their case with references to the desirability of "home rule", the disgusting racist language of the 1901 Constitution, its inordinate length, or its archaic language and provisions. In a very real way the provisions restricting the ability of state government to address problems and take advantage of opportunities may be the most compelling reason for a new constitution for Alabama.

If you agree with Governor Brewer, let your senators and house members know how you feel. I support the folks who want to bring our state into the 21st century. I also recognize there is opposition to change from a number of powerful special interests. The question is: Why do they oppose change? I believe they simply like the control

over government at both the state and local levels the old document gives them.

PLANS FOR LNG TERMINAL OFF ALABAMA'S COAST DROPPED

A Houston-based company has withdrawn its plans for a liquefied natural gas terminal in the Gulf of Mexico. Its decision came after Governor Bob Riley expressed concern over the facility's potential environmental impact. TORP Technologies planned to build the terminal 63 miles south of Mobile and offered up to \$30 million to the state to deal with any potential damage to sea life created by its "open-loop" process of heating the natural gas. Governor Riley believes the process could create too many problems. In that regard, he made this statement:

I believe the potential benefits of the LNG terminal off our coast do not outweigh the consequences and the potentially negative effect this could have on our coastal environment.

TORP said in a news release it was withdrawing the project "based on certain environmental considerations and current market conditions." TORP said it would "reinstitute the licensing process" after addressing the governor's concerns. I understand that Governor Riley is open to further discussions with the company.

LNG must be heated and converted back to its gaseous state before being moved into gas pipelines. The "open-loop" process that TORP proposed would have taken millions of gallons of water to reheat the gas, returning that water back to the sea. That process caused concern among environmentalists and coastal conservation groups, who argued that returning the water to the Gulf of Mexico could wreak havoc on the fisheries and marine life there. I agree with the governor's position on this matter.

Source: *Mobile Press Register*

II. DRUG MANUFACTURER FRAUD LITIGATION

ALABAMA SETTLES MEDICAID FRAUD CASES

We settled Medicaid drug pricing lawsuits last month on behalf of the State of Alabama against Bristol-Myers Squibb and three other companies, Angen/ImmuneX, Bayer and Ethex. The case against Bristol-Myers Squibb, one of 72 companies the state sued for overcharging the state's Medicaid program, had been set for a trial on October 27th. Earlier this year, Montgomery County Circuit Court juries returned multimillion-dollar verdicts against three pharmaceutical companies. Additionally, the state's cases against Dey Labs and Takeda Pharmaceuticals North America Inc. had been settled a few months earlier. We agreed not to reveal the amounts of the latest settlements until such time as appropriate court orders are entered by Judge Charles Price.

These settlements will make it virtually impossible for the Alabama Supreme Court to reverse the jury verdicts against AstraZeneca, Glaxo-SmithKline and Novartis once they apply the facts of those cases to the applicable law. That's because the fraud committed by the drug manufacturers in all of the cases is identical. A jury in February ordered the U.S. subsidiary of U.K. drug maker AstraZeneca, to pay the state \$215 million—\$40 million in compensatory damages and \$175 million in punitive damages. Circuit Judge Charles Price correctly reduced the total amount of the damages in that case to \$160 million. In July, another jury found in favor of the state in lawsuits against the drug companies Glaxo-SmithKline and Novartis. The jury found GSK liable for nearly \$81 million in compensatory damages and found Novartis owed the state about \$33 million in similar damages. No punitive damages were awarded in that case against either defendant.

AstraZeneca has appealed its case to the Alabama Supreme Court. Glaxo-SmithKline and Novartis have post-verdict motions pending before Judge Price. At press time, we were in serious settlement negotiations with several of the companies which have pending cases. Hopefully, agreements will be reached very soon in those cases.

MORE CASES TO BE SET IN ALABAMA

In a hearing on October 15th Judge Price told all of the lawyers present that he would set a number of cases for trial next year. The judge indicated companies would be grouped according to the types of drugs manufactured by a company. The groups of companies would include "brand," "generic" and "blend" companies. We expect to have these settings very soon. Hopefully, all of the cases will be settled by the end of this year. Avoiding trials and cutting expenses—based on how things have gone so far—should make sense to the decision-makers for the companies.

BOEHRINGER SETTLES FALSE CLAIMS ACT LAWSUIT WITH MASSACHUSETTS

The Massachusetts Attorney General's Office has reached a settlement with Boehringer Ingelheim Roxane, Inc. (Roxane), a Columbus, Ohio-based drug manufacturer, in a False Claims Act case. Under the agreement, Roxane will pay the state's Medicaid program, MassHealth, \$1.8 million to resolve the lawsuit which is pending in a Boston federal court. Roxane is a wholly-owned subsidiary of Ridgefield, Connecticut-based Boehringer Ingelheim Corporation. Attorney General Martha Coakley had this to say regarding the settlement:

Drug company price reporting is a national and industry-wide problem that the Commonwealth, as well as other states and the federal government, continues to address. Our office will continue to work with the state's Medicaid program, other law enforcement

agencies and the federal government to ensure that Medicaid payments are based upon accurate information.

Roxane is one of 13 generic drug manufacturers the Commonwealth sued for falsely inflating the prices it reported to national pharmaceutical price reporting services. The Commonwealth's Medicaid program, MassHealth, like all other state Medicaid programs and many private medical plans, uses prices reported by national price reporting services to determine the amounts it will pay for drugs dispensed by pharmacies to Medicaid recipients. By reporting the inflated prices to MassHealth, the pharmaceutical companies caused the Medicaid program to pay inflated amounts for prescriptions for Medicaid recipients. As you know, Medicaid is a joint federal and state program which provides healthcare services, including prescription drugs, to low income and disabled persons.

The settlement resolves the Commonwealth's claims related to the drugs that Roxane manufactured, including lithium carbonate, azathioprine, Roxicet, Roxicodone and ipratropium bromide. Massachusetts had previously settled with four other defendants: Dey Pharmaceuticals, Barr Laboratories, Duramed Pharmaceuticals and Ethex—recovering a total of \$5.675 million from those companies. The case against the remaining eight defendants is still pending. Our firm's lawsuit on behalf of the State of Alabama against Roxane is set for trial on February 9, 2009. This case should settle, but if it doesn't, we fully intend to let a jury hear how bad this company's conduct has been.

Source: Massachusetts Office of the Attorney General Press Release

ELI LILLY SETTLES ZYPREXA INQUIRIES IN 32 STATES

Eli Lilly & Co. will pay \$62 million to resolve claims relating to the marketing and promotion of its anti-psychotic drug Zyprexa to patients who did not

have schizophrenia or bipolar disorder, its only approved uses. The settlement ends an 18-month investigation led by the offices of the attorneys general of Illinois and Oregon, which contended that Lilly had violated consumer protection laws by urging doctors to prescribe Zyprexa to patients who did not need it. The payments will be divided between 33 states, including Alabama.

Under the terms of the settlement, Zyprexa will continue to be available through Medicare programs in all states. Predictability, Lilly says it didn't break any laws. Also, as a part of the settlement, the company also agreed to provide the states' attorneys general with information about the compensation it paid to health care professionals for promotional speaking or consulting regarding Zyprexa. Lilly has been sued by 11 other states and those cases are not included in this settlement.

The states' investigations center on Lilly's marketing of Zyprexa, a potent brain tranquilizer that calms the hallucinations associated with schizophrenia and bipolar mania. Internal Lilly documents and e-mail messages appear to show that the company marketed it for patients with dementia and milder forms of bipolar disorder, which is a violation of federal law. Zyprexa can cause severe weight gain and an increase in blood sugar in many patients and is more likely to cause diabetes than most other medicines for schizophrenia and bipolar disorder, according to the American Diabetes Association.

Once the FDA approves a drug for sale, doctors can prescribe it for whatever disease they see fit because the regulatory agency does not regulate the practice of medicine. But pharmaceutical companies can market and advertise their medicines only for the uses specified on the drug's label. Lilly's deceptive marketing practices were illegal and highly dangerous. The pharmaceutical industry must be made to understand that consumer fraud is something that won't be tolerated in this country.

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

FEDERAL JUDGE CERTIFIES TWO NATIONWIDE CLASSES IN WHOLESALE DRUG PRICING CASE

A federal judge in Boston has certified two nationwide classes and set the stage for two more trials in the massive, multidistrict wholesale drug pricing case against AstraZeneca and Bristol-Myers Squibb Co. The case alleges that the companies published fraudulently-inflated average wholesale drug prices. Their fraudulent conduct caused consumers and insurance companies to pay higher prices for branded and generic drugs used to treat serious illnesses like cancer and HIV. In an order, U.S. District Judge Patti Saris of the District of Massachusetts ruled that there would be a trial for each of the two classes and that each class period would range from January 1, 1991, to January 1, 2005.

The first class, or the so-called Medigap Class, includes third-party payors who made reimbursements for Medicare Part B covered drugs based on average wholesale prices. The second class includes consumer or third-party payors who paid for certain physician-administered drugs made by AstraZeneca or Bristol-Myers. The second class also includes all third-party payors whose reimbursements contracts were based on the published wholesale prices.

Judge Saris cited the court's lengthy experience with the issues in the case when explaining her decision to allow national certification. The order recognized how complex the drug reimbursement system is. Several parts of the case have gone to trial or settled. Following a trial last November, the court ordered AstraZeneca and Bristol-Myers to pay nearly \$14 million to insurance companies and consumers in Massachusetts. In March, 11 pharmaceutical companies and subsidiaries settled claims against them for \$125 million. The agreement followed AstraZeneca's May 2007 settlement of claims brought by Medicare Part B Zoladex users for \$24 million and GlaxoSmithKline's \$70 million settlement in August 2006.

The fraudulent conduct of the pharmaceutical industry has hurt consumers and taxpayers and has resulted in a great deal of litigation across the country. Hopefully Congress will take action next year to clean up this industry and make the regulatory laws much stronger. We have learned over the past several years—as the result of information gained in litigation—that this industry is extremely powerful politically. I believe with a new president and new Congress consumers and the states will begin to see some meaningful changes that will lessen the power of "Big Pharma."

Source: Law.com

III. POLITICAL OBSERVATIONS ON THE NATIONAL LEVEL

THE MOST IMPORTANT ELECTION SINCE THE HOOVER DAYS

When we go to the polls to vote in the general election on the fourth of this month, we will be casting the most important ballot for a president in years. In fact, most say this will be the most important vote since the election of 1932 when Franklin Delano Roosevelt was elected to take over the reins of our national government. At that time, our country was in the midst of a depression and Americans were really hurting. Tragically, the Bush Administration now has taken the United States into the worst economic times since Herbert Hoover was president.

It doesn't take an economist—or even a Washington Insider—to know we are now experiencing the worst of economic times. It's quite obvious we can't afford four more years of the failed economic policies of the Bush Administration which have caused the severe problems we are currently facing. The President and his gang are leaving a real mess for the next admin-

istration and Congress to clean up.

Sadly, John McCain has been totally out of touch when it comes to our nation's economy. Having a man like former Senator Phil Gramm advising McCain on the economy is enough to push even right-wing voters away from the GOP ticket. The McCain group—including the candidate—just doesn't get it.

When you get down to it, John McCain has been a long-standing member of the Washington Crowd for far too long to be an effective President. His campaign is being run by a band of powerful lobbyists who are the very same political insiders who have helped the Bush-Cheney-Rove crowd wreck our economy and have tied our military down in an occupation of Iraq at a cost of almost a trillion dollars with no real end in sight. We can't afford to leave our nation with four more years of their kind of rule.

The American people are demanding real change and they will get it by electing Senator Obama President of the United States of America. The three debates between the two men have given a clear indication of which of them should take over the reins of government in 2009 and bring about the sort of change that will kick the Washington Crowd insiders out and return our Nation's government to the American people. Our nation simply can't afford four more years of the type rule George Bush and Dick Cheney have given us.

I am supporting the Obama-Biden ticket and believe the change necessary to put our economy back on track can only come under their leadership. Senator Obama—with the help of Senator Biden—will be able to assemble the very best team ever put together to help run the affairs of government during the next four years.

THE MCCAIN CAMPAIGN

As the political adage tells us, "a lie can be halfway around the world before truth ever gets its boots on." The Swift-Boat school of smear politics like

that we experienced in the 2004 election relies on this lag time to undermine any real political debate and slip dissembling candidates into office. Sadly, that's just the sort of effort we have seen this year from John McCain and Sarah Palin, his hatchet woman, who is an effective attack dog. Fortunately, at least this time, truth has at least a fighting chance thanks to a democratic mechanism that Barack Obama's campaign has mastered: the Internet. The campaign has used a Web site called "Fight the Smears," which enabled the Obama campaign to refute untruths directly and instantly. Senator Obama and Senator Biden also were quick to refute the lies and distortions from the McCain crowd and their responses were quite different from how things were in 2004.

For example, one smear slung at Senator Obama claimed that he isn't even an American, asserting that he can't produce his birth certificate. The Obama campaign authoritatively responded by posting a copy of Obama's U.S. birth certificate for all to see. In another smear, the Republican Party ran television ads distorting a comment by Michelle Obama, suggesting that she's not patriotic. In response, the Web site posted a video of no less trustworthy a figure than first lady Laura Bush refuting this malicious lie. What about the claims by the McCain campaign that Obama is a Muslim, that he "refuses" to say the Pledge of Allegiance with his hand over his heart, that there's no American flag painted on the outside of his campaign plane? All lies and easily refuted. If you haven't taken a look and want the truth on any of the smear attacks, go to www.fightthesmears.com.

IV. A FINAL LOOK AT STATE POLITICS

THE THIRD PARTY SMEAR MACHINES

Folks in Alabama are asking what the

Center for Individual Freedom (CFIF) is. They are also asking why are they interested in the Alabama Supreme Court race this year. For the uninformed amongst us, CFIF is a corporate-funded, tort-reform group that relies largely on negative campaign advertising leveled against Supreme Court candidates in states like Alabama. Founded in 1998, CFIF is little more than a store-front operation based outside Washington D.C. It's run by a group of lobbyists, political operatives and corporate lawyers who refuse to disclose the organization's donors. There is a very simple reason why it won't say where its money comes from. Its funds come from the giant oil, insurance, and drug companies whose goal has been to destroy the civil justice system in this country. They are all interested in protecting themselves in litigation caused by their wrongdoing.

CFIF has repeatedly run afoul of elections laws in Pennsylvania, West Virginia, and elsewhere. It has been taken to court repeatedly by elections officials who were trying to put a halt to their illegal campaign activities conducted in states' judicial elections. When you consider that CFIF enjoys tax exempt status, its involvement in partisan politics is wrong—can't be explained—and shouldn't be tolerated. I am shocked that the Justice Department doesn't put a stop to the group's political smear tactics in states like Alabama.

If you want more information concerning the history of this well-financed front group, consider the following:

- [ExxonMobil Lawyers run the show at CFIF](#). The ex-CFIF Secretary and Treasurer Guy Vander Jagt was a lawyer with a Cleveland law firm, Baker & Hostetler LLP, whose top clients include ExxonMobil and Chevron, in addition to big insurance companies, banks and Wall Street players like Morgan Stanley, Progressive, State Farm and Wachovia.
- [CFIF has lobbied Pro-Oil Positions to](#)

Congress. The CFIF's high-powered lobbyists fought against higher taxes on record oil company profits and renewable fuels. It has worked on numerous projects to benefit the oil companies.

- Extraordinary Financing from Oil-Backed Foundations. CFIF has received hundreds of thousands of dollars from the Carthage Foundation. Carthage is part of the Richard Mellon Scaife foundations, which are in turn funded by family oil (Gulf Oil), chemical, banking and other corporate interests.
- In its earliest days, tobacco money was put into CFIF and then funneled into political races. CFIF operatives sought funding from the major tobacco companies as they fought state lawsuits.
- CFIF has close ties to Gambling Interests. The original executive director of CFIF is Eric Schippers, executive vice president of Penn National Gaming, one of the country's major slots parlor and racetrack operators.
- CFIF General Counsel Tied to National Manufacturers Association. CFIF lawyer Renee Giachino was also a top lawyer with the American Justice Partnership, a law "association" created by the National Manufacturers Association.
- CFIF Partner—the American Justice Partnership—Routinely Give Low Rankings to Judges it Does Not Support. In a report called the Activist Journey of the Florida Supreme Court an affiliate of CFIF rated state judges in Florida on whether they expanded or "made law" or whether they were conservative and "exercised judicial restraint." These phony ratings proved to be very effective.
- Pro-Corporate, Neo-Conservative. According to New York political media, the Center works closely with "pro-corporate and neo-conservative" groups such as the National Center for Policy Research, which

receives hundreds of thousands of dollars in funding from ExxonMobil.

In the Alabama Supreme Court race this year, giant corporate donors—including ExxonMobil—have funneled millions of dollars into our state through CFIF knowing that outfit won't have to disclose either the amounts received or the names of donors. While that is permissible under Alabama law, it's still as wrong as wrong can be. What interest could these corporations possibly have in the Alabama Supreme Court? Why do they want to hide their names from the voters? These are questions CFIF won't answer and neither will its corporate donors! But, these are answers that the voters should have before casting their ballots.

STATE BAR CONDEMNS PUSH POLL ATTACK ON JUDGE PASEUR

The Alabama State Bar has condemned the "Swift Boat" tactics that were used by the Shaw campaign against Deborah Bell Paseur, the Democratic nominee for the state Supreme Court. The state bar said a telephone "push poll" was used to "spread misinformation and disinformation about one of the candidates running for a seat on the state Supreme Court." Obviously, that candidate was Deborah Bell Paseur and the information in the calls was totally false.

Voters were getting "push poll" telephone calls, claiming the Alabama State Bar had conducted a judicial evaluation that gave Deborah Bell Paseur an "F" grade and that the bar's membership is primarily affiliated with the Democratic Party. Again, both statements were totally false. A push poll is a dirty tricks campaign technique whereby an organization tries to influence a voter under the guise of conducting a real poll. Instead, it's a form of telemarketing-based propaganda. The President of the State Bar, Mark White, a Birmingham lawyer, made this statement:

Let me make this very clear: the state bar does not conduct an

evaluation poll of any judicial candidates and the state bar has no way of knowing the political affiliations of its members. These falsehoods and misrepresentations are nothing short of reprehensible.

Mark communicated with both candidates about this matter and shared the bar's concern about the sleazy tactics with the Judicial Oversight Committee. Mark also said Alabama's voters should not be misled by special interest groups who use lies and distortion to attack judges. Such attacks are examples of how far third party support groups are willing to go to win. He added:

It is unfortunate that civility and intelligence have been replaced by a mean-spirited and misleading approach to the judicial election process that is truly unconscionable.

From a historical perspective, interest group involvement usually spikes as Election Day nears. Today, in states like Alabama that use elections to select judges, campaign costs have risen exponentially, television advertising has become a predominant feature in many campaigns. Special interest groups actively campaign for or against specific candidates. With increasing frequency, these special interest groups play an active role in judicial elections. Mark correctly says that voters who have questions about judicial campaign conduct should contact retired Circuit Court Judge William R. Gordon of Montgomery who co-chairs the Judicial Campaign Oversight Committee.

The 15,756-member Alabama State Bar is dedicated to promoting the professional responsibility, competence and satisfaction of its members; improving the administration of justice; and increasing public understanding and respect for the law.

Either the Shaw campaign was behind these dirty tricks or it was the work of front groups backed by oil, insurance, and drug companies which are funneling money into the state and

trying to defeat Judge Deborah Bell Paseur. In either case, these sorts of dirty tricks can't be tolerated. Hopefully, the election laws will be changed next year and these type organizations banned in Alabama.

Source: Alabama State Bar News Release

V. LEGISLATIVE HAPPENINGS

LOOKING TOWARD 2009

I have been sort of surprised that Governor Riley hasn't called the legislature into special session to deal with a number of urgent problems. Apparently, the Governor believes all of our problems can wait until next year. I hope he is correct. It's clear as a bell that the Governor and Alabama Legislators will have their hands full in 2009. We are facing severe budget short falls in both the general and special education trust fund budgets. We will have proration in the current education budget and that's a certainty. The general fund will face a deficit of around \$100 million. Either revenues will have to be found or services cut drastically. Things could get pretty interesting when 2009 rolls around.

ALABAMA ARISE SETS 2009 PRIORITIES

Alabama Arise is hard at work for Alabama citizens who as a general rule have been shut out of decision-making in government at every level. At the group's annual meeting on September 13th the following issues were adopted as priorities for 2009:

TAX REFORM

- Only one other state fully taxes groceries.
- We have the highest income tax on a family of four at the poverty line.

- The Tax Fairness Amendment would lower grocery taxes by 4%, increase the income tax threshold to \$20,000 for a family of four and remove the deduction for federal income tax, which favors the highest earners.

HEALTH CARE

- An Alabama adult who works 20 hours a week at minimum wage makes too much to qualify for Medicaid.
- Alabama has made great strides toward insuring children in low-income families. The federal government will pay 69% of the cost for Alabama to extend Medicaid coverage to parents, but state matching funds are needed.

MORATORIUM ON EXECUTIONS

- In Alabama, money and race play big roles in determining who's on death row.
- Senator Hank Sanders proposes that Alabama stop executing people on death row for three years while it reviews the fairness of the capital punishment system.

CONSTITUTIONAL REFORM

- Alabama's 1901 constitution gives the Legislature too much power.
- Until we get a new state constitution, local citizens will be denied the right to make decisions affecting their communities because power remains concentrated in Montgomery.

PUBLIC TRANSPORTATION

- All public transportation funds in Alabama come from federal or local governments—not a penny from the state.

- Alabama gas taxes can't be spent on public transportation. Arise proposes a dedicated revenue source for public transportation.

ASSET-BUILDING

- When offered incentives, low-income people can save money for education, housing or entrepreneurship.
- A federal-state partnership offers low-income people a 2-to-1 match on up to \$2,000 of savings, as long as the money is used to pay college tuition, put a down payment on a home or start a small business.

KATRINA RELIEF

- The 2005 storm displaced hundreds of Alabama families. Federal relief has helped only a fraction return home.
- Effective recovery requires a full assessment of unmet needs in storm-damaged south Mobile County and equitable, timely distribution of adequate funds to help survivors rebuild their lives.

I sincerely hope that most of these items will appear on the priority list for the governor and legislative leaders for next year. These are issues that affect middle and low income Alabama citizens and issues that have been ignored for all too long.

VI. COURT WATCH

PHARMACY MAY BE LIABLE FOR FAILURE TO WARN

The Utah Supreme Court has ruled that a pharmacy may be held liable for failing to warn a patient that a drug had been withdrawn from the market by the FDA. The court said the "learned intermediary" doctrine does not shield the pharmacy. In the case before the

high court the patient sued the pharmacy for negligently filling his prescription for fen-phen and failing to remove the product from its shelves or warn him that the drug had been withdrawn from the market by the FDA and the manufacturer. The pharmacy argued that the learned intermediary doctrine should apply.

The doctrine exempts pharmacists from liability where a licensed physician has prescribed a drug. The Utah court said that, although the doctrine has been applied to strict products liability cases, there is a trend to limit its application in negligence cases. In that regard, the Utah court held:

The majority of recent decisions discussing the [learned intermediary] rule... have recognized limits or exceptions to its scope in the negligence context, concluding that its protections extend only to warnings about general side effects of the drugs in question, but not to specific problems known to the pharmacist such as prescriptions for excessively dangerous amounts of the drug or for drugs contraindicated by information about a patient... We conclude that this is such a case... A pharmacist owes the customer a duty of reasonable care with respect to the sale of drugs not authorized for sale by the FDA or the manufacturer.

However, a recent Alabama case decided in February of this year reached a totally different result. The Alabama Supreme Court held in that case out of Mobile that a hospital pharmacist was not responsible for the death of a patient who had been prescribed a drug by a doctor. The pharmacist allegedly had given the patient incomplete “dosing information” for the prescribed medication. Thus, the hospital’s liability was cut off for their pharmacist’s alleged breach of duty. A jury verdict in the case was reversed and the learned intermediary doctrine applied.

Source: *Lawyers Weekly*

A LOOK AT CASES TO BE HEARD BY THE U.S. SUPREME COURT

In its current term, the U.S. Supreme Court is taking up a number of interesting and very important cases. Many of the cases on the docket are business-related cases. Among the cases with business issues to be heard, the justices will take on major questions concerning federal pre-emption of state tort lawsuits, arbitration, environmental regulation, workplace discrimination, pensions and punitive damages. Thus far, the Court has agreed to decide 15 business-related cases. That makes up about 30 to 40% of the docket, which is a very high number. We will briefly discuss some of the cases below.

The following cases to be heard are extremely important to all American citizens who believe in justice and fair play for all:

- ***Drug maker liability:*** The preemption case is being heard in the appeal by drug maker Wyeth. Wyeth, backed by the Bush administration, wants the high court to rule that Food and Drug Administration regulation of prescription drugs—in this case, approval of warning labels for drugs—overrides state laws and makes it easier for companies to defend against consumers’ meritorious claims.
- ***Punitive damages:*** Altria Group Inc.’s Philip Morris is back at the court for a third time trying to reduce the nearly \$80 million in punitive damages awarded by Oregon courts to Mayola Williams, widow of a longtime smoker. Oregon’s Supreme Court has upheld the award three times and the high court twice has thrown it out. The most recent ruling by the state court relied on Oregon law to sustain the award. The justices will decide whether they agree or rather believe their Oregon colleagues are, in essence, ignoring them.

The four environmental cases, all appeals from decisions in cases won by environmental groups, on the docket thus far are:

- ***Summers v. Earth Island Institute,*** which is a lawsuit against the U.S. Forest Service over regulations limiting notice, appeals and public comment for certain activities.
 - ***Winter v. Natural Resources Defense Council,*** a case in which the Navy, which did not complete an environmental impact statement, challenges an injunction on sonar training exercises that could harm marine mammals.
 - ***Entergy Corp. v. EPA*** is a case raising the issue of whether the Clean Water Act authorizes the Environmental Protection Agency to weigh costs and benefits of systems to be used at water cooling structures rather than using the most advanced technology available.
 - ***Coeur Alaska Inc. v. Alaska Conservation Group*** is a case in which a gold mining company and Alaska challenge a bar against an Army Corps of Engineers permit for discharging toxic tailings into the Lower Slate Lake.
- There are also a number of cases involving issues with significant stakes for women. The Court has two major job bias cases involving Title VII of the 1964 Civil Rights Act.
- In ***Crawford v. Metropolitan Government of Nashville,*** the justices will decide whether Title VII protects a female employee who is fired because she cooperated in her employer’s investigation of sexual harassment complaints against another employee. At issue is the scope of Title VII’s “opposition” and “participation” clauses. The Court has been favorable to employees in retaliation cases recently.
 - The appeal in ***AT&T v. Hulteen*** is from a suit by a group of AT&T employees who claim that their smaller pensions resulted from the company’s failure to give them full credit for pregnancy leaves taken before the effective date of the Pregnancy Discrimination Act, violating Title VII.

There are three other business-related cases involving pension benefits and arbitration that are important.

- In *Kennedy v. Dupont Plan Administrator*, the Court will decide if ERISA's rule that pension benefits may not be assigned or alienated prevents enforcement of a spouse's waiver in a divorce decree of her rights to her husband's pension benefits, particularly when the husband never removed her as beneficiary.
- The most potentially significant arbitration case is *14 Penn Plaza v. Pyett*. That case involves whether an arbitration clause in a collective bargaining agreement is a waiver of an employee's right to sue for violations of anti-discrimination law.
- A second arbitration case, *Vaden v. Discover Bank*, involves both arbitration and preemption. At issue is whether federal courts have jurisdiction to enforce a state law arbitration agreement and whether the claims here are preempted by the Federal Deposit Insurance Act.

I believe the Court's only antitrust challenge to be heard this term is *Pacific Bell v. Linkline Communications*. At issue in that case is whether Section 2 of the Sherman Antitrust Act permits a "price squeeze" claim the Defendant has no duty to deal. It will be interesting to see how the court deals with that issue.

The following are also important cases on the court's docket:

- *Profanity on the airwaves*: In the court's first major broadcast indecency case in 30 years, can the Federal Communications Commission fine broadcast television stations for the one-time use of profanity on live programming? Cher, Nicole Richie and Bono are the celebrities who uttered familiar, but profane words on awards shows. The FCC changed its long-standing policy that exempted such "fleeting expletives" from being labeled indecent.
- *Cigarette advertising*: The court will

decide whether cigarette makers can be sued under state law for allegedly deceptive advertising of "light" cigarettes. The tobacco industry is trying to head off a wave of state-based challenges regarding the light cigarettes. At the same time, it is appealing a federal judge's order to stop marketing cigarettes as "low tar," "light," "ultra light" or "mild" because they mislead consumers. Like the prescription drug case, this dispute centers on whether federal regulation bars state fraud claims.

- *Religious monuments*: Pleasant Grove City, Utah, wants the court to back its decision to bar a religious group known as Sumnum from placing a display in a public park that already has a Ten Commandments monument. A federal appeals court found that the city violated the group's free speech rights. The Sumnum believe that when Moses received the Ten Commandments on Mount Sinai, he received a second set of tablets called the Seven Aphorisms.
- *Detainee lawsuit*: A Pakistani Muslim sued former Attorney General John Ashcroft, FBI Director Robert Mueller and others over mistreatment he suffered in federal custody after being rounded up in a post-September 11th sweep. The court will decide if high-ranking officials such as Ashcroft and Mueller can be sued when lower-level government workers allegedly violate people's civil rights.

Source: *Law.com* and *Associated Press*

U.S. SUPREME COURT SEEKS CONSULTATION ON FOOD LABELING LAW

In an interesting and most noteworthy happening, the U.S. Supreme Court asked the Justice Department for advice on a bid by the nation's largest grocery chains to block customers from suing over violations of government food-labeling rules. Supermarkets led by Supervalu Inc., Safeway Inc. and Kroger Co. contend that only government regulators, and not customers, can enforce federal and state labeling laws. The com-

panies want to stop a lawsuit accusing them of concealing that salmon they sold contained artificial coloring. This is just another area where federal preemption is being pushed.

In the California case, that state's Supreme Court allowed the customer claim lawsuit to go forward. In their appeal, the supermarkets claim the California court ruling was "an open invitation to private Plaintiffs nationwide to bring class actions." The high court may add this case to its 2008-09 docket. The central question for the court in the new case is whether the Food, Drug and Cosmetic Act, which governs food labeling at the federal level, bars private efforts to enforce similar state laws. The fact that the court asked the Justice Department for help is very interesting. It would seem obvious that the California state court made the correct decision under well-established law.

Source: *Bloomberg News*

SETTLEMENT REACHED IN KENTUCKY TRAIN WRECK

A federal class-action lawsuit over a fiery train derailment in Bullitt County, Kentucky in January 2007 has been settled for \$3 million. There are about 17,000 people eligible for claims, but no person in the lawsuit can receive more than \$10,000. The lawsuit, filed shortly after the crash, claimed that CSX Transportation was responsible for the derailment and that the railroad failed to warn residents of possible danger quickly enough after the derailment. A combustion plume spread throughout neighboring communities, resulting in chaos, fear and evacuation. During the incident, about 500 residents were evacuated, some people were taken to hospitals, and thick, black smoke spread for miles. The train was carrying chemicals considered hazardous. Some residents went to the hospital complaining of breathing problems. General Electric was added as a defendant in the case after CSX claimed that a defect in a derailed GE-owned railcar caused the accident.

U.S. District Judge Thomas Russell

has given preliminary approval to the settlement. The National Transportation Safety Board has not released its final report on the accident's cause. Interestingly, the settlement includes an order prohibiting any press releases unless all parties agreed to the language. Those persons who may have claims in the lawsuit—people who lived, worked or had property within 3½ miles of the derailment site—are being notified. The closer people lived to the site, the more money is available to them, according to the terms of the settlement.

CSX already has paid about \$1.7 million in hotel bills for evacuees, cleanup of homes and cash payments to victims immediately after the crash. Those who have received some money from CSX will have those payments deducted from their settlement amounts. People who lived within 1,500 feet of the crash are not eligible to participate in the class action. Some of those persons have filed individual lawsuits. People in the class have until the 28th of this month to file claims and they had until October 18th to opt out of the settlement.

Those who opted out can file their own lawsuits or object to the settlement agreement in writing to the court. The lawsuit included residents who were forced to evacuate their homes as well as people who were ordered to stay in their homes. The named Plaintiffs in the lawsuit will get an additional sum for representing the class. Judge Russell will hold a hearing on December 15th to hear any objections to the settlement and decide if it is fair and adequate and should be approved. A number of individual lawsuits against CSX are still pending.

Source: *Courier Journal*

TACOMA FAMILY SETTLES WRONGFUL DEATH LAWSUIT WITH STATE

The family of a Tacoma, Washington, man who was beaten to death by an ex-convict under state supervision has settled its lawsuit against the State Department of Corrections for \$2.2 million. The family of Darrel Johnson

settled the wrongful death lawsuit during mediation last month. The family contended the state department failed to do enough to monitor the man convicted of killing Johnson three years ago when the 69-year-old was taking a morning walk. Andrew J. Brown was on parole from a robbery conviction and had remained free despite an arrest for disorderly conduct and his admitting using drugs. Brown pleaded guilty to murder and was sentenced to more than 30 years in prison.

Source: *Tacoma News Tribune*

VII. THE NATIONAL SCENE

U.S. CHAMBER HELPED TO CREATE THE CURRENT FINANCIAL CRISIS

A recent report concludes that the U.S. Chamber's aggressive lobbying in Congress to eliminate accountability and oversight helped cause our nation's current financial crisis. The report was released to the public and contained some extremely interesting information relating to how the Chamber has worked to protect wrongdoers and in the process has hurt millions of people. In the report, payments from bailed-out AIG to the Washington corporate lobby were exposed. As we all know, the U.S. Chamber was the strongest supporter of the \$700 billion taxpayer bailout, which is more than just a little weird—it's bizarre. That's because the Chamber spent the last decade fighting to eliminate corporate accountability.

The lack of accountability and oversight were major factors that led to the financial crisis. Now the Chamber is pushing stronger regulation and oversight which is a total reversal of its position. The U.S. Chamber has been paid millions by large corporations to limit the rights of shareholders, roll back Sarbanes-Oxley reforms, prevent disclosures to investors, and protect boardrooms while preventing con-

sumers from holding them accountable, according to the report.

We all know how bad American International Group (AIG) has been. It's revealed in the report that AIG has made payments to the U.S. Chamber totaling \$23 million from 2001 to 2005. AIG, labeled by one commentator as "the new Enron," was backed by the Chamber while engaging in massive corporate fraud before receiving its recent government bailout.

One thing is certain: the U.S. Chamber played a big part in destroying all checks on corporate excess, accountability and greed. The American people are now paying for it. The Chamber has put countless Americans in financial jeopardy while it protected corporations like Enron, Tyco, AIG, Countrywide, Lehman Brothers, and a host of others.

The goals of the Chamber have been to sell tort reform—protect corporate wrongdoers—and work for de-regulation of Corporate America. The result was to allow the financial and drug industries to do pretty much what they wanted to do. The U.S. Chamber's lobbying and litigation have put Wall Street ahead of Main Street and corporations above ordinary Americans. If you want to read "Behind the Bailout: How the U.S. Chamber Created the 2008 Financial Crisis," you can visit: <http://www.justice.org/pdf/uschamber/behindthebailout.pdf>.

THE BAD GUYS SHOULD GO TO JAIL

Nobody seems to know at this stage how the \$815 billion corporate bailout will actually work. Thus far, the indications are that it may not slow down the already deepening recession. The jury is still out as to the long-range effect. Hopefully, it will work in time. But regardless of how you feel about how the President and Congress dealt with the economic crisis that came very close to taking our Nation into a depression worse than that of the Hoover days, there is still much work that must be done. Chief among that work is a sweeping criminal investiga-

tion to find out who all should bear criminal responsibility for causing this mess. Those corporate executives who caused the meltdown of our financial institutions and the sub-prime lending industry should be prosecuted in the criminal courts and any person who has broken any criminal laws should go to jail.

Even if the criminal laws were not violated, no executive who led us into the meltdown of the housing and mortgage industries, and the virtual collapse of our economy, must be allowed to keep any of their ill-gotten gain. Hopefully, the Congressional investigations that have started, as well as those by the SEC, FBI, and Justice Department, will be serious and aimed at finding out what actually happened—who caused it—and then making sure those causes don't happen again.

THE FEDERAL GOVERNMENT DROPPED THE BALL

While Congress is now hard at work trying to figure out who is to blame for the deepening financial crisis, it seems quite obvious that lots of folks in Washington dropped the ball. I am shocked that collectively the federal agencies failed to spot the warning signs of massive and growing fraud in the home mortgage industry. Clearly, there was a trail out there that led directly to Wall Street. Lots of folks in Washington were asleep at the switch. The Connecticut Attorney General Richard Blumenthal has been ahead of the curve in dealing with corporate fraud. He had this to say on the subject of fraud in the financial institutions' matter:

The failure to connect the dots is completely reprehensible and should now lead to strong and effective indictments and prosecutions for fraud.

Over the last five years, evidence of widespread fraud and deception in the home mortgage business was presented to the FBI, the SEC and the Federal Reserve Board chairmen, Alan Greenspan and Ben Bernanke. Unfortu-

nately, none of these presentations resulted in a comprehensive or coordinated federal reaction. I have to wonder—if our firm, which has been involved in civil litigation with a number of these financial institutions, knew about how bad a number of these companies were—why didn't the government regulators and specifically the Bush Administration know? Our litigation was widely reported by the media and was no secret.

In July, 2007, a coalition of civil rights groups met with Federal Reserve chairman Ben Bernanke in Washington, D.C., to present concerns that minority homeowners were being particularly hard hit by predatory lenders whose tele-marketing schemes resulted in hundreds of thousands being tricked into mortgages they could not afford. Ultimately, thousands were forced into foreclosure.

Evidence of widespread fraud emerged in discovery conducted in the civil law suits brought against a number of mortgage brokers affiliated with Lehman Brothers. If our law firm and others knew that there were serious problems in the mortgage industry, how could this have been ignored in our nation's capital? In fact, we wrote about the problems in this Report. There was no follow up or real interest from the FBI or the federal prosecutors in pursuing criminal cases even though there were verdicts and settlements made public in a number of civil suits.

Now the FBI is finally conducting criminal investigations involving allegations of fraud involving Lehman Brothers and other major Wall Street financial institutions. The government learned very late in the game that suspect mortgage brokers had been repackaging bad loans and selling them as high-interest paying investments to banks around the world. The corporate bosses had felt there was nobody to regulate them and that they could get away with anything with no fear at all of the consequences.

Perhaps, the Securities Exchange Commission should bear the largest share of the blame because it has direct jurisdiction over such investments.

They failed to take action to stop the sales of these flawed investment instruments to the public in general. However, it may be that the underlying real estate transactions at issue may have been "done entirely outside the regulatory authority of the SEC." It's almost certain now that a number of Wall Street's CEOs—past and present—will face criminal prosecution. One lesson the government has learned the hard way because of this mess is that the "voluntary regulatory program" simply won't work. That was the Bush-Cheney-McCain approach to dealing with the sub-prime lenders and we are now paying for the lack of regulation they espoused.

Source: Associated Press, Bloomberg and Reuters

THE RISE AND FALL OF THE BUSH ADMINISTRATION

Watching the Bush Administration in its final few months is like watching one of those tragic scenes in a disaster movie. In agency after agency, the Bush-Cheney-Rove crew is scrambling to do as much damage as they can to the American people—frantically manipulating our governmental systems to benefit powerful corporate interests—and having no regard for the consequences. From environmental agencies to the Pentagon, the Administration is rushing through new rules and executive reorganizations designed to lock policies that benefit Corporate America and tie the hands of the next administration.

One of their latest efforts came from the Justice Department, which issued a 215-page "policy guidance" paper for future antitrust regulators. During Bush's eight-year reign, his tightly controlled Justice Department has filed exactly one case charging anti-competitive practices. That one was a small case involving a West Virginia newspaper. The new Bush policy protects monopolists, not consumers or competitors, and that was to be anticipated. The policy is so unbalanced that even the Federal Trade Commission blasted it as "a blueprint for radically weakened

[anti-trust] enforcement” that will allow monopolies to act “with impunity.”

If you check to see what the Bush-Cheney-Rove group has done you will find regulatory agencies being stripped of authority and federal preemption being made a part of the regulatory process. Their goal has been to protect corporate wrongdoers and penalize their victims and that goal is getting a final push in the last days of the very worst administration ever.

U.S. ECONOMY NEEDS MORE THAN A BAILOUT OF WALL STREET

The level of government intervention resulting from the financial crisis has no recent precedent in this country. It was reported by *Forbes* that the sum of the liabilities assumed by federal authorities during the past six months—from transactions involving mortgage giants **Fannie Mae** and **Freddie Mac**, the insurer **AIG**, investment bank Bear Stearns and 11 failed regional banks—now exceeds 50% of gross domestic product. That’s a scary situation. The Bush financial-sector rescue plan, which was revised and finally approved by Congress, could push the fiscal deficit in 2009 up to \$1.5 trillion. However, many economists believe the eventual scale of government intervention will likely be much larger. At press time, market conditions were continuing to deteriorate with a great deal of uncertainty in every sector of the economy. There are several conclusions, according to *Forbes*, that can be drawn about the likely course of events:

- **Beyond liquidity crisis.** Access to the Fed’s discount window, or its newer “term-auction facility,” does not guarantee that an investment bank can escape bankruptcy.
- **Derivatives market challenges.** The Lehman bankruptcy has been far more destabilizing than federal authorities believed, due to its status as a prime broker and its role as counterparty in a huge number of over-the-counter derivatives contracts.

• **Piecemeal intervention fails.** The authorities’ piecemeal, largely reactive approach to the crisis has not worked:

- The Securities and Exchange Commission has banned short-sales on more than 800 financial stocks.
- The Treasury will use \$50 billion dollars from the Exchange Stabilization Fund to back money market funds whose asset value falls below \$1 per share.

There was clearly an attack on Bear and Lehman from hedge funds and other financial players who hoped to profit from their demise. The government must investigate the activities of the hedge funds or formulate a strategy for controlling them. Their potential to disrupt markets is evident. Short-selling is a key trading tool and hedging device, and often helps to stabilize markets—but the political backlash will pose major challenges for the hedge fund industry.

- **De-leveraging beyond Wall Street.** The major reduction in leverage on Wall Street is rapidly spreading to Main Street. The assets of U.S. investment banks increased from 5% of gross domestic product during the late 1970s to 25% of GDP in 2003. This has recently shrunk to 23%. It’s predicted by the “experts” that it will plunge in the year ahead.

Meanwhile, the debt of the household sector has increased from 60% of GDP during the early 1990s to almost 100% last year. Household borrowing is still positive, but the growth rate has plunged from nearly \$1.2 trillion per annum three years ago to just 500 billion dollars. Consumer borrowing actually dropped in September for the first time since 1998—because of a lack of credit sources—and that’s bad news for the economy. Corporate debt also increased from 53% of GDP during the mid-1990s to over 70%—more bad news. Hopefully, all of this leverage will significantly wind down in 2009.

The current U.S. de-leveraging spiral is more than a mere liquidity crisis: It is systemic, and so far the piecemeal government intervention pursued has largely failed. Using the huge bailout package to recapitalize banks by taking direct equity stakes is a start, but arresting economy-wide de-leveraging will require more major fiscal policy and regulatory responses. The next President and the new Congress must have definite plans to get our nation’s economy back on track and put it on solid ground. I am convinced that Senator Obama will be able to bring capable people into government roles that have the ability and competence to turn things around.

Source: *Forbes*

WEST VIRGINIA MAY SUE WALL STREET FIRMS OVER STATE LOSSES

West Virginia is considering suing investment firms at the center of the national financial crisis to recoup millions of dollars in losses to its multibillion-dollar portfolio. Governor Joe Manchin has asked his staff to research possible legal action following a briefing from the state’s Investment Management Board. The board manages the portfolio, the bulk of which reflects public employee pension funds. Its returns also fund retiree health benefits, workers’ compensation, insurance for cities and counties and prepaid tuition programs.

At least one public pension fund already filed such a lawsuit. The City of New Orleans Employees’ Retirement System sued AIG directors and key executives on September 17th in Delaware Chancery Court. The action came one day after the global insurance giant received the \$85 billion loan from the U.S. government in exchange for a 79.9% equity stake. That lawsuit seeks to recover for AIG’s shareholders “its staggering losses from its exposure to and grossly imprudent risk-taking in the subprime lending market.”

West Virginia’s investment holdings include stocks and bonds in big Wall Street firms whose bankruptcies forced

sales or government takeovers that punctuated the ongoing financial crisis. Those included AIG, Fannie Mae, Freddie Mac, Lehman Brothers, Merrill Lynch and Washington Mutual. The board bought those securities over time at a cost of \$95.2 million. While those securities amount to a fraction of a percent of the portfolio's \$10.9 billion value, the losses incurred were significant. Their value dropped by nearly \$23 million as of August 31st from the time they were purchased.

I agree with Governor Manchin who believes the firms should be held accountable if they breached their duties to shareholders. The state also may target executives from those financial firms who pocketed hefty exit packages. There are other problems for West Virginia. Besides investment losses, the economic turmoil has delayed the sale of bonds by the state for upcoming highway and college campus construction projects. The governor is assessing whether the government bailout measure, passed by Congress and signed by President Bush, will help that market. Lots of other governors and legislative leaders across the country are doing the same. Hopefully, there will be a turn-around in our economy and soon. But in the meanwhile, other states will likely follow the lead of West Virginia's governor.

Source: *Insurance Journal*

THE FIRINGS OF U.S. ATTORNEYS WILL BE INVESTIGATED

Attorney General Michael Mukasey has appointed a prosecutor to pursue possible criminal charges against Republicans who were involved in the controversial firings of U.S. Attorneys. His move follows the leading recommendation of a Justice Department investigation that criticized Bush Administration officials, members of Congress and their aides for the firings, which certainly appear to have been politically motivated. Results of the investigation, which are now public information, singled out the removal of U.S. Attorney David Iglesias of New

Mexico—among nine prosecutors who were fired—as the most troubling. Republican political figures in New Mexico, including Senator Pete Domenici and Rep. Heather Wilson, had complained about Iglesias' handling of voter fraud and public corruption cases. The report concluded that these complaints are what led to his firing.

Justice Department Inspector General Glenn Fine and Office of Professional Responsibility Director Marshall Jarrett believed a prosecutor was needed because "serious allegations involving potential criminal conduct have not been fully investigated or resolved." Potential crimes described in their report include lying to investigators, obstruction of justice and wire fraud. The Attorney General named Nora Dannehy, a career prosecutor, to direct the probe.

The report says former Attorney General Alberto Gonzales "bears primary responsibility" for the process of firing the prosecutors and the turmoil that followed. Gonzales "abdicated" his leadership role and was "remarkably unengaged," according to the report. The report also concluded that Gonzales' chief of staff, Kyle Sampson, was the person most responsible for coming up with the plan to fire the prosecutors. Sampson's comments to Congress, the White House and others were found to be misleading. Hopefully, the investigation will be a real attempt to get to the bottom of this sordid mess. Anybody who violated the law in this matter should be held accountable and prosecuted if that is deemed to be necessary.

Source: *USA Today*

VIII. THE CORPORATE WORLD

WACHOVIA SETTLES TELEMARKETER SUITS FOR \$200 MILLION

Wachovia Corp., which is being bought by Wells Fargo & Co., has

agreed to pay \$200 million to settle lawsuits claiming it profited by ignoring fraudulent telemarketers who used the bank to help them steal from consumers. Victims of the telemarketing frauds filed suit in federal court in Philadelphia in 2007, claiming that Wachovia knew of claims the telemarketers were using "demand drafts," or unsigned checks, to steal from their victims. The suits were filed on behalf of all people in the country who lost money to the telemarketers between June 2003 and February 2006. The settlement, which must be approved by the court before it can take effect, will reimburse \$163 million the victims lost to the fraud, plus bank fees. In papers filed seeking approval of the settlement it was stated: "This settlement presents the rare instance in which class members have the opportunity to be made whole from any losses resulting from Defendants' conduct."

The settlement follows an April agreement to resolve a probe by the Office of the Comptroller of the Currency into Wachovia's relationship to payment processors who serve telemarketers. Under the April settlement, Wachovia agreed to offer restitution of at least \$125 million to all consumers who lost money on demand drafts processed by the bank. Wachovia had lots of problems—caused mostly by greed—and this settlement reveals the corporate culture of corruption that has existed in the boardrooms of many financial institutions.

In the Wachovia telemarketer fraud suit, unscrupulous telemarketers called consumers, many of them elderly, offering worthless products, including phony coupons, gift certificates and information about government grants. The telemarketers then persuaded the consumers to disclose information about their bank accounts, which the telemarketers used to make fraudulent charges through payment processors that had accounts at Wachovia. The payment processors generated demand drafts with a notice stating "authorized by drawer" in place of a signature. The victims claimed Wachovia failed to close the accounts because it was prof-

iting from fees imposed when many of the consumers discovered the charges and rejected the transactions.

Reimbursement checks will be sent directly to the victims, which is quite unusual, and that's a good thing. Most similar class-action settlements require claimants to fill out and mail forms or follow other complex procedures that sometimes reduce participation in settlements to about 10%. Victims can also make claims for reimbursement of any bank fees. It will be interesting to see how this settlement works out.

Source: *Bloomberg*

NEW WAVE OF CLASS ACTIONS ARE BEING FILED IN WAKE OF SUBPRIME COLLAPSE

The subprime mortgage collapse has already triggered a wave of class actions by shareholders who allege that Fannie Mae, Freddie Mac and underwriters hid the true financial health of the two mortgage giants, both now under conservatorship with the U.S. Treasury Department, to boost stock offerings. All the suits make similar allegations and include many of the same Defendants, including Fannie Mae, Freddie Mac, Goldman Sachs & Co., Morgan Stanley, Merrill Lynch, UBS Securities LLC and Wachovia Capital Markets LLC.

The class actions are likely to incite even more litigation by wealthier individual and institutional investors. Investors who lost \$100,000 or more on the fall of the stock of Freddie and Fannie likely will recover far more if they pursue their own suit or arbitration. Any person who has a significant amount at stake should consider filing suit. Individual investors who own a few shares belong in a class action. Investors with larger losses are generally better off filing individual suits. We plan on making significant resources available in our firm to help people who have been victimized and who need litigation help. Fortunately, we were already involved in litigation involving numerous financial institutions and that will help us take on a larger role if needed. If you need more

information contact Dee Miles or Jay Aughtman at 800-898-2034.

Source: *National Law Journal*

THE FRAUD WE KNOW ABOUT MAY BE JUST THE TIP OF THE ICEBERG

There is no telling how much fraud and corruption has occurred since President Bush invaded Iraq and we started our costly occupation of that country. There has been very little oversight over the massive number of no-bid government contracts given out during the years we have been bogged down in Iraq. A recent example involved a former Army contractor who pleaded guilty to theft after admitting he and others stole nearly \$40 million in jet and diesel fuel from a U.S. Army base in Iraq. Lee W. Dubois of Lexington, South Carolina, faces up to ten years in prison when he is sentenced.

Dubois is a former Army captain who later took a job with Future Services General Trading & Contracting Co., a Kuwait-based contractor. Dubois admitted he and others used false paperwork to draw more than 10 million gallons of fuel from Camp Liberty in Baghdad to sell on the black market. Court papers indicate Dubois personally earned at least \$450,000 from the scheme. Unfortunately, there have been many more similar incidents.

Source: *Associated Press*

IX. CAMPAIGN FINANCE REFORM

WAIT UNTIL NEXT YEAR

Lots of folks who follow college football—who after a series of early season losses—usually say in despair, “just wait until next year!” The same thing can be said for campaign finance reform. We will have to wait till 2009 for any reform to happen. Nothing will happen at either the national or local levels this year. We must look forward to campaign finance reform, as well as lobby-

ing reform, being made a top priority next year. Many believe this could be the greatest challenge facing the newly-elected President and Congress in 2009. Unless we reform the system, we will continue to put politicians in office who are controlled by special interest lobbyists. This is something that—for the good of our nation and its people—must be a part of the change promised by the Obama campaign.

X. CONGRESSIONAL UPDATE

THE BAILOUT LEAVES LOTS OF UNANSWERED QUESTIONS

It appears that the bailout bill—originally sent to Congress by the Bush Administration as a pay-off to wrongdoers—was greatly improved. But, there are still lots of questions unanswered about how the revised measure will work. I doubt seriously that many members of Congress really understand what they have done to the taxpayers. Hopefully, the bill that the President signed into law will eventually rescue our nation's economy. At this point, the jury is still out as to whether the bailout will prove to be a real answer to our nation's economic woes. If it turns out to be a bailout that simply throws billions of taxpayer dollars at the problem—without adequate planning—things will definitely get much worse before the economy is really rescued. My hope and prayer is that those who voted for the bailout did the right thing and for the right reasons.

CONGRESS WILL BE BUSY NEXT YEAR

Members of Congress will certainly have their hands full next year. The Bush Administration is leaving a colossal mess of tremendous magnitude to be cleaned up. It will take a bipartisan effort—with real leadership from the White House for a change—to put our government back on track. This is one

challenge that we can't ignore and it is one that must be met!

XI. PRODUCT LIABILITY UPDATE

NEW FEDERAL RULE ATTEMPTS TO PREEMPT STATE TORT CLAIMS RELATED TO SEAT BELT INJURIES

As President Ronald Regan was prone to say, there you go again! That claim could certainly be thrown at the National Highway Traffic Safety Administration when it comes to its dealing with safety issues—it has done it again. NHTSA has stuck it to consumers and in a big way. The agency has launched another “preemptive” strike against state personal injury suits by inserting a preemption provision in a new rule governing seat belt safety. The final rule, issued on October 9th, is known as the “designated seating position” rule. It revises the definition of “designated seating position” to determine the number of seat belts that are required in a particular vehicle. It also eliminates the exclusion of auxiliary seats from the definition so that all seating locations intended to be used while a vehicle is in motion would provide the appropriate levels of crash protection. Additionally, the new rule contains language that would specifically preempt state tort claims related to seat belt injuries.

Joan Claybrook, president of Public Citizen, who is a former administrator of NHTSA and a good one, reports that the agency has issued safety standards with such preemption language 20 times in the past three years. Joan had this to say about NHTSA:

The fear of lawsuits is one of the greatest incentives automakers have to build stronger and safer vehicles. For NHTSA to suggest that automakers should have blanket immunity from consumer liability lawsuits means that more defective vehicles will

be manufactured, fewer will be recalled, the public will have less information about injury causation and more families will needlessly lose loved ones on our roads each day.

In its latest anti-consumer attack, NHTSA has put the preemption language both in the preamble and the body of the rule. That's a change because previously the preemptive language was only placed in the preamble to rules and NHTSA was only giving an advisory opinion. Clearly, the language in the text is contrary to Congressional intent. NHTSA—which hasn't done a very good job of protecting consumers and has been sort of like an extension of the marketing arms of the automobile industry—should follow the mandate from Congress on the preemption issue. That would protect consumers and make vehicles safer because Congress has to give NHTSA authority to impose preemption. Thus far it hasn't done so.

Source: Public Citizen

SINGLE VEHICLE ACCIDENTS REMAIN A PROBLEM

In investigating automobile accidents and product liability cases over the past 30 years, our firm has seen a great number of single vehicle accidents that were caused by a design defect or mechanical problem. Single vehicle accidents where the occupant received injuries disproportionate to the severity of the collision can on many occasions be traced back to a design or manufacturing defect. On average, over 80% of the product liability claims we investigate are single vehicle accidents.

If there is any possibility of a product liability claim, the vehicle, tires, tire treads and other vehicle parts must be preserved. This evidence is always critical to the success of a product liability lawsuit. Persons who are involved in a single vehicle accident, which may have been caused by a product defect resulting in a serious injury or death, may be entitled to compensation for

medical expenses, loss of wages, and pain and suffering. If you have any questions about how to recognize a product liability claim arising out of a single vehicle accident, contact our product liability lawyers at our toll free number 1-800-898-2034.

THE OVERLOOKED HAZARD RELATING TO CARGO INJURIES

We were contacted recently by a lawyer representing a family who lost a loved one in a motor vehicle wreck when the cargo she was transporting in her GM cargo van shifted forward in a head-on collision. This lady would have walked away from the wreck but for being crushed by the cargo. This tragic wreck reminds me of a case our firm handled several years ago where our client lost his wife in a similar manner in a GM cargo van.

According to accident statistics, there are nearly 250 cargo-related injuries and fatalities every year. In this country, the hazard posed by unrestrained cargo and eliminating that hazard through known safety devices has, for the better part, been ignored by the automobile manufacturers. This is particularly true with the one vehicle where occupants need protection from cargo the most—the cargo van.

For over 40 years, all of the major domestic automobile manufacturers have manufactured and sold cargo or delivery vans. As acknowledged by the industry, cargo vans are designed, manufactured, and sold with one primary purpose: to transport cargo. In fact, most utility vans are designed to carry between 1,500 and 3,000 pounds of cargo in the cargo area which is directly behind the driver and front passenger seat. Remarkably, these vans are designed and manufactured without any means to retain cargo so as to protect occupants from moving or shifting cargo in a foreseeable collision or sudden stop. The only protection provided for the driver of a cargo van transporting an item such as a refrigerator in a frontal collision is the seat itself. However, even manufacturers

will admit that the seats in cargo vans are inadequate to act as a guard or to prevent serious and fatal injuries to occupants in very minor frontal collisions caused by the forces from a 200-pound object, such as a refrigerator, much less the entire payload. Anticipated cargo loads shifting or moving forward in collisions can crush occupants between their seat and steering wheel, even in collisions from which drivers should walk away. In cargo vans, it's the "second collision" that can be more dangerous than the first.

Auto makers have been aware since the 1960s that companies or manufacturers which the industry calls "upfitters" were manufacturing partitions and cargo restraints. In fact, the upfitters started doing this in the early 1960's to afford protection for occupants in foreseeable collisions. Even more amazing is that while the auto makers have business relationships with certain upfitters who manufacture partitions to be placed in cargo vans, the industry claims to this day that it has never tested a partition or cargo restraint. This is true even though the auto makers admit that cargo barracks are necessary safety features when consumers are transporting cargo, such as tools or appliances. Furthermore, the car makers have done nothing to assure that its "certified" upfitters who manufacture cargo restraints for use in its vans are manufacturing crashworthy cargo restraints.

In our case, we learned that while GM has never provided a cargo barrier or cargo partition for the very vehicle that would need one, a cargo van, it has provided cargo barriers for passenger cars since the late 1960's. In the late 1960's, GM began to provide and test a steel divider between the trunk and rear seat of most of its passenger vehicles. GM tested the steel divider to make sure it was an adequate cargo barrier to prevent foreseeable items, which people would put in their trunk, from penetrating the passenger area in frontal collisions. In fact, GM called the cargo barrier a "safety feature." GM also provided securing devices in some of these trunks, to

which people could secure cargo. Between 1968 and 1974, GM tested almost every passenger vehicle it sold to assure that the cargo barrier and steel partition between the trunk and rear seat would retain items, such as spare tires, in 30 mph collisions.

Even more unbelievable than the industry's failure to provide cargo restraints for its cargo vans, are its reasons why it chose not to do so. In our case, GM took the position that the van, and, for that matter, all cargo vans it manufactures, are not provided cargo restraint devices because there are simply not enough cargo injuries and fatalities to justify providing cargo partitions as standard safety devices.

We also learned another factor that makes GM's actions in this country hard to swallow. While GM has ignored the hazards posed by unrestrained cargo in its cargo vans in the United States, GM's actions in Europe have been different for nearly two decades. In the mid-1980's, GM's European engineers acknowledged that the hazard posed by unrestrained cargo could no longer be ignored, and safety features, such as partitions in delivery vans, were necessary to help protect occupants in foreseeable collisions. As a result, Opel, GM's European subsidiary, began designing, manufacturing, and testing partitions for delivery vans. By 1990, when our client's van was manufactured, GM was selling its delivery vans in Europe **with partitions** as "standard safety devices." Unfortunately for our client, during that very same year, her van was manufactured with no partition or device to restrain cargo. Had our client's van been manufactured by GM with a partition like the one it provided in Europe, she would have walked away from her accident and would be with her husband today.

During the same time GM was developing and testing cargo partitions and restraints in Europe, it was considering providing some form of cargo restraint in its cargo vans similar to our clients' vehicle. One of GM's safety engineers testified in our case that he recommended in the mid-1980's that GM provide, at a minimum, cargo tie-downs

in vans because no cargo barrier was provided to protect occupants from cargo that might shift and injure occupants in frontal collisions. This GM engineer testified further that he made these recommendations to GM's policy-makers because GM knew that folks were going to use their vans to haul heavy cargo, and consumers needed some means to retain cargo as recommended by GM in its own owner's manual. Unfortunately, GM ignored its own safety engineer's recommendations. A few years later, our clients' van, like every other G-van manufactured by GM, was sold without any means to restrain cargo.

GM now admits that its cargo vans, as designed and manufactured, are not safe to haul cargo. However, the company takes the position that it is up to folks like our client to make sure the vans are safe to haul cargo. What is even more amazing about GM placing the burden on consumers to make its vans safe is GM's failure to provide any information as to how a consumer should make its vans safe. The owner's manuals being provided with GM cargo vans provide no information as to how a consumer can make its vans safe to transport cargo. In addition, GM provides no literature or warnings as to where consumers can acquire cargo-retentive devices. Even if a consumer is fortunate enough to know where to get a partition or other cargo restraints installed for his or her GM cargo van, GM cannot certify that necessary cargo restraints are, in fact, crashworthy, because GM has chosen for 40 years to ignore needed testing to assure that necessary cargo restraints for use in its vans are safe.

If you want more information relating to the safety issues mentioned above, you may contact Rick Morrison at 800-898-2034.

FEMA NOT IMMUNE FROM TOXIC TRAILER SUITS

A federal judge has ruled that the federal government is not immune from lawsuits claiming many Gulf Coast

hurricane victims were exposed to potentially dangerous fumes while living in trailers provided by the Federal Emergency Management Agency. U.S. District Judge Kurt Engelhardt cited evidence that FEMA delayed investigating complaints about formaldehyde levels in its trailers because the agency felt it might be held legally responsible. Formaldehyde, which is used as a preservative, can cause breathing problems and is classified as a carcinogen. Judge Engelhardt said FEMA learned of the formaldehyde concerns around March 2006, several months after Hurricane Katrina hit in August of 2005, but responded by “sticking their heads in the sand” rather than ordering air-quality tests. The judge wrote in his order that:

The evidence shows that FEMA initially ignored the potential formaldehyde problem and neglected to conduct testing in fear that such testing would ‘imply’ FEMA’s ownership of the issue.

FEMA contended that the agency is immune from lawsuits when it responds to a disaster. But Judge Engelhardt said ignoring potential health problems associated with FEMA trailers wouldn’t be a “permissible exercise of policy judgment.” There are about 800 storm victims who are named Plaintiffs in the cases. The judge is being asked to certify a class action suit on behalf of thousands of people who lived in FEMA trailers after the 2005 hurricanes. So far, that request hasn’t been ruled on. The Plaintiffs are seeking unspecified damages in the case. The lawsuits also accuse trailer makers of providing FEMA with shoddily-built units in a rush to meet the agency’s unprecedented demand for emergency housing. Formaldehyde levels were, on average, about five times higher than what people are exposed to in most modern homes.

Source: *Associated Press*

YAMAHA RHINO DEMONSTRATED FOR CPSC

On July 28, 2008, Yamaha’s profes-

sional drivers demonstrated the new 2009 Yamaha Rhino for the Consumer Products Safety Commission and the public. The 2009 models include a modified door, new seatbelt latch and webbing, a reminder light to wear a helmet and seatbelt, along with several other features. All of these features are good. Unfortunately, no modifications have been made to address the instability of the vehicle. As the lawyers in our firm who handle product liability cases know, that is the problem with the Rhino. It is an unstable vehicle—prone to rollover—and thereby highly dangerous. At the demonstration, the public was invited to ride as a passenger so long as boots were worn and waivers were signed, but they were not permitted to drive, which is quite interesting and pretty smart on Yamaha’s part.

XII. MASS TORTS UPDATE

FDA PROBING DEATHS IN ANEMIA DRUG STUDY

U.S. health officials have been reviewing a higher rate of deaths among patients treated with Eprex, a Johnson & Johnson anemia drug, in a German study of stroke patients. Sixteen percent of patients who were treated with Eprex died three months after the study began compared with 9% who took a placebo. The study was testing to find out if Eprex could improve brain function in stroke patients, which is an unapproved use of the drug. The 522 patients in the test, most of whom were not anemic, were given relatively high doses of Eprex for three days, or were given a placebo.

Eprex is known generically as epoetin alfa. Johnson & Johnson also sells epoetin alfa under the name Procrit. Amgen Inc. sells a version under the name Epogen. The blockbuster drugs are part of a class called erythropoiesis-stimulating agents (ESAs), which are approved for treating

patients with kidney disease and cancer. In recent years, the safety of ESAs came under scrutiny after other studies found tumor growth or shorter survival for some patients given high doses. In July, the FDA ordered strong new warnings on the medicines.

According to the FDA, the higher death rate in the German study “suggests the need to closely monitor patients enrolled in other ongoing trials for adverse outcomes and to evaluate whether the potential benefits for enrolled patients outweigh the risks in these trials.” The FDA says it expects to receive more data within the next several weeks and that the agency will announce its conclusions when the review is completed.

Source: *Reuters*

SAFETY ISSUES REMAIN WITH CHINESE MILK

There are major health and safety issues involving Chinese milk tainted with melamine, a chemical used in making furniture and other goods, and it appears little is being done to solve the problem as has been widely reported. Several children were killed and more than 54,000 made sick in China. The United States, European Union, India, South Korea and a number of other countries have recalled or banned products, including milk from China, as a result. The Chinese milk-safety scandal exposes one of the pitfalls of a key strategy of the world’s big multinational food companies and that is relying on local suppliers in emerging markets. The Chinese government has been struggling to contain the scandal over the contamination of the dairy products. I am not real sure that very much progress is being made.

China has at least promised to ban milk and food products that do not meet newly-introduced standards for permissible levels of melamine. The government is trying to reassure consumers that the widespread tainted dairy scandal is under control. Clearly, China’s food exports have suffered significantly. More than 30 countries—

from Europe to Asia and Africa—have banned, recalled or found contamination in Chinese dairy products.

Under the guidelines announced by the Chinese Health Ministry, melamine limits considered safe are set at one part per million for infant formula and 2.5 parts per million for liquid milk, milk powder and food products that contain more than 15% milk. A ministry official reported that any items containing higher levels will be “prohibited from sale.” Dairy suppliers in China were accused of watering down the milk and then adding melamine to make the product appear richer in protein so it could pass quality control tests.

Melamine, used in products including plastics, paint and adhesives, can lead to kidney stones and possibly life-threatening kidney failure. Melamine should never be used as an ingredient or additive in food products. Any supplier that allows melamine to be put into food products is asking for trouble. Prior to the milk scandal, there were no standards in China. Levels of melamine discovered in batches of milk powder recently registered as much as 6,196 parts per million, which is a highly dangerous level.

The Chinese Health Ministry has acknowledged that the country’s dairy industry was “chaotic” and suffered from a grave lack of oversight. It has pledged to monitor milk products from dairies to store shelves. Even before the uproar over contaminated milk, China’s manufacturing industry had been under intense scrutiny after the industrial chemical melamine and other industrial toxins were found last year in exports ranging from toothpaste to pet foods. The current crisis has forced the government to fire local and even high-level officials for negligence, while repeating earlier promises to raise product safety standards. Hopefully, there will be significant change in China that will create a system of controls designed to protect consumers on health and safety issues.

Source: *Wall Street Journal*

GSK AGREES TO PAY INSURANCE COMPANIES \$40 MILLION

A Minnesota federal judge has approved a \$40 million settlement between GlaxoSmithKline (GSK) and a number of insurance companies. The drug manufacturer has agreed to reimburse the insurers that covered purchases of the antidepressant drug Paxil for children. GSK faces a number of class actions charging that the pharmaceutical manufacturer promoted Paxil for adolescents and children even though clinical studies found the drug increased suicide risks in younger patients.

The settlement, approved by U.S. District Judge Michael J. Davis, applies to insurance firms and other third parties that covered the purchases of Paxil for patients under 18 between January 1, 1998, and December 31, 2004. Class members would be refunded for up to 40% of their actual cost of Paxil if they provide proof that the patient was diagnosed with a severe depressive disorder and was prescribed Paxil or Paxil CR.

The original claims were filed in four class actions in California, Minnesota and Pennsylvania. The settlement is the second phase of litigation against GSK over Paxil use for children. Last year, the company paid almost \$64 million to settle claims of parents who sought reimbursement for the costs of paying for the drug prescriptions.

Source: Law.com

NUVARING LITIGATION EXPANDS

Litigation against the maker of the contraceptive NuvaRing has expanded to over 150 cases filed in state and federal court. In August, all federal cases were consolidated in multi-district litigation in Missouri under U.S. District Court Judge Rodney Sippel. If you don’t already know, NuvaRing is a vaginal contraceptive that releases estrogen and progestin. Its main advantage is convenience because the device can be left in place for three weeks instead of taking a pill every

day. The lawsuits allege that the product has a design defect in the dosage and type of progestin used and that the manufacturers failed to warn about side effects including blood clotting, pulmonary embolism, heart attack, stroke and deep vein thrombosis.

The suits name NuvaRing’s manufacturer, Organon Inc., as well as Organon’s new parent company, Schering-Plough Corp., and former Dutch parent company, Akzo Nobel N.V. The women bringing the lawsuits claim that NuvaRing releases a high dosage of a type of progestin called etonogestrel—a metabolite of desogestrel, a third-generation progestin—that is more dangerous than previous generations of progestin. Public Citizen petitioned the FDA last year seeking to ban third-generation oral contraceptives containing desogestrel.

The claims in these cases are a failure to warn of a known danger, negligence, breach of warranty, consumer fraud and common law fraud. A number of claims are currently pending in a New Jersey state court after a federal magistrate judge rejected the Defendants’ argument that the claims were preempted by federal drug regulations. It will be interesting to see how these claims develop and how the Defendants deal with them.

Source: Law.com

NEW STUDY SHOWS DRUG SAMPLES MAY ADVERSELY AFFECT CHILDREN

Drug companies have flooded the market for years with free drug samples aimed at physicians and patients in an attempt to boost sales of their respective drugs. They also tout the notion that these samples are beneficial to those without adequate health care. A new study published in the medical journal *Pediatrics* looked at a survey conducted by the Centers for Disease Control and Prevention regarding consumer health care. The survey found that children in low income families were no more likely to receive free samples than those in high income families, partly due to inadequate access to

doctors by lower income patients.

Children who did see a doctor and lacked sufficient health insurance were more likely to receive drug samples over adequately insured children; however, the kinds of “free” drugs being dispensed were of great concern. The study showed that four specific medications, which were later given serious safety warnings by the Food and Drug Administration, were given to over 500,000 children in 2004. Those drugs were Adderall, Strattera, Elidel and Advair.

Dr. Sarah L. Cutrona of Harvard Medical School, who spearheaded the study, said that free drug samples tend to be newer drugs on the market, so their safety profile is not always thoroughly examined and instructions regarding use for children are often unclear. Dr. Cutrona went on to say that there needed to be further investigation regarding the potential risks and benefits of these drug samples and possibly “stopping the use of free samples entirely, if there are such potential harms.”

Source: *New York Times*

EXPERTS CONCLUDE PFIZER MANIPULATED STUDIES

Neurontin, manufactured by Pfizer subsidiary Parke-Davis, is a medication originally developed for the treatment of epilepsy. It was approved by the FDA in 1994, and in 2002 an indication was added for the treatment of neuropathic pain. Neurontin has also been used in treating bipolar disorder, a use not approved by the FDA.

Over the past decade, off-label prescribing has become a serious problem. Upon the approval of a drug, the FDA also approves the labeling for the drug which details the manner in which the medication is to be used. It is against the law for a pharmaceutical company to promote a drug for uses outside of the approved labeling. Pfizer has come under heavy criticism for its off-label marketing of Neurontin. In 2004, Warner-Lambert pled guilty to felony charges and paid more than

\$430 million to resolve the charges regarding the off-label marketing of Neurontin.

Pfizer is currently involved in litigation regarding Neurontin in federal court in Massachusetts. Documents released in October suggest that Pfizer manipulated the publication of scientific studies to boost sales by altering or declining to release the conclusions of studies that found no beneficial effect from the drug for off-label conditions. Experts concluded that Pfizer delayed the publication of studies that found no evidence Neurontin worked for other disorders, spun negative data to place it in a more positive light, and bundled negative findings with positive studies to neutralize the results. Dr. Kay Dickersin, one of the experts who reviewed the documents, concluded that the documents reveal a publication strategy meant to convince physicians of the drug’s effectiveness and misrepresent or suppress negative findings.

Pfizer denies any wrongdoing and issued a statement denying that it manipulated the data. Pfizer contends that off-label promotion began before acquiring Parke-Davis through its acquisition of Warner-Lambert in 2000. Neurontin has been one of Pfizer’s best selling drugs and was one of the 50 most prescribed drugs in the United States in 2003. Despite generic competition, it remains a strong seller. Sales have been about \$12 billion since 2000. According to some estimates, off-label prescriptions account for approximately 90% of Neurontin sales.

Source: *New York Times*

GEORGIA SUPREME COURT RULES THAT COUPLE CAN SUE VACCINE COMPANY

In a recent decision, the Georgia Supreme Court allowed an Atlanta couple’s lawsuit against a vaccine manufacturer to go forward. The Supreme Court upheld a first-of-a-kind ruling by an appellate court in a case that had drawn fierce opposition from the vaccine industry. The court’s unanimous decision concluded that a 1986 federal law that has been used to block other

lawsuits against vaccine companies does not bar the lawsuit from Marcelo and Carolyn Ferrari from going to trial.

The court upheld a ruling by the Georgia Court of Appeals, which became the first appellate court in the nation to hold that the National Childhood Vaccine Injury Compensation Act does not preempt state law. The Ferrari family asked the Georgia Supreme Court to rule that vaccine maker American Home Products Corp., now known as Wyeth, can be held liable for damages in a civil case involving their son, Stefan. The family contends that Thimerosal, the mercury-based preservative, caused their son’s disability. According to his parents, the child was a talkative toddler before he got a round of booster shots when he was 18 months old. The boy, now ten, hasn’t spoken since. The case has drawn protests from the vaccine industry as well as powerful right-wing lobbying groups, including the U.S. Chamber of Commerce and Pacific Legal Foundation. Their agenda is to prohibit lawsuits and has nothing to do with patient safety.

The Georgia Court’s ruling, written by Justice George Carley, said the federal law “clearly does not preempt all design defect claims against vaccine manufacturers.” Instead, the court held that vaccine manufacturers must prove on a case-by-case basis that the side effect of the particular vaccine was unavoidable in order to be immune from defective design claims. Families of children with autism have contended that Thimerosal is linked to autism. While the Centers for Disease Control and Prevention have rejected any such link, it appears there may well be a scientific basis for a contrary view. Thimerosal has been removed in recent years from standard childhood vaccines, except flu vaccines that are not packaged in single doses. The CDC says single-dose flu shots currently are available only in limited quantities. It will be interesting to see if this ruling will stand and whether it will affect other cases.

Source: *Associated Press*

MISSOURI COURT UPHOLDS \$8.5 MILLION POLIO VACCINE AWARD

A Missouri appeals court has upheld an \$8.5 million judgment for a St. Louis man who contracted Polio after receiving an oral vaccine as a child. A three-judge panel of the Court of Appeals' Eastern District also ruled that the vaccine's manufacturer owed about \$2.8 million for prejudgment interest on top of the award because it refused to accept a pretrial settlement offer that was less than the amount awarded by a jury. In 1987, as a child, the Plaintiff contracted Polio shortly after receiving a second dose of the vaccine Orimune, which was made by American Cyanamid Co. The Plaintiff said he was frequently teased, struggled to fit in with other children and now has limited use of his left arm and right hand.

He sued American Cyanamid and the pediatrician who administered the vaccine. In 2005, a St. Louis jury cleared the doctor of liability, but ordered American Cyanamid to pay the Plaintiff \$1.5 million for pain and suffering, \$2 million for future lost earnings and \$5 million for future pain and suffering. The company appealed, contending there was insufficient evidence that it was legally responsible for the Plaintiff's injuries. In addition to asking for a new trial, the company also sought to have the judgment reduced or set aside.

As you may know, Polio is caused by three types of viruses. Oral vaccines for the three types were derived from strains that use living, but weakened virus. American Cyanamid grew larger volumes of the vaccine by passing it through the kidney cells of monkeys, which resulted in "production seeds." Federal regulations required that the "seeds" be tested on monkeys to determine if they could cause illness. American Cyanamid was purchased in 1994 and is now part of New Jersey-based Wyeth. The vaccine given to the Plaintiff was discontinued in 2000. Wyeth is considering an appeal.

Source: *Forbes*

CLASS ACTION LAWSUIT SAYS BIOVAIL MISLED INVESTORS

A new class action lawsuit that claims Biovail Corp. misled investors concerning an anti-depressant formula was filed recently in a New York court. It's alleged in the suit that Biovail misled investors about the regulatory approval status of its BVF-033 treatment, a salt formulation version of the generic antidepressant Wellbutrin XL. It's also alleged that Biovail failed to disclose that, while the U.S. Food and Drug Administration required a single dose study of the effectiveness of BVF-033, the company had in fact submitted a multiple-dose study. The Plaintiffs say that Biovail's FDA application for BVF-033 failed to meet the requirements set forth by the regulatory agency. The company, according to allegations in the suit, failed to inform investors that FDA approval would be delayed.

The suit covers the period between December 14, 2006 and July 19, 2007 and seeks to recover damages on behalf of purchasers of the company's shares. Biovail shares dropped more than 20% on July 20, 2007—to \$20.03 from \$25.51—the day it received a non-approval letter from the FDA concerning the treatment. It should be noted that this is not Biovail's first rodeo when it comes to regulatory and shareholder suits.

The U.S. Securities Exchange Commission has already investigated a Biovail warning of a revenue shortfall following an October 2003 truck accident involving a shipment of Wellbutrin antidepressant, and the company's disclosure of the impact of that accident on its 2003 results. The SEC said Biovail executives had been obsessed with meeting quarterly and annual targets, and that they had overstated earnings and hid losses to deceive investors. Biovail agreed to pay \$10 million to settle the case, but four current and former officers still face charges. Earlier this year the company agreed to pay \$24.6 million to settle a case in connection with the commercial launch of its Cardizem LA heart drug.

Source: *Reuters*

JOHNSON & JOHNSON PAID \$68 MILLION TO SETTLE BIRTH CONTROL CASES

Johnson & Johnson has settled hundreds of lawsuits filed by women who suffered blood clots, heart attacks or strokes after using the company's Ortho Evra birth control patch. The drug manufacturer, the world's largest maker of health-care products, has paid in confidential settlements. The financial details of the settlements to investors haven't been released. Of 562 complaints reviewed by Bloomberg News, the vast majority of users alleged the patch caused deep-vein thrombosis, or blood clots in the legs, and pulmonary embolisms, or blood clots in the lungs. Some blamed it for heart attacks or strokes. The complaints filed blamed Ortho Evra for the deaths of 20 women. The litigation before U.S. District Judge David Katz in Toledo, Ohio, where 1,330 cases were consolidated, is being watched closely.

Complaints filed on behalf of 4,000 women in state and federal courts contend that the company hid or altered data about the risks of high levels of estrogen released by Ortho Evra. More than 5 million women have used the patch since sales began in 2002. The New Brunswick, New Jersey-based company voluntarily strengthened the warning label in 2005, 2006 and 2008 with the approval of the U.S. Food and Drug Administration.

J&J, which makes diaphragms and birth-control pills, developed the patch as an alternative method of hormonal birth control for women who might forget to take their pills daily. The company reports sales of the Ortho Evra patch with those of its birth control pills, folding both into overall sales of hormonal contraceptives. J&J reported 2007 sales of \$900 million for that category, a decrease of 9%. The company's total revenue was \$61.1 billion. J&J's annual report cited "a significant decline" in Ortho Evra sales because of "labeling changes and negative media coverage concerning product safety."

Public Citizen's Health Research Group, a Washington-based advocacy

organization, petitioned the FDA in May to ban the patch within six months, even after the three label changes. Sidney Wolfe, Director of the Research Group, had this to say relating to the patch:

It still has dangerously high levels of estrogen. There are no unique benefits. If there is a drug with no unique benefits, and it has unique risks, and there are alternatives, why should anyone use it? What is the purpose of the FDA if not to regulate products like that?

The company's current label warns that Ortho Evra exposes women to 60% more estrogen than the typical birth control pill and that higher estrogen increases side effects. Studies show Ortho Evra can double the risk of serious blood clots compared with the pill, according to the label. If you want more information on this matter you can contact Chad Cook at 800-898-2034.

Source: *Bloomberg*

FLORIDA SUES MERCK TO RECOVER MONEY SPENT ON VIOXX

Florida has now joined eight other states by suing Merck & Co. over what the state alleges was deceptive marketing of Vioxx. In the lawsuit brought by Florida Attorney General Bill McCollum, the state is seeking restitution for all money spent by state health programs on Vioxx, plus interest. Florida's Medicaid program alone spent more than \$80 million on Vioxx between 1999 and 2004. The lawsuit alleges that "Merck's costly promotional campaign was intended to convince purchasers that the drug was not only safe, but that they should demand it from their healthcare professionals for pain treatment." The suit also seeks civil penalties of up to \$10,000 for each time that Merck's advertising caused a Vioxx purchase to be made, an amount that a court would have to determine. Interestingly, the Florida Attorney General says: "The company also allegedly tried to intimi-

date physicians and researchers who questioned the safety of Vioxx."

Alaska, Louisiana, Michigan, Mississippi, Montana, New York, Texas and Utah have previously brought similar suits, as has New York City. Except for the Texas case, all those suits currently are pending in New Orleans under U.S. District Judge Eldon Fallon, who is overseeing the bulk of the massive Vioxx litigation. None of these cases will have any effect on the global settlement that our firm reached with Merck.

Source: *Associated Press*

FALSE CLAIMS ACT CASE PENDING AGAINST MCKESSON AND GOLDEN HORIZONS NURSING HOMES

The Justice Department has intervened in a lawsuit against several companies alleging that they submitted false claims to Medicare arising from illegal kickbacks and the establishment of sham durable medical equipment (DME) suppliers. The companies are McKesson Corporation, McKesson Medical-Surgical MediNet Inc. (MediNET), GGNHC Holdings LLC, Golden Gate Ancillary LLC, Beverly Enterprises Inc., CERES Strategies Inc. and CERES Strategies Medical Services Inc. (CSMC). McKesson is one of the nation's largest suppliers of DME equipment, which includes, among other things, enteral feeding devices and oxygen supplies. Federal officials alleged that McKesson, through its subsidiary MediNet, structured arrangements that ensured that McKesson supplies were used by Beverly nursing facilities.

McKesson allegedly promised Beverly facilities—now known as Golden Horizons—significant profits to be gained from making it appear to Medicare that it was Beverly—not McKesson or MediNet—that was supplying the DME equipment and supplies. The plan was for MediNet to set up and manage a purported DME supplier, called CSMS, which was actually affiliated with Beverly. But, CSMS was in reality managed by MediNet. Federal officials alleged that MediNet's manage-

ment allowed this entity—which was thinly capitalized, had few employees, had almost no DME equipment and performed none of the DME patient services at the Beverly facilities—to bill Medicare and retain millions of dollars in Medicare payments for services and supplies that actually were supplied by MediNet and not by CSMS.

In exchange for accepting this arrangement that enabled Beverly to retain these profits, the government alleges that Beverly agreed to refer to McKesson its facilities' needs for DME supplies. The case originally was filed by a private citizen under the False Claims Act in the U.S. District Court for the Northern District of Mississippi. The federal government has now intervened and that is most significant.

Source: *Corporate Crime Reporter*

XIII. BUSINESS LITIGATION

CITIGROUP SUES WACHOVIA AND WELLS FARGO FOR \$60 BILLION

Since Wachovia purchased SouthTrust Bank, many Alabama citizens are very much aware of what has happened to Wachovia since that time. In fact, many Alabamians have a shareholder interest in Wachovia, and others are concerned because their money is deposited in some manner in the North Carolina-based bank. This concerns both individuals and businesses. When Wachovia's severe financial problems began to be exposed, these Alabamians became very uneasy and greatly concerned. The bank quickly became a take-over candidate.

Citigroup and Wells Fargo have been "fighting over" Wachovia, resulting in Citigroup filing a civil lawsuit in New York Supreme Court against Wachovia, Wells Fargo and the directors of both companies, seeking more than \$60 billion in damages. The basis for the suit is a claim that Wells Fargo interfered with Citigroup's planned takeover of

Wachovia's banking operations. The complaint seeks more than \$20 billion in compensatory damages and more than \$40 billion in punitive damages from Wells Fargo for tortious interference. Citigroup also seeks relief from Wachovia for its bad faith breach of the bank's contract. Citigroup and Wachovia are involved in a separate case in federal court.

The Federal Reserve tried to work things out between Wells Fargo and Citigroup, but that effort failed. It's pretty hard to understand how Citigroup could have prevailed in a bidding war since its offer to purchase Wachovia was grossly inadequate compared to Wells Fargo's offer, which is 15 times better. But apparently, Citigroup and Wachovia already had a valid agreement when Wells Fargo entered the bidding.

Citigroup ended its negotiations with Wells Fargo in its fight to acquire Wachovia. Citigroup believes it has strong legal claims against Wachovia and Wells Fargo for breach of contract and says it plans to pursue its claims vigorously. Citigroup agreed to buy Wachovia's banking operations for \$2.1 billion in a deal orchestrated by the government. Four days later, Wells Fargo stunned Citigroup by announcing that Wachovia's board had agreed to an \$11.7 billion all-stock offer. Originally, the deal was valued at \$15.1 billion, but Wells Fargo stock declined since it was announced.

The Federal Reserve has now approved the Wells Fargo purchase of Wachovia. In an interesting move, Wells Fargo is asking a federal court in New York to void Citigroup's damages. It is asking the court to help it in that regard by ruling that the agreement between Citigroup and Wachovia was against public policy, and thus invalid. That's a pretty slick move and it will be interesting to see if it works.

Source: *Forbes*, *Associated Press* and *The Birmingham News*

JUDGE AWARDS \$1.2 BILLION JUDGMENT TO JOHNSON & JOHNSON

A federal court judge in Delaware has awarded Johnson & Johnson \$1.2 billion in an 11-year patent battle with Medtronic Inc. and Boston Scientific Corp. over devices that prop open heart arteries after they're cleared of fat. Medtronic was ordered by the judge to pay about \$521 million and Boston Scientific to pay about \$703 million in the dispute over the patent for the Palmaz balloon expandable stent. The judgments entered by Judge Sue Robinson include accrued interest over eight years of \$324 million against Natick, Massachusetts-based Boston Scientific and \$271 million against Minneapolis-based Medtronic.

The companies had been fighting over the basic technology for heart stents, which are tiny mesh tubes inserted in arteries. Johnson & Johnson's patents have expired and the specific stents involved in the case are no longer being sold. The companies were still arguing over details about the patents and the question of whether a new trial on damages should be held. Judge Robinson reinstated the awards and refused to grant a new trial in a case where four trials already have been held over liability and two over damages. The company, which took a charge against some of its liability in the third quarter of its fiscal 2008, may appeal the interest award.

Source: *Bloomberg*

CONTESSA PREMIUM FOODS WINS TRADE SECRETS CASE

A California Superior Court jury has found the following Defendants, Thai Union International, Inc., Empress International, Inc. and Chicken of the Sea Frozen Foods (collectively "Thai Union"), as well as Bryan Rosenberg and Brenden Beck (former employees of Contessa Premium Foods, Inc.), liable in connection with a scheme to steal trade secrets and compete unfairly with Contessa in the sale of frozen food products in the United States. The case

dates back to 2005 when, without Contessa's knowledge, Thai Union began interviewing several key Contessa sales executives.

The jury found that Thai Union ultimately conspired with two of the highest-ranking sales executives, Defendants Bryan Rosenberg and Brenden Beck, to misappropriate Contessa's valuable trade secrets, defraud Contessa and take Contessa's existing as well as anticipated customers. The jury also found that Rosenberg and Beck breached their fiduciary duty while employed by Contessa and did so with malice, oppression or fraud. The jury determined that Rosenberg and Thai Union engaged in fraud by concealment resulting in significant damages to Contessa.

Contessa was awarded compensatory damages of approximately \$2.8 million in the first phase of the trial. In the punitive damages phase, another \$1.5 million was assessed against Thai Union and \$200,000 against Rosenberg. This made the total damages awarded to Contessa \$4.5 million. In addition, Contessa is legally entitled to recover its attorney's fees and costs as well as interest on the damages awarded in this case.

Source: *PR Newswire*

CEPHALON TO PAY \$425 MILLION TO SETTLE GOVERNMENT CHARGES

Cephalon Inc. will pay \$425 million to settle criminal and civil charges that it illegally promoted three of its drugs. The U.S. Department of Justice and the company have finalized an agreement that penalizes Cephalon for marketing Actiq (painkiller), Gabitril (epilepsy drug) and Provigil (sleep drug) for unapproved uses. Acting United States Attorney Laurie Magid had this to say in a statement:

These are potentially harmful drugs that were being peddled as if they were, in the case of Actiq, actual lollipops instead of a potent pain medication intended for a specific class of patients.

Cephalon, which is based in Frazer, Pennsylvania, will pay \$425 million it reserved in 2007, and an additional \$12 million in accrued interest expense. The company will plead guilty to a single misdemeanor violation of the U.S. Food, Drug and Cosmetic Act. From the total settlement amount, \$50 million will go to resolve criminal charges and \$375 million to cover a separate civil settlement brought by Medicare, Medicaid and other federal programs.

Cephalon also settled its two outstanding state government investigations for a total of \$6.85 million. In its settlement with the Connecticut Attorney General and Commissioner of Consumer Protection, Cephalon agreed to a \$6.15 million payment. It also agreed to pay \$700,000 to settle an investigation with the Attorney General of the Commonwealth of Massachusetts. The civil settlement also resolves four whistleblower actions. Three of those cases were filed by former Cephalon sales representatives.

As part of the settlement, Cephalon entered into a five-year corporate integrity agreement. It requires the company to send doctors a letter telling them of the settlement and giving them a means to report questionable conduct from the company's sales representatives. The agreement also requires Cephalon to post payments to doctors on its web site. As you should know from prior Reports, doctors are allowed to prescribe drugs for any condition they like; but companies are only allowed to promote them for conditions for which they have been approved by the U.S. Food and Drug Administration. Kim Rice, who is with the FDA's Office of Criminal Investigations, made this statement relating to the settlement:

This settlement demonstrates the government's continued scrutiny of sales and marketing practices by pharmaceutical companies that put profits ahead of the public health.

The politically powerful pharmaceu-

tical industry has pretty much had its way during the years of the Bush Administration. It's good to see the wrongdoers in that industry is made accountable for their conduct. We have seen how truly bad this industry has been over the years as a result of our involvement in the states' Medicaid fraud litigation.

Source: Reuters

XIV. INSURANCE AND FINANCE UPDATE

HOMEOWNERS WIN THEIR LAWSUIT AGAINST FARMERS INSURANCE

A jury in Oklahoma recently returned a \$130 million verdict against Farmers Insurance Co., the Los Angeles-based subsidiary of Zurich Financial Services. A group of Oklahoma homeowners, who alleged the company had underpaid on claims, contended that Farmers improperly failed to pay for general contractors. They alleged claims for breach of contract, bad faith and fraud. Each one of about 76,000 people had an average of about \$575 in unpaid bills for repairing damaged homes. The jury awarded the homeowners as compensatory damages \$50 million for breach of contract, and \$50 million for bad faith and \$30 million were assessed as punitive damages. The verdict includes duplicate compensatory damages, which is improper. That will result in the total judgment being \$80 million. The homeowners will also receive 15% interest on actual damages and attorneys' fees if the verdict is upheld. Farmers will appeal.

The homeowners include Farmers' customers in Oklahoma who made claims from June 1994 through mid-2007. The homeowners contended that Farmers should have covered compensation for overhead and profits for general contractors. Michael Burrage and Derrick Morton, who are from Oklahoma, represented the homeowners in the case and did a very good job.

Source: Bloomberg News

HIGH PROFILE LAWSUIT FILED ON LIFE INSURANCE CLAIM

A lawsuit has been filed against the Minnesota-based ReliaStar Life Insurance Co. over a \$10 million life insurance policy. The policy insured the life of film actor Heath Ledger. The company has not paid the proceeds since the actor's death earlier this year. The suit alleges the company is trying to avoid paying the claim to Matilda Rose, Ledger's two-year-old daughter. The lawsuit doesn't mention Heath Ledger by name, nor does it list his daughter's name. But, it states that the suit is on behalf of a man who died of "accidental causes on January 22, 2008." That is the date the 28-year-old actor was found dead of an apparent accidental prescription drug overdose in New York City.

ReliaStar claims it is seeking more information about whether Ledger may have lied on his application for the insurance policy. The company is also investigating whether the actor's death may have been a suicide. The lawsuit claims ReliaStar had an obligation to investigate any statements Ledger made in his application while the actor was still alive. The lawsuit was removed from Los Angeles Superior Court to federal court. It should be noted that ING Americas owns ReliaStar.

Source: Newsday

XV. PREDATORY LENDING

JUDGE ORDERS RELEASE OF INDYMAC RECORDS

A federal judge has ordered the release of the records of borrowers in a class action lawsuit against failed IndyMac Federal Savings Bank. U.S. District Judge Alicemarie H. Stoller ruled last month that officials with the Federal Deposit Insurance Corp., which now operates the bank, must turn over paperwork identifying possi-

ble Plaintiffs in the suit claiming IndyMac misrepresented terms for adjustable rate mortgages. Judge Stoller also issued a temporary restraining order blocking the FDIC from enforcing a deadline for possible Plaintiffs to file legal claims against the bank.

Lawyers for the Plaintiffs argued the deadline did not give them time to identify Plaintiffs in the case alleging the bank enticed borrowers to take on loans they could not afford by offering them artificially low “teaser” rates at the start of repayment schedules. The claim could cover tens of thousands of IndyMac borrowers who want to be repaid any interest in excess of the terms they thought they were receiving, as well as losses due to negative amortization. Claimants are also seeking punitive damages in the case.

Source: *Associated Press*

COUNTRYWIDE SETTLES MORTGAGE LAWSUIT

Facing a lawsuit over deceptive mortgage practices, Countrywide Financial Corp., now a Bank of America Corp. subsidiary, has agreed to modify tens of thousands of loans to keep people in 11 states from losing their homes. Borrowers who have Countrywide Financial mortgages they can't afford may see a reduction of their interest rates or have the loan principal lowered. Some might qualify for having to pay only the interest on their loans for a decade. Even folks who can't afford to keep their homes with such changes will be able to get help moving to a new home. Illinois Attorney General Lisa Madigan and California Attorney General Jerry Brown Jr. are responsible for negotiating this settlement. In addition to California and Illinois, nine other states have also joined the settlement. The other states joining the settlement are Arizona, Connecticut, Florida, Iowa, Michigan, North Carolina, Ohio, Texas and Washington. Other states can still sign on.

The Countrywide effort is the most comprehensive, mandatory loan workout program since the mortgage crisis began last year. Congress has pro-

posed various programs, but those measures did not make it into the final \$700 billion government bailout. Since taking control of housing agents, Fannie Mae and Freddie Mac, the Federal Housing Finance Agency has said it is looking at expanding modifications on the loans that Fannie and Freddie own or guarantee.

If all 50 states were to join, the Countrywide settlement could provide as much as \$8.7 billion in relief to 400,000 borrowers. The settlement applies to folks who obtained their mortgages through Countrywide Financial Corp., which Charlotte, North Carolina-based Bank of America purchased in June, at the same time Illinois and California sued the company.

Bank of America will launch the new mortgage aid program in December. The mortgage aid includes revising customers' payments so they don't exceed 34% of income. Other options include reducing interest rates and adjusting principal so that borrowers don't wind up actually losing equity under some payment plans. Countrywide will not charge loan modification fees and will waive prepayment penalties. This is the largest predatory lending settlement in history, far exceeding the \$484 million deal struck in 2002 with the Household Finance Corporation. The settlement could serve as a model for steps that other lenders could take to make up for misleading mortgage practices. The agreement involves no tax money, but will help folks keep their homes and keep money flowing to lenders.

Source: *CBS News*

XVI. PREMISES LIABILITY UPDATE

BIG DIG DEATH SUIT SETTLED FOR \$28 MILLION

The family of a woman who was killed when Boston's Big Dig tunnel ceiling collapsed has settled its wrongful death lawsuit for more than \$28

million. The settlement is on behalf of the husband and three adult children of Milena Del Valle, who was killed in July 2006 when part of a tunnel ceiling collapsed on her car. The main defendants in the lawsuit included companies that worked on the Big Dig—Bechtel/Parsons Brinckerhoff, Modern Continental Co., Gannett Fleming Inc.—and the Massachusetts Turnpike Authority. The settlement resolves claims against all 15 defendants. It includes the payment from Powers Fasteners Inc., which was \$6 million. Del Valle, 39, of Boston, was fatally crushed under 26 tons of concrete when ceiling panels collapsed and fell on the car she was riding in with her husband, Angel Del Valle.

Of the nearly \$30 million dollars, Bechtel/Parsons Brinckerhoff and Modern Continental will pay the largest share of the settlement, with a combined \$15.4 million owed to Del Valle. Powers Fasteners, which manufactured the epoxy used to glue the support bolts for the multi-ton plates, had previously announced it would pay \$6 million. Gannett Flemming Inc. and other companies will share the millions remaining.

The National Transportation Safety Board said in a 2007 report that the wrong type of epoxy was used. The report spread blame among Big Dig project manager Bechtel/Parsons Brinckerhoff, construction contractor Modern Continental, designer Gannett Fleming and Powers Fasteners, the firm that supplied the epoxy. Gannett Fleming and BPB were criticized for failing to identify potential creep in the epoxy bolts. Modern Continental and BPB were faulted for failing to monitor the bolts after several of them began to creep out of the ceiling in 1999. Brad Henry of the Boston firm of Mechan, Boyle, Black and Bogdanow represented the Del Valle children and Jeffrey Denner of Denner Pellegrino represented the husband. They did an outstanding job for their clients.

Source: *Associated Press*

MANUFACTURERS FOUND TO BE AT FAULT FOR FATAL WISCONSIN BLAST

A civil jury returned a verdict last month against a manufacturer that claimed a contractor was to blame for a plant explosion that killed three workers and injured 48. The jury ruled that Falk Corp. bears nearly all responsibility for the December 2006 explosion at its Milwaukee plant, which shook the city and did \$72 million in damage. An investigation determined two leaks in a propane pipe allowed the gas to accumulate and ignite in a large storage building on Falk's 50-acre campus. Falk and its insurance company sued J.M. Brennan, the mechanical contractor that installed the pipe in 1988, for \$68 million. Falk contended that Brennan installed the pipe improperly. But Brennan's lawyers claimed Falk didn't maintain the pipe properly and had skipped a \$1,000-a-year test of an anticorrosion system that could have detected problems before the explosion.

The Milwaukee County jury assigned 95% of the responsibility for the accident to Falk and only 5% to Brennan. That means Brennan won't have to pay damages. Rexnord Industries, Falk's parent company, agreed last year to pay \$40,000 in fines from the U.S. Occupational Safety and Health Administration and correct violations of safety regulations. Brennan agreed to pay OSHA \$5,600 in fines for two safety code violations.

Source: *Insurance Journal*

A GOOD RESULT IN A SLIP AND FALL TRIAL

Our firm tried a slip and fall case in Montgomery County Circuit Court before a judge without a jury. Last month, the judge who heard the case entered a judgment in favor of our client for \$219,660.60. This was a very good result in a case of this sort. The Defense lawyers had contested the Plaintiff's damages vigorously. The fall took place on a Saturday at the Los Amigos Mexican Restaurant in Montgomery. It was determined that the fall was caused by a piece of brown

lettuce. The manager assisted our client and then found the lettuce on the floor.

The challenge in this case for our lawyers was to link the medical causation of our client's initial knee injury to a pulmonary emboli which the doctors discovered in her lungs at a later date. The treating pulmonologist for our client helped a great deal. This case was tried by Mike Crow and Gibson Vance from our firm and they did a very good job.

YO-YO AMUSEMENT PARK RIDES RECALLED

An amusement park ride manufacturer has recalled about 85 Yo-Yo rides to repair defects involved in two accidents. The Yo-Yo ride made by Chance Rides Manufacturing Inc., based in Wichita, Kansas, has a series of metal arms extending from a rotating hub. A chair is attached to the end of each arm by a chain. The arms and chairs swing outward as the hub rotates and picks up speed.

There have been a number of incidents involving the Yo-Yo ride resulting in injuries. In May, a Yo-Yo ride collapsed at the Calaveras County Fair and Jumping Frog Jubilee in Angels Camp, Calif., injuring 23 people. In March 2006, a Yo-Yo ride at Six Flags Over Texas in Arlington, Texas, also malfunctioned. Nine people were injured, sustaining bruises and back and neck strains, according to reports from the Texas Department of Insurance.

Chance Rides Manufacturing will give ride owners and state regulators kits to help inspect and repair defective rides, according to the Consumer Product Safety Commission. The company will also offer new maintenance guidelines for the rides. The kits are intended to help owners and operators identify problems.

Source: *Associated Press*

LAWSUIT FILED IN TENNESSEE FIRE THAT KILLED SEVEN PEOPLE

The families of seven people killed in an August fire that occurred in

Memphis, Tennessee, have filed a lawsuit seeking \$90 million in damages. The lawsuit, filed in state court, claims electrical problems at the rental property were ignored or not adequately repaired. The suit also claims there were no working smoke detectors in the building and that the triplex did not have at least two ways of exiting. The suit, which was filed last month, named the property owner, the City of Memphis and others as Defendants. Tragically, five children were among the seven people who died in the fire.

Source: *The Commercial Appeal*

XVII. WORKPLACE HAZARDS

CRANE FALLS ON RHODE ISLAND SCHOOL UNDER CONSTRUCTION

We have written in previous issues of the Report about safety issues involving cranes at construction sites. Recently, a crane fell on a school under construction in Woonsocket, Rhode Island, resulting in damage to the building. Fortunately, there were no injuries. An operator was warming up the crane when its boom fell forward onto exposed steel beams. No one else was in the structure at the time. OSHA investigators are investigating the incident.

Source: *Insurance Journal*

CRANE OPERATOR SAYS HE WAS FIRED FOR REPORTING SAFETY CONCERNS

A heavy tractor crane operator who worked on the North Slope of Alaska says that a BP Alaska contractor fired him for raising safety concerns. The crane operator, Robert Soto, says that he raised concerns about a persistently malfunctioning safety system—known as a Load Moment Indicator (LMI)—on the crane. Soto says the system would malfunction in the middle of a job and shut down the crane, leaving him and the load hanging. If his claims are truthful, clearly a safety hazard existed

which put workers at risk.

On October 17, 2007 Soto filed a complaint internally on a “red card” with his employer—the BP Alaska contractor Norcon Inc.—and he says he never heard back from the company. On September 18, 2008, Soto, who was an experienced crane operator, was fired. Retaliation against workers who report safety problems to their employers can’t be tolerated.

Source: *Corporate Crime Reporter*

OSHA FINES OKLAHOMA REFINERY

The Occupational Safety and Health Administration has proposed \$91,000 in penalties against Oklahoma’s Wynnewood Refining Co. for allegedly failing to protect employees from hazardous working conditions. The penalties came after OSHA cited Wynnewood with three serious and two repeat violations of agency standards. OSHA had been investigating following an explosion due to the release of flammable liquid and vapor from an open piping system during preparation for maintenance. The facility, which produces gasoline, butane, fuel oils and asphalt, employs 210 people. The three serious violations were for failing to document and implement OSHA rules concerning equipment deficiencies, operator training and safe working practices. The two repeat violations were for failing to document design codes, written procedures for normal operations and written procedures for mechanical integrity.

Source: *Insurance Journal*

MASSACHUSETTS CONSTRUCTION SITE ACCIDENT

One construction worker is dead and another seriously injured after a hydraulic lift platform collapsed last month in Massachusetts. The employees were working on the lift on October 9th when it toppled over, causing them to fall about 25 feet to the ground. One of the employees, a 40-year-old man, was killed and the other

worker was hospitalized. The victims worked for Lyco Construction of New Hampshire. The accident is being investigated by OSHA.

Source: *Associated Press*

SUIT CLAIMS BILL HEARD VIOLATED FEDERAL LABOR LAW

A lawsuit filed against Bill Heard Enterprises claims the company, which had the largest chain of Chevrolet dealerships in the country, violated federal labor law when it fired thousands of employees last month. A former employee, Edward Kratzel, who worked at a Bill Heard dealership in Las Vegas, filed the suit in U.S. Bankruptcy Court in Alabama. Kratzel was one of more than 2,000 employees who lost his job when the Columbus, Georgia-based company closed all of its remaining dealerships on September 24th. The suit against Bill Heard and about two dozen affiliated companies alleges the companies violated the workers’ rights under the Worker Adjustment and Retraining Notification Act. Class action status is being sought on behalf of all of the fired employees in the suit.

Source: *Associated Press*

XVIII. TRANSPORTATION

MANY BOOSTER SEATS FOR CHILDREN ARE NOT DOING THE JOB

The Insurance Institute for Highway Safety has found that booster seats are doing a poor job of improving the fit of lap and shoulder belts for children. Booster seats are meant to do one thing—elevate children so that safety belts designed for adults are in the right position to restrain kids during a crash—and that’s well known to automobile makers and to seat manufacturers. Thirteen of the 41 belt-positioning booster seats the Institute evaluated with the University of Michigan Transportation Research did so poorly that

the Institute doesn’t recommend them at all. Ten models are best bets, and five were good bets. Institute president Adrian Lund observed:

We evaluated the safety belt fit boosters provide, not crash protection. This is because unlike child restraints, boosters don’t restrain children in crashes. They simply position children so lap and shoulder belts are in the right place to restrain them. We’d expect the ten best bets to improve belt fit for children in almost any car, minivan, or SUV. Likewise, it’s clear that kids in the 13 boosters we don’t recommend aren’t getting the full benefit of improved lap belt fit. These boosters may increase restraint use by making children more comfortable, but they don’t position belts for optimal protection.

Researchers at the University of Michigan Transportation Research Institute assessed two types of boosters—backless and highback—under conditions representing a range of 2001-06 model vehicles. Some highbacks convert to backless, and some boosters, called combination seats, can be used as child restraints. Highback and backless modes were evaluated separately because each mode affects how belts fit. More importance was assigned to lap belt fit. All of the best-bet boosters locate this belt on the child’s upper thigh. The main problem with the boosters that aren’t recommended is that they leave the lap belt partially or fully on the abdomen. Fit is important because a correctly positioned lap belt loads pelvic bones during a crash, not the abdomen. Good boosters route belts across a child’s bony parts, not soft parts like the abdomen, which is more vulnerable to injury. A good booster also positions the shoulder belt at midshoulder, keeping the webbing away from the neck so it won’t chafe and reducing the likelihood that kids will endanger themselves by putting the belt behind their back or under an arm. Matt Reed, the study’s lead author

and research associate professor at the University of Michigan Transportation Research Institute, stated: "Our data show it's possible to design a booster with good lap and shoulder belt fit. Boosters that can't do that should be redesigned."

Boosters the Institute doesn't recommend are the highback Compass B505, Compass B510, Cosco/Dorel Traveler, and Evenflo Big Kid Confidence; backless Safety Angel Ride Ryte; combination Cosco/Dorel Alpha Omega, Cosco/Dorel (Eddie Bauer) Summit, Cosco Highback Booster, Dorel/Safety 1st (Eddie Bauer) Prospect, Evenflo Chase Comfort Touch, Evenflo Generations, Graco CarGo Zephyr, and Safety 1st/Dorel Intera. At least two of these models have been discontinued, hopefully replaced by better designs. Booster makers sometimes reuse names and even model numbers for new seats, so manufacture dates and model numbers are important, the Institute said.

The ten best-bet boosters are the most likely to position not only lap belts but also shoulder portions correctly on many children in many vehicles. Best bets include three backless seats: Combi Kobuk, Fisher-Price Safe Voyage, and Graco TurboBooster. These may require plastic clips to correctly position shoulder belts. Six highbacks are best bets: Britax Monarch, Britax Parkway, Fisher-Price Safe Voyage, LaRoche Bros. Teddy Bear, Recaro Young Style, and Volvo booster cushion. Another best bet is the combination seat Safeguard Go when it's used as a backless booster. Combination seats convert to boosters by removing their built-in harnesses. At least five of the best-bet boosters have been discontinued but still are sold.

The five good bets provide acceptable belt fit in almost as many vehicle belt configurations. They are highbacks Combi Kobuk, Graco TurboBooster, and Safety Angel Ride Ryte, and combinations Recaro Young Sport and Safety 1st/Dorel Apex 65, when used as highbacks.

Anne McCartt, Institute senior

vice president for research, made this assessment: "Boosters that provide better belt fit aren't necessarily the priciest. Parents don't have to spend a lot of money for a best bet or good bet booster." The highback Graco Turbo-Booster, for example, converts to a backless booster and retails for about \$50. The backless-only version sells for about \$20.

Child safety seat laws in 43 states and the District of Columbia include booster seat provisions, but until now there has been little information on how to pick one that provides proper belt fit. The government's dynamic tests of boosters don't measure belt fit. Congress in 2002 told the National Highway Traffic Safety Administration to evaluate a belt fit test, but the agency decided to forgo testing. Instead, it only rates boosters by how easy they are to use. Manufacturers' crash test boosters, but these simulated tests don't tell parents how boosters will fit kids in their vehicles. For more information, visit <http://www.iihs.org/sr/pdfs/sr4308.pdf>.

Source: *Insurance Journal*

GOVERNMENT WANTS CHILDREN TO BUCKLE UP ON SMALL SCHOOL BUSES

Smaller school buses will have to be equipped with lap-and-shoulder seat belts for the first time and larger buses will have higher seatbacks under a federal government rule announced on October 15th. Under the rule the seat belts will only have to be installed in new buses weighing five tons or less. The requirement will not take effect until 2011. It should be noted that these smaller school buses are already required to have lap belts, but not the safer, harness-style belts. There was no seat belt requirement for larger buses and that is still the case. Transportation Secretary Mary Peters said she stopped short of requiring seat belts for larger buses because that could limit the number of children that can squeeze into seats, forcing some children to

travel in ways that she says aren't as safe as school buses. That may make sense to the government, but I have difficulty with that observation.

The Transportation Department estimates it will cost about \$6.1 million a year to equip new, smaller buses with the three-point seat belts and higher seat backs, and \$3.6 million a year to equip new, larger buses with higher seat backs.

The rule increases the required height of seatbacks on new buses to 24 inches, up from the current 20 inches. The government says higher seat backs will help keep taller, heavier children from being thrown over seats in a crash. The rule will be phased in beginning in the fall of 2009 and become fully effective in 2011.

The federal government—along with the State of Alabama—started to explore the question of school bus safety after four students were killed when their bus nose-dived off an interstate overpass in Huntsville two years ago. Our firm is involved in that tragic occurrence and we have a death case set for trial on December 8th.

Source: *Associated Press*

REPORT FAULTS FAA OVER MAINTENANCE OUTSOURCING

It has been reported that nine major U.S. airlines are farming out aircraft maintenance at twice the rate of four years ago and now hire outside contractors for more than 70% of major work. Contractors located in foreign countries handled one-quarter of the outsourced maintenance. The Transportation Department's inspector general found that U.S. oversight of repair facilities is lagging. Investigators said the Federal Aviation Administration has failed to closely track how much maintenance is outsourced and where it is performed. The report concluded that even though the FAA has taken steps to improve, "the agency still faces challenges in determining where the most critical maintenance occurs and ensuring sufficient oversight."

As a result of the airlines' effort to

lower costs, heavy airframe maintenance is being shifted from in-house mechanics and engineers to hundreds of repair companies in the United States, Canada, Mexico and countries in Central America and Asia. Nine major airlines examined by the inspector general outsourced 71% of their heavy air frame maintenance—repairs and servicing to an aircraft's body, wings and tail—in 2007, compared with 34% in 2003. Also, 27% of that work was performed at foreign repair facilities.

The airlines examined in the report were AirTran Airways, Alaska Airlines, America West Airlines, Continental Airlines, Delta Air Lines, JetBlue Airways, Northwest Airlines, Southwest Airlines, and United Airlines. The inspector general says American Airlines, the nation's largest domestic carrier, was not included because it handles most maintenance in-house. The FAA relies heavily on the airlines—and the repair facilities themselves—to make sure outsourced repairs meet the air safety standards and requirements of the individual airlines.

The FAA requires each repair station to have a government inspection at least once a year. But, the report says those inspections often are not being conducted by agency inspectors most familiar with standards and requirements of the airline whose planes are being repaired. As much as five years lapsed between visits to some major maintenance facilities by inspectors assigned to individual airlines. Inspectors not assigned to a specific airline may not be familiar with the special maintenance requirements of that airline's planes, which are often customized.

The report cited a foreign facility, which repairs engines for an unidentified airline that had not been inspected by an FAA inspector assigned to that airline in five years, a period in which the facility had repaired 39 of the air carrier's engines. That is totally unacceptable and is impossible to understand.

The report recommends that the FAA require airlines to provide more complete information on the extent and

location of outsourced repairs, ensure air carriers and repair stations are better able to spot and correct problems, and improve the documentation of inspection results. The FAA agrees it needs to do more and actually agreed with all of the inspector general's recommendations. The agency says it has procedures in place that "already address some of the recommendations," and "have some projects in progress that address others."

It appears the FAA has a long way to go toward resolving the outsourcing issue. Many believe the FAA doesn't have enough inspectors to adequately oversee all the repair stations and their subcontractors. This is especially true as it relates to foreign repair stations. The lack of oversight is said to extend beyond the adequacy of repairs to background checks of employees.

Source: *Associated Press*

TEXAS COMPANY CITED IN FATAL BRIDGE ACCIDENT IN ARKANSAS

A Texas contractor faces almost \$31,000 in penalties after federal safety officials found that undersized bolts and overloaded scaffolding contributed to an April accident in Arkansas that resulted in the deaths of three workers. While OSHA hasn't released the specific cause of the accident, the agency cited Oscar Renda Contracting Inc. for eight workplace safety violations. The employees fell 50 feet into the Arkansas River when the 5,000-pound-plus platform they were working on detached from a dolly on Interstate 430 and fell into about 20 feet of water. Rescue workers recovered the bodies of two of the men, but not the other.

Among other concerns, OSHA citations raised questions as to whether the scaffolding was designed and inspected to ensure it could handle the weight of workers and equipment. Also, the men were not wearing flotation devices designed for high-impact activity, according to the citations. The company faces \$30,800 in proposed penalties. The men were building a water pipeline underneath the I-430

bridge. The workers were installing brackets for two 30-inch water mains. This was on a \$6.4 million pipeline project of a larger \$43 million initiative to increase water capacity for Cabot, Jacksonville, the North Pulaski Waterworks Association and Central Arkansas Water. OSHA investigators found swivel bolts connecting the top of the scaffolding to the dolly's ballast plate were a half-inch smaller than the holes. The size difference allowed the bolts to move vertically within the openings as traffic passed over the bridge.

Also, the scaffold platform and associated hardware were not rated to support the weight of the men and their equipment, and a recommended backup cable system wasn't attached to the platform. In addition, ropes used in suspending the scaffold platform reportedly weren't inspected before each work shift. Oscar Renda Contracting also was cited for not having a rescue boat immediately available in the area and for not recording the deaths on a log filed later with OSHA. Work on the water-pipe project stopped the day of the accident. While the contract with Oscar Renda Contracting is still valid, work was suspended until the company submits an updated construction plan.

Source: *Arkansas Democrat-Gazette*

JURY AWARDS \$1.7 MILLION AGAINST METAL COMPANY

A Florida jury has found Tarmac America, a company that sold metal plates, liable for \$1.7 million for an accident in which one of the plates fell off a truck, hit a car and killed a passenger. The company was held liable in a wrongful death suit even though it didn't own the truck, which was never identified. Police investigated the accident, but closed the case without finding the truck or determining who manufactured the metal plates. The plaintiff's lawyer, Marc Wites of Wites & Kapetan in Lighthouse Point, Florida, conducted his own investigation and subpoenaed a number of companies to track down the origin of the plates. As

you will see, he did a very good job in this case.

At trial, the lawyer relied mainly on a video surveillance tape of various trucks that came through the Defendant's company that day and revealed how the trucks were loaded. While he never identified the truck that carried the metal plate that killed the Plaintiff, the videos showed the company hadn't properly packaged the cargo on the trucks. The Defense took the position that it only sold the metal plates and that it was the duty of the trucker to secure the load.

The metal plate at issue was shaped like a 34-pound cookie sheet and was used for making concrete blocks. One of the plates fell off a truck on I-95 in South Palm Beach, went through the windshield of a car and struck the passenger. Claudia Avila, a 43-year-old mother of three, died several weeks later. The plates were so rare that only a few companies used them. The metal plates were placed in two stacks of 50 plates per stack, and were secured to a wooden pallet with metal straps. At trial, it was argued by the Plaintiff's lawyer that either the plates were not properly secured to the wooden pallet or the straps were not strong enough to secure the stacks. The Plaintiff's trucking expert testified that the metal strapping was not adequate.

Prior to trial, settlements had been made with the trucking company, EM Transfer, and IGM, the scrap metal company that purchased the metal plates. After an eight-day trial, the jury awarded a total of \$6 million and apportioned 28% of the fault to the Defendant—totaling \$1.7 million—with the remainder being assessed to the trucking company. Marc Wites' pre-trial strategy was the key to the successful result in the case.

Source: *Associated Press*

COUPLE AWARDED \$11.6 MILLION IN MOTOR VEHICLE CRASH

An elderly couple was awarded \$11.6 million recently by a jury that found a lack of safety measures on a remote highway had caused the husband to

crash into an embankment. Seventy-nine year old Cletus Schmidt was left a paraplegic and is ventilator-dependent as a result of the 2006 accident. The jury found the State Department of Transportation to be at fault and awarded damages to Mr. Schmidt and his seventy-seven year old wife, Marlene Schmidt. The jury found the state agency 90% responsible for the crash and Mr. Schmidt, a retired lawyer, 10% responsible. Mr. Schmidt was on his way to Lake Havasu, Ariz., where he often went to spend time with his four children and ten grandchildren. He was driving his Ford Crown Victoria along Highway 62 when he crashed where that highway intersects with another highway. It was very dark and that road is an isolated road with no traffic lights or overhead lights at the intersection.

Mr. Schmidt was left in a coma for more than two months. He suffered several broken bones, including some in his neck and back. He also suffered significant neurological damage. Evidence was presented during the three-week trial to show missing safety features, such as a sign warning of the end of the road or rumble strips on the pavement, created a dangerous condition. Caltrans' records show those features were in place at one time, but the agency failed to maintain or replace them.

There had been eight crashes at that very intersection in the 21 months prior to this accident. Five months after this lawsuit was filed, some of the safety mechanisms were replaced—including a larger stop sign and a two-way arrow warning drivers they have to turn. Also, the intersection is now a three-way stop. Significantly, there have been no incidents at the intersection since the safety measures were installed.

Source: *Dailybreeze.com*

JURY AWARDS \$1.5 MILLION TO TWO MEN INJURED IN CRASH

A Texas jury has awarded \$1.5 million to two men injured when an Indiana-based tractor-trailer veered into their lane and hit their car. The men,

Ronny Martinez and Kenneth O'Neal, were traveling on a highway in Waxahachie, Texas, in 2006 when their car was struck by a truck operated by Celadon Trucking Services, Inc. The two men filed a personal injury lawsuit against the Indianapolis-based company, contending Celadon was negligent in hiring the truck driver and that the driver was negligent in causing the crash. The jury award included \$750,000 for medical bills and another \$750,000 for other actual damages such as pain and suffering or physical impairment. The jury also found Martinez, who was driving, partly responsible for causing the accident.

In 2005, Celadon Trucking agreed to pay \$1.25 million to the parents of a soldier who died when his car rear-ended a tractor-trailer that stalled along a Texas highway in 2002 after its brake hose failed. The husband-wife truck driving team in that case had tried to repair a high-pressure brake hose with a toothpick wrapped with tape.

Source: *Chicago Tribune*

JURY FINDS AGAINST WEST VIRGINIA BAR AND DRUNK DRIVER IN DEATH CASE

A Kanawha County, West Virginia jury has ordered a bar owner and a man convicted of drunken driving to pay nearly \$400,000 in damages in a fatal highway accident. The circuit court jury's verdict came last month in a lawsuit filed in 2002 by Michael Landers of South Charleston against the owners of an establishment called Frank's Place. The mother of one of the owners was one of three people killed when a car driven by that man collided with another vehicle on a state highway in February 2000. The accident occurred after the owner, who had been drinking, left the bar. He later pleaded guilty to driving under the influence and causing death while driving under the influence. Jurors ordered him to pay \$128,179 in compensatory damages and \$50,000 in punitive damages in the civil case. The bar was ordered to pay \$220,000 in compensatory damages.

Source: *Insurance Journal*

MEDICAL HELICOPTER CRASH IN CHICAGO SUBURB KILLS FOUR PEOPLE

We have previously written in this Report about the high incidence of medical helicopter crashes around the U.S. In another recent tragedy, a medical helicopter transporting a one-year-old girl to a Chicago hospital crashed and burned, killing all four aboard. The helicopter was headed for Children's Memorial Hospital in Chicago from a hospital in Sandwich, Illinois, about 50 miles west, when it went down around midnight on October 15th. Reportedly, the helicopter may have clipped a radio tower's wire before the crash.

The child, who was being transported to the hospital because of epileptic seizures, was en route to the Chicago hospital after a closer hospital indicated there was no room for her there. The helicopter belonged to Air Angels Inc., an emergency medical transport service based at Clow Airport in suburban Bolingbrook. The helicopter's crew included the pilot, a nurse and a paramedic employed by the company. According to reports, the helicopter's pilot did not report mechanical problems, and weather was not an issue. All on board were killed.

The helicopter crashed in a field near a residential area in east Aurora and became engulfed in flames. No one on the ground was hurt. It was reported that—after the crash—engineers were evaluating the structural integrity of the 750-foot tall radio tower after its wire was clipped in the accident. The little girl was initially to go to Central DuPage Hospital in Winfield, which was about 20 miles closer to Sandwich than Chicago. Investigators of the National Transportation Safety Board are investigating the crash.

The Aurora crash is the third involving Air Angels helicopters. In January 2003, an Air Angels helicopter crashed killing the pilot. Investigators determined pilot error and weather caused the accident. Mechanical problems were blamed for an August 2007 crash in which there were no injuries. The latest crash was another tragic incident

that resulted in four deaths.

Source: *Associated Press*

XIV. NURSING HOME UPDATE

VIOLATIONS REPORTED AT NURSING HOMES

More than 90% of the country's nursing homes were cited for violations of federal health and safety standards last year. For-profit homes were more likely to have problems than other types of nursing homes, according to a report by federal investigators. About 17% of nursing homes had deficiencies that caused "actual harm or immediate jeopardy" to patients, according to the report by Daniel R. Levinson, the inspector general of the Department of Health and Human Services. Problems included infected bedsores, medication mix-ups, poor nutrition and abuse and neglect of patients. Inspectors received 37,150 complaints about conditions in nursing homes last year. They substantiated 39% of them, the report said. About one-fifth of the complaints verified by federal and state authorities involved the abuse or neglect of patients.

The report reveals that about two-thirds of nursing homes are owned by for-profit companies, while 27% are owned by nonprofit organizations and 6% by government entities. The inspector general said 94% of for-profit nursing homes were cited for deficiencies last year, compared with 88% of nonprofit homes and 91% of government homes. The Inspector General had this to say concerning the report:

For-profit nursing homes had a higher average number of deficiencies than the other types of nursing homes. In 2007, for-profit nursing homes averaged 7.6 deficiencies per home, while not-for-profit and government homes averaged 5.7 and 6.3, respectively.

Mr. Levinson, the Inspector General,

also issued a compliance guide that says some nursing homes "have systematically failed to provide staff in sufficient numbers and with appropriate clinical expertise to serve their residents." Researchers have found that people receive better care at homes with a higher ratio of nursing staff to patients. The inspector general said he had found some cases in which nursing homes billed Medicare and Medicaid for services that "were not provided, or were so wholly deficient that they amounted to no care at all."

More than 1.5 million people live in the nation's 15,000 nursing homes. The homes are typically inspected once a year and must meet federal standards as a condition of participating in Medicaid and Medicare, which cover more than two-thirds of their residents. The cost to the government is \$75 billion a year. Medicare pays a fixed daily amount for each nursing home resident, with higher payments for patients who are more severely ill and need more services. Mr. Levinson said some nursing homes had improperly classified patients, or overstated the severity of their illnesses, so the homes could claim larger Medicare payments. Federal officials have publicly identified 163 nursing homes that will receive extra scrutiny because of their "chronic failure to comply with quality-of-care standards."

Source: *New York Times*

LAWSUIT AGAINST EXTENDICARE EXPANDED

A lawsuit against a company that owns 15 nursing homes in Washington has been expanded to include new allegations that the homes admitted residents with disregard to meeting their needs in order to boost profits. The suit, which has been removed to U.S. District Court in Seattle, also alleges that Milwaukee-based Extendicare Health Services violated consumer protection laws by advertising high-quality, skilled nursing care and failing to deliver. The Plaintiffs are two former residents and a man whose daughter died at Aldercrest Health & Rehabilita-

tion Center in Edmonds after her tracheal tube clogged with mucus within 24 hours of being admitted.

The Plaintiffs' lawyers also say Extencicare, which runs one of the largest nursing-home chains in North America, violated a state law that bars nursing homes from making residents sign a form waiving liability for injury or property loss. The Plaintiffs allege in their complaint that extencicare is "more interested in protecting themselves from liability and thereby increasing profits than protecting the rights, health and safety of their own elderly and vulnerable residents."

Source: *Seattle P-I Reporter*

NURSING HOME SUITS FACE OBSTACLES

Folks who attempt to bring lawsuits against nursing homes that are at fault for wrongdoing causing injuries and deaths to residents face a number of obstacles, including mandatory arbitration clauses and corporate structures that mask the ownership of facilities. The ownership and operation schemes to avoid liability have been described as a "corporate shell game." We have learned about complex corporate setups that mask ownership to avoid legal responsibility for wrongdoing. David Cohen, a lawyer with Stark & Stark in Princeton, New Jersey, and who is chair-elect of the nursing home litigation section of AAJ, observed:

If you look carefully at the way the facility is established, there will be a contractual relationship between a management company and a nursing home, where the same human being is on both sides of the contract and the management company is being paid a disproportionately high amount of money compared to its services.

Mandatory arbitration clauses have become a major obstacle for victims of nursing home wrongdoing. Arbitration has no place in disputes involving care and treatment at a nursing home. As we have reported, there are a number of legislative developments in the nursing

home area. The Nursing Home Arbitration Act, which would ban pre-dispute mandatory arbitration agreements in nursing home contracts, recently passed committees in both houses of Congress. Another recently introduced bill, the Nursing Home Transparency and Quality of Care Improvement Act (H.R. 7128) would improve reporting and transparency of nursing home ownership. The Department of Health and Human Services has proposed a star-system to grade nursing homes and has released a **compliance guide** based on voluntary participation. Residents of nursing homes must be protected by government regulators. They and their families must also have access to the court system when wrongs occur and folks are hurt or killed.

NURSING HOME WORKERS CHARGED IN DEATH

Two nursing home workers have been charged in the September 2007 death of a longtime resident of a Clinton, Arkansas, nursing home. Staffers forgot to plug an oxygen line for the female resident into a wall spigot, instead letting her breath away all the oxygen in a small portable tank. By the time a worker found the resident, her extremities were turning cold and her hands were blue from a lack of oxygen. The worker told the nursing director about the problem, but both failed to tell her doctor and family that her condition resulted from the lack of oxygen. By withholding that information, both contributed to the death of the resident. The worker faces a manslaughter charge, while the nursing director faces an elder neglect charge.

Source: *Associated Press*

XX. HEALTHCARE ISSUES

HOPKINS RESEARCHERS REPORT ON POSSIBLE CAFFEINE RISKS

Researchers at the Johns Hopkins University say some of the popular energy drinks contain potentially harmful levels of caffeine—as much caffeine as is in 14 cans of Coca-Cola. In a review article appearing in the September issue of the journal *Drug and Alcohol Dependence*, the researchers say the drinks should carry warning labels displaying their caffeine content and possible health risks, such as nervousness, anxiety, insomnia, rapid heartbeat and tremors.

Caffeinated energy drinks are marketed as supplements, not soft drinks, and are not required to list their caffeine content or comply with the U.S. Food and Drug Administration's maximum caffeine content for soda and other beverages. In addition, they are actively marketed to teens and young adults, impressionable groups that may not be aware of the dangers. Dr. Roland Griffiths, a professor of psychiatry and neuroscience at the Johns Hopkins School of Medicine and one of the study's authors, said:

I believe people should be informed about what they are taking and what the risk is. First and foremost, we need to label the amount of caffeine and label it prominently—not in fine print. At the very least, we should know how much caffeine is in the product, and we should have some indication of what the drug does.

The top-sellers include such brands as Red Bull and Monster Energy.

Dr. Griffiths, who has been studying caffeine for more than two decades, said caffeine intoxication can, in rare cases, lead to death. His article is a review paper that compiles studies, reports and surveys on caffeine intake, chemical dependency and energy

drinks from numerous sources. The article mentions cases of adverse reactions from caffeine in energy drinks reported to U.S. poison control centers. Dr. Griffiths stated:

I'm not concerned about someone whose caffeinated beverage of choice is Red Bull—they really are no different than a coffee drinker at that point. But it's the sporadic use to people who are not tolerant and who are naive and vulnerable in other ways that make it problematic.

Dr. Griffiths notes that caffeine stimulant pills such as NoDoz, which contains between 100 and 200 milligrams of caffeine, include a warning on the label saying that too much caffeine may cause nervousness and irritability and that they should not be taken by children under 12.

Since the launch of Red Bull in Austria in 1987 and in the United States a decade later, the market for caffeinated energy beverages has expanded worldwide and accounts for a \$5.4 billion industry. With names like Amp Energy, Rock Star, and No Fear, the products sell not only a beverage, but a high-energy lifestyle, with claims to expand strength, endurance and toughness.

Source: *Baltimore Sun*

NO COLD MEDICINES FOR CHILDREN UNDER FOUR

Drug companies say children under four years of age should not be given cough and cold medicines. The industry has been criticized by pediatricians for marketing over-the-counter cough and cold remedies for children under six despite a lack of evidence that they work, and reports of safety problems. The companies will also add a warning to their product labels saying parents should not give young children antihistamines to make them sleepy. Antihistamines are used to relieve allergies. While many parents believe that getting a sick child to sleep is the best medicine, the use of sedatives is widely

discouraged by medical experts, who say they can worsen breathing problems caused by illness. According to government health officials, the issue needed additional study.

Officials at the Food and Drug Administration supported the changes, but promised to continue a long process to reassess the safety and effectiveness of the products in children of all ages. The government is hoping the new labels strike a balance between two competing concerns: that the drugs may not be safe in young children, but that some parents in turn may give their children adult medicines if the agency bans pediatric products.

Despite the products' extraordinary popularity, every study performed in recent years shows that they have no therapeutic effect beyond sedation, and a growing number of reports have concluded that they can be dangerous. The risks are as varied as hives, neurological problems and, in rare cases, even death. Many injuries from pediatric cough and cold medicines occur when young children get their hands on medicine bottles without their parents' knowledge. But accidental overdoses have also resulted when parents confuse dosing instructions or give their children two products without realizing that those drugs share ingredients.

The following is a statement by Dr. Peter Lurich, deputy director of health research at Public Citizen:

Today, the leading manufacturers of over-the-counter cough and cold medications indicated that they are "voluntarily transitioning" toward putting a label on their pediatric products that instruct parents not to give the medications to children under four. This measure, announced by the Consumer Health Products Association (CHPA), clearly represents a political compromise, not a solution based on scientific evidence. It will do little to protect all children from these ineffective and, therefore, needlessly dangerous products. By announcing a four-year-old age restriction—

halfway between the current voluntary limit of two years of age and the age limit of six requested in a petition submitted last year—the manufacturers are once again attempting to delay more definitive action by the Food and Drug Administration (FDA). The FDA must use its authority to make a strong, evidence-based decision not to allow these medications to be available to children under 12, rather than let the industry engage in this type of self-serving self-regulation.

A year after manufacturers of over-the-counter (OTC) cough and cold medications agreed to voluntarily withdraw their products for children under two from the market, a small Public Citizen survey found that less than a quarter of cough and cold medications on sale in two major pharmacies in Washington, D.C., and Baltimore, Md., carried labels warning parents not to use these medications in children two or younger. We have no confidence that today's proposed "voluntary" measures by members of the CHPA (which does not represent all manufacturers of OTC cough and cold medicines, particularly generic ones) will be any more effective. Moreover, CHPA proposes to leave the medications on pharmacy shelves "throughout the 2008-2009 cough and cold season," allowing the companies to reduce their inventories. By instructing parents not to give these medications to children under four, the new label sends the message that these medications are "safe and effective" for children four and over. This assertion is not true. Reviews by FDA Medical Officers and a more recent published study demonstrate that OTC cough and cold medications have not been proven to be effective in children under 12. In light of this ineffectiveness, any toxicity is unaccept-

able. The FDA needs to take a firmer stance to modify the regulations governing these products and must ensure that they are removed from the market unless new evidence proves them safe and effective. Unless the agency acts more expeditiously and forcefully, we will continue to see more unnecessary emergency room visits and deaths, and the annual squandering of hundreds of millions of dollars.

Source: *Associated Press* and Public Citizen

STUDY SAYS DRUG SAMPLES MAY ENDANGER CHILDREN

A new study suggests that free drug samples, an effective marketing tool for the drug industry, do little to help the poor and may put children's health at risk. The study, being published last month in the journal *Pediatrics*, analyzed an in-depth survey conducted in 2004 by the Centers for Disease Control and Prevention that asked people how they got health care. As part of the survey, respondents were asked if they received free drug samples. It was found that children in the lowest income group were no more likely to receive the samples than were those in the highest income group, in part because the poor are less likely to see doctors.

Once in a doctor's office, children who lack health insurance are more likely to receive free drug samples than their well-insured counterparts, the study reported. But of greater concern, the authors wrote, are the kinds of drug samples that doctors provide. In 2004, the year of the CDC survey, more than 500,000 children received samples of four medicines that were later the subject of serious safety warnings required by the FDA: Advair, for asthma; Adderall and Strattera, both for attention deficit disorder; and Elidel, for eczema.

Elidel, for example, was given to the parents of more than 38,000 children under age two. The FDA later received reports of skin cancer in patients who took Elidel. Although the agency was

not sure whether the drug was to blame, the drug's label got a strong warning and a reminder that it was not approved for use in children under two. The study's lead author, Dr. Sarah L. Cutrona, an instructor at Harvard Medical School, told the *New York Times* in an interview that the drugs provided as free samples tended to be the newest, so their safety had often not been thoroughly vetted. Samples also often lack instructions for children or information about what parents should do in the event of an overdose. Dr. Cutrona said more research was needed on the risks and benefits of samples and that doctors should perhaps "consider stopping the use of free samples entirely, if there are such potential harms."

I don't believe that free samples should be allowed to play any significant role in doctors' decision-making when it comes to patient care. Treatment decisions shouldn't be influenced by sales representatives using any sort of "marketing technique." Dr. Sidney Wolfe, director of Public Citizen's health research group and a fierce opponent of free drug samples, says the practice encouraged doctors "to overuse dangerous drugs."

Source: *New York Times*

WARNING HIGHLIGHTS DANGERS OF MICROWAVING

Many folks don't know that improperly microwaved frozen foods can make you sick. The government has issued a new warning urging consumers to thoroughly cook frozen chicken dinners after 32 people in 12 states were sickened with salmonella poisoning. Doug Powell, scientific director of the International Food Safety Network based at Kansas State University, says using microwaves to reheat is good, but not so good for cooking. He says the problem is that microwaves heat unevenly, and can leave cold spots in the food that harbor dangerous bacteria, such as *E. coli*, salmonella or listeria. Thus microwaving anything that includes raw meat,

whether it's frozen or thawed, can cause problems. Michael Davidson, a University of Tennessee food microbiologist, observed: "I think most food-safety experts probably would have said it's not a good idea to microwave anything that's from a raw state."

Many folks wrongly assume all frozen meals are precooked and only need to be warmed. It's a misconception fostered in part by foods prepared to appear cooked, such as chicken that has been breaded or pre-browned. Even some meals designed to be microwaved can be unsafe if they are not heated thoroughly enough, or are cooked using directions meant for a microwave with different wattage.

The government doesn't track microwave-related food-borne illnesses, but every year more than 325,000 people are hospitalized for food-related illnesses. Last fall, hundreds became ill when Banquet pot pies made by ConAgra Foods were linked to a salmonella outbreak and frozen pizzas made by General Mills were tied to an *E. coli* outbreak. Both products were recalled. Since then, food companies have revamped the cooking instructions on their frozen foods to make sure they are sufficient for killing off any dangerous bacteria. At least that's what Leslie Sarasin, head of the American Frozen Food Institute trade group, told *Associated Press*.

Microwaves produce short radio waves that penetrate food about one inch and excite water, fat and sugar molecules to produce heat. Food safety experts say that method poses more risk than a stove or oven because it heats food unevenly. To be safe, consumers should use a thermometer to check the temperature of microwaved food in several places, especially if the product includes raw ingredients.

Consumers also need to become better acquainted with the technical specifications of their microwaves. The unit's wattage—how powerful it is— influences how well it heats food, and cooking instructions are written for specific wattages. But microwaves lose power over time, and some smaller microwaves may not produce enough

power to safely cook some products. Banquet pot pies, for example, now include a warning that the product shouldn't be cooked in microwaves with less than 1,100 watts output.

Source: *Associated Press*

CANCER TEST FAILED TO GET FDA APPROVAL

The Food and Drug Administration has told the Laboratory Corporation of America that it is illegally marketing a blood test to detect ovarian cancer, according to a warning letter posted Wednesday on the FDA's Web site. The test, introduced in June, has raised hopes among women and their doctors because it promises to detect ovarian cancer at an early stage, when it is still treatable. But some outside experts, including the Society of Gynecologic Oncologists, have said the test has not been proved accurate and might cause women to have unnecessary surgeries to remove their ovaries. The FDA itself, in a previous letter to LabCorp, said the test "may harm the public health."

In its new letter, which was sent September 29th, the FDA said the test, called OvaSure, required agency approval before it could be marketed. Typically, the agency has not regulated tests that are developed and performed by a single laboratory, as opposed to test kits that are sold to hospitals, laboratories and doctors. But the FDA said that OvaSure did not qualify for this exemption because the test was developed at Yale University, not at LabCorp, and the materials for the test were not manufactured by LabCorp.

Source: *New York Times*

XXI. ENVIRONMENTAL CONCERNS

U.S. SUPREME COURT WILL REVIEW WHO PAYS FOR SUPERFUND SITE

The U.S. Supreme Court has agreed to decide what share railroads and an

oil company should bear of the cleanup of a contaminated industrial site in Arvin, California, near Bakersfield, that threatened drinking water supplies. Shell Oil Co. and the railroads—the Burlington, Northern and Santa Fe Railway Co., and the Union Pacific Railroad Co.—claim they are being unfairly tagged with an inordinate portion of the cost of cleaning up the site. The companies contend they merely transported and sold legal, useful products and were not involved in years of soil and groundwater contamination. The site was once the home of a fertilizer and insecticides manufacturing facility.

Source: *Associated Press*

COURT FINDS EXXON IGNORED ASBESTOS WARNINGS AND PUT WORKERS AT RISK

The Louisiana First Court of Appeals has upheld a trial court jury's finding that despite being aware of the dangers of asbestos in its Louisiana riverboats, chemical plants, and oil refineries as early as 1937, ExxonMobil Corporation failed to implement any type of safety measures to protect its workers. The court affirmed a trial court's 2006 judgment awarding substantial damages to the family of a former Exxon employee who died of mesothelioma, an asbestos-related cancer. Renee Melancon, a lawyer with Baron & Budd, P.C., who represented the Plaintiff, had this to say:

Exxon's own documents reveal that the company knew that the use of asbestos insulation in the petroleum industry was hazardous to workers like our client. Exxon even outlined a strategy for minimizing asbestos exposure in its facilities in 1937, but just never bothered to follow through on the plan to protect its workers.

The Plaintiff, Bruce Spillman of Baton Rouge, worked on Exxon towboats from 1945 to 1949 and was exposed to asbestos when he spent time in the boats' engine rooms. From 1949 until 1986, he worked as a helper, then a welder, in Exxon's Baton Rouge oil

refinery, where he continued to be exposed to pipes insulated with asbestos. Despite the 1949 warnings of its own industrial hygienist about asbestos, Exxon neither alerted its workers to any danger nor instructed them to wear masks. Mr. Spillman was diagnosed in 2005 with mesothelioma, a painful and extremely aggressive cancer that causes the lining around the lungs to thicken and harden. He died later the same year.

Exxon attempted to claim immunity from the lawsuit based on Louisiana workers' compensation statutes. But, the appeals court rejected that argument and reaffirmed its earlier ruling that Louisiana's Workers' Compensation Act does not cover mesothelioma, and as a result does not bar suits by mesothelioma victims against their employers for claims that accrued before 1975. The law was amended to cover that disease in 1975. In addition, the court held that the Plaintiff's evidence was more than sufficient to establish that Exxon knew of the need to protect its workers from exposure to asbestos. The oil giant was responsible for exposing its employees to dangerously high levels of asbestos without any respiratory protection. Exxon worked hard to evade its legal responsibility in this case. Fortunately the powerful oil giant failed.

Source: *PR Newswire*

EVAPORATING PESTICIDES A LEGAL NUISANCE

Organic growers Jacobs Farm/Del Cabo (Jacobs Farm) prevailed last month in its 2007 suit against Western Farm Service. Jacobs Farm cultivates 120 acres in the Wilder Ranch State Park, just north of Santa Cruz, California. Its suit successfully argued that the nearby spraying of chlorpyrifos, diazinon, and dimethoate contaminated its dill, sage, and rosemary. The crux of the argument was that the chemicals evaporated and were transported onto the Jacobs Farm by wind or fog. The Santa Cruz County jury agreed with Jacobs, finding the spray-

ing constituted negligence on the part of Western Farm Service, a trespass on the Jacobs Farm land, and a nuisance preventing Jacobs Farm from the use and enjoyment of its land.

The lawyer for Jacobs Farm, Austin Comstock, believes the ruling sent the right message to the regulatory agencies and the chemical industry, that it is necessary to re-examine the use of these post-World War II pesticides. Many believe the landmark ruling sends a clear message that pesticides, like these, that evaporate and are displaced onto non-target property need to be strictly regulated to prevent future property damage. What is left to determine is the impact of this ruling for other private citizens suffering from similar pesticide sprayers.

Source: *PRN Newswire*

RESIDENTS SEEKING \$1 BILLION AFTER 2006 GAS SPILL

A trial involving Maryland families who sued one of the nation's largest oil companies started last month in Towson, Maryland. More than two years ago, thousands of gallons of gas spilled in Jacksonville, Maryland, north of Baltimore. About 90 families filed the lawsuit and are seeking \$1 billion in damages from ExxonMobil. They contend that their water wells are contaminated.

In February 2006, ExxonMobil reported that gasoline had been leaking into the ground for more than a month at a Jacksonville service station. An underground pipe was the source of the leak, and the company began cleaning up the site after the leak was discovered. More than 25,000 gallons of gas leaked. The state says the well water still has contamination in it. Many people in the area won't drink the water or bathe in it. About 250 families have been affected by the leak. They've gone through regular water testing and relied on bottled water, which Exxon has provided.

The State of Maryland recently settled its lawsuit with ExxonMobil. According to Attorney General Doug Gansler, ExxonMobil will pay \$4

million in civil penalties. The settlement is the largest environmental penalty in Maryland's history. It will be interesting to see how the individuals' lawsuit comes out. At press time that case was still going and it's projected to last for several weeks.

Source: *Associated Press*

XXII. THE CONSUMER CORNER

CONGRESS TARGETS ONLINE PHARMACIES

Congress has passed a bill intended to crack down on rogue online pharmacies that sell drugs without a valid prescription. The bill, sponsored by Rep. Bart Stupak (D-MI) prohibits the sale of controlled substances over the Internet without a prescription written by a doctor who has conducted an in-person examination of the patient. It would also require online pharmacies to display certain information on their Web sites, including a pharmacy's address and phone number as well information about the pharmacist and any physician associated with the business.

The legislation is a response to mounting concerns that unscrupulous online pharmacies are contributing to drug addictions and drug overdoses—particularly among adolescents—by selling controlled substances without requiring valid prescriptions and without verifying customer ages or identities. We have seen numerous examples where folks have gotten prescription drugs—without ever seeing a doctor—online. The last such case we saw resulted in a death caused by an apparent overdose.

Source: *Associated Press*

UNSTABLE HOUSEHOLD ITEMS POSE DEADLY DANGER TO CHILDREN

Large furniture such as television sets, chests, armoires, and kitchen appliances can tip over and crush children,

causing injury or death. Last year, the U.S. Consumer Product Safety Commission identified this issue as one of the "top five hidden home hazards." A new data report from the CPSC staff shows at least 180 tip-over related deaths between 2000 and 2006, 80% involving children younger than ten. The report also indicates that between 2005 and 2006 there were at least 40 reports of television or television and furniture related tip-over deaths. These deaths and injuries frequently occur when children climb onto, fall against or pull themselves up on television stands, shelves, bookcases, dressers, desks, chests and stove oven doors. Televisions placed on top of furniture can tip over and cause a child to suffer traumatic and sometimes fatal injuries. Tip-over related deaths continue to be a problem. To help prevent tip-over hazards, CPSC recommends the following safety tips:

- Verify that furniture is stable on its own. For added security, anchor all entertainment units, TV stands, bookcases, shelving and bureaus to the wall or floor using appropriate hardware, such as brackets, screws, or toggles.
- Place televisions on sturdy furniture appropriate for the size of the TV or on a low-rise base.
- Push the TV as far back as possible from the front of its stand.
- Place electrical cords out of a child's reach, and teach children not to play with the cords.
- Remove items from the top of the TV and furniture that might tempt kids to climb, such as toys and remote controls.

The manufacturers of the furniture have a duty to provide methods of attaching some types of furniture to walls and to also issue warnings to purchasers of the hazards which are known to the industry. Our firm has handled a number of cases where persons were killed in incidents involving the tip over of furniture and appli-

ances. One such case involved a woman who was trapped under a kitchen oven that was top-heavy and thus unstable. When attempting to open the oven door the stove tipped over and pinned her underneath. She died from her injuries. If you want more information you can contact Kendall Dunson at 800-898-2034.

SOME FOOD FINALLY GETS LABEL OF ORIGIN

Under a new law consumers will now be able to tell what country food products came from. This labeling has been a long time coming. It predates by years concerns about domestic and imported foods after E. coli outbreaks and chemical contamination. First proposed in 2002, the country-of-origin legislation finally became law. All meats, fish, and fresh or frozen fruits and vegetables must now be identified by their country of origin, whether by a sticker, a sign, a placard or a label. Unfortunately, organ meats, such as heart, liver or kidney, aren't included. The labeling originally was advocated by farmers and ranchers who believed consumers would choose U.S.-grown food. Consumer groups then took up the fight and applauded the measure. It offers valuable information and choice. But the consumer advocates are not happy with the many loopholes in the law. For example, cooked and processed foods are exempt. The USDA doesn't plan to go into full enforcement mode for a few months to give its educational efforts time to take effect.

FRAUD IN THE PREPAID CALLING CARD MARKET

Over the past decade, the prepaid calling card business has mushroomed into a \$4 billion industry. It has injected new competition into the market for international phone calls. The cards are sold in gas stations, newsstands, convenience stores, bodegas and groceries across the country. But consumer watchdogs and government officials warn that certain segments of the

market are plagued by fraud and deceptive practices that give consumers fewer minutes than they pay for and tack on all sorts of hidden and unfair "junk fees." The problem takes many forms:

- connection fees on calls that don't go through because no one is home or the line is busy;
- post-call service fees and 99-cent hang-up fees on cards that are only worth a few dollars to start with;
- calling rates that go up when a card is used more than once; activation and weekly maintenance fees; and
- cards that bill customers in three- or four-minute increments even if they use just a few seconds of calling time.

These charges and fees often end up leaving buyers with far fewer minutes for calls than they thought they were getting. The Hispanic Institute, a non-profit advocacy group, estimates that the average calling card delivers only 60% of the minutes promised—cheating consumers out of \$1 million a day. Government officials are starting to force card providers to be more upfront about their card terms. But some consumer advocates worry that better disclosure alone is not enough to protect customers.

Victims include soldiers calling home from abroad and foreign students studying in this country. But the people most vulnerable to these scams, consumer advocates and government officials say, are the newest arrivals who speak little English and don't have the money or documentation to get a home phone line or cellphone—much less a computer—to communicate with relatives overseas. They are also the people who are least likely to seek redress if they are cheated.

One thing that particularly disturbs industry critics is that many prepaid calling card companies advertise in Spanish, but provide disclosures of card terms and conditions in English only—if at all. The Federal Trade Commission and attorneys general in Florida, Texas

and a handful of other states have cracked down on bad actors in the market, while state and federal lawmakers have begun to craft regulations to clean up the industry. It's the government's responsibility to protect the most vulnerable among us who are being taken advantage of by these fly-by-night operators.

Senator Bill Nelson (D-FL) is sponsoring a bill that would force prepaid calling card companies to clearly disclose the number of minutes that their cards provide as well as any fees and charges. The House has passed similar legislation. But while both measures are an important first step, Sally Greenberg, executive director of the National Consumers League, noted that neither prohibits most "unconscionable" industry practices. She says: "Disclosure only goes so far and these are primarily disclosure bills. It doesn't help the consumer to tell them we are ripping them off."

Consumer advocates say the prepaid calling card market has become ripe for abuse because there has been so little industry regulation—and so little enforcement of the rules that do exist. Ms. Greenberg from the consumer group said: "The problem is that these companies can set whatever terms they want. It's a free-for-all, a Wild West." Also, con artists face a low barrier to enter the market since calling card providers do not need to own their own telecommunications networks.

Source: *USA Today*

ORKIN SETTLES \$6 MILLION FIX-UP AT TERMITE-INFESTED CONDOS

A recent settlement will require pest-exterminating giant Orkin to repair a termite-ravaged condominium complex in Sumter County, Florida. This could cost the company an estimated \$6 million in "fix-up costs." The pest damage was at the Sandalwood Condominium Association at Wildwood, a 104-unit residential community. Peter M. Cardillo, known as the "bug lawyer," specializes in termite cases. He says Orkin failed to properly

treat Sandalwood's 13 residential buildings and clubhouse, rid the complex of the wood-eating pests or live up to other promises and guarantees in its contract.

The settlement came as a civil trial was set to begin this month. Orkin was charged with criminal racketeering, breach of repair, breach of duty and false advertising—for which punitive damages could have been awarded, had the case gone to trial.

According to the lawsuit, which was filed eight years ago in Circuit Court in Sumter County, the condominium association accused Orkin of violating Florida's Deceptive and Unfair Trade Practices Act. Under terms of the settlement, Orkin also agreed to pay the condominium association \$815,000. Cardillo had reached earlier settlements on behalf of the condominium association from Sandalwood's insurers that were worth more than \$2 million. Orkin attempted to avoid liability for termite damage by arguing that water leaked in and around the buildings, fostering the infestations that caused concern for Sumter County building inspectors.

Source: *Sentinel*

TURN THE NOISE LEVELS DOWN

Millions of youngsters across Europe could suffer permanent hearing loss after five years if they listen to MP3 players at too high a volume for more than five hours a week, according to a recent warning from EU scientists. The scientists' study, requested by the European Commission, attacked the concept of "leisure noise," saying children and teenagers should be protected from increasingly high sound levels—with loud mobile phones also coming in for criticism. The Commission, the EU's executive arm, said in a statement:

There has been increasing concern about exposure from the new generation of personal music players which can reproduce sounds at very high volumes

without loss of quality. Risk for hearing damage depends on sound level and exposure time.

More and more young people were exposed to the significant threat that leisure noise posed to hearing. Commission experts estimate that between 50 and 100 million people listen to portable music players on a daily basis. If they listened for only five hours a week at more than 89 decibels, they would already exceed EU limits for noise allowed in the workplace, they said. But if they listened for longer periods, they risked permanent hearing loss after five years.

The scientists calculated the number of people in that risk category at between five and 10% of listeners, meaning up to 10 million people in the European Union. Sales of personal music players have soared in EU countries in recent years, particularly of MP3 players. Commission experts estimate unit sales between 184 and 246 million for all portable audio devices just over the last four years, of which MP3 players range between 124 and 165 million.

Mobile phones used at excessive volume also came under fire from Meglena Kuneva, the EU's consumer affairs commissioner. She said in the statement:

I am concerned that so many young people... who are frequent users of personal music players and mobile phones at high acoustic levels, may be unknowingly damaging their hearing irrevocably.

Lots of young folks will be deaf as a poker unless they learn to "turn the volume down" or unless some noise-level constraints are imposed in some manner.

Source: *Reuters*

IMPURE BOTTLED WATER IS A PROBLEM

Many Americans buy bottled water because they believe it's purer than tap water, but a new study may sur-

prise them. An environmental advocacy group says tests on leading brands of bottled water have turned up a variety of contaminants often found in tap water. However, the study says all the brands met federal health standards for drinking water, and only two violated a California state standard. As expected, an industry group branded the findings "alarmist." It says the study is based on the faulty premise that a contaminant is a health concern even if it's within regulatory limits. The two-year study was done by the Washington-based Environmental Working Group, an organization founded by scientists that advocate stricter regulation. I would put much more stock in a study done by EWG as opposed to a statement by an industry group.

Source: *Associated Press*

STATES ASK BABY PRODUCT COMPANIES TO AVOID BPA

We have written on the safety issues involving the chemical bisphenol A in previous issues of the Report. There has been a great deal of debate over how much of a threat BPA presents. Attorneys general from Connecticut, New Jersey and Delaware sent letters last month to 11 companies that make baby bottles and baby formula containers, asking that they no longer use the chemical in their manufacturing because they said it was potentially harmful to infants.

As previously reported, the Food & Drug Administration has tentatively concluded that BPA is safe based on a review of research. Also, some manufacturers have already said they would make BPA-free baby bottles. But Connecticut Attorney General Richard Blumenthal, a real friend of consumers, criticized the FDA for declining to take action after a preliminary study in September drew a possible connection to BPA and risks of heart disease and diabetes. Attorney General Blumenthal observed:

Unfortunately the federal agency,

the Federal Food and Drug Administration, has been asleep at the switch, in fact resistant to respecting the scientific evidence that grave harm can result in use of this product.

Several states are considering restricting BPA use, and some manufacturers have begun promoting BPA-free baby bottles. St. Louis-based Handicraft, maker of Dr. Brown's baby bottles, says on its website that its newest bottles do not contain BPA and urges consumers to check its products for symbols that identify bottles that don't contain the chemical. Some U.S. stores, such as Wal-Mart Stores Inc. and Toys "R" Us, have already said they're phasing out products that contain BPA. The European Union has said BPA-containing products are safe, but Canada's government has proposed banning the sale of baby bottles with BPA as a precaution.

BPA is used in lightweight, durable plastics. Products include some baby bottles, sippy cups and reusable food and drink containers, such as reusable sports water bottles, Tupperware, compact discs, DVDs, eyeglass lenses and sports safety goggles and helmets. BPA is also in epoxy resins used to make paints, adhesives and canned food liners. Animal studies have linked BPA with breast, prostate and reproductive system abnormalities and some cancers, but experts disagree on whether it poses health risks for humans. The FDA's advice for consumers who want to reduce exposure includes avoiding plastic containers imprinted with the recycling number 7, as many of those contain BPA, and to avoid warming food in such containers.

Source: *Associated Press*

MELAMINE CONTAMINATION ALERT TO ALABAMA CONSUMERS

Agriculture & Industries Commissioner Ron Sparks warned consumers in Alabama last month about melamine contamination in "Koala's March" crème filled cookies manufactured in China. The Department's Pesticide

Residue Laboratory has confirmed the presence of melamine in the "strawberry" and "chocolate" flavors of the cookies. Consumers were advised to discard the products and avoid consumption.

Other flavors of the cookies may have been on the market, but have not been tested by the Department. The company that distributes the cookies, Lotte USA, has been conducting a market withdrawal for all flavors of the cookies, but has not conducted a full recall at this time. It appears that Alabama's results were their first lab results that were positive for melamine. Commissioner Sparks made this observation:

This is another example of how important the state diagnostic labs are to us here in Alabama. We take food safety issues very seriously and we will continue to work hard to protect consumers.

The Department lab has also confirmed melamine contamination in the already recalled "White Rabbit Creamy Candy," another Chinese product found in Alabama stores. The Department's food safety inspectors have pulled all of the recalled products found in stores and samples have been tested for melamine. Ten of the 46 "White Rabbit" samples tested positive for melamine. For more information on products recently recalled due to melamine contamination, visit www.agi.alabama.gov and look under the "Product Recalls" listing.

As we have reported, melamine has recently been linked to contaminated infant formula and other products containing milk protein in China and the massive pet food recalls in 2007. The chemical is used in plastics manufacturing and as an illegal additive in foods to simulate protein.

XXIII. RECALLS UPDATE

NISSAN RECALLS 200,000 VEHICLES OVER AIR BAG CONCERNS

Nissan Motor Co. is recalling more than 200,000 vehicles to fix a sensor system that could affect the car's passenger side air bag. Nissan says the recall includes 140,000 Nissan Altima cars from the 2007-2008 model years. It also involves 2007-2008 model years of the Infiniti EX35, G35 Sedan, G37 and the Nissan 350Z, Murano and Rogue. According to the Japanese automaker, an issue with an electronic component could interrupt a signal in the sensor system. That could prevent the passenger air bag from deploying under certain conditions. A Nissan spokesman says there have been no injuries or crashes. Most of the recalled vehicles are in the United States; others are in Mexico, Canada, Puerto Rico and the Persian Gulf.

FOUR-WHEELED RIDE-ON VEHICLES RECALLED BY RAZOR USA

Razor USA LLC, of Cerritos, California, has recalled about 30,000 Razor® Dirt Quad Electric Powered Ride-On Vehicles. The control module for the throttle can fail and cause the electric ride-on vehicle to unexpectedly surge forward, posing a risk of injury to the user or a bystander. Razor has received 60 reports of the vehicles unexpectedly surging forward, including two reports of injuries. This recall involves Razor® Dirt Quad electrically powered ride-on vehicles.

Product ID numbers included in the recall begin with 103110-01 or 103110-02. The product ID numbers are located on the bar code affixed to the right step of the vehicle, on the charger and on the retail packaging. Product ID numbers beginning with 103110-03 or later are not included in this recall.

Authorized dealers nationwide sold the ride-on vehicles from August 2006 through September 2007 for about

\$400. Consumers should immediately stop using the product and contact Razor for a free replacement controller. For additional information, contact Razor USA at (800) 813-3155 anytime, or visit the firm's Web site at www.razor.com/recall.

TV STANDS RECALLED BY STUDIO RTA DUE TO TV TIP-OVER HAZARD

Studio RTA, of Pico Rivera, California, has recalled about 48,000 TV stands. The stability of the stands does not meet industry standards to prevent TV tip-over, posing a risk of injury or death to consumers. This recall involves four different TV stand models. Model numbers are printed on the packaging and instruction's sheet. The recalled models are:

- "E Series" Model 060331: The product consists of two glass shelves, a lower shelf made of metal, and black leg and frame components.
- "Fierro" Model 402875: This product was sold exclusively by Best Buy. The product consists of three glass shelves with black leg and frame components.
- "Madison DLP" Model 060176: The product consists of three glass shelves with dark wood grain finish frame components, black legs, and a black fiberboard back panel.
- "Madison 3000" Model 060090: The product consists of three glass shelves with dark wood grain finish frame components, black legs, and a metal mesh back panel.

Consumers should immediately remove the television set from the stand and contact Studio RTA to receive a free repair kit. For additional information, contact Studio RTA toll-free at (888) 309-0299 between 7 a.m. and 5 p.m. PT, or visit the firm's Web site at www.studiorta.com.

WAL-MART RECALLS 210,000 GE TOASTERS

Wal-Mart is recalling about 210,000 General Electric toasters that could cause fires or shocks. According to the company, an electrical short circuit can occur between the heating element and the bread cage, posing a fire and electrical shock hazard to consumers. Wal-Mart has received 140 reports of fires or sparks coming from the toasters or the toasters tripping the circuit breaker in consumers' homes. Thus far, no injuries have been reported.

The recalled toasters have a chrome steel body, a black plastic base and controls with either two or four openings in the top. The GE logo is located on the front of the toasters just above the controls. Model numbers 169115 (four-slice toaster) and 169116 (two-slice toaster) are included in this recall. The model number is printed on the bottom of the toasters.

The recalled toasters were sold at Wal-Mart stores nationwide from September 2007 through July 2008 for between \$17 and \$28. If you own one of the recalled toasters, stop using it immediately and return it to any Wal-Mart for a full refund or replacement toaster. For more information, contact Wal-Mart at (800) 925-6278 between 7 a.m. and 9 p.m. Monday through Friday, or visit www.walmartstores.com.

HASBRO INC. RECALLS NERF BLASTERS

Hasbro Inc. has recalled about 330,000 Nerf™ N-Strike Recon Blasters. The blaster's plunger can pull the user's skin during firing of the toy blaster resulting in injury to the face, neck, and/or chest. Hasbro and CPSC have received 46 reports of injury to children aged four to 12, resulting in bruising, abrasions, pinching/pinch marks, blood blisters and welts. This recall involves the Nerf N-Strike Recon CS-6 Blasters for children age six and up.

The toy blaster is yellow with a black handle and orange plunger, trigger, and reload clip. The word "NERF" in black

lettering is on both sides of the blaster and the word "ARMED" is indented on the orange plunger. "RECON CS-6" is on the gray cocking mechanism.

There are five interchangeable parts including the shoulder stock, the flip-up sight, barrel extension, quick re-load clip and dual-mode light beam. Model number 63552 and UPC codes 653569272021 and 653569311218 can be found on the packaging. Only blasters with an exposed orange plunger are included in this recall.

Consumers should immediately take the recalled toy blasters away from children and contact Hasbro for a free cylindrical cover to prevent additional injuries. For more information, contact Hasbro toll-free at (800) 245-0910 anytime or visit the firm's Web site at www.hasbro.com/nerf.

WIRELESS HEADSET BATTERIES RECALLED

GN Netcom Inc. has recalled GN9120 Wireless Headsets. An internal short circuit can cause the lithium-ion polymer batteries to overheat, posing a fire hazard. GN Netcom has received ten reports of incidents involving overheating, including three reports of open flames and property damage to furniture on which the headsets were resting. An additional 37 reports of overheating, three reports of open flames and one report of second degree burns, requiring medical attention, was received outside the U.S.

This recall involves GN9120 wireless headsets with ATL lithium-ion polymer batteries. The headsets are intended primarily for professional use in offices and call centers. The product is sold with three components: a base station, headset and power adapter. "GN Netcom" or "GN9120" is printed on the base station and headset. The affected batteries have part number 603028 and have a white plastic enclosure. The batteries are labeled "Made by ATL (Amperex Technology Ltd.)" and "(ATL P/N 603028)." Batteries sold as a replacement part are labeled "GN9120 battery replacement kit." For additional information, contact GN Netcom at

**PORTABLE GENERATORS RECALLED BY
GENERAL POWER**

General Power Products LLC, of Loveland, Ohio, has recalled about 13,000 Portable Generators. The generator's fuel valve can be damaged by the cover plate during shipment and cause a fuel leak and fuel spillage during use, posing a fire hazard to consumers. General Power Products has received 14 reports of damaged fuel valves. No injuries have been reported.

This recall includes the General Power Products 6000 Watt portable generator and the Poulan Pro 6000 Watt portable generator with serial numbers 060400483 through 060600725. The serial number is stamped on the engine block which is located on the front of the engine below the generator's control panel. "General Power Products" and "6000 Generator" are printed on the side of the General Power Products generator. "Poulan Pro" and "6000 watts" are printed on the side of the Poulan Pro generator.

Hardware and home improvement stores primarily located in Illinois, Indiana, Louisiana, Ohio and Texas sold the generators from June 2008 through September 2008 for between \$600 and \$800. Consumers should immediately stop using the generators and contact General Power Products to determine if the generator's fuel valve is damaged and, if it is, to receive a free repair kit and instructions. For additional information, contact General Power Products toll-free at (877) 428-3769 24 hours a day, seven days a week, or visit the firm's Web site at www.gener-alpowerproducts.com.

XXIV. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

TED MEADOWS

After graduating from law school, Ted returned to his hometown of Prattville, Alabama, where he learned the basics of a general law practice in the firm of Howell, Sarto & Howell. In 1995, Ted moved his growing personal injury practice to Birmingham, Alabama, where he became a partner in the Plaintiffs' litigation firm of Davenport, Lavette & Meadows, P.C. In 2001, Ted accepted an "of counsel" position at our firm. While he has spent his entire career helping the injured and defrauded, Ted now focuses on representing personal injury victims throughout the country in claims against pharmaceutical and medical device companies. The Autauga County native became a shareholder at our firm in 2002. Since that time, he has been the principal firm lawyer in settlements totaling in excess of \$60 million.

Ted is a frequent speaker on mass tort issues. He has been a guest speaker at National Lawyer Conventions held in New Orleans, Miami, Key West, Aspen, Los Angeles, San Francisco, Boston, Atlanta and Puerto Rico. Ted received the Alabama State Bar Continuing Legal Education Award in recognition of efforts to continue and enhance professional competence. He has been recognized as an "advocate" by the National College of Advocacy. Ted has spoken at the Mississippi Judicial College on the subject of Electronic Discovery. He has spoken regarding Hormone Therapy (Prempro) litigation in a conference sponsored by the American Association for Justice. Ted has been interviewed by Legal Times Network regarding the latest in the Vioxx litigation. He is mentioned in the 2007 & 2008 editions of *The Legal 500*, a book carrying independent editorial commentary on the leading law firms in the United States.

Ted was the principal Beasley Allen lawyer who handled the Lotronex,

Meridia, Guidant Ancure Stent, Sulzer and Smith & Nephew Knee Replacement litigations. He is currently handling Pain Pump, Hormone Therapy (Prempro), Medtronic Heart Devices, Guidant Heart Devices and Medtronic Lead Wire cases. Ted is also investigating other potential Mass Tort claims. He currently serves on the Plaintiffs' Governing Committee in the Prempro Multi District Litigation.

Ted is married to the former Carla Musgrove of Eufaula, Alabama. They have two children, Nathan and Amanda. He and his family are members of Saint James United Methodist Church, where he is actively involved in the Music Ministry. Ted also serves on the Worship & Fine Arts Council, and has served on the Board of Trustees, at the church. The Autauga County native is a very hard worker who is practicing in a complex and most interesting field. Ted cares about his clients and does a very good job handling their claims. We are blessed to have him with the firm.

RICK MORRISON

Rick graduated from Huntingdon College in 1988 and graduated cum laude from the Cumberland School of Law in 1991. While attending Cumberland, Rick served on the Editorial Board of the *Cumberland Law Review*. He joined the firm in 1996 after practicing with a very good Defense firm. Initially, Rick handled consumer and insurance fraud cases, several of which resulted in seven-figure settlements and verdicts. He was moved over to our Personal Injury Section where he now works.

Rick currently handles product liability cases for the firm, including crash-worthy litigation. He has been involved in cases against automobile manufacturers dealing with defective seat belts, seats and seat backs, fuel systems, structural integrity, safety glass, and cargo restraints. He has also handled rollover and roof crush cases dealing with SUVs and heavy trucks. In addition to the numerous cases Rick has handled against automobile manufacturers, he has also represented clients with their cases relative to motorcycles, helmets, saws, tractors, presses, and ATVs.

Several of these cases have resulted in seven-figure settlements.

Rick is a regular speaker at various state seminars concerning product liability issues and updates. He is the author of various papers and articles on Product Liability issues, including "The Hidden Dangers of Cargo Vans, The Overlooked Hazard." Rick is married to the former Estee Knudsen and they have one daughter, Meredith Grace. Rick is also a very hard worker and he too works in a most interesting field. Nothing is easy in product liability cases as we all know, but that doesn't deter good lawyers like Rick who are willing to meet all of the challenges in those cases. Rick does a very good job taking care of his clients' needs. We are certainly blessed to have him with us.

LANCE GOULD

Lance began his legal career with our firm in 1997, focusing his practice in the area of consumer fraud litigation. He has handled cases brought by individuals who have been victimized by finance and insurance companies within the financing industry. Some of these cases include lender liability causes of action known as "loan flipping," "insurance packing," "yield spread premium" and "equity theft." Additionally, Lance represents life insurance policyholders who have been victims of the "vanishing premium" scam.

Lance was a member of the trial team in a landmark case involving a door to door sales and finance scam, which resulted in a jury verdict of \$581 million. As a result of this litigation, the finance company had to quit those activities in the State of Alabama. Also, Lance has assisted clients in obtaining Multi-Million dollar settlements and has influenced corporations to correct their predatory lending practices.

Lance has authored publications on consumer fraud litigation and has been a guest speaker on consumer fraud litigation at both the state and national levels, including a lecture for the National Consumer Law Center. The Russell County native also serves on the Board of Governors for the Alabama Trial Lawyers Association. Lance does a

very good job and, like all of our lawyers, he is concerned for the well-being of his clients. We are truly blessed to have Lance working in the field mentioned above.

JENNIFER CALDWELL

Jennifer Caldwell has been with us for 15 months working as a staff assistant for Ted Meadows and Russ Abney. She works primarily on hormone therapy and pain pump cases. Jennifer is married to William who is the Manager of Engineering at Kelly Aerospace and they have two rambunctious boys. Liam is seven and Bryce is five. They are all Canadian and moved to Montgomery almost four years ago from Ontario. Jennifer has an Honors Degree in Biology as well as a Bachelor of Education. She is planning to attend Jones School of Law next fall. Jennifer teaches Adult Sunday School classes at St. James United Methodist. Jennifer also likes to hike, camp, scrapbook, travel, and read. Jennifer is a most valuable employee—who does very good work—and we are mighty glad she moved South to be with us.

TABITHA MCGUIRE

Tabitha McGuire started with the firm in May 2000 after moving from Tucson, Arizona with her husband, Brennon McGuire, who is Active Duty in the United States Air Force. However, in January 2002, they received orders for a transfer to Wright-Patterson Air Force Base, Dayton Ohio, and Tabitha left the firm. Fortunately, she and her family returned to Montgomery for a second assignment, after receiving orders to Maxwell-Gunter Air Force Base in Montgomery. Tabitha then rejoined the firm in January 2006.

Tabitha started as a Clerical Assistant in the Personal Injury Section. She then served as a Clerical Assistant and Secretary in the Fraud Section and is currently serving as a Litigation Assistant in the Fraud Section working with Lance Gould. Tabitha had worked with Larry Golston in the Fraud Section. While working under Larry, Tabitha worked on various fraud cases including employment, race/age discrimination, and various other fraud cases. Tabitha is cur-

rently working on employment, class action and various fraud cases. Tabitha is responsible for collecting, organizing and reviewing documents, maintaining client contact, preparing cases for mediation, arbitration, and trial.

Tabitha was born and raised in Chillicothe, Ohio. Her father, Tony Johnson, and sister, Tonya Matthews, still reside in Chillicothe, and her mother, Sharon Watson, resides in Wetumpka, Alabama. Tabitha has been married to Brennon McGuire since July of 1996. Mr. McGuire serves as the Faculty Superintendent of the Profession of Arms Team at the Gunter Noncommissioned Officer Academy, Maxwell-Gunter AFB. They have two daughters; Ceara is 11 years old and is a student at the Wetumpka Intermediate School, and Kaylee is six years old and is a student at Wetumpka Elementary School. Tabitha and her family currently reside in Wetumpka.

Tabitha is a 1996 graduate of Paint Valley High School (Bainbridge, OH) and graduate of Pickaway Ross Vocational Center (Chillicothe, OH). In her spare time she enjoys riding with her husband on their Harley and spending quality time with her daughters, family, and friends. Tabitha is a very good employee and we are blessed to have her with the firm.

CECELIA JOHNSON

Cecelia Johnson, who has been with us a little over a year, works in our Mass Torts Section as a Clerical Assistant on Medical Records. Currently, she is working on ordering records through our vendor Mediconnect. She also updates the authorization and speaks with clients on any information that may be needed to send to our vendor to get the records. Cecelia, a graduate of Robert E. Lee High School in Montgomery, is licensed as a Certified Nursing Assistant. She is currently in school working to get her RN license. Cecelia enjoys reading her Bible, shopping, watching basketball and spending time with her family. She is a very good employee and we are fortunate to have her with the firm.

VICTOR COYLE

Victor Coyle, who has been with the firm for ten years, serves as our Network Administrator. In this position, he handles tech support and networking issues, as well as researching new products and software. Victor started with us as a mail clerk, and worked as a runner for the firm before moving to our Information Technologies Section. He has a bachelor's degree in marketing and a master's degree in general business. Victor also has computer certifications in CCNA and MCSE. He is married to Praewpan and their families live in Thailand. Victor is a very good employee who holds a most important position with the firm and we are fortunate to have him with us.

FIRM LAWYER NAMED CO-CHAIR OF THE CLASS ACTION LITIGATION GROUP

For the first time ever, the American Association for Justice has approved a Class Action Litigation Group. The group will be co-chaired by Jay Aughtman from our firm. There are hundreds of lawyers and firms who are members of AAJ and focus primarily on class action litigation. The class action litigation group will provide a forum for those lawyers focusing on class action litigation to share ideas and work together in representing consumers in state and federal courts. The litigation group will hopefully culminate in the formation of a formal class action practice section within AAJ in 2009. I believe that move is badly needed in today's economic climate. The subprime mortgage meltdown and all of the problems relating to financial institutions will result in a great increase in class action litigation. Jay will be on the ground floor of this wave of litigation and will be in a position to help folks who have been victimized by the fraud and other wrongdoing that took place over the past few years in the nation's financial institutions.

XXV. SPECIAL RECOGNITIONS

NHTSA TURNS 40 AND CHALLENGES FOR THE AGENCY REMAIN

All Americans owe a debt of gratitude to one of the greatest friends consumers in this country have ever had. That friend is none other than Joan Claybrook, president of Public Citizen, who has been one of the leaders over the years in the ongoing battle for automobile safety. Joan has been a fighter and is largely responsible for making automobile safety a priority with lots of people. Unfortunately, one of the "hardest nuts" to crack thus far has been the National Highway Safety Administration. Ironically, it's the federal agency that has the responsibility for automobile safety on the national level. Over the years, NHTSA has been largely ineffective and on occasion has seemed to be little more than an extension of the very industry it has the responsibility of regulating.

Joan served with distinction as Director of NHTSA during the Carter Administration and knows that agency very well. The following is her statement on the anniversary of NHTSA which lays out a good history of the agency as well as insightful observations on how they operate. It's sort of long but it's very good and I encourage you to take the time to read it:

Today is the 40th anniversary of the enactment of the National Traffic and Motor Vehicle Safety Act of 1966, which created the National Highway Traffic Safety Administration to save lives on the highway. It was a definitive moment in American history, ending decades of dithering over conferences and studies while deaths on the highway rapidly increased. At that time, almost 50,000 people were killed annually in highway crashes and the death rate was more than 5.5 per million vehicle miles of travel. For

years, the auto industry blamed this carnage on driver behavior ("the life you save may be your own"), even though it was aware that poor vehicle design was a prime culprit and far easier to remedy than any attempt to influence tens of millions of drivers. When a new federal regulatory agency was proposed by President Johnson, the industry argued that such regulation was a matter for state law. But when auto industry executives testified in Iowa that same year about possible state regulation, they asserted, with typical cross-town hypocrisy, that only the federal government could be the regulator of manufacturing and interstate commerce.

The publication of Unsafe at Any Speed in late 1965 severely criticized the Detroit auto manufacturers (which produced 85% of the market) for ignoring safety while investing in design and marketing. It was followed in several months by a revelation that General Motors (GM) had hired a detective to dig up dirt on the then-unknown author, Ralph Nader. GM's malfeasance galvanized Congress to enact a new law to improve motor vehicle safety in under nine months. The important new statute required the agency to issue vehicle safety standards not only to prevent crashes but also to protect occupants when a crash occurred, and coined a new term based on the developing science of auto safety: "crashworthiness." It also authorized the agency to conduct research for vehicle standards and to promote highway safety through state traffic laws and programs. It required the agency to produce experimental safety vehicles to showcase new technologies and authorized the investigation of safety defects, requiring notification of those defects to consumers because Detroit for 60

years had covered up safety defects and failed to notify consumers. In 1974, the agency got the authority to require recalls of unsafe vehicles and parts.

In its early years, NHTSA issued dozens of vehicle and highway safety standards, as well as standards for vehicle consumer information. The standards required installation in all cars of collapsible steering columns, laminated windshield glass, lap and shoulder belts, head restraints, dual braking protection, air bags and safer tires. The auto industry was critical of the agency's activities from day one. Henry Ford II held a press conference in late 1966 after the issuance of the first proposed standards, claiming they would close down Detroit unless modified. Some modifications were made, but not all that he wanted. The automakers soon recovered their influence, however. The roof crush resistance standard was seriously undermined after the agency in 1971 caved in to Detroit's pressure to test the roof on only one side, despite the fact that both sides of the roof are hit by the ground in a rollover crash. The fuel tank standard was finally issued in 1974 under duress after Congressman John Moss of California threatened to mandate it by law.

The air bag standard was delayed from 1973 to 1976 after President Nixon was visited by Henry Ford and Lee Iacocca, who complained about the cost of air bags and fuel tank safety. In all, it took 20 years of battling with Detroit before the standard took effect in 1989 models—half the agency's lifetime. President Reagan's revocation of the standard was unanimously overruled, with the Supreme Court proclaiming that the automakers had "waged the regulatory equivalent of war against the air bag and lost."

By the 1990s, Congress grew impatient with a decade of inaction and decided to mandate action by the agency, citing the long period of few achievements on key safety issues. Laws mandating a specific safety standard agenda for agency action were enacted in 1991, 1998, 2000 and 2005. The agency, under hostile administrations, too often has undermined these mandates by issuing deeply inadequate rules (some of which have been overruled by consumer litigation brought by Public Citizen and other groups). Due to the recent Congressional action in 2005, there remains a large unfinished agenda of vehicle safety standards that are required to be issued. Despite minimal funding (a shoestring budget of about \$227 million annually for operations and research, including only \$25 million devoted to safety performance standards, in comparison to the billions of dollars being spent on national aviation security), and long delays caused by constant pressure from automakers and their friends in the White House, the payoff in lives saved and injuries avoided is impressive. To date, almost 25,000 lives have been saved by air bags, with more than 2,700 more saved each year. Safety belts are highly effective, and now with usage reaching about 80%, many thousands of lives are being saved each year. Child safety seats, despite frequent poor installation by well-meaning family members, have significantly reduced child passenger deaths. Other NHTSA standards such as collapsible steering columns, energy absorbing interiors, non-pop-out windshields and door locks also are saving lives and reducing injuries. The death rate today is 1.47 per hundred million vehicle miles traveled and the number of deaths in 2005 was 43,443, an increase of 1.4% over 2004 and

the highest level in 15 years. But when compared to 1966, these reductions are almost a miracle. The increase in the number of passenger vehicles and drivers since 1966 is substantial, and yet both the number of deaths and the death rate have declined dramatically. NHTSA's programs and vastly improved highways have played a large role in achieving these savings.

But there is much more to do. Highway fatalities add up to the equivalent of a plane crash a day, or the equivalent of 14 separate September 11th disasters every year. In addition, there are more than 3 million injuries annually, creating an economic impact of well over \$230 billion. Very important vehicle safety standards are required to be issued under the 2005 Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA—LU) law, particularly for rollover crashes, rollover protection, roof crush and ejection prevention. In all, rollover crash deaths, which continue to increase, kill about 10,500 people each year and severely injure another 17,000. A large number of these deaths are needless and could be prevented with proper vehicle designs.

Highlights of a large, unfinished agenda for NHTSA are available from Public Citizen's Web site. Some actions are required by law; others the agency has the authority to address but has not. All are documented ways to stem casualties, which each year far outpace the terrible losses in Iraq and September 11th combined. The agency should not delay in addressing them. It should do so to maximize the saving of lives, rather than undercut the potential to do so by caving to industry pressure. If the president of Costa Rica can place highway safety on the top of his

country's agenda, we should be able to do so also.

If you want to know more information about Joan Claybrook or Public Citizen you can go to www.citizen.org. Also, if you want to thank Joan for working to make our motor vehicles safer, you can write her at 1600 20th Street, NW Washington, DC 20009 or email her at j.claybrook@citizen.org.

Source: Public Citizen

ALABAMA STATE BAR LAUNCHES CAMPAIGN TO ASSIST HOMEOWNERS FACING FORECLOSURE

In response to the mortgage foreclosure crisis, the Alabama State Bar and Legal Services Alabama have joined in a unique partnership with a plan to help Alabama homeowners remain in their homes. Under the public awareness and education campaign announced last month, homeowners facing foreclosure can call a toll-free hotline (1-877-393-2333) and be connected with a legal aid lawyer who will advise them about the various stages of the process and furnish free legal assistance. Such assistance can take the form of limited representation, negotiation or litigation, if necessary. State Bar President-elect Tom Methvin, our firm's managing shareholder, chairs the Mortgage Foreclosure Task Force. Tom had this to say about the campaign:

Help is available. Homeowners need to know there are options but the key to a successful outcome is early intervention and I can't stress that enough. If you are having a problem making your monthly payments and believe foreclosure is imminent you must act now.

Initially, the campaign will have a staggered rollout throughout the state with the Huntsville/Madison County area being targeted first because of the high number of reported foreclosures. Working in cooperation with the state Broadcasters Association, the State Bar has produced a series of broadcast mes-

sages that will begin airing on radio and television in Huntsville and surrounding areas. In addition, the Bar has available a public information pamphlet that provides answers to some of the most commonly asked questions about foreclosure. Copies may be downloaded from the Bar's Web site: www.alabar.org and then click on the words "foreclosure resources." The Bar is very concerned about people losing their homes. We are also concerned about other related effects of foreclosure such as reducing property values, creating blight with vacant and abandoned properties in neighborhoods, diminishing the local tax base which often supports important services, and straining court dockets.

Alabama allows for two kinds of foreclosure proceedings; judicial and non-judicial. Non-judicial foreclosures are actually more common and are the ones that can occur in such a short time frame, 21 days. This is why it is crucial for homeowners who have missed making even one monthly mortgage payment to call the hotline immediately. At no cost, legal aid attorneys will interview homeowners by phone and may write a letter on their behalf to the lender for example, or, depending upon the circumstance, they will try to negotiate a work-out of the mortgage. In some cases, the lawyer may represent the homeowner in various stages of foreclosure litigation, including mediation, but this option is limited to low-income individuals. The Bar is committed to assisting consumers who are facing the difficult prospect of losing their homes or filing for bankruptcy. Legal Services Alabama is a non-profit organization providing free civil legal and law related services to low income Alabamians in all 67 counties.

The 15,700-member Alabama State Bar is dedicated to promoting the professional responsibility, competence and satisfaction of its members, improving the administration of justice and increasing public understanding and respect for the law.

J.L. CHESTNUT WILL BE MISSED

J.L. Chestnut, a beloved hero of the civil rights movement and the ongoing struggles for justice for all in the United States, died on September 30th. J.L. was an outstanding lawyer who had a long and impressive history against racial injustice in the South. The man, who was "larger than life," became Selma's first black lawyer when he started to work there in 1959. Ultimately his law firm became Chestnut, Sanders, Sanders & Pettaway. During his legal career, J.L. handled a tremendous number of noteworthy cases.

J.L., who never saw a legal challenge he didn't like, served as the NAACP Legal Defense Fund's lead counsel to implement the *Brown v. Board* decision in Alabama. Dr. Martin Luther King and countless other civil rights leaders, including Ralph Abernathy, Dick Gregory, Joseph Lowery, James Foreman and Bernard Lafayette chose J.L. to be their lawyer and he always responded in a highly capable and often times colorful manner. This multi-talented man will be sorely missed by his family, friends and admirers. I learned a great deal from J.L. He was my friend and I will miss him.

RON SPARKS ELECTED PRESIDENT OF NATIONAL ASSOCIATION

Alabama Agriculture and Industries Commissioner Ron Sparks was elected President of the National Association of State Departments of Agriculture (NASDA) during their semi-annual meeting. Ron, who previously served as the President of the Southern Association of State Departments of Agriculture, had this to say:

I have been proud to represent Alabama's agriculture industry in our national organization and it is certainly an honor to become president of NASDA. I hope that serving as president will help Alabama to continue to have a strong voice when it comes to protecting our farmers and consumers.

Several issues important to agriculture in Alabama were discussed at

length during the conference. Some key issues include: rural development and financial security, the role of agriculture in climate change policy, and food regulation and nutrition. NASDA represents all of the 50 states in the United States and Puerto Rico. The majority of members are secretaries or commissioners of state departments of agriculture. This is quite an honor for Ron and it will give him the opportunity to do some good work on issues important to all U.S. citizens.

ALABAMA HISTORICAL COMMISSION AWARDS HONORS

The Alabama Historical Commission has presented distinguished service awards for work in Montgomery, Athens and Huntsville. The commission recognized my longtime friend James Willoughby Fuller of Montgomery, for his role in the rescue and restoration of Montgomery's 1837 Figh-Picket House and for other important preservation work. Dr. Mildred Caudle and the city of Athens were honored for restoration of a 1930s gas station and cafe. The Redstone Arsenal Cultural Resources Management Program was cited for its work at the federal arsenal in Huntsville. The awards were presented at the Alabama Preservation Conference in Mobile. The Alabama Historical Commission does outstanding work and its members and staff are to be commended for helping to save and preserve historical sites in our state.

Source: *Associated Press*

XXVI. SOME CLOSING OBSERVATIONS

As we all know, our nation is undergoing some tough economic times. We will likely be tested in a number of ways before the many problems facing us are solved. Folks are really hurting. Bill Fuller, who heads up the Alabama Elder Justice Project, sent me the fol-

lowing quotation. It's certainly applicable to today's problems and concerns:

As I've faced hard times in my personal and professional life, and as I've struggled to find God in the face of senseless tragedy, I return again and again to what has become a guiding star of my faith: God never wastes a single experience.

*Dr. Andrew Westmoreland
President of Samford University*

It's good to know we have a man in charge of a major institution of higher learning in Alabama who knows where to turn when problems of any sort arise. Dr. Westmoreland's words are both timely and absolutely true.

FAVORITE BIBLE VERSES

I am going to furnish one of my own favorites this month. I have learned from experience that "good" will eventually show up regardless of our trials and tribulations in life.

And we know that in all things God works for the good of those who love him, who have been called according to his purpose.

Romans 8:28

Shanna Malone, who works with me each month to put out the Report, submitted her favorite scripture which is:

*Commit your works to the LORD,
And your thoughts will be established.*

Proverbs 16:3

Shanna, who is a strong believer, also added the following words of wisdom that I will pass on for your consideration:

All too often we fail to commit what we do to the Lord. Some people commit their work only superficially. They say the project is being done for the Lord, but in reality it is being done for themselves. Others give God only temporary control, taking back

control when things stop going the way they expect. Still others commit a task to the Lord, but put forth no effort themselves, and then wonder why they failed. We must trust God as if everything depended on Him, while working as if everything depended on us.

My friend Wanda Devereaux, a Montgomery lawyer, sent this verse in:

Take therefore no thought for the morrow; for the morrow shall take thought for the things of itself. Sufficient unto the day is the evil thereof.

Matthew 6:34, KJV

She added the following observations which I am passing on to you. Wanda is my friend and I appreciate her remarks.

Today. One day at a time. Take no thought for tomorrow. Comforting words but hard to live up to. Of course, we must plan and prepare for the future but can we learn to live as Jesus tells us to? In October, Jere shared with us The Beatitudes and some reflections on them. Jesus went on to deliver, in Chapters 5-7, some beautiful and comforting words, of which this verse is a part. The preceding verse tells us first to seek the Kingdom of God and His righteousness and "all these things shall be added unto you." Verse 34 is not to be read in isolation; it comes with the comfort that God shall add unto us as our needs require. It is not foolish to "take no thought for the morrow" when you understand what Jesus is saying. The economy is horrible; people are scared; people are losing jobs and life savings. The talking heads are crying "depression coming!" Now is an excellent time to heed His words, plan and prepare as we can, but live today for today. God will take care of you. I am reminded of the saying that if you fall from a cliff, God will either catch you or teach you

to fly. Well, a lot of us are learning to fly! The incredible depth of the peace and comfort of God's providence and love are much needed in these chaotic times. "In God have I put my trust. I will not fear." Psalm 56:11. By trusting in God and cherishing His Holy Name and the ultimate sacrifice of His only Son, our Saviour Jesus Christ, that we might see eternal light, all shall be well.

XXVII. MY PARTING WORDS

As I stated above, lots of folks are greatly concerned over the economic woes that face our nation. Over the last several years ordinary citizens were being victimized by corrupt and greedy corporate executives in the sub-prime lending industry. Our firm's first involvement on that front was in litigation against pay-day lenders, the bottom feeders in the sub-prime

lending industry, and we learned that this was a multi-billion dollar industry. I must admit that came as a surprise.

We then got into litigation against companies like Citigroup, Countrywide, Morgan Keegan, and many others we soon found that enormous greed and corruption also existed in their board rooms and below. Instead of just affecting low-income citizens, the victims of fraud now include investors who have put their money in what they were led to believe were safe investments, as well as business owners who borrow money for payrolls and capital building projects on a regular basis.

When the fraud at that level started to be exposed, the media really started paying more than just casual attention to the economic problems and hurt to millions being caused by financial institutions. We have learned lots over the past several years concerning how many in Corporate America operate and it has been quite an education.

Certainly, our country is facing tough economic times and things may even get worse. But, I am confident that there are enough smart folks who really care about our country and all of

its people to come up with a real plan that will turn our economy around. The worst thing any of us can do right now is to be negative and let worry consume us.

In fact it's a time when our faith in God is put to the test. I truly believe that God loves us and will never forsake us regardless of how bad things may look. I have been "broke as a haint" in my life and without my belief in God and a faith that made me realize that my God is all powerful and the source of all that is good, I would have been greatly concerned at that time about my future. Those times passed and I survived, for which I am grateful. I am also confident that the current crisis will pass in due time.

My prayer for you and your families is that you will continue to put your faith in God, trust Him and not worry about the economy and what tomorrow may hold for the United States and for you. God has blessed us and if we hold true to our beliefs, and do not become consumed with doubts and worry, God will continue to bless us now and in the future.

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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of "helping those who need it most," now employs 44 lawyers and more than 200 support staff. **Jere Beasley** has always been an advocate for victims of wrongdoing and has been **helping those who need it most since 1979.**

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