

THE JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

A Crossroads For Alabama

The time has come for a complete reform of the way we run and pay for state government in Alabama. There can no longer be a waiting for "tomorrow" to come. This means no more band-aid approach to problem solving. Our tax structure and the ways we spend our tax money are grossly unfair, inefficient, and inadequate and that is well documented. I am convinced beyond any doubt that the need for reform of the tax structure is more urgent today than ever before. The fiscal crisis that faces our state may be the catalyst needed to bring about the long overdue reform. I do not believe that any person in state government can dodge the responsibility that comes along with their office when it comes to this issue. Of course, there will be roadblocks. The corporate world generally does not want government to pose any threat to their own special interests. However, it is high time that the politicians put the people first and the special interests a distant second in their setting of priorities. It appears that we finally have a Governor who will do just that. I have to believe that a majority in both the House and Senate will do that which is required to put our fiscal house in order.

We have an abundance of rich natural resources as well as a workforce that is second to none. In spite of

this, we continue to lag behind the rest of the nation in almost every economic category. The blame for those shortcomings cannot be put at the feet of ordinary citizens in Alabama. They have done their share and more over the years. Instead, the responsibility for making our government work is with the people we elect. These office holders must also take the blame when we allow things to get in the "mess" we currently have in Alabama. If our Governor and Legislature let this window of opportunity slip by without solving the problems that have hindered both public education and the operation of state government for years, it will be a crying shame. In fact, it will be inexcusable. It appears that the Governor is willing to do his part. It will now be up to the Legislature to do its part. I am confident that the majority of both the House and Senate will do just that.

The Special Interest Groups

The special interest groups will have to cooperate with the Governor and Legislature in the special session if the task at hand is to be successful. I have talked to a number of lobbyists and it appears that a few groups are not too happy with the Governor and his package of bills. Hopefully, all special interest groups will put the state's interest first for a change and support the Governor. If this happens, our state will surge ahead of all states in our region and move to the top of the economic ladder in short order. The choice for all of us is very clear - we can either support the Governor and move our state forward or we can

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oppose him and continue to see Alabama lag behind our sister states. It is either sink or swim time - there can be no middle ground - for the Alabama Legislature. Those citizens and corporations who haven't paid their fair share of taxes must step up to the plate and do the right thing. Several special interest groups have a great deal of catching up to do. Hopefully, the groups that are paying for the attack ads on the Governor will have the courage to go public, instead of hiding behind a "sham name," and explain why they want our state to remain in the economic cellar. I have great difficulty in understanding how any group could not want to do their fair share at this critical point in our state's history.

The Special Session

Since this is being written at the start of the second week of the special session, it is too early to get a real good reading on how things will go in the session. Thus far, only a few Legislators have expressed their feelings on the Governor's package. However, groups like Alfa and the large timber tract owners have expressed their opposition to the tax increases that will affect them. Hopefully, by the time you read this, some real progress will have been made. Some of the bills have already had committee approval in the House. In any event, an unexpected development is the move by the Senate leadership - and specifically President Pro Tem Lowell Barron - to inject the controversial nursing home immunity bills into the session. This could prove to be a disaster. It will be an interesting session, to say the least.

Stealing Is Stealing - Even With A Fountain Pen

Most of our readers won't remember the notorious bank robber called Pretty Boy Floyd. However, I am sure all of us have read about his exploits during the depression years. He stole with a gun

and was a real bad fellow. A ballad was written several years ago that is quite applicable to the corporate stealing we have experienced over the past few years.

Yes, as through this world I've wandered

I've seen lots of funny men;

Some will rob you with a six-gun,

And some with a fountain pen.

—"The Ballad of Pretty Boy Floyd," by Woody Guthrie

I have written and spoken volumes about the attacks on our constitutional right to a jury trial. We have also been bombarded with stories of how many in Corporate America have lied, cheated, and actually stolen from their stockholders, employees, and even the government. However, there is another form of stealing that may affect ordinary citizens just as much. An experienced jurist once made this observation: "Without a jury of one's peers, the system simply does not work the way the authors of our Constitution envisioned. Justice is too important to be left to judges and lawyers alone. Justice must remain in the hands of ordinary people." Many of us are sitting back today and watching justice being wrestled from the hands of ordinary people. Armed with form contracts with fine print, corporations are silently stealing our rights. Many contracts today have arbitration clauses that are literally robbing individuals of their rights to a jury. In fact, this robbery actually takes away the right to go to court at all. These clauses are buried in employment contracts, purchase agreements for cars, mobile home purchases, repair invoices, loan agreements, all sorts of consumer purchases, and the list goes on. Just look at the fine print in a credit card or cell phone agreement for example - you will find an arbitration agreement.

These are "mandatory" arbitration clauses that are binding and final. Signers virtually forfeit all of their rights to go to court, no matter how badly a company may have cheated them.

Instead, consumers are permitted only to submit their claims to an arbitrator from a national arbitration corporation. These arbitrators do business constantly with the companies that use them and are - predictably - extremely tilted toward them. Individuals have no right to appeal the arbitrator's decisions. Arbitrations are generally held in secret, which serves to conceal bad corporate practices, and that is never good. Consumers have no power to investigate what the corporation did to them or whether it was done to thousands of others. The corporation may have been in a thousand other arbitrations where customers had been cheated in the same way, and no individual, or the public, will be able to find that out.

With the stroke of a pen, a disreputable corporation places its conduct beyond the reach of the civil justice system. Even if a consumer spots such a clause in a contract, he or she has no power to force any change in the agreement with a corporation. The consumer generally, as a practical matter, has no choice. The use of mandatory, binding arbitration in consumer contracts is nothing more than stealing with a fountain pen. Stealing is stealing, and whether carried out with a gun or a pen, it is still stealing. Some of our politicians could be considered accomplices to this activity by their refusal to come to the aid of consumers. All too many in Corporate America have done great damage to their victims, much the same as did Pretty Boy Floyd, just on a grander scale and with their pen instead of a gun.

Ads Begin Against Riley's Tax Plan

The opposition to the Governor's \$1.2 billion tax plan started with the Alabama Coalition Against Tax Increases running TV ads in at least Huntsville, Birmingham, and Montgomery. The ads, which call the governor "Billion Dollar Bob," urge taxpayers

to try to stop his proposals. Tuscaloosa businessman Stan Pate boasted to the Associated Press that he was a member of the coalition. According to a report by AP, the group had initially purchased about \$31,000 in television time. Pate is obviously fronting for a few special interest groups that are afraid to put their names on the ads. The ads sure do smell like the work of Siegelman confidant Joe Perkins. In any event, regardless of who put them on the airways, the ads are in very poor taste and probably are helping the Governor, rather than hurting him.

II. CASE OF THE MONTH

Our firm recently settled a wrongful death action against Columbus Paper Company, Inc. (COPACO) for \$5,988,000. The tragic lawsuit arose out of a 2-vehicle collision, which occurred on August 19, 2002, on Alabama Highway 169 in Lee County, Alabama. Mrs. Karla Willis, a 45-year-old lady from Eufaula, Alabama, was on her way to Auburn for an appointment. While there, she planned to visit two of her children, one a teacher and the other a student at Auburn University at the time. Unfortunately, a 2002 Freightliner straight truck driven by a COPACO employee was also on that highway, having made several deliveries that morning. The driver of the truck was headed back to Columbus, Georgia, to pick up another load. The truck was a van type, approximately 26 feet long.

As the COPACO driver approached the Willis vehicle, he ran off the highway onto the right shoulder, striking a mailbox. As he attempted to correct the problem, the driver lost control of the truck, crossed the centerline into the northbound lane of travel, and struck Mrs. Willis' car, even though she was completely off the highway. After the initial impact, Mrs.

Willis' car was pushed backward, turned clockwise, and was struck a second time by the COPACO truck. Mrs. Willis, who was trapped in the vehicle, suffered severe, life threatening injuries. She subsequently died in the hospital. This violent crash caused the death of this fine lady, who was a good wife and mother, and who just happened to be in the path of a person who really shouldn't have been driving a truck that day. Mrs. Willis was a young, active, and extremely popular lady who worked at St. James Episcopal Church in Eufaula. Everybody in Eufaula who knew Mrs. Willis loved her and without a doubt she will be sorely missed. Her death will leave a void, not only in her family, but in the entire community.

The state trooper who investigated the crash concluded that the COPACO driver most likely fell asleep while operating his truck, causing him to lose control. According to the trooper's investigative report, the driver did not even remember leaving the roadway. The driver admitted to having taken medicine on the day of the collision and cold and sinus medications were found in his truck. The driver's medical records, which we obtained, revealed that he had been treated for bronchitis a week before the collision. He had been treated for acute bronchitis and was given medications to take. At that time, just days before the incident, he was complaining of fatigue, fever, chills, and abnormal activity levels. At the time of the collision, the driver was taking medication, including a new antibiotic prescription, an antihistamine, a nasal spray, and prednisone. His medical treatment started just 14 days before the collision when he was treated for fatigue and weakness. Clearly, based on our investigation, this driver had no business operating a large truck on the day of this collision. That was the fault of COPACO, his employer. In addition to being allowed to operate a large truck while on medication and falling

asleep, this driver was not experienced in driving large trucks. His work experience was as a nursing assistant for a number of years and only drove a dump truck for a short time before going to work for COPACO.

Julie Beasley of our firm, along with Jimmy Calton, and Jim Calton, Jr. from Eufaula, represented the Willis family in this case. I helped out some during the settlement negotiations. This was a prime example of a corporation allowing persons to operate large trucks on the highways of this state without proper training and supervision. The result of COPACO's wrongdoing in this case was the tragic death of an innocent victim. Our prayers go out to the surviving family members.

III. NURSING HOME UPDATE

The Senate Battle Carries Over

Unless President Pro Tem Lowell Barron and his nursing home buddies are able to force the nursing home bills through during the special session, they will be back when the regular session reconvenes on June 9th. In that event, the State Senate will resume its struggle with the nursing home so-called "pool bill" when it returns to work. The Senators adjourned on May 15th without having debated the bill on the floor, which is a small win for the residents who have to be confined to nursing homes in our state and for Alabama citizens generally. However, because of Senator Barron's intense interest in passing the immunity bill for his "buddies" in the nursing home industry, the battle is far from over. Lowell and I have been friends for a number of years. In fact, I have represented him in a civil lawsuit when he sued Alfa. However, I have been most disappointed in Lowell's involvement in this

important legislative fight. It is difficult to understand how Lowell could now possibly want immunity from lawsuits for the nursing home industry. He claims that his motives are aimed at saving the Democratic Party. If that is true, his salvation plan is rather unusual. I always thought the Democratic Party was the party of the people - not that of the rich and powerful - and that one of its responsibilities was to protect the elderly from abuse, neglect, and mistreatment.

As we know, nursing homes in Alabama already have tremendous protections and advantages over residents in facilities who are abused, neglected, or mistreated by the nursing homes. When these victims have to file lawsuits - they start with two strikes against them. This is because of two special laws passed by the prior Legislature. The first is the prohibition against discovery of prior incidents of wrongdoing of a like nature. The second is the fact that a victim can't sue a nursing home for hiring an incompetent employee. When you consider further that Alabama nursing homes rank at or near the bottom in all areas of concern for residents, the pushing of these immunity bills is just plain wrong and can't be justified. There is also a law in place that puts an unreasonably low cap on punitive damages that already covers nursing home lawsuits.

Finally, the Litigation Accountability Act, which prohibits the filing of lawsuits without merit (frivolous lawsuits) in Alabama, has been on the books for years. This Act also applies to lawsuits filed against nursing homes. That is why there have been no lawsuits filed against Alabama nursing homes that could be labeled "frivolous." What more protection do they need? What do the nursing home bosses have to hide? It may have something to do with either the nursing home owners' own liability insurance company, which is located in the Cayman Islands or with all of their related companies that sell goods and services to their own nursing homes

without having to take competitive bids. To this day, not one Senator to my knowledge has any information on either the insurance company or the related companies. Any person who doubts this can simply ask their own Senator for information on either of these two significant matters. Whatever the reasons for these unpopular bills being pushed so hard by a few in the Senate, those reasons must be very strong and compelling.

Nursing Home Bills Introduced In Special Session

Since the nursing home bills were introduced in the special session on the first day, I will discuss them here. As all Alabamians now know, we face a fiscal crisis in Alabama that threatens the very fiber of our State Government. Both public education and most of all the functions of State Government are in serious peril. At this point in time, correcting the fiscal problems has to be the top priority for the Governor and for each member of the Legislature. I was shocked to learn that the nursing home industry has now placed the special session in jeopardy by introducing two of their ill-conceived immunity bills in the special session. It is inconceivable that the nursing home owners and their cadre of lobbyists would put the entire session at risk and jeopardize Governor Riley's reform package in an arrogant effort to push their own selfish interests. It is my belief that the team of "Perkins, Fine, and Barron" will try to use the Governor's package in some manner to force passage of the nursing home bills during this session. Hopefully, I am wrong on that score. However, by the time this is read, I suspect we will all have an answer - the bills will have either passed or been defeated.

I sincerely hope that members of the Senate will not participate in this effort by the nursing home bosses. When an overwhelming majority of Alabama people do not believe that the nursing

home bills should pass in any form, it is beyond comprehension to see how their introduction in the State Senate can do anything but hurt the chances of solving our "fiscal mess." If the Senate leadership plans on holding the Riley package hostage in hopes of passing the nursing home bills, it will do more to destroy the Democratic Party than you could ever imagine. If that is the plan, people certainly won't understand or tolerate it back home. If the nursing home industry and their lobbying team destroy the special session, it will indeed be a sad day for Alabama. For the good of our state, I sincerely hope and pray that this effort by the nursing home industry will be rejected. Government has a duty to protect two groups of people in our state - the elderly and the very young - and that is a given fact. To mistreat, abuse, or neglect either group is just plain wrong. To protect those who are guilty of such conduct is even worse. I don't believe that responsible members of the Senate will be a party to passing bills that will result in "hurting" the elderly.

Good Nursing Home Care Costs Less Than Poor Care

A recent study sought to answer the question of whether good nursing home care costs less than poor care. This study was conducted by researchers from the Sinclair School of Nursing at the University of Missouri. The results of the study were recently published in *Nursing Outlook*, the official journal of the American Academy of Nurses. The researchers found that good nursing home care actually costs less than poor care. The researchers randomly selected 90 nursing homes to be the subject of their initial study. The study revealed that good quality care costs \$13 per resident per day less than poor quality care. For a 120-bed facility, this would result in a \$600,000 annual saving compared to facilities that provided poor quality care.

To confirm the findings of this

smaller study, the researchers examined state-wide nursing home data by auditing Medicaid cost reports from all nursing homes in Missouri to analyze direct patient care costs and total costs. The researchers compiled clinical information and quality indicators from minimum data sets prepared by the nursing homes. The researchers used this information to classify the nursing homes as having consistently provided good resident care or poor resident care. The outcome, not surprisingly, revealed a significant difference in the cost of care between the two groups. The nursing homes that consistently provided good quality care had a total median cost of \$85.35 per resident day, as compared to \$92.31 per resident day for facilities classified as providing poor quality care. The statewide research revealed an added cost of \$400,000 per year in a 120-bed facility, which provided poor quality care. I am not surprised by the results of this study. I think anyone who operates a business would agree that it is always cheaper to provide good quality services. More importantly, in the nursing home arena, providing good quality care results in positive outcomes for our elderly citizens. This study confirms the need for one of the primary functions of the jury system in our country, which is to make the cost of "doing bad" more than the cost of "doing good."

State Department Investigating Death At Nursing Home

The Alabama Department of Public Health is investigating a Birmingham nursing home after an 84-year-old woman fell out of a window on Easter Sunday. Mrs. Juanita O. Cantrell of Hueytown fell from a second-floor window around 11:00 p.m. The lady died instantly. It was reported that a guard found her. Mrs. Cantrell, a grandmother, was a resident at the Civic Center Health and Rehabilitation facility in Birmingham. Northport Health Services Operations LLC, based in

Tuscaloosa, owns the facility. Norman Estes, who has spent most of the last two months in Montgomery pushing the nursing home immunity bills, is President and Chief Executive Officer of the company. A spokesman for the nursing home issued this statement: "We do confirm that there was a death at our facility Sunday, April 20th. The appropriate authorities have been notified. Without the explicit consent of the family, we are unable to release any additional information at this time." However, it has been rumored that Mrs. Cantrell jumped. The family does not believe the resident died because she jumped out of the window. Whether she jumped or fell, it is shocking that a nursing home facility would have unguarded windows on an upper level floor. It is equally shocking that the lady was unsupervised or monitored.

The State Health Department has confirmed that it is investigating the facility, but would not say if the investigation centers on Mrs. Cantrell's death. "We are conducting an investigation at Estes Civic Center, but it's not concluded. I can't tell you anything about it until it is concluded," according to Rick Harris, Director of the Bureau of Health Provider Standards at the Health Department. Estes operates 22 facilities in Alabama. Three facilities are in Northport, one is in Moundville, and four are in Birmingham.

State Finds Fault In Death Of Nursing Home Resident

Texas authorities are pursuing civil penalties against a Richland Hills, Texas, assisted living center after an Alzheimer's patient who could barely walk escaped and later died after wandering in traffic. Officials with the Texas Human Services Department reported that they would refer the case to the Texas Attorney General's office after finding that the Alterra Clare Bridge Cottage was "grossly negligent." This request was made, not only on behalf of the deceased patient's family, but

also on behalf of other patients. The other eleven patients were left alone while the only two attendants on duty cared for the dying woman in the street. Even though the problems that led to the February death have since been corrected, state officials will seek penalties because of the "egregious" nature of the death. The Alzheimer's patient crawled out a window and walked nearly a block away from the center about four hours after she had been transferred from another facility owned by Alterra. According to reports, the lady "had a slow gait" and "could barely walk." Officials at the first facility had informed those at the Richland Hills Center that the resident had to be "redirected at least 50 times a day" to prevent her from leaving.

The following information was contained in the report (the resident was referred to as "Resident A"):

The facility failed to ensure that staff was knowledgeable of Resident A's history of elopement. The facility failed to ensure that staff conducted elopement drills. The facility failed to ensure that staff conducted searches for residents when warning alarms sounded. The facility failed to replace window devices after remodeling to deter elopement. As a result of the facility's failures, Resident A eloped from a facility window, was hit by a car and sustained fatal injuries.

The center's staff did not fully apprise Kemp's family of the state guidelines, nor did the staff have the family sign an admission agreement, according to the report. A registered nurse at the facility told state investigators that one of her responsibilities is to assess patients before they move to the facility. Neither the lady nor her family had been assessed before she was admitted.

The department report also criticized the facility because no employees were watching the other residents while the two workers cared for the dying resident. The nurse told authorities that all of the patients in the facility

were flight risks because of their dementia. The report said “the failure to implement protective measures after the incident involving [Kemp] constituted a threat to the health and safety of the 11 remaining residents.” This was not the first incident in which a patient left the Richland Hills facility. According to company officials, some patients actually walked out after the building opened in January 1999. The alarm system was not working then. The facility has also been investigated in connection with complaints of neglect in August 2001 and in August 2002. The company has more than 20 assisted living centers in Texas. All the centers have had complaints of some nature.

Arkansas Nursing Home Verdict Reduced On Appeal

On May 1, 2003, the Supreme Court of Arkansas reduced a \$78 million verdict in a nursing home case to \$26 million. The case had been filed against *Advocat, Inc.*, which is the owner of 64 nursing homes in the southeast United States and Canada, and Rich Mountain Nursing and Rehabilitation Center. Margaretha Sauer had been a resident at Rich Mountain for five and a half years before she died on July 19, 1998, at the age of 93. She died from severe malnutrition and dehydration. According to the nurse’s notes at Rich Mountain, at the time of her death, Ms. Sauer had lost 15 pounds in the last month and was in need of a feeding tube. She had severe bedsores on her body, which developed from lying in urine and feces. She also suffered from contractures and she had a urinary tract infection.

At the conclusion of the trial, which lasted 8 days, the jury was asked to consider claims for ordinary negligence, medical malpractice, breach of contract, and wrongful death. The jury returned a verdict of \$78 million for Ms. Sauer’s Estate on all four counts. After all post-trial motions were denied, the defendants appealed, arguing that both the compensatory and punitive damages were excessive. The evidence

that the Supreme Court reviewed on appeal was shocking. Surveys from the office of Long Term Care were replete with statements saying there was not enough help in the nursing home to feed, bathe, or clean residents. There was evidence of “false charting” by nursing home staff to show more staff than actually present. In addition, there was damaging testimony from several witnesses. Faye Chamberlain, a former nurse assistant at the home, had written a letter to President Clinton in 1997 about the nursing home’s inadequacies. Mark Hemingway, a former regional vice-president of the defendant, testified to a change in corporate philosophy in 1996, stressing “profits over care.”

Testimony further revealed that at times, there was not even enough hot water for the patients to take showers. Ms. Sauer was often found wet with urine, without being changed for four hours at a time. She had pressure sores on her back, lower buttocks and arms; and was found on several days sitting in her own waste. At times, the poor lady had no water pitcher in her room. Testimony was that Ms. Sauer did not receive a bath for weeks, due to short staffing. She was described as “always thirsty” and the nurse’s notes indicated that she was heard moaning and crying. In light of this testimony, the Arkansas Supreme Court concluded that the reprehensibility of the defendant’s conduct was very high. However, the court held that the compensatory and punitive damages awarded by the jury in this case were excessive. As a result, the damages were reduced to \$26 million. This case doesn’t involve conduct of a single, isolated fact situation where a resident was abused, neglected, and mistreated. Unfortunately, this type situation is all too common in our nursing homes all over the country, including Alabama.

Another Arkansas Trial Starts Up With An Alabama Connection

Covington Court Health and Rehabilitation Center and Northport Health

Services are being sued over the death of a female resident of the Fort Smith, Arkansas, nursing home. There is an Alabama connection to this case since Tuscaloosa-based Northport owns Covington Court. The lawyers for the plaintiff are contending that the nursing home failed to provide adequate care for the elderly female victim simply because the company was more interested in saving money than caring for their residents. The unfortunate lady was a resident of the nursing home from February 2000 until July 2000. During that period of time, it is alleged that the nursing home was consistently understaffed, which resulted in sub-standard care. This lady died from an infection in her blood. It was alleged that bedsores, caused by a failure to be turned, caused the infection, which resulted in her death. This nursing home is owned by Norman Estes, who is working hard in Alabama on the nursing home immunity bills.

Georgia Nursing Home Residents Escape Caps

The most recently completed battle in an epic war that has become all too familiar was waged recently in Georgia. The combatants know one another well and have fought numerous past battles worthy of recordation in myth. The proverbial role of “David” was played by Georgia elderly citizens, along with other citizens of conscious who care about the plight of seniors. Their antagonist, assuming its usual role of the salacious juggernaut “Goliath,” was played by some very tough and well financed folks in the nursing home industry and their tremendous number of persons on their lobbying team. Clearly, the economic and influential giant in this battle, and the definite favorite by the odds makers going into the fight, was the deep-pocketed and powerful nursing home industry and their highly paid lobbyists. Thankfully, the outcome of this epic battle was no different than that described in the Bible. Good prevailed as it should

have. The Georgia Legislature, to their credit, refused to be conned by the nursing home industry.

IV. LEGISLATIVE HAPPENINGS

The Special Session

The Alabama Legislature has an opportunity to go down in history as the body that pulled our state out of the fiscal bog that is literally destroying our public educational system and is curtailing our state's ability to perform other essential functions of government. In fact, the demise of the state's economy can be attributed to our band-aid approach to problem solving by past Governors and Legislatures. As I was riding home on May 19th, the first day of the session, I heard a radio ad attacking Governor Riley. It was a typical attack by a special interest group hiding behind a shadow group with a catchy title. I have since seen the TV ads of a similar nature. With the fiscal crisis facing our state being so grave, it is difficult to understand how responsible groups could attack the Governor for working to solve our state's problems. It may develop that Bob Riley might wind up with a new circle of friends, folks who love our state, and who are willing to sacrifice a little to reform the way government works in Alabama. When you consider that some in Alabama who can certainly afford to pay more taxes, and who haven't paid their fair share in the past, are now mad with the Governor. One has to wonder what their plans for Alabama are. It is difficult to understand how these folks can fuss at a Governor who is trying to "fix" the problems. The citizens who have been at the low end of the economic rung in our state have been saddled with the tax burdens for years. It is high time for them to get some relief. It is also

high time that we get down to the business of finding permanent solutions to our fiscal and economic problems in our state.

Another Critical Need For Reform

There are currently some 565 individuals who are registered to lobby members of the Alabama Legislature on a regular basis. Interestingly, this is four lobbyists per Legislator. That mismatch may be a contributing factor, if not the root cause, of our state's current fiscal "mess." Unfortunately, the laws regulating the activities of these lobbyists are extremely lax in our state. There have been a number of editorials in newspapers around the state encouraging the Legislature to make these laws much stronger. Putting some teeth in the laws regulating lobbying activities can certainly do no harm. In fact, I believe it would greatly improve the overall performance of our Legislature. Anyone who has observed the Legislature in action realizes that the lobbyists are extremely powerful and influential. Not surprising is the fact that the special interest groups that hire and pay these men and women demand strict performance by their lobby teams on a day-to-day basis. Of the 565 lobbyists, I suspect you can count those who look out for the interests of Alabama consumers on your 10 fingers and that may be a stretch. This may account for why our state is noted for having such "sorry" consumer protection laws and why mandatory, binding arbitration is still a tremendous problem for Alabama consumers.

It should be noted that lobbyists and their employers in 39 states, including Alabama, spent almost \$10 million wining and dining and influencing State Legislators during 2002. That is the amount that was reported. I suspect the real total is much higher. Unfortunately, many details about how those dollars were spent remain hidden from public view. A study by

The Center For Public Integrity made a detailed study of lobbying activities and disclosures in all the states. Few states did well in this study. Alabama certainly did not do well and that comes as no surprise. The study clearly underscores the definite need for a reform of the entire lobbying system. When you consider that in Alabama the lobbyists are considered the fourth branch of government, the necessity for stronger regulation is most evident.

Plenty Of Work Left

When the Legislators return to work on June 9th for the remaining 12 days of the regular session, there will be a great deal of important work left for them to do. I am told the Senate leadership will likely have two bills on the top of their agenda when they return and those are the nursing home immunity bills (if not passed in the special session) and the pay day loan bill. If that is true, it will be a sad commentary on how the Alabama Senate is now operating. There are too many important matters that should be dealt with to put unpopular special interest legislation at the top of their agenda. Since there is almost no support for either of the bills referred to above, it is a real mystery as to why a few Senators are so committed to passing these anti-consumer bills. In any event, a great deal of important matters remain to be addressed. One thing that should happen would be to kill Alfa's corporate farm immunity bill. There are other bad bills that should be killed and obviously there are a number of good bills that should be passed. It should be noted that the state's budget will still have to be dealt with - either in the regular session or in another special session. So, without question, there is a great deal to do in the remaining 13 days of the regular session.

A Message To The Governor And To Our Legislative Leaders

I join with a number of consumer advocates and urge the Governor and Alabama Legislature to put helping persons who haven't had the same opportunities as some of us have had in Alabama at the top of their legislative agenda. Tax reform and constitutional reform, along with the upgrading of public education, should be on this agenda. Passage of strong consumer protection laws, the upgrading of the Alabama Insurance Department, and regulation of all predatory lenders should be on the agenda. A reader of the report sent me a passage from the Old Testament that all Legislators should read.

"Woe to those who make unjust laws, to those who issue oppressive decrees, to deprive the poor of their rights and withhold justice from the oppressed of my people, making widows their prey and robbing the fatherless." Isaiah 10: 1, 2

V. COURT WATCH

The Tort Reform War Rages On

Tort law battles are now being fought in the nation's capitol and in one-third of the states in the United States. Since the fights are being taken to both the State Legislatures and to Congress it has to be taken as the most serious assault on the court system ever. Apparently, the U.S. Chamber of Commerce has been chosen to lead the charge for the tort reformers. The chamber sometimes offers not just "advice," but also lots of money and so-called experts to help mislead politicians and the public on the tort reform issue. Individual tort reform packages vary widely from state to state. The centerpiece of all packages, however, is a cap on damages. We have found that restrictions on noneco-

conomic damages such as pain and suffering are hard for the tort reform groups to justify. It is even more difficult to sell the idea of capping wrongful death. I understand that tort reform packages have been introduced in 17 states so far this year. There is no telling how much money has been spent on pushing tort reform legislative packages over the years. Some observers put the figure in the hundreds of millions. When you go back for 12 years, during which time the now infamous Karl Rove has been driving the tort reform train, the number may exceed \$1 billion. Where does all of that money come from? The tobacco, insurance, drug, and automobile industries are certainly suspects.

While the tort reformers had victories in Pennsylvania, Nevada, and Mississippi last year, things haven't gone as well for them this year. As you know, President Bush has called for damage caps and an end to joint and several liability on the national level in medical malpractice cases. The President mentioned the need for tort reform in his State of the Union address in January. Supported by the drug industry, insurance companies, and a good number of the "bad guys" in Corporate America that had long pursued changes in the civil justice system, the tort reformers looked to 2003 with high expectations. However, ordinary folks have figured out that the tort reformers could care less about them and are only interested in profits for Corporate America. The destruction of the court system will ultimately lead to a weakening of our country simply because without the courts, we are much like the countries where there are no private rights. If a group wanted to take over our government, the first thing they would do is to destroy the court system.

The Effect Of A Cap On A Real Victim Of Wrongdoing

The tort reformers lose sight of the fact that their uncaring and callous

attempts to pass oppressive tort reform actually hurts "real people" on a recurring basis. Putting caps or limits on damages is always their main objective. Sometimes it takes a "shock" to see how truly unfair putting caps on folks can be. A prime example of how tort reform and caps don't work for victims is found in a Virginia case. A jury in Virginia awarded a National Science Foundation employee Craig Allen \$6.5 million in a medical malpractice case. Unfortunately, Mr. Allen will only receive a fraction of that award after it is automatically reduced by the state's statutory cap on medical malpractice damages. Allen suffered from an inflammation of the spine that his doctor failed to diagnose. The doctor assumed that the tingling he complained of was a side effect of the anti-depressant Mr. Allen was taking. The defense did not contest the \$1 million in projected income the 33-year-old would lose, nor did they contest the \$2.5 million in medical expenses to be incurred in the future. Under the Virginia law, that \$3.5 million, plus \$3 million more added by the jury, will be automatically cut to \$1.55 million. The Virginia tort reform law imposes a cap of \$1.5 million on all damages in a medical malpractice case. That limit, set in 1999, increases by \$50,000 each year until 2006. After that, it increases by \$75,000 annually until the cap reaches \$2 million. Most states that limit damages in such cases use so-called "soft caps" - ones that limit noneconomic damages or punitive damages only. So, in this case, the victim would not even be compensated for his medical expenses and would receive nothing for lost earnings, pain and suffering, and mental anguish.

This case is a prime example of the unfairness of the Virginia statute and of caps on damages generally. Caps punish the people who are injured the worst. Historically, large verdicts in medical cases are the exception rather than the rule. That is true in Virginia and certainly is the case in Alabama.

According to observers of the Virginia litigation scene, the damages cap hasn't had a chilling effect on case filings, prosecutions, awards or settlements. As you might expect, however, litigating cases under the cap does change trial strategy. All of the defense's force goes into disproving liability or causation. In most cases many defendants don't challenge damages at all. The most egregious cases go to trial and those cases will always get reduced. The wrongdoer knows going in that the victim will wind up being punished again. The result of putting caps on damages - as was done in Virginia - places the financial burden of damages caused by wrongdoing, regardless of how bad the conduct is, on the victims and their families. Only the most callous in our society would allow that to happen.

Court-Sanctioned Secrets Can Kill

Last month, we reported on the General Motors document that has revealed a deep, dark secret concerning untold deaths resulting from a defective vehicle. Since last month, we have been asked lots of questions about what GM has done. There can be little doubt but that the C/K pickup truck is a dangerous vehicle, which is prone to fiery crashes and explosion. More than 700 people have burned to death in fires triggered by C/K crashes since the truck was introduced in the 1970s. GM kept the public from knowing anything about the massive problem. The company spent years paying off victims and their families through secret court settlements meant to ensure that the details of those cases never emerged.

GM is hardly alone in trying to keep this sort of negative information secret. Tire makers and drug companies, among others, have also settled claims against their products using strategies that aim to ensure that the public learns little about the claims — not the settlement amounts, not the underlying facts, not even, if possible, that a lawsuit

was brought at all. Pfizer, for instance, secretly settled dozens of lawsuits in connection with its Bjork-Shiley heart valves, which were used by 50,000 patients before the product was finally recalled in 1986. Firestone recalled 6.5 million tires in August 2000, but only after eight years of accidents and deaths led to lawsuits that the company quietly settled. Firestone launched the recall only after details from one of those court files leaked out.

The public is rightfully alarmed by these secrecy strategies because lack of knowledge by the public increases the danger to those who may still be using or considering a defective product. There is also a need with information that the law otherwise protects, like trade secrets. Secrecy is fine when dealing with personal matters, such as in a divorce. Secrecy is clearly wrong when people remain exposed to the same danger that harmed the victim in a lawsuit. The laws in every state should be amended to bring about some meaningful changes in the area of secrecy:

Courts should not seal their own files without compelling justification. Court files and courtrooms must be open to the public and the news media.

Judges should never be allowed to seal information that might reveal an ongoing public danger. Preventing harm is always more important than anyone's interest in secrecy.

Defendants should be barred from conditioning settlements on a plaintiff's blanket promise of confidentiality.

Confidential settlements should be banned outright in product liability cases and in cases involving corporate fraud.

Unfortunately, victims of corporate wrongdoing are often forced to accept secrecy in exchange for a settlement that is badly needed. They are forced to put their own needs and interests ahead of the public's interests. The only way to stop that from happening is to forbid it. American corporations should put the safety of their customers ahead

of profits and should warn the public of potential dangers and hazards. Such hopes have thus far, however, proved misplaced. For this reason, it is up to the courts and Legislatures to protect the public from the strategies that make secrecy possible, for the lower courts to utilize on punitive damages awards.

The U.S. Supreme Court Sends Ford Damage Cases Back To The States

The U.S. Supreme Court has ordered lower courts in California and Kentucky to reconsider two multimillion-dollar judgments against Ford Motor Co. The giant automaker had challenged punitive awards in two cases in state courts - \$290 million in a California court and \$15 million in Kentucky. As we all know, punitive damages are supposed to punish defendants and deter similar behavior; compensatory damages are designed to compensate victims for their actual losses. In an earlier case in April involving State Farm Insurance Company, the High Court struck down as excessive a \$145 million punitive-damages award against State Farm. In that case, \$1 million in compensatory damages has been awarded. The justices said the sheer size of the punitive award, which was calculated by taking into account State Farm's net worth, violated the Constitutional guarantee of due process. The Court's ruling, while significant, doesn't represent a total defeat for victims of corporate wrongdoing. We all recognize that there is a limit to the size of punitive damage awards. However, it isn't clear exactly where the courts will draw the line. It will take a few more trips to the High Court before a more definite rule will be established, if that is possible.

VI. THE NATIONAL SCENE

A Two-Trick Pony

I spent the first two years of my life in Tyler, Texas. I guess that is where I picked up my love for horses. I must confess that I always wanted a pony when I was a small boy, but for some reason I never got one. We had a few mules out on the farm - but not a single pony. When my folks moved back to Pratts Station in rural Barbour County, where my family had farmed since 1819, I found that several of my new young friends did have ponies. Over the next few years, I did learn a little about the animals. I soon found out that all you could teach a pony was two tricks and no more. That rule of thumb made a real impression on me. Now, years later, it appears that we have an occupant in the White House who could be described as a two-trick pony. Our President has clearly mastered two tricks and those are tort reform and tax cuts. I hope my Republican friends don't take offense to this assessment of the President's abilities or performance.

I must confess that President Bush has finally convinced me that he has tremendous ability and also the capacity to perform a given task very well. However, I suspect the Republican Party bosses are quite happy with the two tricks mastered by this President. They apparently believe those two are enough to guarantee his reelection. To the credit of George W. Bush, however, some of us have never even gotten to that second level. While I have a tremendous respect for the office of the Presidency, I am most concerned, however, that the welfare of ordinary folks seems to be a low priority for the Bush White House. I sincerely hope that I am wrong in my views when it comes to the White House, but I see little evidence to rebut my beliefs.

Karl Rove Makes Trial Lawyers The Bush Target

When President Bush was Texas' Governor, his number one advisor, Karl Rove, came to the conclusion that trial lawyers made good targets. That sort of thing followed Bush to the nation's capitol. Now the White House and its GOP congressional allies are attacking trial lawyers on a regular basis. In a recent book about President Bush, Rove is quoted as having persuaded the President to elevate the importance of tort reform in the Texas governor's race. In a memo obtained by the Associated Press in December, the White House identified legal reform as one of 10 possible "signature issues" heading into the President's bid for re-election in 2004. The barrage of proposals by Republicans - from legislation to presidential executive orders - has consumer groups working on several fronts to protect themselves. Obviously, that is a good strategy, especially since the White House has friends with unlimited funds to spend. Every major corporation in America and thousands of lobbyists, with many millions of campaign contributions available for their use, are working overtime in their efforts to shut the courthouse door to all American consumers. Republicans say their efforts have nothing to do with punishing a Democratic constituency. Instead, they parrot the usual tort reform line and blame frivolous lawsuits for everything in sight.

Business Groups Attack Lawmakers

The U.S. Chamber of Commerce has become one of the nation's most powerful political lobbies. The organization has actually become an extension of the National Tort Reform Association. The Chamber has concluded that a federal court ruling on the new campaign finance law allows it to continue to run ads targeting members of Congress with attack ads. The Club for

Growth, another tort reform group, also contends the decision lets it run ads mentioning lawmakers. This group started airing a second batch of attack ads attempting to force two reluctant Republican Senators, Olympia Snowe of Maine and Ohio's George Voinovich, to support President Bush's tax-cut package. The group ran its first ads before the court ruling. It is rather interesting that the Bush White House - led by Karl Rove - would actually attack their own Senators. What will they do to Democrats between now and next November?

Republican Senator John McCain has a different interpretation of the high court's decision. The Arizona lawmaker believes ads such as the Club's can't legally be run. The Club for Growth and the U.S. Chamber are among several organizations that asked the judges handling the case to overturn the ad restrictions and other parts of the law, arguing that they violated free speech and other constitutional rights. It and several other groups, including the National Rifle Association, AFL-CIO, and American Civil Liberties Union challenged the new law. The Chamber interprets the ruling to mean that an ad on a political issue mentioning a candidate's name doesn't necessarily prove the ad is designed to influence an election. When you consider the tremendous power of the Chamber of Commerce when it puts the organization's name and the tort reformers' money behind an attack ad and how it is perceived by most citizens, it becomes abundantly clear that the new law shouldn't allow their attack ads. In fact, the Chamber of Commerce has no business putting its label on political ads. Most folks believe the National Chamber of Commerce controls the local Chambers of Commerce, and that isn't the case. Unfortunately, the U.S. Chamber has become a political entity and nothing more. The local chambers promote local businesses and generally do their job in a non-political manner - as it should be. I have to wonder what

really motivates the U.S. Chamber today. More will be said on the federal court ruling in the Campaign Finance Reform Section.

A Second Powerful Stalking Horse

This month, I will briefly mention one other group – organized last year – that is a key member of the national tort reform team. This group is well financed, well connected, and has a carefully planned agenda and that agenda is not good for ordinary citizens. I will write more on “Common Good” next month. In the meanwhile, if you want to learn more about this group, go to their Website www.our-commongood.com. It doesn’t take a PhD in political science to figure this group out and to spot its real agenda and that is to destroy the court system.

Halliburton Contract Larger Than Previously Known

This probably shouldn’t come as a big surprise, but Halliburton Co.’s emergency, no-bid contract to work on Iraq’s oil wells is much more than first reported. We now need a full disclosure of the terms. The Army’s admission that the company has a far more lucrative role than originally believed is certainly disturbing. Prior descriptions said Vice President Dick Cheney’s former company would only fight oil fires. Now we learn that the contract also lets the company operate the oil fields for a time and distribute the petroleum. Information received from the U.S. Army Corps of Engineers, which awarded the contract, makes it clear that Halliburton did much better than originally thought. Cheney’s office has said repeatedly that the Vice President has no role in Halliburton’s operations or its government contracts. I am sure The Corps didn’t intentionally mislead the public about the contract. Some members of Congress are concerned, however, that the Bush Admin-

istration’s reluctance to provide complete information about this and other Iraqi contracts has denied Congress and the public important information.

Halliburton Discloses Bribery Payment In SEC Filing

There have been so many examples of corporate wrongdoing over the past few years, that nobody is surprised when more “bad stuff” is uncovered. I hope Corporate America still considers bribery a crime and something to avoid. However, a subsidiary of Halliburton Co. paid a Nigerian tax official \$2.4 million in bribes to get favorable tax treatment in that country. This was disclosed by Halliburton in a federal filing. In a filing made May 8th with the Securities and Exchange Commission, the company said its KBR subsidiary “made improper payments of approximately \$2.4 million to an entity owned by a Nigerian national who held himself out as a tax consultant when in fact he was an employee of a local tax authority.” The filing stated that the payments were found during a routine audit. As a result, I understand that several employees were fired. Halliburton said it was cooperating with the SEC in its review. A company spokeswoman told the Houston Chronicle that the bribes were paid between 2001 and 2002. The company may owe Nigeria as much as \$5 million in back taxes. As you know, Vice President Dick Cheney led the company until August 2000. As expected, the Bush Administration denied there was any connection between Cheney’s former role in running the company and the most interesting no-bid contract with the government for work in Iraq. In Nigeria, the engineering, construction, and oil field services company is constructing a liquefied natural gas plant and developing an offshore oil and gas facility. I am sure that the Vice President is not using his vast power and influence in our nation’s capitol to help his old company. However, it appears that somebody is doing a good job of lobbying for Halliburton. If a steel worker from Gadsden bribed a tax offi-

cial to avoid paying his taxes, I suspect that man would be put under the jail. How can Halliburton get away with bribery and then get a multi-billion dollar no-bid federal contract?

Pentagon Consultant Was Out-Of-Bounds

Some political types question why ordinary people don’t trust politicians and don’t believe that government generally takes care of the rich and powerful. The following episode certainly does little to change their opinions. A key Pentagon adviser apparently briefed an investment seminar on ways to “profit” from conflicts in Iraq and North Korea just weeks after he received a top-secret government briefing on the pending crises in the two countries. Richard Perle, who until March was chairman of the Defense Policy Board (a group of outside advisers to the Pentagon), also serves on the board of several defense contractors. We had a piece on this board last month. The Los Angeles Times reported that Perle attended a Defense Intelligence Agency briefing in February and three weeks later participated in a Goldman Sachs conference call in which he advised investors in a talk titled “Implications of an Imminent War: Iraq Now. North Korea Next?” Surely, this would create a serious conflict of interest for Perle. Unfortunately, too many politicians in our nation’s capitol apparently condone this sort of thing. Hopefully, that mindset will change one of these days.

Perle has been one of Defense Secretary Donald Rumsfeld’s closest advisers. He was a vocal advocate of going to war against Iraq. Perle resigned as chairman of the Defense Policy Board on March 27th, only after it was reported he had worked as a consultant to bankrupt telecommunications company Global Crossing Ltd. This corporation was trying to get Pentagon approval to be sold to Asian investors. In offering his resignation, Perle denied any wrongdoing and said he didn’t want questions about his outside inter-

ests to be a distraction to Secretary Rumsfeld. However, he remained a member of the board. Representative John Conyers Jr. (D-Mich.), the ranking Democrat on the House Judiciary Committee, has asked the Pentagon's Inspector General to investigate Perle's business activities and any conflicts they might pose for his membership. I believe Perle should be asked to resign from the board immediately. In fact, Congress should take a close look at the entire board.

The Trade Deficit Is Out Of Control

Many economic experts are greatly concerned over our ever-increasing trade deficit. The U.S. trade deficit widened in March to \$43.5 billion, the second highest on record, as imports of foreign-made industrial supplies, including crude oil, rose to an all-time monthly high. On May 13th, the Commerce Department reported that the trade gap grew by 7.6% in March from February's deficit of \$40.4 billion. Although exports went up for the third month in a row in March, imports rose nearly five times faster, leading to a bloated trade deficit that was second only to the record deficit of \$44.9 billion produced in December. Economists were expecting the deficit to get much larger in March, but not as much as it did. To combat the trade deficit, the Bush Administration says the United States should seek to boost American exports by attacking foreign trade barriers, rather than raising barriers to imports coming into the country.

Trade critics, including labor unions, say the deficit is evidence that President Bush's free-trade policies are not working and are actually contributing to very large job losses in manufacturing. Many private economists say the weaker U.S. dollar, which has lost ground over the past year, is helping out exports at a time of a weakened global demand. Weak growth abroad, however, will continue to be a challenge for U.S. exporters, economists say. A weaker dollar makes U.S.-made products more competitive on

foreign markets and less expensive for overseas buyers. The U.S. dollar fell last month to a new four-year low against the Euro. The decline came one day after Treasury Secretary John Snow said a weaker dollar would help U.S. exports - a view that some private economists and U.S. manufacturers share. However, traders viewed the remarks as signaling a retreat from the long-standing position of the Bush Administration and the previous Clinton Administration in support of a strong dollar.

We have severe economic problems in this country and if we don't start moving in the right direction, we will be in for some very hard times. We have seen record surpluses turn into all-time record deficits in two short years. A tremendous number of good jobs were created during the Clinton years. In fact, 20 million jobs were created in 8 years, which I believe was a record. We now face a tremendous number of job losses in this country. It is most disturbing that over 2 million Americans have lost their jobs under the economic policies now in place in just slightly less than 3 years. There has to be a reason. We should be creating jobs - not losing them to foreign countries - and that is a real problem that will get worse if not corrected. I don't pretend to be an expert on the economic woes facing our nation. However, common sense tells me that losing surpluses and building huge deficits is not good, especially when you factor in a significant increase in our trade deficit. In any event, for all of these reasons, the economy will most likely be the central issue in next year's national elections.

VII. CONGRESSIONAL UPDATE

Two Outstanding Alabama Senators - From Different Eras And Different Parties

I have been blessed in my lifetime to

have crossed paths with some outstanding individuals. One of my favorites will be mentioned. In the late 1960s, as a very young country lawyer, I had the rare opportunity to become associated with a true gentleman from Gadsden, Alabama. During the fall of 1967, I was asked to serve as State Campaign Manager for James B. Allen, who was running for the U.S. Senate. The former two-term Lieutenant Governor won that race in 1968 and went on to a distinguished career in the Senate. Jim Allen became one of the most respected members of the Senate and was widely recognized as a master of the Senate rules. He was a true statesman, not just a politician, and was extremely popular throughout the state. An interesting point that has gone largely unnoticed is the fact that prior to the 1968 race, Senator Jim Allen was known as "James Allen." From the date he became an announced candidate in 1967, however, he was known as "Jim Allen." The results of an early poll run by the campaign and advice from my friend from Baldwin County, Jimmy Faulkner, brought about the name change. So much for trivia. Senator Allen was a great Alabamian and a great U.S. Senator. He was a good man who died much too early in life.

We are again blessed to have a Senior Senator from Alabama who has made a name for himself in our nation's capitol. Richard Shelby is without question one of the most powerful men in government today. He is conservative on fiscal matters, but is a real friend of consumers. Senator Shelby has the respect of his colleagues in the evenly divided upper chamber and is clearly one of the most influential members of that body. We are fortunate to have Senator Shelby serving our state. He has the ability to work with all members of the U.S. Senate - Republicans and Democrats alike - and that is good, not only for Alabama, but for the nation. Hopefully, Richard Shelby will be in the U.S. Senate for years to come - Alabama and the nation need him!

The Combination Of War And Tax Cuts

I am certainly no expert on the subject, but I do have strong opinions concerning the combination of waging war and providing tax cuts. When you factor in the cost of the “wars” in Afghanistan and Iraq and the continuing costs of occupying these foreign countries with the tax cuts pushed through Congress by the President, it seems we are heading in the wrong direction. We have seen record governmental surplus turn into record deficits in just a short time and the economy in a tailspin. It seems to me that we are heading for fiscal disaster if we continue down this “political path.” Congress passed and sent a \$350 billion tax cut to the President. The measure passed the Senate by a 51-50 vote, with Vice President Cheney casting the decisive vote. The bill also contains \$20 billion for the states’ use. I hope my opinions are wrong, but I really don’t believe they are. In any event, time will certainly tell if the President did the right thing or if he was acting for political purposes. If the economic woes are not reversed, however, members of Congress who supported the tax cuts may be praying that people will forgive them for supporting the President’s plan.

VIII. CAMPAIGN FINANCE REFORM

What’s Left Of The New Campaign Finance Law?

A ruling on the Campaign Finance Reform law by a special three-judge federal court panel seems to have left everybody unhappy. The panel held parts of the Act unconstitutional and parts were upheld. Apparently, political parties can now return to raising soft money. Contributions of any size and

unlimited donations from any source will again be allowed. The parties can spend this money on party-building costs such as get-out-the-vote drives and overhead, but not for issue ads or helping specific candidates. The federal judges rejected a broad ban on election-time political ads by interest groups. That barred a range of groups – sometimes financed with corporate and union money – from airing issue ads mentioning federal candidates in those candidates’ districts in the month before a primary election and within two months of a general election. However, the court upheld backup rules blocking many groups from airing ads that promote, support, attack, or oppose a candidate at any time. It remains to be seen how far interest groups can go when featuring candidates in ads. Also rejected was a requirement that political parties choose between coordinating spending with candidates – making the spending subject to federal contribution limits – and spending independently to help them, without limits. The court upheld a tougher standard for determining how much interest groups, political parties, and candidates can coordinate election activity before interest group or party spending is considered a donation to a candidate subject to federal limits. Those suing cover the political spectrum, including the National Rifle Association, Republican National Committee, AFL-CIO, U.S. Chamber of Commerce, and California Democratic and Republican parties. The case will now go to the U.S. Supreme Court. Hopefully, the entire Act will be upheld. The three-judge panel stayed its ruling and the matter will ultimately be decided by the Supreme Court.

The American people want the wild spending in political races stopped both on the national and local levels. Instead of trying to undo what Congress did, the political parties should join forces to bring about complete campaign finance reform. However, as long as Corporate America maintains its

current political posture, the prospects are not good for more reform of a “broken” system. Hopefully, the U.S. Supreme Court will uphold the changes made to date. At least that was a step in the right direction.

IX. THE CORPORATE WORLD

Wall Street Settlement

Last month, we discussed the recent \$1.4 billion dollar settlement between State and Federal securities regulators and ten of the largest Wall Street firms. We now learn that the agreement was accompanied by thousands of pages of damaging e-mails and memoranda that security regulators have released. The allegations were that, to attract corporate underwriting deals, investment bankers pressured analysts to produce glowing reports they knew were false. Consequently, analysts artificially raised share prices by ignoring the flaws in the companies they recommended. Five Wall Street firms even paid their rivals to put out misleading research reports on their clients to create the illusion of widespread support. To ensure that the analysts kept up the charade, their superiors paid them according to how many new investment banking business they attracted. Further, to reward executives for sending them business, bankers “virtually bribed” CEOs, according to regulators, with shares of hot initial public offerings. Unfortunately, the persons damaged the most by this unbelievable conduct were average investors, consumers who dealt with retail stockbrokers.

The settlement is meant to keep investors from being defrauded and to restore the integrity of research by forcing structural reforms of the “terrible ten.” The settlement is also meant to increase the information available to individual investors by requiring the firms to provide free copies of

independently produced analysis and to support an investor-education fund. It is my opinion that, as well intentioned as these requirements are, real change will only occur if there is a change in the corporate culture, starting at the very top. Already, there are serious concerns as to whether any change in the corporate mindset is occurring. Only one day after the settlement was announced, Morgan Stanley CEO, Phillip J. Purcell, stated publicly that he saw nothing in the settlement agreement "that will concern the retail investor about Morgan Stanley." This is rather shocking, considering that Morgan Stanley paid \$125 million dollars of the \$1.4 billion dollar settlement.

Many believe that regulators must follow up on promises to bring cases against the Wall Street executives, managers, and CEOs who oversaw research and banking during this time in order for real change to occur. It is disappointing that so far only two individuals, former analyst Jack Grubman of Salomon Smith Barney and Henry Blodgett of Merrill Lynch, have been "punished." Both have been barred for life from the securities industry only after taking home multi-million dollar paydays during the height of the fraud. Despite what many believe is real evidence that senior managers knew that retail customers/investors were losing money because of tainted research, none were charged in the settlement. Regulators claim that cases are pending against more than a dozen top managers, including Citigroup Chairman and CEO, Sanford I. Weill, and Michael Carpenter, Citigroup's former head of investment banking, for failing to supervise Salomon Smith Barney officials. Some State Securities Regulators are also looking into bringing criminal cases against individuals.

Despite the many good things included in this settlement, one source of conflict still remains: As research produces no revenues, it will continue to be indirectly subsidized by investment banking, which often accounts

for about one quarter of the revenues of these firms. It is generally understood that, knowing where their paychecks come from, analysts will continue to write reports that are pleasing to their banking clients. The breakdown of the settlement is as follows: Citigroup will pay \$400 million, Merrill Lynch will pay \$200 million, Credit Suisse First Boston will pay \$200 million, Morgan Stanley Dean Witter will pay \$125 million, Goldman will pay \$100 million, UBS Warberg, BearSterns, Lehman Brothers and J. P. Morgan Chase will pay \$80 million, while U. S. Banc Corp Piper Jaffray will pay \$32.5 million. Class actions and arbitration claims continue to be pursued and many of the e-mails and documents that were released will be used in those claims.

Just a few examples of the type of information that has been released include a statement from a Lehman Brothers equity analyst in an August 2000 e-mail to his supervisor complaining about investment banking influence. The statement read, "Enough is enough. It is hard enough to be right about stocks, it is even harder to build customer relationships when all your companies blow up, you knew they were going to and you couldn't say anything." Information at Salomon Smith Barney regarding analyst Grubman included one broker telling superiors that Grubman should be fired, and another even called him a "crook" while yet another wrote "I hope Smith Barney enjoyed the investment banking fees he generated, because they came at the expense of the retail clients (investors)."

Senator Shelby Speaks Out

As most folks already know, I have tremendous respect for Senator Richard Shelby, who in my opinion is a real champion for people in the U.S. Senate. Importantly, the Senator recognizes the difference in "right" and "wrong!" Senator Shelby has voiced skepticism that the government's \$1.4

billion settlement with 10 major investment firms referred to above will fundamentally change Wall Street's culture, saying that top executives need to be held accountable. Shelby, who is Chairman of the Senate Banking Committee, said at a hearing called to examine the accord: "I believe that the Wall Street culture must change from the top down, and I am not convinced that the (settlement) has done enough to change attitudes at the top of the big investment firms. Without holding executives and CEOs personally accountable for the wrongdoing that occurred under their watch, I do not believe that Wall Street will change its ways or that investor confidence will be restored." The executives who caused their companies to do "bad" things should be prosecuted in the criminal courts. The possibility of future enforcement action against executives of the Wall Street firms is still open, according to the SEC boss. "Ongoing actions by the SEC will be directed toward supervisory responsibilities of brokerage executives," according to William Donaldson, Chairman of the SEC. Lawsuits filed against the companies by the SEC have uncovered an industry-wide pattern of abuse, financial incentives, and pressures that led analysts to publish false stock reports. Senator Shelby suggested that the amount of fines being paid by Wall Street's biggest firms was "relatively small." I totally agree with the Senator. The civil courts are still open to investors who were defrauded. The losses suffered by the investors are almost beyond comprehension.

Under the settlement, the firms will not be able to deduct any of the payments of fines against their taxes. Because that prohibition does not extend to the firms' payments to compensate investors or pay for independent research or investor education, some lawmakers have criticized the settlement. Senator Charles Grassley (R-Iowa), Chairman of the Senate Finance Committee, already has proposed legislation

to put more restrictions on the firms' ability to deduct payments against their taxes so that U.S. taxpayers won't have to pick up part of the tab. I understand the firms promised in the settlement not to seek insurance reimbursement for fines they paid. However, it's not clear whether the companies will try to deduct more than \$900 million in other payments related to the pact. The accord does not clearly address whether millions of dollars paid toward the restitution fund, independent research and investor education may be recovered. Hopefully, regulators left these details up to state courts, which handle most insurance disputes.

WorldCom Settlement

At a time when the tort reformers are busy trying to shield Corporate America from paying for its transgressions, the wrongdoers are lining up to "pay" their way out of trouble. As you may have read, WorldCom has agreed to settle accounting fraud charges by paying \$500 million to investors. The federal judge presiding over the matter, however, said he wants more time before approving what would be the largest fine ever levied against a public company. The U.S. District Court judge has indicated that several issues about the fraud committed by WorldCom need to be addressed before he signs off on the deal between WorldCom and the Securities Exchange Commission. Last year, it was discovered that WorldCom had engaged in accounting irregularities of approximately \$11 billion, which led to the largest bankruptcy in U. S. history. It is reported that WorldCom expects to emerge this year from the \$103 billion bankruptcy that led to the indictment of Scott Sullivan, the company's former CEO. Frankly, the \$500 million fine is nothing more than a slap on the wrist for WorldCom. In my opinion, WorldCom came out smelling like a rose since the fine amounts to one week's revenues for the company. In fact, it will get \$300 million back from the IRS for lying on

its tax returns. I don't believe we should turn corporate crooks loose with only a slap on their wrists.

Corporate Tax Cuts And Corporate Tax Cheating

As I prepared this portion of the report, a version of the President's tax cut proposal had passed in Congress. Conferees from the House and Senate agreed on a sizeable tax cut. I suspect there will be very little for an ordinary citizen to be happy about in the final version of the tax cut bill. From what I heard and read today, it certainly appears to be a tax cut primarily for the wealthy and Corporate America and one that does very little for ordinary people. The Senate version of the tax cut had a provision that would have penalized companies that move their headquarters to offshore tax havens. As previously reported, there is an increasing number of U.S. corporations that have moved to offshore locations and are cheating the American people who work hard and pay their taxes. Clearly, this is wrong and shouldn't be allowed. The offshore provisions had the support of Senator Charles Grassley (R-Iowa), who is Chairman of the Senate Finance Committee. The ranking member of the Committee, Senator Max Baucus (D-Mont.), was also a strong supporter of the measure. Representative Richard Neal (D-Mass.), who has sponsored a bill in the House of Representatives to close the loophole that allows corporations to reincorporate offshore and save hundreds of millions of dollars in federal taxes, had hoped that the conference committee would include the Senate provision in the final version of the bill. I haven't read the final version of the tax cut bill - as worked out by the conference committee - but I doubt seriously that the offshore measure was left in. However, Corporate America can't be allowed to use the existing loophole in the Tax Code and avoid paying U.S. taxes. If the tax cut bill failed to include the measure referred to above, Congress still has an obligation to act and soon.

Bayer® Fined \$5.6 Million In Drug Scheme

A federal judge has approved the criminal fine of \$5.6 million against Bayer Corp. as part of the previously reported settlement to resolve allegations it overcharged the government insurance program for the poor for two of its drugs. Bayer® agreed last month to plead guilty to violating the Federal Prescription Drug Marketing Act and to pay the criminal fine for overcharges involving its antibiotic Cipro and its high blood pressure drug Adalat. The U.S. District Court Judge approved the plea and fine on May 8th. Under the settlement agreement announced last month, drug giants Bayer® and Glaxo-SmithKline agreed to pay a combined total of nearly \$345 million to settle claims they used a labeling scheme to overcharge the Medicaid program. In addition to the \$5.6 million criminal fine, Bayer® agreed to pay \$252 million in civil damages. Glaxo agreed to pay a civil fine of nearly \$88 million for overcharges involving its anti-depressant Paxil and the nasal allergy spray Flonase. Unlike Bayer®, the company was not accused of any criminal wrongdoing. Bayer® has a great deal of exposure in civil cases for its drug, Baycol. Many claims are pending around the country.

Former Qwest Exec To Pay \$4.4 Million

A former Qwest Communications executive will pay \$4.4 million for accepting lucrative initial public offering, IPO, shares in exchange for his firm's investment banking business, according to a settlement reached with New York Attorney General Eliot Spitzer. The payment by Qwest founder and former chairman Philip Anschutz will be roughly equal to his profit from the practice of IPO "spinning" and will go to charity and an investor assistance fund. The settlement marks the first time an executive has relinquished profits linked to "IPO spinning." The Attorney General

accused Anschutz and four other corporate executives of receiving millions of dollars in hot IPO offerings from the Salomon Smith Barney division of Citigroup. Anschutz and the other executives were also accused of failing to disclose that they received the IPO shares. When the shares were later publicly traded, they reaped millions of dollars in profits for the executives. The cases against the other four executives continues.

Scandals In Corporate America

When you think about things like burglary and stealing, you immediately think about the corporate scandals that involved WorldCom, Enron, Arthur Anderson, Tyco, Adelphia, HealthSouth, and the list goes on. Actually, it is impossible to turn on the television set or open the daily newspaper without being confronted with another corporate scandal. Reports of financially troubled companies and their accounting firms cheating the public and government regulators are commonplace. Not only are American citizens now faced with losing their jobs, but they are also faced with the loss of their stock portfolios and retirement savings. A recent nationwide survey conducted by BowneDescisionQuest has revealed some most interesting and alarming conclusions:

76% of the people surveyed are angry with Corporate America.

76% believe the way executives are paid promotes corruption.

73% believe auditors cover up for their clients.

71% expect managers and executives to lie when confronted on the witness stand.

78% believe many corporations destroy documents to avoid the taxation and responsibility.

85% believe large corporations hide the truth about the dangers of their products.

If these survey results are accurate, we are in deep trouble in this country. Government must work diligently to restore confidence in our nation's economy and in the corporations that

used to be held in high esteem. Destroying the court system and taking away the right to trial by jury surely isn't the way to do it. Personally, I believe criminal prosecution and long jail terms are the place to start.

X. BUSINESS LITIGATION

A Medical Doctor Takes His Case To Court

A jury in St. Louis, Missouri, has awarded Dr. David L. Gearhart \$195,500 in actual damages in a case involving allegations that St. Luke's Hospital tried to ruin his private medical practice after he was fired from the staff of the hospital in 1998. The jury found in favor of the obstetrician, and against St. Luke's Hospital and its parent, Unity Health System. The jury found against a doctor, a former partner, who was also sued. When this issue went to the printer, the jury was still deliberating punitive damages. The two doctors sold their practice to St. Luke's in April 1997. It was reopened under St. Luke's as Comprehensive Women's Health Care. In June 1998, Dr. Gearhart gave a television interview critical of staffing changes in the obstetrics department. He was subsequently fired for those remarks by the hospital's president. However, the firing itself wasn't an issue in the trial. Dr. Gearhart alleged that employees of Comprehensive failed to give out his new phone number to his patients; that the hospital tied up payments owed him for months at a time, and that Unity sent the accounts of 456 of his patients to a collection agency who got collection letters even though they had been unaware they owed money. The hospital's actions allegedly led Dr. Gearhart to seek psychiatric help and to undergo double bypass heart surgery. Apparently, the jury agreed with Dr. Gearhart.

Xerox Settles Lawsuit Against Lab

Xerox Corp. has settled a defamation lawsuit filed against an independent lab that had tested its products. The companies agreed not to disclose the settlement terms. Xerox had accused Business Equipment Research & Test Laboratories of defamation and interfering with customer relations. BERTL, based in Englishtown, New Jersey, publishes independent product evaluations on copiers, printers, color systems, and multifunction devices. Xerox commissioned BERTL to conduct a series of tests comparing the performance of its document center systems against competitors in November 2001. Xerox then prepared the test data for use in an internal sales training tool, which the company claimed was allowable under the companies' agreement. BERTL then allegedly sent an e-mail to its competitors containing an altered version of the test summary, which suggested that Xerox could not use the data for internal training. Subsequently, BERTL filed 16 counterclaims in U.S. District Court against Xerox and Xerox Canada for \$53 million in compensatory and punitive damages. The counterclaims accused Xerox of copyright infringement, appropriation of trade secrets, trademark misuse, false advertising, breaches of access license, and defamation.

Asbestos Fund At Hartford Nearly Triples

The Hartford Financial Services Group announced on May 15th that it was nearly tripling its reserves to pay for potential claims for asbestos-related illnesses and deaths. The company, the nation's seventh-largest insurer, said it would add \$3.97 billion to its asbestos reserves, bringing them to \$5.96 billion. The company also said it was getting out of the volatile business of reinsurance, or providing coverage to other insurers. Hartford's increase in reserves for asbestos, once the most widely used insulating material, comes after a string of similar steps by other big insurers over the last year. It is by

far the largest increase, significantly surpassing the \$2.45 billion that the Travelers Property Casualty Corporation added in January, bringing its total asbestos reserves to \$3.4 billion. Hartford's big increase comes as insurers, industrial companies, victims' lawyers, unions, the Bush Administration and Congress are trying to agree on a global settlement intended to end asbestos litigation and place a cap on total potential payouts at \$100 billion to \$125 billion. Over the last two years, 200,000 lawsuits have been filed seeking damages for asbestos exposure.

XI. PRODUCT LIABILITY UPDATE

Claim Of Fraud By Ford Could Have Wide Impact

We reported in our March issue on Ford Motor Company's intentional concealing of evidence in Bronco II lawsuits. The claim that Ford fraudulently concealed evidence could have an impact nationally on similar cases that are either pending or have previously settled. It appears that Ford Motor Co. falsified testimony and concealed harmful documents in serious Bronco II rollover accidents over a period of ten years. The testimony of David J. Bickerstaff, a former engineer for Ford who worked extensively on the design and testing of the Bronco II in the early 1980s, helped Ford in many of the approximately 600 cases brought by drivers, passengers, and families of those injured or killed in Bronco II rollover accidents. The engineer testified that, based on his assessment, the Bronco II was safe and did not have a propensity to rollover. More specifically, Bickerstaff testified that the Bronco II's "stability index" was not a major factor in rollover propensity. He also testified that those working under him at Ford were not telling him the vehicle needed to be improved from a rollover standpoint.

As we learned prior to the South Carolina case, Bickerstaff's testimony was not always so favorable to his employer. Specifically, in a July 9, 1990 deposition, the Ford engineer testified that stability index was a major factor in a vehicle's resistance to rollover and that people working under him in 1982 were telling him that the Bronco II needed to be improved from a rollover propensity standpoint. Bickerstaff, who left Ford in 1982, subsequently changed his story. As reported, in June 1990, lawyers for Ford met with Bickerstaff in a hotel room getting ready for Bickerstaff's deposition testimony in a Bronco II rollover case in Texas. Shortly after the meeting, Bickerstaff sent a letter to two of Ford's attorneys, which read in part: "I feel I should be reimbursed my current rate. I would suggest you retain our services to assist you in preparing myself, in Ford's favor, as we discussed per our phone conversation of 6/18/90." You can draw your own conclusions as to what this was all about. Court documents suggest that Bickerstaff has been paid as much as \$5 million for his favorable Ford testimony over the years. The 1990 letter written by Bickerstaff did not surface until 1995, despite earlier discovery requests to Ford. Ford finally produced the letter after it was referred to by Bickerstaff in a deposition in 1995 for a rollover trial. Ford also failed to produce a second document - a testing memo from Ford to the Arizona Proving Ground acknowledging stability and design problems with the Bronco II.

It is our opinion that the South Carolina decision will have a broad and significant impact on previous and future Bronco II rollover cases. This case should open the door for many victims who settled their cases believing that Ford would use Bickerstaff as a star witness against them. There have been about 600 cases involving Bronco II rollovers that have settled with Bickerstaff being listed by Ford as an expert witness. If a trial lawyer or a client had

done what Ford and its "expert" allegedly did in the South Carolina case, there would be an uproar in Corporate America that would equal the attention given to the aftermath of the bombing of Pearl Harbor in 1941. Lawyers in our Product Liability Section have gotten accustomed to corporate defendants bending the rules, but on most occasions we simply couldn't prove unethical conduct. Now, Ford has apparently been caught red-handed. The company's conduct, as well as that of their lawyers, should be dealt with by the courts and bar associations. This sort of conduct by parties to litigation can't be tolerated. I would like to hear the justification by the U.S. Chamber of Commerce and the National Tort Reform Association for Ford's conduct.

The Environmental Working Group, a Washington, D.C.-based not-for-profit corporate watchdog group, has been keeping tabs on Ford over Bronco II litigation. EWG recently filed a letter with the U.S. Department of Justice asking the government to conduct a criminal probe of what the organization calls "Ford's pattern and practice of willfully concealing safety-related defect data from courts, federal regulators, and consumers." Hopefully, there will be a meaningful investigation. EWG's position has been that Ford has already compromised safety. EWG has detailed histories of Ford rollover litigation on its Website: www.ewg.org.

GM To Put Stability Systems On Full-Sized Vans

General Motors will install stability control systems as standard equipment in the GMC Savana and Chevrolet Express 15-passenger vans sometime in the 2004 model year. Installation probably will start after January 1st, according to GM. Stability systems are designed to help drivers keep control of their vehicles in risky situations, such as driving on ice or gravel, or making emergency lane changes. GM

says while it won't directly prevent rollovers, it "may help drivers avoid the conditions that cause them." The automaker has been studying the feasibility of putting this technology in the vans for more than a year. GM already offers the system, referred to as Stabili-Trak, Precision Control and Active Traction, in other vehicles. It will be called StabiliTrak in the vans.

While General Motors has announced that it will install the stability enhancement systems on these vans, this is no substitute for a full redesign of these deathtraps. Little more than tin cans originally designed to haul cargo, the vans have devastated entire church and school communities as a result of rollovers resulting in deadly crashes. GM's failure and refusal to retrofit its existing 15-passenger vans on the highway is hard to justify. The company should have added stability control systems to all its rollover-prone vehicles - including vans - a long time ago. This new system won't fix the fundamental design flaws that are found in these vans. The vehicles have extremely weak roofs that crush in a rollover, putting the heads and spines of passengers at great risk for serious injury, and opening large portals for ejection. The vans also have weak doors and poor restraint systems that fail to keep passengers in place during a crash. The hazards created are evident in the crashes.

Public Citizen called on all manufacturers last fall to retrofit, or recall altogether, the vans that are currently on the highways, so as to prevent more rollovers. GM's recent action shows that these top-heavy vans, which have killed more than 400 people, should not be allowed to "haul" people. Simply put - the vans are unreasonably dangerous. More people should not have to die before these vans are either fixed or removed from the highways. All safety groups should join with Public Citizen and let the public know that the proposed "fix" by General Motors is grossly inadequate.

SUVs Fare Poorly In Latest Government Rollover Tests

Sport-utility vehicles performed poorly in the latest round of rollover tests released on May 20th, with none winning the government's highest safety rating. The National Highway Traffic Safety Administration released rollover ratings for fourteen sport-utility vehicles from the 2003 model year. Most got three out of five stars from the agency. None got a four- or five-star rollover rating. That shows little improvement from the 2001 model year, when the Pontiac Aztek was the first SUV to win a four-star rollover rating from NHTSA. In 2002, the Aztek and the Acura MDX earned four stars.

Two General Motors SUVs — the Cadillac Escalade EXT and the Chevy Avalanche — and the Mitsubishi Montero Sport received two-star ratings. SUV rollover ratings became a big issue earlier this year when NHTSA chief Jeffrey Runge said at an auto conference: "I wouldn't buy my kid a two-star rollover vehicle if it was the last one on earth." Runge quickly retreated and tried to explain away his statement. He said later he only meant that buyers should be aware of the driver's experience when choosing a vehicle. However, the head man at NHTSA has repeatedly expressed concern about the high rollover rates of SUVs. More than 60% of fatalities in SUVs involve rollovers, compared to 22% of car deaths. A NHTSA spokesman believes it is a good predictor of vehicle performance. NHTSA plans to abandon the mathematical formula later this year in favor of a new, moving test that will show how the vehicle responds to sharp turns. That will be a much better indicator of how the vehicles will perform.

Vehicles did much better in NHTSA's crash test ratings, which also were released. The Chrysler Pacifica, which was the only 2004-model vehicle tested, won five-star safety ratings in all

four front- and side-impact crash tests that NHTSA performs. No other SUV won five stars in every test. Chrysler said the Pacifica is one of the first to offer standard side curtain airbags as well as inflatable knee blockers to protect occupants' legs.

Confidential Information Concerning GM C/K Trucks Released

As previously reported, General Motors Corp. paid at least \$495 million to settle nearly 300 lawsuits filed by families of victims who were killed in crashes involving the popular C/K line of pickup trucks. News of the payouts, reported in the Los Angeles Times, came when a Montana federal judge released an exhibit in a case brought by the estate of a family killed in a pickup accident. The exhibit was unsealed by the judge at the request of the newspaper. All American citizens owe the Times a long round of applause. The civil suits involve C/K pickups that had fuel tanks mounted outside the vehicles' protective frames. Critics have maintained for several years that the design left the tanks prone to explode in crashes. GM produced more than 9 million of the pickups from 1973 to 1987 with fuel tanks outside the frame, and later changed the design. GM had argued against releasing the document, saying it would violate confidential agreements reached with plaintiffs all over the country. Obviously, GM doesn't like this turn of events. Incredibly, GM's spokesperson, in a statement that the now infamous "Baghdad Bob" would have been proud of, claimed that the number and size of the settlements did not mean that the C/K pickups were unsafe.

The document — known as Exhibit 8 and carrying the heading "Byrd v. General Motors" — was produced by GM in response to a demand for information from lawyers representing the plaintiff. Three persons were killed in a fiery wreck of their C/K pickup. The

exhibit says in full: "There have been 297 settlements of lawsuits and claims involving 1973-87 C/K pickup trucks which resulted in 331 individual settlement agreements. The total amount paid in settlement to date is \$495,076,104. This yields an average of \$1,495,698 per individual settlement, or \$1,666,923 per lawsuit/claim." One of the cases was settled in October 2000 for an undisclosed sum. At the time of the settlement, the Times asked the judge to release Exhibit 8. After hearings on the issue, the court ordered the exhibit unsealed in January 2001, but GM appealed.

You may recall that federal regulators had begun an investigation into GM's truck line, but dropped it in 1994 in exchange for a \$51 million payment from the vehicle maker that was to be earmarked for safety programs. At the time, I didn't believe that the "deal" was in the best interest of consumers. I am now convinced that it wasn't. After the federal inquiry was dropped, at least 65 people are believed to have been burned to death in C/K crashes. That number could be conservative since GM demands secrecy when settling cases.

The GM document provides a rare glimpse into the confidential settlements paid by GM in a string of product liability cases. This points out clearly why companies zealously guard such information from public view. I have always contended that corporations have a duty to make this type of information known to the public. A GM spokesman criticized the judge's decision to release the exhibit and said the judge had "set a dangerous precedent" that could encourage defendants to engage in protracted litigation rather than settle product liability claims. I would certainly like to hear an explanation for that prediction. Why would GM want to try a lawsuit when they know the defective vehicles have caused the deaths of untold numbers of innocent people?

The Ninth Circuit Court of Appeals

overturned the court order and remanded the case to the judge for further consideration. The trial court then again unsealed the document in a ruling that sought to address issues raised by the Appeals Court. Federal regulators, in exchange for a \$51 million payment from GM earmarked for safety programs, dropped an investigation in 1994 that could have led to a recall of millions of C/K trucks. The failure to mount a recall followed hundreds of deaths in C/K pickup accidents. Auto safety groups had long contended that, from a fire-risk standpoint, the C/K pickup was the most dangerous vehicle ever sold. After the federal inquiry was dropped, the Times' investigation found that at least 65 people were believed to have burned to death in C/K crashes. We have handled a number of these cases and are bound by confidentiality and restrictive court orders. The release of this GM document will alert the public to the magnitude of the sidesaddle fuel tank design hazard.

Head Injuries Are Noted in Crash Tests of 3 SUVs

The National Highway Traffic Safety Administration announced recently that results from a side-impact crash test showed that passengers in three sport utility vehicles would have suffered a high likelihood of severe or fatal head injuries. The vehicles, all 2002 models, were the Daewoo Nubira and the Suzuki Grand Vitara (both considered small SUVs) and the Mitsubishi Montero Sport (considered a midsize). The disclosure was the first time that federal safety officials had provided information on potential head injuries in side-impact crash test results. The agency also said it would recalculate future crash test measurements to reflect head injuries. Since 1997, NHTSA has been measuring the effects of a vehicle's being hit from the side. However, the previous tests reflected only chest injuries to test dummies

inside the vehicle. When the tests started, the dummies were not sophisticated enough. Now, the agency has a new type of dummy that can help measure potential head injuries. As a result, NHTSA plans to note when a head injury score indicates a higher likelihood of a severe or fatal brain injury. The agency will begin the process of revising safety standards to include the head injury information. Hopefully, the revision will be made this year.

The head injury data is not yet included in NHTSA's crash-test ratings, which award up to five stars, the highest rating, according to how vehicles perform. That is how the Grand Vitara and the Montero Sport were able to receive five-star ratings for side-impact safety despite the potential for serious head injury. The Nubira received three stars. The Nubira is no longer sold in the United States. General Motors, which took a stake in Daewoo's automotive operations last year, stopped importing Daewoo vehicles for the 2003 model year, which began last October. GM eventually plans to begin selling Daewoo products through its own dealers.

NHTSA has noted that the driver's side door on the Ford Explorer and its sister SUV, the Mercury Mountaineer, became unlatched during a side-impact crash test. Both, however, received five-star ratings for driver's side safety. In addition, the agency said that the front passenger in a Hyundai Santa Fe SUV would have had a high chance of suffering a thigh injury in a full frontal crash. Despite that, the Santa Fe received a four-star rating. The auto industry, faced with mounting criticism over the increase in fatalities involving sport utility vehicles, recently agreed to cooperate with the government to explore new tests and standards to address SUV safety. Numerous safety advocates have criticized the idea of permitting the industry to regulate itself. It would be like putting the proverbial fox in charge of the hen

house. There is nothing in our experience in handling significant product liability cases that leads me to believe that the automobile industry would ever “voluntarily” regulate itself. Profits have always driven the industry – with safety oftentimes taking a back seat.

Crash-Avoidance Technology

In the mid-1960s, there were 5.5 deaths for every 100 million vehicle miles traveled. Under pressure from consumer advocates and government regulators, the auto industry finally made some fundamental safety changes, building cars that crumple around their occupants, installing better restraint systems, and making airbags standard equipment. By 1992, the fatality rate had fallen by more than two-thirds, to 1.75. Over the next ten years, however, the rate improved. Unfortunately, motor vehicle deaths rose last year in this country to their highest level since 1990. The rise capped a decade in which the rate of deaths per miles traveled leveled off after twenty-five years of falling sharply. Most of last year’s jump in fatalities was caused by rollover crashes involving SUVs or pickups. The recently reported rise in U.S. highway fatalities shows that vehicle safety has taken a back seat to profits. There has been a marked change in buying habits of the motoring public. Cars now represent no more than half of all vehicles on the road. For the first time, SUVs and other light trucks outsold passenger cars last year. SUV and pickup sales now account for the bulk of profits for U.S. automakers. These popular vehicles, which are not built like cars, are being used by families as passenger vehicles. They are especially popular with young people. Unfortunately, while these vehicles are not like passenger cars, that is the way most of them are used.

Auto industry officials insist that SUVs are just as safe as cars and try to put the blame on people for the motor vehicle crashes. Clearly, folks who

don’t wear safety belts do contribute to the death rate. However, auto safety advocates correctly dispute the claims that people are the problem. The simple fact is that there is a higher mix of SUVs and unstable vehicles in the entire fleet. Safety advocates are calling for the government to set roof crush standards for SUVs. They are also asking carmakers to install roof-mounted airbags that can protect against head injuries during rollovers. If these things are done, it will have a marked improvement in safety and a reduction in the fatality rate.

Clarence Ditlow, director of the Center for Auto Safety, applauded the recent popularity of smaller, car-based SUVs – often called crossovers or CUVs – because their smaller, more forgiving frames pose less of a threat to other cars. Auto industry researchers must move into the realm of designing vehicles that can avoid wrecks in the first place. Some types of crash-avoidance systems are already on the market. Interestingly, these systems are more widely available in Europe than in the United States. That should not come as a big surprise to safety advocates who have been around a while, since we have always been far behind European countries on safety issues.

Mercedes, Jaguar, Lexus, and Infiniti offer what is called “adaptive cruise control,” which uses either radar or lasers to sense when other traffic is getting too close and makes the car slow down. Automakers market the systems as a convenience rather than a safety feature. Bob Ervin, head of engineering research at the University of Michigan Transportation Research Institute, is supervising the field-testing of a device that goes one step further, using full-time radar to keep a car from hitting any obstacles. According to knowledgeable sources, the technology works. The unknown factor is how drivers will interact with it, how much they will trust the system, and how much control they are willing to surrender. One of the most promising

advances in crash avoidance is electronic stability control. Such systems, already widely available in Europe, but offered on only a few U.S. luxury cars and SUVs, use gyroscopes and other sensors to judge when a vehicle is beginning to tip on its side. Then the system can apply brakes to individual wheels to prevent a rollover. Most safety advocates contend that these should be standard on all SUVs. Regulators at NHTSA are said to be taking a close look at stability control.

Government’s Product Liability Case Settled

Wal-Mart has agreed to pay a \$750,000 penalty to resolve a government lawsuit that said the company failed to report safety hazards from defective exercise “glider” machines. Wal-Mart also agreed to better track information about product safety hazards, the Consumer Product Safety Commission and the Justice Department brought the suit. Apparently, Wal-Mart reported injuries involving the glider machines to the manufacturer, but for some reason saw no reason to alert the CPSC. In May 2001, the federal government accused Wal-Mart of failing to report hazards with Weider and Weslo brand exercise gliders. Despite knowing of at least twenty-nine consumers who were injured while trying the equipment in Wal-Mart stores, the retail giant failed to notify the CPSC. Injuries included fractured vertebrae, herniated discs, and a compression injury to a woman’s spine. People used the gliders by sitting on a seat while pushing pedals with their legs and pulling handlebars with their arms. The seat on the gliders could collapse during use, causing people to fall, according to the CPSC. The law requires companies to immediately report dangerous products to the government. In November 2001, Icon Health & Fitness Inc., the Logan, Utah-based manufacturer of the gliders, agreed to pay a \$500,000 civil penalty

for failing to report 68 injuries involving the same exercise equipment. As previously reported, Icon recalled about 75,000 of its folding exercise gliders in 1999.

Goodyear Tires Under Fire

There have been a number of lawsuits filed against Goodyear, alleging a defect in a particular type of tire that the company manufactured. The lawsuits claim the rubber tread on the tires peeled away from the steel belts beneath and that this “tread separation” caused crashes, injuries, and in some cases, death. The tires that are in question are certain Goodyear Load Range “E” type tires made between 1991 and 2000. It is estimated that millions of the tires remain on the road on large, heavily loaded sport utility vehicles, pickups and commercial-sized vans. Goodyear claims the tires “were, and still are, quality tires.” The company urges drivers to make sure the tires are properly inflated. However, there have been lots of problems with these tires.

In a deposition obtained by Good Morning America, a retired Goodyear engineer testified that by the mid-1990s, the company was concerned enough about the tires to begin an internal investigation. Goodyear was concerned about the number of tread separation claims. “Those claims were growing at an alarming rate,” engineer Beale Robinson testified in a video deposition. Between 1991 and 2001, there were tread separations in 15,000 Load Range “E” tires. Goodyear says its investigation found no defect in the tires. Further, the company said that in crashes it looked at, tread separation was caused in every case by either overloading of the vehicle, under-inflation of the tire, or other misuse of the vehicle. Admittedly, some drivers do overload their vehicles, and some under-inflate the tires. Clearly, those factors are not good practices. Until recently, however, few folks were ade-

quately warned about such practices.

A National Highway Traffic Safety Administration investigation turned up 87 reported crashes involving Goodyear Load Range “E” tires between 1991 and 2001. Approximately half of the crashes caused injuries — a total of 158 injuries — and some were very serious. Eighteen people died. In 1996, Goodyear redesigned the tires, adding an extra nylon cap or overlay between the tread and the steel belts. Good Morning America reports that since the government investigation closed, Goodyear received reports of ten more crashes serious enough to cause twenty-six additional injuries and five more deaths. Last year, after the government asked more questions about the tires, Goodyear said it would replace LRE tires with the newer type on 15-passenger vans and ambulances. Most of the injuries and deaths linked to the tires have been in large vans. After that, NHTSA closed the investigation. However, the agreement does not apply to millions of others with the controversial tires on their SUVs, pickups, or utility vans. If those motorists want new tires, they must pay for them. The tires were all made by Goodyear, but many of them don’t have the Goodyear brand on them, because they were sold by many different retailers under various brand names. However, the tires do all have the words “Load Range E” on the sidewall. Also, the new design tires with the nylon cap say 2 polyester cords, plus 2 steel cords, plus 2 nylon cords. If you don’t see those 2 nylon cords, you may have one of the old design tires. A Goodyear dealer can determine if Load Range E tires are made by Goodyear.

Certain Hazards Created By Children’s Clothing

When purchasing clothes for children, parents need to look past the appearance and the name brand. Flammable clothing can cause serious and

permanent injury and even death especially for children. Clothing that can catch fire easily are associated with 200 to 300 emergency room-treated burn injuries to children annually. Studies have shown that children are most at risk from burn injuries that result from playing with fire (matches, lighters, candles, burners on stoves) just before bedtime and just after rising in the morning. Manufacturers and retailers have a duty to sell children’s clothing that satisfies flammability regulations. When clothes manufacturers and retailers fail to observe these standards, children suffer.

Children’s clothing can be separated into sleepwear and all other types of clothing. Children’s sleepwear is defined as any product or fabric intended or promoted for use in children’s sleepwear. Children’s sleepwear must either be made of flame-resistant garments or be snug-fitting. As of June 28, 2000, the Consumer Product Safety Commission (CPSC) required all hang-tags and permanent labels to specify if the clothing is flame-resistant or snug fitting. Flame-resistant garments are made from inherently flame-retardant fabrics or are treated with flame-retardants and do not continue to burn when removed from a small flame. Snug-fitting sleepwear is made of stretchy cotton or cotton blends that fit closely against a child’s body. Snug-fitting sleepwear is less likely than loose clothing to come into contact with a flame, and does not ignite as easily or burn as rapidly because there is little air under the garment to feed a fire. Although rarely publicized, manufacturers and retailers commonly violate these clear standards. For example, in 1999, Gap recalled 231,000 children’s pajamas because they failed to meet flammability standards. Parents should note that unless labeled as flame retardant or flame resistant all clothing should be considered flammable.

All other types of children’s clothing are governed by standard flammability

tests. Standard flammability measure ignition ease, flaming, rate of burn, or flame spread. Fabrics that exhibit normal flammability are entitled Class 1 textiles. Class 1 textiles are acceptable for use in clothing. Fabrics that have raised fibers are considered to be of intermediate flammability and may be used in clothing. These fabrics are entitled Class 2 textiles. Finally, Class 3 textiles are fabrics that exhibit rapid and intense burning. Class 3 textiles are dangerously flammable and may not be used in clothing.

Fibers burn differently. Generally, cotton ignites and burns easily. Polyester and nylon are slower to ignite, but will eventually burn with a flame. The melting residue from polyester and nylon is a very high temperature and can cause deep and severe skin burns. On the other hand, wool and silk shrink from flames and are hard to ignite; however, they burn easily. Blended fabrics like cotton and polyester are oftentimes more dangerous than either individual fiber. Many major retailers have produced clothing for the public that failed standard flammability tests. In 2000, Kmart recalled 42,000 fleece sweatshirts. In 1998, Hardwick Knitted Fabrics, Inc. was forced to recall 16,800 children's vests, pants, men's shirts, and ladies tops for failure to meet flammability standards. In 1997, Target Stores recalled 106,000 fleece sweat shirts for men and boys. Finally, in 1996 a national retailer recalled 40,000 flammable sheer silk chiffon scarves. The testing revealed that the scarves burned faster than newspaper.

Occasionally, retailers will voluntarily or involuntarily recall garments that fail flammability standards. More often that not, the only redress is to file a lawsuit against the clothes manufacturer. We currently represent a young girl who was severely burned because the shirt she was wearing was defective and unreasonably dangerous. The shirt fabric is a blend of polyester and rayon. This young person sustained

serious and permanent burns to her chest, arm and face. She will be scarred for the rest of her life. Consumers, especially parents, should take note of the clothes they purchase to avoid serious injury or even death. Manufacturers must take all steps possible to avoid putting dangerous and hazardous products, which will be used by children, on the market.

XII. PREMISES LIABILITY UPDATE

Alabama Power Didn't Learn A Lesson

Several years ago, our firm handled a case in Montgomery, Alabama, where a young man was electrocuted by a guy wire that became energized. We learned during the case that Alabama Power Company had a large number of guy wires located around the state that had a configuration on its power poles that made them highly dangerous and hazardous. Some of these dangerous guy wires at that time were actually on school grounds. Now an Alabama jury has awarded a \$3 million verdict in another lawsuit filed against the Alabama Power Company in a most similar case. The 50-year-old man in the recent case was severely burned when he touched a guy wire. The victim was leaving Outback Steakhouse in Montgomery when he realized his front bumper was caught on an unprotected guy wire located in close proximity to his parking space. When our client attempted to remove the guy wire from the bumper of his vehicle, an electrical current was conducted through the guy wire and into his body. As a result, he was severely burned, resulting in permanent scarring. He also suffered permanent injuries to his left arm and hand and was required to undergo multiple skin grafts and two years of physical therapy. Unable to continue in his

occupation as one of the top hunting and fishing guides in the south, our client has suffered a significant loss of income. The utility company filed written admissions during the trial, which acknowledged that the pole configuration advocated by our expert was a safer method than was used on the pole involved in this incident in preventing a guy wire from becoming energized. Alabama Power Company also admitted that it was aware that on prior occasions, guy wires have become energized resulting in injury or death.

Obviously, the first case we tried in Montgomery in the 1980s, where an innocent truck driver was electrocuted when a guy wire contacted the door to his truck, should have been a warning to Alabama Power Company. In the first case, the Montgomery County jury awarded \$5 million for that death, after hearing the power company witnesses admit they had a great number of guy wires that were dangerous, when we only asked for \$3 million. We learned then that Alabama Power Company had a tremendous number of dangerous guy wires around the state as mentioned above - some on school grounds. The jurors we talked to after the trial told us they were shocked to hear the evidence in that case and hoped their verdict would make the company locate the hazards and "fix" the problems. Obviously, there have been other cases. No safety engineer can justify a guy wire becoming energized. Certainly, no layperson should anticipate that such a "dead" wire would be "hot" and pose such a hazardous condition.

The current jury verdict was comprised of \$1 million in compensatory damages and \$2 million in punitive damages. Some jurors commented after the trial that they hoped the \$2 million punitive award would motivate Alabama Power to correct its remaining unsafe pole configurations. Where have we heard that before? It was clearly a surprise to everyone in the courtroom

that guy wires could ever become energized under any circumstance. Our client settled with Outback Steakhouse and Hadmanco, the building owner, before the case went to trial, for \$800,000. Graham Esdale and LaBarron Boone from our firm and Lynn W. Jinks of Jinks, Daniel & Crow L.L.C., located in Union Springs, represented the plaintiff.

Companies Pay \$12 Million To Settle Lawsuit By Woman Burned By Power Line

A Kansas City woman, who suffered severe burns and lost her arm and leg from a downed power line, has settled her lawsuit for \$12 million. The 35-year-old's case was against the Kansas City Power & Light Co., its parent company, Great Plains Energy Inc. (the parent company) and parts supplier Hubbell Power Systems Inc. The victim said while she appreciated the settlement, but she would give it all back if she could have her arm and leg back. The victim was injured in 2002 when she and her family were loading laundry into her car. A power line snapped and fell on the victim, her husband, and her two children. The line burned the poor lady over half her body. Doctors had to amputate her right arm and leg in order to save her life. The other family members suffered electrical shocks, but none were so severe. The three companies paid the settlement - \$11.5 million to the primary victim, \$400,000 to her husband, and \$50,000 to each of her two children, ages ten and three. The line fell because KCP&L improperly secured it with a clamp intended for temporary repairs. Before the accident, the victim worked in data entry for a bank. Her burns were so serious that she has not been able to use prosthetic limbs. At least these defendants in Kansas City did the right thing and settled the case. Hopefully, they will take remedial action to keep this sort of thing from happening again.

A Serious Breach Of Security At Marion Military Institute

In the past, our firm has handled several cases against Marion Military Institute. In fact, we currently have such cases pending. Marion Military Institute is a private military school located in Marion, Alabama. The school accepts both male and female applicants, ranging from junior high students to Associate Degree students. All live and study within the confines of their campus. The co-ed nature of the campus and the integration of college and high school age cadets with junior high cadets is a lethal combination for assaults on both female and young cadets. With the make-up of the student population, it would appear that security would be a top priority at Marion. Unfortunately, that doesn't seem to be the case.

We have recently concluded a case where a junior high female cadet (14-years-old) was raped by a high school cadet in the female dormitory. The male cadets made entry through a ground level window. To the school's credit, since this incident occurred, all female cadets were moved to a second floor dormitory area. Unfortunately, after this move occurred however, two more rape incidents occurred at the second floor dormitory area after security measures were breached. The lack of adequate security to protect the cadets is difficult to understand and can't be justified.

We are currently handling a case where a hazing incident occurred involving a junior male cadet. The hazing was carried out by four high school male cadets. It is common knowledge that certain types of hazing conduct occur at military academies, fraternity organizations, and other similar groups. However, there must be limits if such activities are allowed to take place. In this case, the high school cadets invaded the dormitory room of a junior high cadet late one night and inflicted rectal injuries with a broom

handle. There was an adult supervisor on the same floor in the dormitory where the incident occurred. This type activity can't be tolerated in a civilized society.

Parents are leaving their vulnerable children in the hands of a school administration that either cannot provide adequate security or refuses to do so. The type of conduct by cadets that we have encountered and the lack of security by the administration is intolerable and must come to a halt. If parents are contemplating leaving their children at a place such as a military school, they should thoroughly check out all security measures the school has in place to protect children in their custody and under their care. You would think a military school would have adequate security measures in place. Unfortunately, we have not found that to be the case at Marion Military Institute.

Ed McMahon Settles His Mold Lawsuit

Insurers and other defendants will pay Ed McMahon \$7.2 million to settle a lawsuit alleging that toxic mold spread through his Beverly Hills home, sickening Johnny Carson's "Tonight Show" sidekick and his wife and killing their dog. The settlement is the highest published recovery in the nation by an individual alleging property damage in a mold case. Ed and Pamela McMahon sued American Equity Insurance Co. in April 2002 for breach of contract, negligence, and intentional infliction of emotional distress. The couple and members of their household staff were allegedly made sick by toxic mold that spread through their six-bedroom house after contractors failed to properly clean up water damage from a broken pipe.

McMahon's doctor ordered the then-80-year-old to move out of his 8,000-square-foot house overlooking Coldwater Canyon after he spent four months on antibiotics for coughing,

sneezing, and congestion. His health improved. The McMahons' dog, Muffin, had to be put to sleep after contracting a respiratory illness. The McMahons, who at first rented a \$23,000-a-month house but then moved to reduce expenses, are having the mold removed from their property by replacing walls and treating beams. They plan to return home in five or six months.

The pipe broke in July 2001 and flooded their den, which was filled with memorabilia from McMahon's television career. The McMahons discovered mold in the den a month later. It spread through the heating and air-conditioning ducts to their bedroom, invading their closets and contaminating their clothes, according to the suit. Workers originally painted over the mold, prompting the McMahons to question the cleanup methods. As the project became more expensive, insurers and contractors abandoned it, and the McMahons sued. McMahon will receive \$5.05 million from American Equity Insurance Co. and the other insurers; \$750,000 from Benchmark; \$500,000 from Alliance Environmental Group; \$250,000 from Southern California Insurance Adjusters and Robert and Ken Koster; \$250,000 from Pacific Health and Safety Consulting Inc.; \$3,000 from California Power Vac; Controlled Environmental Solutions will pay \$230,000; and Monteleone Interiors Inc. added \$200,000 to the total settlement.

Other Notable Mold Cases

Melinda Ballard, had mold problems in her home. She then established the Austin, Texas-based "Policyholders of America" last year "to empower policyholders" in their dealings with insurers as her mold-suit lingered in the court system. In a statement given to the Los Angeles Times, Ms. Ballard said that although McMahon's settlement is the largest to date, she is not sure that \$7 million will cover all his losses and litigation expenses. Nor does it give her

hope for more out-of-court settlements. Ms. Ballard believes that McMahon spent several hundreds of thousands of dollars on expert witnesses alone.

Darren and Marcie Mazza and their 8-year-old son won a \$2.7 million verdict in November 2001 against the owners and managers of their California apartment complex for personal injuries suffered from mold. A Texas jury awarded Melinda Ballard and her family a record \$32.1 million in June 2002 for mold-related damage to their home. This award was reduced to \$4 million and the case is now on appeal to the Texas Supreme Court. Erin Brockovich, the paralegal whose crusade against toxic polluters was made into a movie, has also sued in a California court, alleging mold damage. She has settled with the builder and is still pursuing claims against the seller. While there have been other settlements of mold cases, it doesn't appear that the flood of litigation predicted by the insurance industry has occurred.

Falling Doors Kill Boy At Texas Home Depot

We discussed in previous issues how some of the warehouse-type stores have lots of hazards located on their premises. Home Depot Inc. is the world's largest home improvement retailer and the second largest retailer in the United States. It has expanded from its original 761 to more than 1,500 stores today. The retailer has had a good number of injuries and deaths on its premises. Home Depot could now face criminal charges from the May 2nd death of a 6-year-old boy who was crushed by falling doors in the company's Pharr, Texas, store. According to the chief felony supervisor in the Hidalgo County District Attorney's Office, Home Depot has a lot of explaining to do about that child's death. The child was in the Home Depot store with his father and step-brother one evening when he was struck by large patio doors that fell

from a pallet on the floor of one of the aisles. The child was pronounced dead on arrival at a nearby hospital. This child was at least the fourth customer killed in Home Depot stores since 1999, according to our information. In February, Atlanta Business Chronicle published a series of stories documenting the deaths of three customers and five workers at Home Depot stores since 1999. It is unfortunate that no government agency collects information on customers killed in retail stores and Home Depot won't release information about customer deaths in its stores. Company records obtained in a lawsuit against the company following the 1999 death of a 79-year-old woman who was hit in the head by falling lumber while shopping in a California store revealed that Home Depot received 185 reports of injuries to customers each week in 1998. Unfortunately, no more recent statistics are available. Home Depot says it is conducting its own investigation of the most recent death.

Texas law allows the state to charge corporations with criminal offenses if the crime is committed with the knowledge of the company's top management. A company can be charged with criminal negligence if its management allows unsafe conditions to exist that result in an injury. "The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint," the law states. The law allows the state to file criminal charges against Home Depot and the employee who left the pallet of doors unattended. However, most cases are resolved with the company paying a substantial fine, he said. We understand that Home Depot has ordered a comprehensive review of company safety procedures in the window and door departments of all its stores. This came only days after the death of the child in Texas. The

company also issued a new rule designed to prevent the conditions that caused the death. However, Home Depot denies that the company changed any of its safety procedures because of the accident.

On the night of the incident, an employee had moved a pallet containing several patio doors, each weighing more than 100 pounds, from a shelf to the floor. He removed the packaging, holding the doors upright on the pallet to get one of the doors for a customer. The pallet was left unattended without anybody securing the remaining doors. Those doors fell the child. The company's new policy requires employees to remove all the doors and windows from pallets if the packaging, which usually consists of shrink-wrap or bands that are installed by the manufacturer, is removed. The new policy also requires stores to post the instructions on all four sides of packages affected by the change. The company is paying the cost for local stores to implement the new procedures and ensure compliance with existing safety standards instead of charging such expenses to each company's operating budget, which is the company's customary procedure. According to the store manager, he was surprised that the changes came about so soon after the death. The manager told a local newspaper, "It would be criminal not to review our policies. It's sad that somebody had to die for things to change."

Wal-Mart's Litigation Strategy

Over the years, we have had a considerable number of cases against Wal-Mart. Mike Crow and Julie Beasley have handled most of these cases for the firm. The giant retailer made a big to-do over its so-called new litigation strategy a few months ago. In fact, the company announced the change in litigation policy to the public. However, we have seen little change in the way this corporation conducts its litigation practices. For years, Wal-Mart was

noted for its scorched-earth litigation strategy and its frequent abuses of the discovery process. Over the past decade, Wal-Mart developed a very bad reputation with judges and lawyers as the company was repeatedly sanctioned for discovery abuse. While we have had fewer cases against Wal-Mart over the past few months, other lawyers who have dealt with the company tell us that they are experiencing the same difficulties with the company as in the past. Hopefully, the giant retailer has really turned over a new "litigation leaf" and we just haven't experienced it yet.

XIII. WORKPLACE HAZARDS

Justice Department investigating McWane Inc.

We have discussed the safety problems at Birmingham-based McWane Inc. in prior issues. Now, the U.S. Justice Department is investigating the environmental and safety record of the company. McWane operates eleven foundries across the country and has been the subject of media reports that described safety and environmental lapses. The New York Times reported in a series of articles that McWane had more safety violations than its competitors and endangered the lives of workers with safety policies that resulted in the deaths of two employees in 2000. The company employs about 300 people at McWane Cast Iron Pipe in Birmingham. It also committed environmental violations including illegally discharging water contaminated at its New Jersey plant into the Delaware River in 1999. McWane's three Alabama plants have been fined \$535,000 in the past three years for environmental violations. Employers have a legal and moral obligation to provide a safe place for their workers.

The government has the same obligation to make sure that this happens. It is unfortunate that some in Corporate America don't meet their obligation. When this occurs, working men and women are put at risk for serious injury and even death.

Union Carbide To Pay \$1.2 Million In Asbestos Case

Union Carbide Corp. must pay a Florida man \$1.2 million because he got cancer working with a drywall compound that contained asbestos fibers that the company made in the 1970s. The jury, after three days of deliberations, found that the company was negligent in not warning construction workers about its joint compound. The company will likely appeal the verdict. Union Carbide told the Palm Beach Post that the company sympathizes with the Kavanaughs, and "it's clear to us that the verdict was driven by the sympathy for Mr. Kavanaugh's illness." That is a typical corporate response. Hundreds of thousands of construction workers were exposed to the wall joint compound before it was banned in 1977. Kavanaugh, a West Palm Beach resident who worked as a carpenter, said he developed incurable mesothelioma, a cancer of the thin linings of major organs caused by asbestos exposure, from inhaling the asbestos fiber while on the job. The disease was diagnosed two years ago. In December, a Broward County drywall worker received a \$1.8 million verdict against Union Carbide. Michigan-based Dow Chemical Co. purchased Union Carbide two years ago.

XIV. TRANSPORTATION

Should Automobile "Black Boxes" Be Regulated?

Many people have heard of the "black boxes" that are found in aircraft

and used by investigators to help piece together what happened in the final moments of an airplane crash. However, many people are unaware that many automobiles now contain "black boxes" that also provide certain information about the vehicle in the moments leading up to a car crash. These automobile "black boxes" are not required under any government regulations. The automobile industry has been placing "black boxes" in automobiles for a number of years in selected models. These data-recording devices were first developed by automakers to assist in airbag deployments in frontal collisions. As the years have passed, the data-recording ability of these airbag enablers has increased. The information stored in vehicle "black boxes" has been used to assist researchers in studying crashes as well as providing vehicle crash information in both civil and criminal litigation.

The most advanced "black boxes" used in automobiles today can record information, such as seat belt use, vehicle speed prior to accident, brake usage, and, in some cases, steering inputs. Unfortunately, many of the automobile manufacturers have been very reluctant to release information about what information is recorded by these onboard computers and how to retrieve the data. Only GM has provided detailed information about reading and retrieving the information stored in its onboard computer "black boxes." Information from automobile "black boxes" has been showing up in courtrooms over the last several years. Prosecutors and defense attorneys alike have used the information in criminal prosecutions to show driver inputs and speeds during criminal prosecutions. Civil attorneys have also found great use for the information in prosecuting product liability cases. On several occasions, our firm has been able to prove that serious product defects existed in automobiles that were involved in low-speed foreseeable crashes, even when defense experts

claimed the accident involved excessive speeds.

The National Highway Traffic Safety Administration, the federal agency responsible for regulating automakers, has been reviewing "black box" technology for some time and collecting public comments to determine whether these devices should be regulated. Since this computer technology can record sensitive information about vehicle use, the question arises whether the devices should be mandatory and, if so, should they be regulated. In certain civil litigation, auto manufacturers have been made aware of the accident and obtained downloaded computer information from the "black boxes" without the owner's consent or knowledge. Some Courts have addressed the issue and determined that the content of the data recorders is owned by the vehicle owner, and therefore third parties have no right to the information without the consent of the owners.

Since "black boxes" are often necessary to activate airbags in collisions, it appears that the technology is a necessary element of safe car design. If these devices are going to be present in automobiles and collect data regarding the vehicle use, NHTSA should provide some guidance to manufacturers as to what information the devices should record and how the information can be retrieved by consumers. Additionally, courts should make it clear that the data on these recorders is the property of the vehicle owner, and manufacturers should not be allowed to unilaterally collect the data without the permission of the owner. Although this technology is not always 100% accurate, it is very helpful in helping in determining what happened in crashes, and manufacturers should be encouraged to continue the development of "black boxes."

NHTSA Releases Preliminary Estimates Of 2002 Highway Fatalities

The National Highway Traffic Safety Administration has released preliminary estimates concerning traffic deaths during 2002. Alcohol-related highway fatalities increased again in 2002. With overall highway fatalities also up slightly from 2001, the statistics underscore the need for better state laws that address the causes of the problem and stricter enforcement. In 2002, an estimated 42,850 people died on the nation's highways, up from 42,116 in 2001. The fatality rate per 100 million vehicle miles traveled (VMT) remained unchanged at 1.51, according to preliminary estimates. This represented the highest number of fatalities since 1990. Fatalities in rollover crashes involving sport utility vehicles and pickup trucks accounted for 53% of the increase in traffic deaths. In 2002, 10,626 people died in rollover crashes, up 4.9% from 10,130 in 2001.

The preliminary report also notes some significant progress. NHTSA said that deaths of children seven and under dropped to historic low levels. In 2002, 980 children seven and under were killed, down from 1,053 in 2001. Pedestrian deaths also declined to 4,776, a 2.2% drop from 2001. The number of persons injured in crashes also declined from an estimated 3,033,000 in 2001 to 2,914,000 in 2002, almost a 4% drop. NHTSA earlier estimated that highway crashes cost society \$230.6 billion a year, about \$820 per person. The preliminary 2002 statistics also continue to show the increased risk of death and injury when drivers and passengers do not wear safety belts: 59% of those killed in crashes last year were not belted. NHTSA's Fatality Analysis Reporting System (FARS) also shows that, in 2002: Fatalities from large truck crashes dropped from 5,082 in 2001 to 4,902 in 2002, a 3.5% decline.

Motorcycle fatalities increased for

the fifth year in a row following years of steady improvement. A total of 3,276 riders died, up 3% from 2001. Deaths among riders fifty and over increased 24%. Of the total, alcohol-related deaths in 2002 accounted for 42% — 17,970 deaths — up from 41% (17,448) in 2001. Deaths in low alcohol crashes (.01-.07 blood alcohol content) dropped 7.2% to 2,335 deaths. Deaths of persons in high alcohol crashes (.08 BAC and above) rose 4.7%. Alcohol-related fatalities have been rising steadily since 1999. Young drivers (16-20) were involved in 7,722 fatal crashes in 2002, up slightly from 7,598 in 2001. The number of occupant fatalities for children ages eight to fifteen increased by nearly 9%. In 2002, vehicle miles traveled increased slightly to 2.83 trillion, up from 2.78 trillion in 2001, according to the DOT's Federal Highway Administration. Summaries of the preliminary report are available on the NHTSA Website at: www.nhtsa.dot.gov.

\$7.5 Million Jury Verdict In Turnpike Crash

Contractors that do work on busy highways have a special obligation to make the construction zones safe for the traveling public. A federal court jury has awarded \$7.5 million to an Ohio man who was permanently disabled when his car hit a dump truck stopped in a construction zone on the Pennsylvania Turnpike in 1999. The jury awarded the sum to Anthony Ravotti, 37, and his mother and guardian, Janet Ravotti, following a two-week trial. New Enterprise Stone & Lime Co., which had set up the construction zone, and contractor Bilger Concrete and truck driver Richard L. Sunderland were at fault in creating the dangerous condition. New Enterprise was found to be at fault because it ignored turnpike commission rules in establishing its own traffic pattern on the highway. The jury decided that the plaintiff was 25% responsible for the

crash because he was driving too fast. As a result, the award will be reduced by that percentage to about \$5.6 million. New Enterprise will be responsible for paying interest on the award, which will bring the total back up very close to the verdict amount. The plaintiff, who suffered severe brain damage in the crash, was driving his Pontiac Grand Prix from Cleveland to Maryland at about 12:30 a.m. when he entered a construction zone. New Enterprise had set up the construction zone about an hour before the incident. Instead of shutting down one eastbound lane of the turnpike, the company kept both lanes open, but shifted them.

The truck driver, who had just started on the job that night hauling stone millings from the site, got lost and stopped his dump truck on what he thought was the berm while he called for directions on his radio. As the plaintiff approached at about 50 mph in the 40 mph zone, he saw the dump truck stopped in his lane. He tried to veer into the adjacent lane, but clipped the tire of an 18-wheeler, spun around and struck the parked truck. New Enterprise took it upon itself to set up the double-lane traffic zone in violation of turnpike procedure. The plaintiff remained in the intensive care unit for a month, is now dependent on others for care, and has a life expectancy of about 15 years. We handled a similar case in Alabama a few years ago that resulted in the death of a fine young lady who was on the way to her first job at the local church. The facts in the two cases were almost identical.

\$10.5 Million Verdict In West Virginia Airplane Crash

A jury has awarded \$10.5 million to the family of a pilot killed during a 1996 crash in West Virginia. The jet took off from the airport before crashing near an apartment complex and bursting into flames. The airport was found 90% liable for the accident for having a ditch near the runway. The jet

was blown into the ditch during takeoff, resulting in damage to the plane's landing gear, brakes, and wing flaps. The crash killed the two pilots, a flight attendant and one passenger. The families of the other three victims had already won verdicts or reached settlements related to the crash.

Government Settles With Families Of Plane Crash Victims

The federal government has agreed to pay a total of \$4.75 million to the families of three people killed in a March 2000 plane crash at the Sarasota-Bradenton International Airport. The three families had sued the Federal Aviation Administration in a federal district court in Tampa, Florida. They blamed air traffic controllers for a runway accident that killed their loved ones and a fourth flier. On the date of the incident, air traffic controllers told a pilot to taxi his airplane down the runway just after they cleared another pilot for takeoff on the same runway. The two Cessna planes collided and exploded in flames. Both the pilot and the passenger in the first plane were killed. A flight instructor was riding in the second aircraft.

None of the four lawsuits filed on behalf of the victims' families ever went to trial. One suit was settled for \$1.4 million last December. The three remaining families reached separate settlements in April of this year. All were awarded between \$1.35 million and \$2 million. Awards in such cases are designed to address the "mental pain and anguish of the survivors." A nonbinding arbitration process, much like mediation, was involved and resulted in the last three settlements. The three-judge arbitration panel concluded that the pilots were not responsible in any way for the crash. The judges placed 70% of the blame for the crash on the FAA's air traffic controllers, a ruling consistent with the findings of the National Transportation Safety Board. The board also faulted the

pilot of the first plane for failing to check the runway before moving onto it. The arbitration panel awarded the flight instructor's family \$2.75 million, but because the arbitration was non-binding, the federal lawyers asked for a trial. The two sides then entered into further settlement negotiations and decided on an award of \$2 million. The family had already received \$675,000 from the insurance companies that covered the pilot of the first aircraft.

A Charlotte Crash That Killed 21 People

In January, US Airways Express Flight 5481 crashed on takeoff from Charlotte-Douglas International Airport in Charlotte, North Carolina. The plane took off with its nose pointed too far up, according to transcripts of the cockpit voice recorder released on May 20th. The pilot apparently pushed the control column that moves the tail flap, which was supposed to push the nose down to the correct angle. Unfortunately, the tail flap, or elevator, did not respond properly, according to the National Transportation Safety Board's investigator. The pilot then radioed the control tower and reported, "We have an emergency." Warning horns then sounded. The plane plunged to earth 37 seconds into the flight from Charlotte, North Carolina, to Greer, South Carolina. All 21 people aboard the 19-seat Beech 1900 turboprop were killed. Investigators have been looking at a mechanical problem and the plane's weight as potential causes of the crash. The plane was estimated to be within 100 pounds of its maximum takeoff weight. In a preliminary report, the NTSB said turnbuckles that control tension on elevator control cables were set improperly, leaving one cable nearly 2 inches shorter than the other. If a cable is too slack, the pilot does not have full control of the elevator. The plane's tail assembly was adjusted two days before the crash. The aircraft's data recorder showed an unusual up-and-

down motion of the elevator control on all nine flights it took following the maintenance work. The NTSB hearings on the crash focused in part on oversight of airplane maintenance performed by outside contractors.

XV. MASS TORTS UPDATE

Information On Serzone®

Our Mass Torts Section continues to investigate hundreds of claims involving liver injury to persons resulting from ingesting the prescription antidepressant Serzone® (nefazodone hydrochloride). Roger Smith is the lead lawyer assigned to these cases and he reports that medical records are being collected on our clients. Serzone®, manufactured by Bristol-Myers Squibb, has been marketed in the United States since 1995. On March 6, 2003, Public Citizen, dedicated to protecting consumer interests, petitioned the FDA to ban Serzone® in the United States. According to the Petition filed with the FDA, "Nefazodone (Serzone®) appears to be one of the most dangerous antidepressants marketed: nefazodone-induced liver toxicity cannot be predicted in any individual, there is no way to safely monitor for it, nor is there any way to guarantee that once diagnosed, patients' lives can be saved."

In January 2003, Bristol-Myers Squibb withdrew Serzone® from the Swedish market after the Swedish Medical Products Agency announced that liver enzyme monitoring would be required in product labeling. After learning that other European countries were considering similar monitoring and labeling changes, Bristol-Myers Squibb withdrew Serzone® from the entire European market that same month. Concerns over liver toxicity and Serzone®, however, are not new. Reports of jaundice and drug-induced

hepatitis surfaced in 1998. Three cases of liver failure in early 1999 resulted in two liver transplants and one death. Additionally, a group of independent Spanish researchers analyzing adverse event data in Spain found that the incidence of hepatic injury in Serzone® users was 7 to 22 times more likely than in users of other antidepressants. In January 2001, Bristol-Myers Squibb advised Canadian physicians of "very rare reports of severe liver injury temporarily associated with the use of nefazodone." At that time, the Canadian adverse event database contained 38 cases of liver injury associated with nefazodone, 31 of which were listed as severe. Three of those cases involved hepatic failure, one case involved hepatic degeneration, one case involved necrosis, and one case involved fulminant hepatitis.

Nearly one year later, in January 2002, Bristol-Myers Squibb was required to include a "black box warning" in its U.S. product labeling due to increasing numbers of serious adverse events related to liver toxicity. Unfortunately, although the black box warning suggests the need to monitor patients' liver enzymes while on Serzone®, other areas of the warning label downplay the benefits of such monitoring. In fact, the label provides that there is no evidence to suggest that liver enzyme testing can prevent serious injury. According to Dr. Sidney Wolfe of Public Citizen, Serzone® should be removed from the market immediately. At this time, Serzone® continues to be marketed by Bristol-Myers Squibb in the United States. If you or someone you know is taking Serzone®, I recommend a contact with your personal doctor to assess your own situation.

The Insider Lands A Job

In the 1990's, Daniel Troy became a well-known lawyer. He vigorously defended pharmaceutical drug manufacturers and major tobacco companies

against the Food and Drug Administration. You should not be surprised to learn that a decade later, Troy was appointed by the Bush Administration to a key position with the FDA. He is now the FDA's chief legal counsel. This is a position, which over the past ten years has been held by a civil servant, not a presidential appointee. For years, the lawyer sued the FDA, fighting the FDA on regulating tobacco and championing causes such as allowing pharmaceutical companies to promote "off-label" uses of their products. Now, thanks to the Rove-led Bush Administration, Daniel Troy is in a position of power and fully armed to carry out the objectives that he once pursued from the "outside." He is now a powerful "insider" and perhaps can better take care of his old clients in his current position.

One significant change already made by Troy is a mandate that all FDA warning letters be reviewed by his office prior to issuance by the FDA. These warning letters are used to caution companies for failure to give sufficient warnings about dangerous side effects and the use of false or misleading advertisements. According to Representative Henry Waxman of California, there has been a significant decrease in the number of warning letters issued by the FDA in the past year. Waxman stated that the decline "may be a welcome development for the drug industry, but it poses serious dangers to public health." In a letter to Health and Human Services Secretary Tommy Thompson, Waxman writes, "It appears that the FDA is now granting major drug manufacturers virtually a free pass." Troy states that he has no specific agenda. "I never took a science class, I'm just a lawyer," he adds. The fact that he is "just a lawyer" isn't the problem. However, it is the type lawyer that he "just happened to be," that creates the problem.

The "Troy agenda" seemed evident in July of 2002, when Pfizer Inc., was sued by a plaintiff alleging that Zoloft, an antidepressant, caused her husband to

commit suicide. Troy, who "coincidentally" worked for Pfizer as an attorney up until his appointment with the FDA, was asked by their legal team to file a brief supporting Pfizer. Troy waited until just after his one-year mandatory recusal on matters involving former clients had expired and agreed to assist Pfizer. Troy stated that as long as he had waited the mandatory one-year after performing legal work for Pfizer, he saw no problem with filing a supporting brief that assisted Pfizer. He declined to discuss the type of work performed for Pfizer, or disclose the amount he was paid. Maybe a country lawyer like me doesn't understand conflicts of interest, but when an FDA lawyer works for a drug company, it surely doesn't meet the "smell test."

Bayer® Settles Baycol Case Slated For Trial

A case scheduled to go to trial in Minnesota this month was settled by Bayer® AG, the German chemicals and drugs group. Reuters news network reported that the case had been settled for several weeks. The amount paid is confidential. The settlement means the next case to be heard will be later this month in Texas. The Minneapolis settlement was included in Bayer's last update figure of 785 cases settled for \$240 million, as reported by Bayer® earlier last month. Bayer® recalled Baycol, linked with more than 100 deaths, in August 2001. The company faces some 8,800 cases over Baycol. I have to commend Bayer® - unlike other drug companies - for their efforts to settle the claims pending against the company.

90,000 Folks Opt Out Of Wyeth Settlement

About 90,000 people who took Wyeth weight-loss drugs that were later recalled have opted out of the company's class-action settlement. In a document filed with the Securities and Exchange Commission, Wyeth said

those who opted out by the May 3rd deadline included about 20,000 who said they suffered serious heart-valve damage from taking its diet drugs. Those patients will most likely sue the company. Wyeth says it will vigorously defend cases filed by the persons who saw fit to opt-out. Wyeth, formerly known as American Home Products, made Redux and Pondimin, chemicals that were the fenfluramine half of the once immensely popular fen-phen combination. The drug was recalled in September 1997, due to evidence it caused heart-valve damage. Some users developed a lung condition called primary pulmonary hypertension. Phentermine, the other drug in the fen-phen combination, was not implicated in the problems. Wyeth entered into a class action settlement that included about 475,000 people when it became final in October 1999. Wyeth set up a trust to review and administer claims and settlements. Wyeth reserved a total of \$14.6 billion to cover the litigation costs. According to Wyeth's chief financial officer, the company doesn't know whether that amount will be adequate to cover all claims.

Football Player's Widow Reaches Settlement In Wrongful Death Case

Korey Stringer was a highly successful professional football player with the Minnesota Vikings. He died during training camp last year. His widow has reached a settlement with the Vikings' training camp physician and his clinic, the sole remaining defendants in the wrongful death lawsuit filed against the team. Details of the settlement against Dr. David Knowles and the Mankato Clinic were not disclosed, since the case was settled on a confidential basis. The trial judge had earlier dismissed all claims by Mrs. Stringer against the Vikings, but allowed her \$100 million lawsuit to go forward against Dr. Knowles and the clinic where the doctor worked.

Kelci Stringer contended her 27-year-old husband did not receive proper

medical care when he collapsed during training camp on July 31, 2001. Corey Stringer, a 335-pound Pro Bowl lineman, died early the next morning. The evidence was insufficient to determine that the conduct of any of the Vikings defendants or the two regular team physicians constituted gross negligence - the legal standard the plaintiff had to meet to survive summary judgment and go on to trial. The case against Dr. Knowles and the Mankato Clinic had been scheduled to go to trial on June 9th. The remaining claims had included gross negligence and medical malpractice.

XVI. INSURANCE AND FINANCE UPDATE

Coastal Is Approved To Sell Malpractice Policies

The Alabama Department of Insurance has granted permission to a new medical malpractice insurer to begin selling policies in Alabama. Hopefully, this will help a number of Alabama hospitals that have been left without insurance. The action comes less than four months after the Virginia-based medical malpractice insurer - Reciprocal of America - left policyholders, including 46 hospitals and an estimated 800 doctors in Alabama, at tremendous risk. The new Montgomery-based insurer, Coastal Insurance Risk Retention Group Inc., is owned by several of the affected Alabama hospitals. The new company will file for two different types of business, the hospital business and the doctors' business. Coastal's hospital policies and rates were approved on May 6th. Physician policies and rates were also approved a few days later. Coastal should begin issuing policies very soon. State approval in the form of a certificate of authority was granted on an expedited basis, in significantly less than the usual amount of time. Johnny Johnson, the

Insurance Department's Deputy Commissioner for Property and Casualty, heads the division under which Coastal is regulated. Johnny, a dedicated public servant, is one of the most experienced employees in the Insurance Department and is extremely knowledgeable. That prompt action was prompted by Reciprocal's severe problems - the company, which is roughly \$210 million in debt, faces its first liquidation hearing June 19th. The web that was spun by this company led to the Virginia-based firm's demise. Unfortunately, the policyholders were left in a very bad situation.

The new insurer will begin operations with a capitalization of nearly \$4.8 million after selling 500,000 shares of Class A common stock with a par value of \$1 and 188 shares of Class B common stock with a par value of 1 cent each. It will be hospital-owned at the outset. The Insurance Department granted Coastal permission to sell stock in March. The owner hospitals have contributed more than \$4.26 million in gross paid-in and contributed surplus. These four hospitals own 96% of the stock: DCH Health System of Tuscaloosa holds 43.5%; Birmingham-based Eastern Health System Inc. owns 36.1%; Springhill Hospitals Inc. of Mobile holds 9.6%; and Russell Medical Center of Alexander City owns 6.9%. Coastal is targeting five market niches: Alabama hospitals previously insured by Reciprocal of America (ROA); Alabama physicians previously covered by a Reciprocal subsidiary, Tennessee-based Doctors Insurance Reciprocal (DIR), which is also in receivership; other doctors licensed in Alabama; members of the Alabama Hospital Association; and other medical coverage related to insured hospitals and doctors. In 2002, Reciprocal was Alabama's second-largest writer of medical malpractice policies. Last year, Birmingham-based ProAssurance Corp. subsidiary, Medical Associates, held 68% of the Alabama market. Reciprocal had a 13.5% share, and Georgia-based MAG

Mutual Insurance Co. had 5.3% of the market. Several other companies, including one - St. Paul Cos. Inc. - that no longer sells medical liability coverage - and another - Oregon-based First Actual American Insurance Co. - which the Alabama Department of Insurance late last month ordered to stop selling policies here, had less than 4% of the market.

I suspect all of the affected Alabama hospitals will seek coverage through Coastal en masse. Coastal will make direct contacts with the 800 or so physicians affected by Reciprocal's and DIR's problems. The new insurer also is set up as a risk-retention group, which will allow the company to write policies in other states. This will be a distinct advantage for the several Alabama hospitals that have clinics and other provider facilities outside the state. A risk-retention group can sell policies in other states with nothing more than notification to those states of its intentions. If you want more information on what led to the problems relating to ROA and DIR, take a look at the April and May issues of this report. What happened with these companies is inexcusable. We are pursuing the claims for the doctors, hospitals, and lawyers who were badly mistreated by the officers responsible to run these companies. Hopefully, we will be able to obtain a substantial recovery in these cases to not only fully compensate all victims who have suffered substantial losses, but also to punish some wrongdoers who intentionally violated the law with knowledge that innocent persons who trusted them would be badly hurt or damaged.

What Happened To The Homeowners-Insurance Crisis?

Just a few months ago, insurers were jacking up rates in the homeowner insurance market and dumping policyholders at an unprecedented pace. Now insurers have not only cut their

losses, but many companies are now reporting tremendous profits. The upheaval of the past year or so – when some people saw their rates double or triple, if they could get insurance at all – appears to be ending. While rates surely haven't come down, they are increasing at a much slower pace. For example, rates in Texas soared 57% last year. So far this year, rates in the Lone Star State are up only 1.5%. Nationwide, the Consumer Federation of America projects an average rate increase this year of 5%, down from last year's 17%. According to an Associated Press report, what happens to your premium now depends largely on who your insurer is. According to the report, some companies, including Allstate Corp., Safeco Corp., and Travelers Property Casualty Corp., appear to have fixed their problems. On the other hand, some insurers, including industry giant State Farm Mutual Automobile Insurance Co., appear to be primed to pass along more rate increases.

Homeowners who shop around will be able to save hundreds of dollars a year. By contrast, last year, the best a homeowner could generally do was hang on and hope the rates didn't go up too much. The current market is a mixed bag. The rates offered vary greatly. As a result, getting the best rate can take some work. If your insurer hits you with a big rate increase, make sure the company is using the right information. For example, insurers increasingly are using credit information to determine rates. This is clearly wrong and should be challenged. What does your credit rate have to do with your insurance premiums? If your current carrier won't give you a break, find a better price from a reputable carrier and take it. If you can't get a better rate right now, try again in six months. The homeowners market is changing rapidly. For this reason, it is possible that rates will become more attractive later in the year. I am convinced that insurance companies should have to justify all rate increases.

For years, insurers were willing to

break even or lose a little money on homeowners in order to sell more automobile insurance, which is a highly lucrative market – but that has changed. Even after increasing their rates, insurance carriers say they lost money last year. When the stock market took a dive and interest rates plunged, insurers could no longer rely on investment income to help fill the hole created by underwriting losses. Instead, the companies raised rates and dumped some of their policyholders. It now appears that the insurance industry's fear of a wave of large mold payouts appears to have been greatly overblown by the industry. There simply hasn't been a tremendous number of large mold coverage payouts by the insurance industry.

Consumer advocates say the insurers acted too quickly, and drastically, in raising rates to fix their home-insurance businesses. "It was all hype," says Robert Hunter, Director of Insurance for the Consumer Federation of America. The Texas Insurance Department recently completed a study that said some insurers should now be able to reduce rates in that state as much as 25%. According to Texas' Insurance Commissioner, some companies are right where they need to be, while others' rates are excessive. The best way to counter the so-called insurance crisis is for the states to do a better job of regulation.

AIG Criticizes Malpractice Suits And Then Cashes In On Insurance Sales

American International Group, Inc., the giant New York insurer, has made a financial killing selling malpractice insurance policies. At the same time, the insurer has been "crying wolf" at every opportunity, helping to "sell" tort reform to the politicians and the public. The self-inflicted crisis in medical-malpractice insurance appears not to have slowed AIG down a bit. Insurance executives have blamed their largely manufactured crisis on

"rampant" class-action lawsuits and "excessive" jury awards. However, there has been little proof to back up these claims. The proof generally places the blame squarely on the insurance industry. Interestingly, AIG has worked with the U.S. Chamber of Commerce on a state-by-state grading of "tort" systems – or damages awarded by juries – with the average grade a C-minus. This was all a part of the trumped-up crisis and the effort to pass severe tort reform legislation. AIG, a few years ago a minor player in the medical-liability arena, has grown in the past year to become one of the biggest writers of medical-malpractice coverage in the country.

AIG and a few other insurers that are boosting their medical-liability businesses have consistently overstated the severity of the problem. By doing this, with no independent scrutiny, the companies can "justify" passing along big rate increases. "It's classic AIG behavior," says Robert Hunter, director of insurance for the Consumer Federation of America. "It bad-mouths the system and says how awful everything is. At the same time, it sells massive numbers of policies. They win either way. If there's no tort reform, AIG still pulls in big premiums. If there is tort reform, AIG gains market share in a line that's going to be more profitable." State regulators and Legislators around the country need to look past the hype and find out the real truth about the insurance crisis. I believe a good place to start would be with the tremendous profits being made by AIG in what is supposed to be a down market.

Jefferson Pilot Settles Vanishing Premium Class Action

Jefferson Pilot Life Insurance Company has agreed to settle a class action lawsuit filed against it by its own policyholders who have alleged that the company engaged in fraudulent sales practices concerning policies

being sold on a representation of “vanishing premium” or “disappearing premium” sales presentations. There are numerous other issues alleging a variety of corporate conduct regarding the dividends that were declared by the company during the years 1982 through 2000. The class action concerns four types of policies, current assumption life, excess interest whole life, whole life, and participating limited pay life. Not all policies issued by the company during the time frame of 1982 through 2002 are included in this class action. Specifically, universal life policies are excluded from the class. The class, pending in the General Court of Justice, Superior Court Division, in Guilford County, North Carolina, offers what some would consider to be minimal benefits to the class members, some may find them so minimal that they are unacceptable. In that case, policyholders are offered the opportunity to “exclude” themselves from the class action, or what is commonly referred to as “opting out.” If you choose to opt out, you must do so no later than June 7, 2003. There are very specific instructions on how to opt out of this class action contained in the class action notice that was received by the policyholders who are potential members of the class. There are some 350,000 documents that were produced in this class action, documents that can be reviewed by the policyholders, or their attorneys if they choose to do so before the exclusion date of June 7, 2003. Our law firm has already had the opportunity to carefully review some of these documents. We are advising a number of our clients to exclude themselves from the class action lawsuit. Anyone who is a member of this class should give considerable thought to their right of exclusion before the June 7, 2003 opt out deadline. After that time, it will be too late to get out of the class.

Insurance companies all over this country have faced a similar problem that Jefferson Pilot Insurance Company

now faces, selling insurance based on fraudulent sales materials and sales practices, leading their policyholders to believe that they will only have to pay premiums for a fixed amount of time. With a weakened economy and low interest rates, these policies continue to perform poorly and have policyholders in a virtual rage over the insurance industry’s empty promises when these policies were sold. While companies appear to be “stepping up to the plate” to settle these lawsuits, they continue to offer inadequate benefits to the policyholders, causing policyholders to exclude themselves from these types of class actions. Policyholders have a constitutional right to address their grievances against the insurance company in their own state, in their own county courthouse, with their own lawyer. By excluding themselves from the class actions, they will have this opportunity. Until insurance companies and class action lawyers offer benefits that are meaningful to the policyholders, policyholders excluding themselves from these class actions will continue to be a problem for them in the future.

A Satisfied Client Reports In

We received an interesting thank you letter from one of our clients involved in the American General settlement. This client, who has asked to remain anonymous, was an African-American female who had purchased life insurance policies from a company, which had racially discriminated against her by charging her a higher premium for the same type of insurance than that which a white female would have been charged. This client had no knowledge whatsoever that she was being overcharged for her insurance policy based solely on the color of her skin. In her letter to us, a letter just to say thank you, she states, “May God bless you all this year and all the years following. God works through men and women and surely He’s working through you all to help others.” It is letters like this that rejuvenate the spirits of any trial lawyer, and especially those at this firm.

We are blessed to have the ability to help folks who need help and who come to us.

Insurance Companies Seek Immunity From Class Actions

Over the past several years, the powerful insurance industry has introduced legislation on a regular basis that is designed to take away the rights of ordinary consumers. The last bill is as bad as they come. Clearly, the insurance industry had further erosion of policyholder rights when they introduced these bills. The insurance industry introduced a bill in the State Senate that actually attempted to give insurance companies immunity from class action lawsuits that are filed against it. The bill would require a policyholder to first go to the Insurance Department to seek administrative remedies before being allowed to file suit. An uninformed consumer might not recognize the repressive nature of such a bill at first, but when consumers learn that the Insurance Department has no more “fining authority” than a parking meter officer, they are shocked.

Imagine a company that has overcharged policyholders for their premiums for a hidden charge that was never disclosed in a policy. The company then collects millions of dollars in hidden fees that it was not entitled to collect. An ordinary policyholder discovers this, files a class action lawsuit to protect all other policyholders who were similarly situated and asks the court to award damages for those amounts of illegally collected hidden fees from the insurance company. Under this bill introduced by the insurance industry, the insurer would be charged no more than \$5,000 for this violation. This bill would then prevent a lawsuit from going forward to address the company’s conduct and determine how it should be punished. Under this scenario, no one is adequately compensated, and the insurance company gets away with theft from its own policyholders.

This bill is yet another example of how the insurance industry continues to take advantage of its own policyholders. The insurance industry regularly lobbies against the State Insurance Departments in Alabama and other states. Their goal is to keep the departments from being adequately funded year in and year out. As a result, the companies cannot be properly regulated. They have been very successful in keeping the Alabama Insurance Department's fining authority at a very low number. Then, they come to a Legislature and try to pass bills like that described above. It is no secret that the insurance industry has played a leading role in villainizing consumers who bring lawsuits against them, as well as the lawyers who represent them. In fact, the insurance industry may be as responsible as any other group for the tort reform that has been passed, all of which limits the rights of ordinary consumers in their access to the court-houses. We have attempted to pass on information like this so that consumers can be informed. The type of abuse practiced by the insurance industry should be addressed in Congress and in State Houses throughout this country. You can rest assured that if an insurance industry is behind a bill in a Legislature or in Congress, it is not good for consumers!

XVII. HEALTHCARE ISSUES

Court Decision Boosts State Plans To Pressure Drug Companies To Lower Prices

Several states are trying to force drug companies to lower prices on prescription drugs for the elderly, the working poor, and others who have trouble paying for their medicine. More than 20 states have considered programs that would do what Maine is now free

to try - that is to use the power of the Medicaid program to leverage bulk discounts from drug makers. This comes about because of a recent U.S. Supreme Court ruling. Many of the people who need drug coverage are older Americans who rely on Medicare for health coverage. While promises are repeatedly made to add drug coverage to Medicare, Congress still has not acted. Many state programs are geared specifically to help low-income seniors. "We have been waiting a long time for Congress," Sarah Lock, an attorney for AARP, the largest lobby group for older Americans, told the Associated Press. "States can't afford to take a pass and wait for Congress yet again," she added.

Drug prices have been rising around the country by double-digit percentages annually. Poor people generally get prescription drugs through Medicaid. In Alabama, persons on Medicaid pay from \$.50 to a maximum of \$3.00 co-pay on all drugs. Programs like Maine's use the Medicaid program to pressure drug makers to bring down their prices for those without insurance. Drug makers are asked to negotiate discounts for the elderly and others and if they won't do it, the state makes it more difficult for them to sell those drugs to people on Medicaid. Opponents, led by drug makers, argue that the program would hurt people on Medicaid, who could be forced to jump through an extra hoop in order to get certain prescriptions filled. In Maine, supporters say their "Maine Rx Program" would cut prices by 25% and help more than 300,000 residents.

Drug makers don't like the Maine program because it would pressure them to sell their medicines for less money. Their trade group, the Pharmaceutical Research and Manufacturers of America, filed suit to stop it. In its 6-3 ruling, the U.S. Supreme Court really didn't endorse Maine's plan. The decision said only that drug makers did not adequately show why the plan should be blocked. The issue is far from decided and will continue to be liti-

gated in the lower courts. The Department of Health and Human Services has yet to issue its own interpretation of the law, which could ultimately affect the program's fate. Maine plans to move forward with its plan, which was first approved in 2000. Other states may hold off until HHS provides clearer guidance. At least the victory for Maine is proof that the powerful drug industry can be defeated. The large drug companies have a tremendous army of lobbyists who have tremendous influence and who have the financial ability to generally "get their way." Forcing these companies to lower their prices is a tough job. Nevertheless, government must make every effort to give the consuming public some price relief. I am not sure at this point how Alabama is affected by the court ruling. I have asked several persons in government, but thus far haven't been able to find out anything of substance.

The Most Serious Long-Term HealthCare Crisis

According to the Congressional Budget Office, the widely used estimate that 41 million Americans lack health insurance year-round may actually be double the real figure. This is an estimate that could fuel the debate over reshaping the nation's health care system. On May 12th, the nonpartisan budget office issued a study estimating that 21 million to 31 million people are without insurance coverage all year. Overall, at least 59 million are uninsured at least briefly in a given year, the report revealed. This report will be examined carefully by both political parties as they prepare to tackle the issue in Congress and on the 2004 campaign trail.

Republicans, who generally favor the insurance industry, could cite the budget office's conclusion that there are fewer people without coverage all year than the 41.2 million estimated by the Census Bureau. On the other hand,

Democrats, who are supposed to be from the party more in tune with people, could use the 59 million estimate for Americans who lack insurance for at least some period to argue that the need is even more widespread. There is no doubt that extending coverage to more people would be very expensive. However, defining the magnitude of the problem is highly significant because it will affect which policies lawmakers might design to address it. The issue has already emerged as a major issue among the chief Democratic contenders for their party's presidential nomination. Thus far, the Bush Administration has pretty much ignored the problem or at best given the crisis lip service.

The budget office said nearly half the 59 million uninsured in a given year are without insurance for less than four months. An additional 30% are uncovered for more than a year, the report estimated. Demographic groups likeliest to face long periods without health care coverage include people with lower income, less education, and Hispanics, according to the report. The analysis by the budget office was based on data from the Census Bureau and other federal sources for 1998, which the report said is the most recent year for which there is reliable data. The Census Bureau's estimate last September that 41.2 million people were uninsured for the entire year covered 2001. Almost all Americans age 65 and older are covered by Medicare, the health insurance program for the elderly and handicapped. The budget office and Census estimates covered people too young to qualify for Medicare coverage. Without question, healthcare issues will be discussed until some real solutions are found and health insurance will be a key part of the debate. No American citizen should have to live without health insurance.

Many Drugs Prescribed To Children Are Not Adequately Tested

Most folks don't realize that many of the drugs prescribed to children have not been adequately tested for use by children. When they learn about this, it comes as a shock to many parents. We all were led to believe over the years that the drug industry would never put an unsafe or untested drug on the market. Today, that simply is not always the case. There are a number of drugs prescribed for children that haven't been adequately tested. For example, since it was first marketed in 1989, Propofol has been prescribed to thousands of American children. In many pediatric intensive care units, it was the first choice for sedating children who were seriously ill. However, it wasn't until 2000 that researchers looked carefully at the drug's effects. While the drug worked well in young patients, scientists discovered that 9% of those who received it, died. This is more than twice the mortality rate of children given a similar anesthetic. As a result, doctors now use the drug much less often. Unfortunately, what happened with Propofol - prescribing a drug that had never been tested on children - is common. Most experts say that about three quarters of the drugs prescribed to America's children have not had adequate pediatric trials. Children have almost certainly suffered harmful side effects, and some likely died, many pediatricians say. A group of doctors, children's health advocates, and government officials are pushing hard for more pediatric drug testing. They want the Food and Drug Administration to require drug companies to test all new drugs likely to be commonly used for children. This bill is now in Congress and, if passed, would complement a 1997 measure that gave drug companies incentives to do more tests. There shouldn't be two different classes in medical care, according to Johns Hopkins University professor Dr.

Kwang Kim, a pediatric infectious disease specialist. It should be noted that tests on adults often do not predict how a drug will affect children. Children are not mini-adults.

Neither are newborn babies mini-children. Experts say that children metabolize many drugs differently from adults, and have distinct vulnerabilities. To treat children safely and effectively, doctors must see exactly how a given drug works on children. The number of pediatric trials is on the rise. In 1994, NIH created a drug-testing program affiliated with top medical centers. Known as Pediatric Pharmacology Research Units, these centers conduct a large proportion of children's drug trials. The 1997 incentive law - which gives a six-month patent extension for conducting a pediatric trial - triggered the increase in testing. Since then, more than 37,000 children have taken part in drug tests, according to the FDA.

Recent research has underscored how fundamentally dissimilar children are from adults. With some drugs, children need a higher relative dose than adults. Tests on the painkiller Neurontin, for example, revealed that the recommended dose for patients younger than 12 was much too low, meaning that children with severe chronic pain were likely suffering needlessly. I am told that an enzyme system in children's kidneys is more active than it will be later in life, so the drug clears faster. With other medicines, children require lower-than-expected amounts. For example, livers of small babies are relatively undeveloped. As a result, they metabolize certain drugs much slower than babies a few months older. Hopefully, Congress will take the necessary steps to make sure when a prescription drug is supplied to our children that the drug has been tested for children and is safe.

Public Citizen Believes Cancer Drug Iressa Should Not Be Approved

As you may have suspected, I am a strong supporter of Public Citizen, the national consumer advocacy group, and am convinced that they do great work for American citizens. Some of their best work deals with problems in the pharmaceutical industry. Recently, Public Citizen released information on a new cancer drug. Data showing that AstraZeneca's new cancer drug Iressa (gefitinib) is likely ineffective and dangerous should dissuade the U.S. Food and Drug Administration from approving the drug for use in the United States, according to Public Citizen. AstraZeneca has sought an accelerated approval for gefitinib under a system developed by the FDA to approve drugs more quickly if they treat serious or life-threatening diseases for which no other treatment is available. This fast-track approval process has been widely abused by the pharmaceutical industry.

Results of clinical trials suggest that gefitinib will have to be removed from the market soon after approval. In two well-designed studies of patients who had not received prior therapy for cancer, there was no difference in the one-year survival in those taking gefitinib and those taking a placebo. A third study, which was submitted to the FDA as the basis for approval of the drug, was flagged as problematic by members of an FDA review team and the team leader. The study tested an atypical group of patients with less aggressive cancers, did not have a control group, and did not adequately separate the effects of gefitinib from the effects of other medications the patients were taking. "The FDA would be putting patients in jeopardy by approving a drug that is already showing itself to be ineffective and dangerous. The agency certainly should not approve it on a faster timetable," said Sidney Wolfe, M.D., director of

Public Citizen's Health Research Group. Dr. Wolfe added: "The severity of adverse events, both in the clinical trials and in Japanese patients, should be a red alert to the agency." In the study AstraZeneca submitted to support the drug's approval, 25% of patients suffered from pneumonia or acute respiratory disease. One patient died from each condition.

Japan approved gefitinib in July 2002. In February 2003, AstraZeneca Japan announced that of about 23,500 patients who had been prescribed the drug, 473 had developed serious lung disease or pneumonia and 173 had died. It is likely, however, that many more patients became sick or died after taking the drug because only a small proportion of cases are both properly diagnosed and reported, according to Public Citizen's research. Under the FDA's accelerated approval process, drugs are often approved on the basis of a clinical finding, such as shrinkage of a tumor. However, this does not necessarily mean the patient will be cured or live longer. The company is then required to conduct post-marketing studies to determine if the approval was appropriate and whether the drug provides a true benefit to patients. The two studies that have already been conducted would normally have been done and submitted during the post-marketing period. Because the studies already have been conducted and show no benefit associated with the drug, the FDA cannot justify approving the drug, according to Public Citizen. The FDA's medical officer has expressed grave reservations about the studies that AstraZeneca is relying on to push this approval - with good reason. There is no way that a drug that shows a high likelihood of causing deadly lung disease, in addition to doing next to nothing to stop cancer, should be approved for patients. Public Citizen has written a very strong letter to the FDA outlining its case against this drug. We appreciate Public Citizen furnishing this information to us.

The Drug Industry Misleads The Public

In today's world, it's difficult to watch television or flip through a magazine or newspaper without seeing an advertisement for prescription medications. Whether it's Dorothy Hamil promoting Vioxx® or Atlanta Falcon's Coach Dan Reeves talking about Zocor, celebrities are pushing pharmaceuticals and being paid well to do so. Pharmaceutical companies pay big bucks for celebrities to endorse their product. While pharmaceutical companies pour millions into advertising each year, they are no longer relying on traditional commercial spots, which started to soar after the FDA relaxed advertising restrictions in 1997. Instead, drug companies are now running "public awareness campaigns" and "video news breaks," which are designed to simulate valid news reports from seemingly credible journalists. The real objective of the pharmaceutical manufacturers is to deceive and trick consumers by masking a drug commercial as a legitimate informational news report.

The journalists associated with these reports are placed in a traditional news setting and comment on news and videos, which highlight pharmaceutical companies and their products. Other drug companies have also hired journalists to appear on videos interviewing doctors and patients about specific medications. Newsmen who have considered filming these "infomercials" include CNN's Aaron Brown, former CBS anchorman Walter Cronkite and "60 Minutes" reporter Morley Safer. Even though all three men are now backing away from these endorsements, the Associated Press stated that, "Safer was reportedly paid \$100,000 for one day of filming." According to Reuters News Network, "Celebrities can make from tens of thousands of dollars to six figures a day for their role in industry-sponsored public awareness campaigns."

XVIII. PREDATORY LENDING UPDATE

The Pay Day Loan Bill

I sincerely hope that the State Senate will amend the House-passed pay day loan bill and make it more consumer-friendly. Certainly, I believe there is much room for improvement. For example, I believe the interest rates proposed are still too high. The maximum interest rates allowed for pay day loans should be placed at no more than 36%. There also should be stronger regulatory measures added to the House bill. Mandatory, binding arbitration should also be restricted in all pay day loans. No person dealing with the pay day lenders can bargain with the lenders as to whether or not they will accept an arbitration agreement. They simply are on an unequal economic footing. All of these changes can be added by Senate Amendments. The House bill received a second reading in the Senate on May 15th, which means the bill will be on the Senate calendar when the regular session reconvenes on June 9th. I understand the pay day loan bill is one of Senate Pro Tem Lowell Barron's top priorities, along with the passage of the nursing home immunity bills, and that is not good news for folks who have to borrow money from the pay day loan sharks. Hopefully, a majority of the Senate will make some needed changes to the bill and return it to the House for concurrence. Clearly, there is a real need for regulation of this industry. With a few added changes, the Senate could make this legislation very effective.

Tom Methvin Speaks To Louisiana Legislature About Predatory Lending

We have been extremely active in the fight against the evils of predatory

lending. Tom Methvin traveled to Baton Rouge last month to testify before the Louisiana State Senate in support of a bill that proposes regulation and monitoring of lending practices for minorities. Tom, who is our Managing Shareholder, spoke to the Legislature about the evils of predatory lending, including the practices of stripping, flipping, insurance packing, and ballooning. The committee voted to convert the badly needed bill into a "study resolution," which is not good for consumers. Our firm is committed to stopping predatory lenders wherever they are located and we believe that we have an obligation to speak out on the evils of predatory lending at every opportunity. Tom appeared at the request of State Senator Cleo Fields, the sponsor of the bill in the Louisiana Senate.

XIX. MONSANTO

Pfizer Acquires Pharmacia

The involvement of Pfizer, Inc. in the Anniston PCB cases may well lead to an early settlement of the almost 18,000 cases being handled by our firm. Pfizer is now the owner of Pharmacia, which assumed the liability of Monsanto and Solutia. While the court has refused to allow Pfizer to be added as a defendant at this point, the company should have an interest in seeing this matter resolved. I believe that after discovery on the issue is completed, we will be allowed to put Pfizer in the case. We started court-ordered mediation in Atlanta before Eric Green, the Boston-based mediator, on May 14th. Professor Green has handled a number of successful mediations in some high profile cases, and is most impressive. Hopefully, he will be able to bring the parties together. We will resume the mediation process in Atlanta on June 5th and hopefully will be able to resolve all of our cases. However, if the mediation is

unsuccessful, trial will begin in October. Chief Judge U.W. Clemon, who has our cases, has told all sides that the case will not be continued. We will be ready to go as scheduled.

Jury Awards In Anniston PCBs Case Still Coming In

A jury deciding monetary damages in the Anniston-area PCB pollution case has awarded \$35 million in damages for plaintiffs against Monsanto and Solutia to date. Property damage and emotional distress claims have been awarded to about 200 plaintiffs since the trial resumed in mid-March. The claims of about 700 plaintiffs await deliberation. Plaintiffs' attorneys have been asking the jury to award damages covering, among other things, the cost of cleaning up contaminated properties. The cleanup process involves digging up the contaminated dirt to a certain level and replacing it with clean soil. As previously reported, Monsanto made PCBs, or polychlorinated biphenyls, at its plant in western Anniston from the 1930s to the early 1970s. About 3,500 people in the state case being heard in Gadsden claim that Monsanto and Solutia, which now owns the plant, polluted their properties and bodies with the chemicals. The jury has already decided the liability issues and is now working on damages. PCBs were used to insulate electrical equipment, but are now banned in the United States. As people have learned, PCBs have been linked to a range of health effects, from cancer to learning disorders. This is now confirmed by federal health agencies.

XX. ENVIRONMENTAL CONCERNS

Polluters Make Gains

The tide appears to have turned in favor of industry on environmental

concerns, now that the Bush Administration is in power. According to reports, the Environmental Protection Agency is not referring as many new cases to the Justice Department for federal prosecution these days. Clearly, the number of new cases referred has dropped drastically during the Bush Administration. New figures were released by Public Employees for Environmental Responsibility that verified the drop off in new cases. According to a study of the problem area, the following information was discovered:

New criminal pollution cases referred by the EPA for federal prosecution are down more than 30% since the start of the Bush Administration;

New civil pollution referrals are down by more than 25% under the Bush Administration;

With the reduction in new referrals, the number of environmental prosecutions is also beginning to fall;

New criminal prosecutions are off nearly one-third; and

Civil filings are more than a quarter of the levels during the Clinton Administration.

I was never real sure whether Christie Whitman was failing to do very much to protect the environment and to prosecute corporate crime on her own or whether she was simply following orders from the White House. However, she was appearing to be "enjoying" her position. I became suspicious that something was going on when somebody started to leak inside information to certain members of the news media. Ms. Whitman was criticized for building up a "protective security detail" that often requires a contingent of as many as ten special agents - plus permanently attached supervisory positions - to "protect" her on a 24-hour-per-day basis. These insiders identified as "knowledgeable sources" contrasted Ms. Whitman's predecessor, Carol Browner, who used a one-agent escort from the Inspector General's office to accompany her while she was on official business. We

will never know if everything reported by the media on Ms. Whitman's security use was true. She unexpectedly resigned from her high position on May 21st, ending her 2-1/2 year tenure. USA Today reported that Ms. Whitman had several "conflicts" with the President's policies. As Governor of New Jersey, Ms. Whitman was labeled as an "environmental moderate." According to USA Today, there had been numerous times when the White House overruled Ms. Whitman on key environmental issues. I now suspect that Ms. Whitman tired of the White House interference with her job. It will be interesting to see who is appointed to head the EPA. If nothing else, the former New Jersey Governor learned the hard way that some in the Bush camp play real "hard ball." Would you venture a guess as to whom that man from Texas might be?

\$43 Million Award To Colorado Uranium Mill Neighbors Reversed

A federal appeals court has overturned a \$43 million jury award won in 2001 by dozens of residents allegedly sickened by radiation near a uranium mill in Canon City, Colorado. A three-judge panel ruled in April that a lower court failed to assure expert testimony in the case was relevant and reliable. The court also said evidence supporting and opposing the experts' reliability was improperly limited. The trial court was ordered to schedule a new trial for the claims against Cotter Corp. on allegations of negligence and trespass. A new trial also was ordered for another group of plaintiffs who were awarded \$300,000 in 2000. The plaintiffs included residents and businesses located around the mill. During the jury trials, expert testimony alleged that radioactive dust drifted across the residents' properties and poisoned them. The Cotter mill was declared a Superfund site in 1984 and closed three years later. It will be interesting to see what happens on the retrial.

XXI. ARBITRATION UPDATE

Nursing Home Arbitration Ruling

In a recent lawsuit, the Alabama Supreme Court upheld an arbitration agreement in a nursing home case admission form. Since the court did not mention the most significant federal issue, I assume the issue wasn't properly before the court. If so, I would have expected it to have been raised on appeal and arbitration denied. As reported last month, the Tennessee Court of Appeals had ruled in a similar case that a nursing home that accepts federal money could not require an arbitration agreement to be signed as a condition of being admitted to the facility. The Tennessee Court properly voided the arbitration agreement. I will try to find out why this issue wasn't addressed in the recent Alabama case. If the court is saying that nursing homes can force elderly citizens to sign away a constitutional right before they can get a bed in a nursing home, there will never be another nursing home lawsuit filed. I don't believe the Alabama court has said that at all. This case was decided on whether there was sufficient evidence to put the nursing homes in interstate commerce.

Should Buyers Have To Beware?

Almost every time we buy something these days there are hidden terms and conditions that we miss completely. Even when fully disclosed and apparent, for a number of reasons, these self-serving for the drafter terms and conditions are easy to ignore. The print is often small and the language hard to understand. Most consumers seldom read a long document before signing it

and the “drafters” of the contracts know this. In fact, most folks don’t expect to ever have a problem and are not looking for such things. Sometimes, you just want to make your purchase and get out of the store. If you don’t read carefully, however, and you do later have a problem, you may find you’ve given up many or all of the consumer protections guaranteed to you by state and federal law. That’s because, as you know, most companies are now inserting mandatory, binding arbitration clauses into their purchase agreements, service contracts, and telephone calling plans. Clearly, binding arbitration is a private, alternate dispute resolution system where an arbitrator receives total and complete authority to resolve any dispute that may arise. The arbitrator is not required to follow existing laws and only in rare circumstances can a decision be appealed to court. Both the process and the results frequently are kept secret. This is never good for consumers in any respect.

A State Representative in Wisconsin has introduced legislation that would prohibit credit card companies from requiring binding arbitration. Significantly, U.S. Senators Russ Feingold (D-Wis.) and Patrick Leahy (D-Vt.) say they will introduce similar federal legislation. Senator Feingold told the AARP, “It is not surprising that more and more credit card companies are adding mandatory arbitration clauses to their agreements since consumers have no power to resist these provisions that deprive them of the option of taking disputes to court.” What happens is that most people don’t read all the small print when they sign up for a credit card. People shouldn’t be automatically forced to give up their constitutional rights in such a fashion. With arbitration, the little guy always gets the short end of the stick. Surely, Congress must have realized the dangers and unfairness of mandatory arbitration last year when it passed a new law to prohibit such provisions in contracts between auto dealers and auto manu-

facturers. You will recall the justification for that law prohibiting arbitration in dealer contracts was that the auto manufacturers were “too powerful,” resulting in an “uneven playing field.” I have to wonder, however, why Congress thus far has not extended this reasoning to consumer contracts. Hopefully, this latest development is a start in that direction.

Realistically, these bills in Congress probably won’t be approved any time soon. Heavy special interest lobbying for deregulation of the financial service industry will likely see to that. The issue of whether a binding arbitration clause preempts existing state consumer protection laws also is being argued in courtrooms in states that give consumers that type protection. Unfortunately, Alabama doesn’t have such a law. In California, a challenge to AT&T’s long distance service agreement was decided in favor of consumers bringing the challenge when the court ruled that the binding arbitration clause was inserted into the agreement in a legally unconscionable manner. The U.S. Supreme Court will eventually face the issue of whether the federal law permitting binding arbitration preempts state laws protecting consumers. When you consider how the Federal Arbitration Act came into being and factor into the equation the basic constitutional right to a jury trial in civil claims, it is extremely difficult to see how arbitration can be forced on consumers. The legislative history of the FAA clearly proves that Congress never intended for the Act to apply to consumer transactions. I have to believe that in the near future the constitutional rights of consumers will be recognized and preserved by the U.S. Supreme Court.

The EEOC Position On Arbitration Shouldn’t Be Changed

Employer and employee groups have been waging a behind-the-scenes battle

at the Equal Employment Opportunity Commission (EEOC) as the agency reconsiders a Clinton-era policy opposing the use of mandatory arbitration agreements as a condition of employment. The 1997 policy statement is the most comprehensive, written statement documenting how mandatory arbitration agreements undermine civil rights laws. Nothing has changed since the policy was adopted by the Commission. Employer groups say the policy’s viability is questionable because of recent Supreme Court decisions. The 1997 policy is being examined in light of subsequent case law, according to the agency. The policy says agreements that mandate binding arbitration of discrimination claims as a condition of employment are inconsistent with anti-discrimination laws. Among the reasons: Private arbitration does not allow for development of the law through precedent; mandatory arbitration systems are biased against plaintiffs; and they threaten the enforcement of discrimination laws because workers may be discouraged from coming to the EEOC since they can’t litigate claims.

The EEOC’s action probably will be more important for the arbitration debate than its legal effect. There’s evidence that the EEOC’s concerns about mandatory arbitration in 1997 are accurate, said my friend Paul Bland, head of the mandatory-arbitration project for Trial Lawyers for Public Justice. Paul says that “the EEOC can’t litigate counter to direct Supreme Court decisions, but it has an obligation to speak the truth as it understands it. If they’re just going to cave in to businesses who say it would make our lives easier if you said we could do this, that would be unfortunate. It would be a terrible signal of a reduced commitment to meaningful civil rights enforcement.” I certainly agree with Paul. There is no justification for allowing any employer to force a person to accept arbitration as a condition of getting or keeping a job.

Bill Barring Pre-Dispute Arbitration In Consumer Contracts

The U.S. House of Representatives is again considering legislation that would prohibit the use of pre-dispute binding arbitration clauses in consumer contracts, classifying their use as a deceptive trade practice. The proposed Consumer Fairness Act of 2003 (H.R. 1887), introduced April 30th by Representative Luis Gutierrez (D-IL), would amend the Consumer Credit Protection Act to bar the use of mandatory pre-dispute arbitration clauses in most consumer contracts. This ban would apply to any written or standard form contract between parties to a consumer transaction, including contracts for the sale or rental of goods, services, real property, and financial products or services contracts. Similar legislation was introduced in the last Congress by Representative Gutierrez. That bill was referred to the Committee on Financial Services, but no further action was taken on the bill.

Congress also is considering a number of bills designed to prohibit the use of mandatory arbitration in various contracts or situations, including high cost home loans (H.R. 1663, H.R. 1865 and H.R. 833, and employment, H.R. 540), which would amend the Federal Arbitration Act to allow employees to accept or reject the use of arbitration. To date none of those bills have been approved in committee. Most of the bills addressing mandatory arbitration and its use allow parties to agree after a dispute arises to use arbitration to resolve disputes. H.R. 1887 authorizes parties to consumer transactions to enter into written arbitration agreements post-dispute. There is absolutely nothing wrong when both parties agree after a dispute arises to allow arbitration to resolve the parties' differences. It is quite different, however, when a dominant party forces a party with no power to sign away the constitutional right to a jury trial before

a dispute even arises. This is the manner in which Corporate America shuts the courthouse door to consumers by putting arbitration clauses in all purchase and employment contracts. Credit card companies simply place the arbitration clauses in a monthly bill envelope as a "bill stuffer." The latest bill also says it is not intended to annul, alter or affect other federal or state laws dealing with arbitration of consumer disputes unless the provisions of those laws are inconsistent with the provisions of H.R. 1887. It would be great to have a President who recognized that consumers have rights guaranteed under the U.S. Constitution. Unfortunately, that is not the case with the current occupant of the Oval Office.

Circuit City's Arbitration Policy Is "Oppressive"

The Ninth Circuit Court of Appeals believes the arbitration policy used by Circuit City Stores is so one-sided that it's illegal in California. The court held that the Circuit City arbitration agreement is oppressive, stating: "Circuit City, which possesses considerably more bargaining power than nearly all of its employees or applicants, drafted the contract and uses it as its standard arbitration agreement for all of its new employees. The agreement is a prerequisite to employment, and job applicants are not permitted to modify the agreement's terms - they must take the contract or leave it." The ruling may well apply to similar mandatory arbitration agreements affecting hundreds of thousands of workers in California. The proponents of arbitration tell the public that the process is both cheaper and faster. That is simply not true. Critics say arbitration is secretive and lacks an appellate process. The court didn't buy Circuit City's claims and found its argument exceedingly disingenuous because the agreement is one-sided. Among other things, to have a valid contract, an employer's arbitration

policy must apply equally to grievances by both sides, must not assess onerous legal costs against the employee or applicant and must be fair in its other provisions, the appeals court says. It is impossible to justify mandatory, binding arbitration in the employment setting. No American citizen should have to agree to arbitration in order to get or keep a job.

In this case, the plaintiff had signed the mandatory arbitration agreement when she was hired as a sales person in a San Diego Circuit City store. Following several alleged on-the-job incidents, involving sexual harassment and discrimination based on sex and disability, she tried to sue. Circuit City challenged the lawsuit, saying the employee had agreed when she was hired, that such disputes would be put before arbitrators, not the courts. In this case, the court noted, "Circuit City does not even consider the applications from job applicants who elect not to enter into the arbitration agreement." This employee had no meaningful option - she either had to walk away from the employer altogether or sign the arbitration agreement for fear of automatic rejection or termination at the outset of her employment.

Some Recent Alabama Cases

In addition to the nursing home case mentioned previously, the Alabama Supreme Court continues to crank out decisions dealing with the arbitration issue. There are two recent cases that deserve mentioning. One is the case of *Anderson v. Ashby*, 2003 WL 21125998 (Ala. May 16, 2003), which involved an arbitration agreement between illiterate consumers and American General Finance, a credit life insurer. Both consumers were on disability and the insurance salesperson admitted that he knew they were illiterate. The arbitration agreement here is incredibly comprehensive and covers everyone and everything imaginable. The Alabama Supreme Court struck down the arbitration

agreement. The court reiterated its holding in *American General Finance v. Branch*, that just because the arbitration agreement says that questions of arbitrability are decided by an arbitrator, it doesn't mean that the court can't examine the question of unconscionability of the arbitration clause. Where the attack is addressed to the arbitration clause itself, as opposed to the contract as a whole, the trial court, and not the arbitrator, resolves the issue. Thus, the threshold issue of unconscionability of an arbitration clause is a question for the court and not the arbitrator.

The Court then found this agreement unconscionable for the same reasons as in the *Branch* case, i.e., unconscionable, grossly favorable terms (including the term sending questions of arbitrability to the arbitrator), and the overwhelming bargaining power on the part of *American General Finance*. Because the court found the entire arbitration agreement unconscionable, the Court refused to sever any part of it, despite a severability provision in the arbitration agreement. Finally, and most important, the Court finds that any question of fraud — in the inducement or in the factum — in signing the agreement is a question for the jury.

The second case, decided by the Alabama Supreme Court, used state contract law to resolve an ambiguity in the contract. In *ex parte Mountain Heating and Cooling, Inc.*, 2003 WL 2007810 (Ala. May 02, 2003), the contract was between a contractor and a sub-contractor and contained the confusing language that “the parties agree to settle the dispute by arbitration under the Construction Industry Mediation Rules of the American Arbitration Association.” The simultaneous references to mediation and arbitration, as well as the fact that the contract contained other language about litigation, and that the subcontractor had required the contractor to strike a sentence waiving his right to a jury trial,

led the Court to conclude that the issue of arbitrability was a question for a jury.

The Right To Trial By Jury

Our Supreme Court continues to struggle with the arbitration issue. Eventually, the court will have to face the constitutional issue head-on. Of course, it is absolutely necessary for lawyers appealing cases to the court to have laid the proper foundation for the appeal in the trial court. I sincerely believe that when faced with the issue, a majority of the court will honor the Constitution and refuse to allow the forcing of ordinary citizens, on unequal footing – for whatever reason – to give up a cherished constitutional right. The best argument for consumers can be found in what Congress did for the car dealers because the car manufacturers were too powerful. In any event, we will wait for the proper case to come before the court. When that happens, consumers should finally get some needed relief.

XXII. THE CONSUMER CORNER

The Dangers Of Online Pharmacy

With the high prices of prescription drugs, folks are constantly looking for lower prices. With this comes some real dangers. There are a number of companies that are now selling prescription drugs online. In my opinion, this is extremely risky and can be extremely hazardous to a purchaser's health. One such Website advertises that, “our U.S. physicians will write an FDA approved prescription for you and the product will be filled and shipped by U.S. licensed pharmacists direct to your doorstep, immediately and discreetly. We make it easier and faster than ever to get the prescriptions you

need.” The Website goes on to point out “that no prior prescription is required.” Not only is this risky from a health perspective, I checked the prices on this Website advertised as a “limited time special offer,” and found their listed prices were higher than I can buy the same prescriptions currently in Montgomery or at one of my brother's three drugstores in Barbour County. My advice is to do business with your local pharmacist and not run the risk that comes with buying online. In my opinion, the Internet is no place to buy prescription drugs. Your own doctor and local pharmacist should be involved in any healthcare decision that requires the filling of a prescription drug. The costs of prescription drugs should be addressed by the President and Congress. The Internet is certainly not the answer when it comes to health issues and product safety.

Summer Tire Checklist

The Department of Transportation has issued a number of tire safety tips for consumers during the summertime vacation season. As you may already know, tire care is especially critical in warm weather. Long trips, heavy loads, higher speeds, and higher temperatures all put additional stress on tires. You should check your tires regularly to make sure there are no visible signs of wear, damage, bulges, or tread separation. Be sure your tires are properly inflated. Check your tire pressure often – with an accurate gauge – for routine driving and before and during any long trips. Always measure the tire when the tires are cold, before you drive on them. Make sure you understand the recommended inflation pressure for your tires. This can be found in your owner's manual or on a label frequently found in the glove box, near the door latch on the driver's side, or other locations on your vehicle. The recommended inflation pressure is not to be confused with the maximum inflation pressure that is shown on the

side of the tire. At the recommended inflation pressure, tires will last longer and be less likely to fail, and the car will use less fuel. Serious injury can result from tire failure because of under inflation or overloading.

You should never overload your vehicle. Your car and tires are designed to operate safely only up to their load limits. These limits should be found in your owner's manual and on the certification plate on the edge of the driver's door. Make sure there is enough tread on the tire to operate safely and that the tires are wearing normally. All grooves should be visible and deep enough to at least touch the top of Lincoln's head on a penny inserted head first in the tread. Low tread or bald tires are unsafe and must be replaced. If some spots on the tire seem to be wearing faster than others, see your tire dealer, a mechanic, or a real service station. Misaligned wheels and worn shock absorbers can cause serious problems. Make sure all tires are aligned and balanced properly. It is not a good idea to drive at a high rate of speed for a long time. This is especially true in hot weather. Posted speed limits should always be obeyed. Finally, always make sure that all persons in your vehicle are properly restrained in a seat belt. Children should use child safety seats on every trip. It should become routine for passengers to buckle up before your vehicle is cranked up. Parents should make seat belt use a habit in the family.

Paint Companies Agree To Warn Consumers Of Lead Risks Following Agreement

Paint companies will have to put warning labels on their products alerting consumers to the danger of lead exposure during home renovations. This results from an agreement with dozens of Attorneys General across the country. The agreement between the National Paint & Coating Association and 45 states was announced on May

12th. The District of Columbia, Guam, Northern Mariana Islands, Virgin Islands, and Puerto Rico also were included in the agreement. While paint manufacturers haven't made house paint with lead since 1978, it is still found in many older homes and buildings. The danger is that children will ingest or inhale lead paint dust stirred up during repainting and renovation of older homes.

In addition to new labels on paint cans, paint manufacturers also agreed to provide brochures to consumers and training courses on lead-safe renovation and repainting to homeowners, contractors, landlords and housing workers. According to national figures from the Environmental Protection Agency, about 900,000 children under the age of five have elevated blood-lead levels. If not detected early, high levels of lead can cause damage to the brain and nervous system. Massachusetts Attorney General Tom Reilly, who led the states' negotiations with top paint manufacturers, said the settlement is "a landmark agreement with the paint industry and it addresses a serious problem." Lead exposure continues to be a health hazard to children and that includes lead dust. "There's a proper way to remove it. If you don't do it properly, it presents a serious health risk," he said.

Interestingly, the Rhode Island Attorney General, the first state to sue former lead paint manufacturers for lead poisoning in children, called the agreement an "empty gesture." "It's too little, too late," Attorney General Patrick Lynch told the Associated Press. "This agreement fails to address the full extent of the dangers of lead paint and, perhaps purposefully, it comes as we are taking steps to retry our case against the lead pigment manufacturers." The agreement includes a 19-month interim product sticker program - beginning September 30, 2003 - and permanent product labeling that would warn consumers of possible exposure to lead dust during the renovation of

older buildings. Only time will tell if the Attorney General's agreement is adequate. The Rhode Island lawsuit will be watched carefully.

States Can Now Sue Lying Charity Telemarketers

The U.S. Supreme Court has ruled that states can sue professional telemarketers for misleading donors about how much of their contributions actually go to the charity. This appears to be a victory for consumers. The unanimous decision overturned an Illinois Supreme Court ruling that dismissed, on free speech grounds, a fraud lawsuit brought by state prosecutors against a company that kept the vast majority of the money contributed by donors. "The First Amendment protects the right to engage in charitable solicitation but does not shield fraud," Justice Ruth Bader Ginsburg wrote for the High Court. The court's decision will allow the state of Illinois to bring a lawsuit against Telemarketing Associates, a Chicago company that was under contract with the veterans support group VietNow, to solicit donations for the charity.

Over a period of eight years, this company raised \$7.1 million in donations. What the donors did not know was that Telemarketing Associates kept \$6 million of the money, with the remaining \$1.1 million going to VietNow. In 1991, the Illinois Attorney General's office sued Telemarketing Associates for fraud, claiming the company misled consumers by failing to tell donors during the solicitation call that most of their donations went to the telemarketing company. In 2001, the Illinois Supreme Court dismissed the suit against Telemarketing Associates, ruling that it would violate the company's right to communicate freely with the public. Lawyers for the state appealed the ruling, saying the decision would deal a "crippling blow to one of the state's principal weapons against telemarketing fraud."

Fortunately, the High Court held that the Constitution does not protect businesses that knowingly mislead the public. This decision is clearly a “victory for consumers.” Donors deserve to know that most of their money will be spent for charitable work and not given to telemarketers. The ruling won’t affect telemarketers who deal honestly with potential donors. On the other hand, telemarketers who are making misrepresentations about how money is being used will be stopped. When you consider that each year Americans give an estimated \$200 billion to charities through telemarketers, the importance of this decision is quite apparent. People fed up with unwanted telemarketing can sign up in July for a national do-not-call list that will block many sales calls. The Federal Trade Commission will launch a Website on July 1st so consumers can register online for the free service. In addition, the Commission will begin an eight-week rollout of a toll-free phone number by which people also can register for the list. The number should be available nationwide by the end of August.

May Was National Electrical Safety Month

While the month of May was National Electrical Safety Month, unfortunately, few people even knew it. If there was any mention in the media, I must confess that I missed it. However, anytime is a good time to check for hazards. So, now is a good time to check our homes and workplaces for hazardous conditions related to the use of electricity. Few people really understand electricity and most of us don’t fully comprehend the risks and hazards found at home or at work. The U.S. Consumer Product Safety Commission recently announced that Tyco Electronics Corp., of Harrisburg, Pennsylvania, has agreed to continue offering the COPALUM connector repair system until at least 2005 for homes with aluminum wiring. According to the CPSC,

the COPALUM repair system has benefited tens of thousands of consumers by reducing the risks of dangerous overheating and fire that can be caused by failing aluminum wiring connections. It is estimated that 2 million homes were built with aluminum wire between 1965 and 1973. Warning signs, such as warm-to-the-touch faceplates on outlets or switches, flickering lights, circuits that don’t work, or the smell of burning plastics, can indicate a fire hazard within 15- and 20-ampere aluminum wiring circuits. A failure in the circuits can lead to electrical arcing and a serious fire, which can spread within the walls of a home before being detected.

The COPALUM crimp connector, which has been available for more than 20 years, is the only system recognized by CPSC that provides a complete and permanent repair and reduces the fire hazard in aluminum wire circuits. The COPALUM connector system attaches a copper wire to the old aluminum wires and is then crimped together with a power tool, achieving a “cold weld” between the conductors. The “cold weld” creates a permanent bond that eliminates electrical arcing or glowing connections and creates a safer electrical connection at outlets, switches, lights, circuit breakers, and panel board terminals. The COPALUM connector repair materials and power crimping tools are only available to electricians who receive training from the manufacturer, to ensure that repairs are properly made. Without the Tyco Electronics system, the only method for safely upgrading aluminum wiring systems would be to install new copper circuits, which is often impractical for consumers. The CPSC believes that “twist-on” connectors, receptacles and switches and other devices that connect directly to aluminum wires, are an inadequate solution. The COPALUM crimp connector system provides a safe, permanent fix.

If homeowners are not certain whether their home has aluminum branch circuit wiring, they can look at

the markings on the surface of the electric cables which may be visible in unfinished basements, attics or garages. Aluminum wiring will have “Al” or “Aluminum” marked every few feet along the cable. A home inspector or qualified electrician also can assist in identifying aluminum wiring. CPSC advises that consumers should not open the interior of the panel board or circuit breaker compartment - this can expose live wires and pose an electrocution hazard. COPALUM connectors are available from Tyco Electronics under the AMP brand. Consumers can check to see if the COPALUM connector system is available in their area by calling the company at 1-800-522-6752. To order a list of authorized electricians in their area, consumers can write to: Tyco Electronics Corp., Attn: Aluminum Wire Repair Program, P.O. Box 3608, Harrisburg, PA 17105-3608. If no authorized electrician is currently located nearby, consumers can have an electrician interested in repairing their home contact the nearest supplier of AMP- brand COPALUM connectors for training and other repair information. For more information about aluminum wiring and the crimp connector system, see “Repairing Aluminum Wiring” (pdf). Consumers can also obtain a free copy of this booklet by writing to CPSC, Washington, DC 20207. We appreciate very much the CPSC furnishing this information.

Jury Awards \$16 Million In A Candy-Related Death

A jury awarded \$16.7 million to a couple whose daughter died after choking on a gel candy that’s now banned in the United States. The parents sued Taiwan-based Sheng Hsiang Jen Foods Co. after their 11-year-old daughter choked in April 1999 on sticky candy containing a dangerous gel. The little girl remained in a coma until her death in July 2001. The candy contained a substance called conjac gel, which is derived from a type of

yam. Unlike the gels found in most chewy candies, conjac does not dissolve in the mouth and must be chewed. The jury awarded \$16.7 million to the parents and their two remaining daughters.

The company in this case has never acknowledged fault. In fact, it took an FDA ban to stop the selling of the dangerous candy. The U.S. Food and Drug Administration banned the gel in October 2001. The candies were sold under the names Fruit Poppers, Gel-ly Drop and Jelly Yum. The candies are packed in small, soft plastic cups and sold in bulk in plastic jars. They usually include a piece of fruit surrounded by the gel. Around the world, more than a dozen deaths are tied to the candy. Most are in Asia, where the candy originated in 1995. We reported on the hazards created by this type candy several months ago. It is most disturbing that a company would put a product on the market that is highly dangerous for children and then resist efforts to have the product taken off the market.

XXIII. TOBACCO UPDATE

WHO Approves Anti-Tobacco Accord

The World Health Organization (WHO) has adopted a sweeping anti-tobacco treaty in an unprecedented global push to regulate a product it says kills half of its regular users. There have been four years of turbulent negotiations between WHO and the tobacco industry. Last month, WHO's policy-making annual assembly unanimously adopted the accord. WHO says it is acting to save "billions of lives" and "protect people's health for generations to come." The anti-smoking drive has been the top priority for WHO for the past several years. It is a tragedy that about 20 million people have died since the debate began. The treaty enti-

tled the "Framework Convention on Tobacco Control" provides for a general ban on tobacco advertising and promotion in many countries. However, it only provides restrictions in countries like the United States, where a total prohibition some believe would violate their constitutions.

The accord says that health warnings - including pictures such as diseased gums and lungs - should ideally cover at least half the package and encourages governments to clamp down on terms like "low-tar" and "mild" on cigarette packs. Specifically, it aims to stop hard-sell tactics aimed at children. Tobacco's image as being glamorous and cool would be curtailed. It also provides for tougher international measures against second-hand smoke and cigarette smuggling, and espouses manufacturer liability. The treaty will take effect when 40 countries have ratified it. The European Union, China, and Japan are expected to ratify in short order. You will be interested to learn that the one notable exception at the meeting was the United States. U.S. Health and Human Services Secretary Tommy Thompson reported that Washington was "reviewing the text of the convention." I have to wonder if anybody back in the United States was surprised at that development. Judith Wilkenfeld of the Campaign for Tobacco Free Kids had this to say:

The United States is not making commitment to sign or ratify. They recognized that the rest of world wanted to go forward but didn't say they would join the rest of the world in ratification. It's an incredible missed opportunity.

For months, anti-smoking activists have accused the representatives of our country of trying to undermine the treaty. Hopefully, this opposition hasn't come about because of the tremendous power and influence of the tobacco industry. As we know, the world's biggest exporter, Philip Morris, is located here. The text was agreed to in spite of U.S. objections that it did not allow countries to opt out of individual clauses. Much work now lies ahead in

trying to put the terms of the convention into practice. The developing countries are expected to account for 70% of the forecast 10 million annual deaths by 2030. These developing countries took the lead in pushing for the convention, saying they need protection from tobacco multinationals who have switched their sales drives from saturated Western markets to Asia and Africa. WHO estimates that nearly 5 million people die each year from smoking-related diseases.

A Very Large Victory For The Tobacco Industry

On May 21st, a Florida appellate court threw out the record-setting \$145 billion verdict for thousands of Florida smokers against the tobacco industry. The court said the case should not have been tried as a class-action lawsuit. The Third District Court of Appeals said smokers could not group themselves together in a single lawsuit against the nation's five biggest cigarette makers. By eliminating class action status, the appeals court kicked out the award a Miami-Dade County jury had awarded to sick Florida smokers in 2000. After a two-year trial, that jury had decided that cigarettes are deadly, addictive, and defective because they make people sick when used as directed. Punitive damages were set for an estimated 300,000 to 700,000 smokers. The jury had awarded compensatory damages to three people with cancer who served as class representatives of the group of smokers. Stanley and Susan Rosenblatt, who are very good lawyers, represented the smokers. They have spent a tremendous amount of time and money in this case. I know that these lawyers are totally dedicated to the cause and will not give up their fight. Over time, public policy has been moving against Big Tobacco. However, this powerful industry has been able to survive in the courts and I frankly don't have a good explanation as to how or why.

List Of Large Awards In Tobacco Lawsuits Later Reduced

Despite how bad the tobacco industry has been, the companies have been generally successful in the courts. For years, it was difficult to even get a case to trial. The companies utilized a litigation strategy that literally attempted to "break" any law firm that sued them. When people began to learn of how bad the industry was and how the companies operated, the outcome of trials began to shift to the victims. However, the outcome of their victories at trial hasn't been that good on appeal. There have been a number of large awards in tobacco lawsuits that were later reduced. Some of these were:

December 2002: A Los Angeles Superior Court judge reduced a \$28 billion punitive damages award to \$28 million in a case against Philip Morris. The victim, Betty Bullock, 64, of Newport Beach, California, had been diagnosed with lung cancer in 2001.

August 2002: A Los Angeles Superior Court judge reduced the \$3 billion punitive damages award to \$100 million in a case against Philip Morris. The victim, Richard Boeken, 56, of Topanga, California, died of lung cancer in January 2002.

May 2002: A Multnomah County (Oregon) Circuit Court judge reduced the \$150 million punitive damages award to \$100 million in a case against Philip Morris. The family of Michele Schwarz, 53, of Salem, Oregon, sued after Ms. Schwarz died from lung cancer in July 1999.

April 1999: A San Francisco Superior Court judge reduced the \$50 million punitive damages award to \$25 million in a case against Philip Morris. The victim, Patricia Henley, 52, of Los Angeles, had been diagnosed with inoperable lung cancer in February 1998.

Key Tobacco-Case Ruling On Ad-Fraud Is Expected

We have been watching the govern-

ment's lawsuit against the tobacco industry with interest. A federal judge is expected to rule any day on a motion with major implications for the largest government lawsuit ever filed against the tobacco companies. The Judge in the U.S. District Court in Washington will decide whether to discard claims of advertising fraud and deception from the suit, filed by the Justice Department and accusing the cigarette industry of conspiring to deceive consumers about the dangers of tobacco and cigarettes. The suit seeks \$289 billion in damages, as well as tough restrictions on the marketing, manufacture, and sale of tobacco products. This amount would top the \$246 billion the tobacco companies agreed to pay states in settlement agreements of the late 1990s.

The tobacco companies have asked for partial summary judgment on the advertising-fraud claims in the current suit, which would cut the case down, but not kill it. The government is still pursuing other claims under the Racketeer Influenced and Corrupt Organizations Act against all nine major tobacco companies and two nonprofit groups that did joint industry research and public relations. In court filings, the companies argue advertising and marketing are regulated by the Federal Trade Commission, and therefore shouldn't be a part of the suit. The legal question presented is: Does the FTC's rule-making authority prevent the government from making its claims on advertising fraud? The federal judge was expected to rule by early May. The \$289 billion represents what the industry has earned since 1971 from the 33 million people who became addicted to cigarettes as minors.

The lawsuit was filed more than three years ago under former President Clinton. While the Bush Administration has publicly raised questions about whether it will pursue the case, it continues to fund a Justice Department team preparing for trial. Unless there is a change, the trial is scheduled to begin on September 15, 2004. Hopefully, the government will aggressively pursue its

case to a conclusion. The tobacco industry, often referred to as the "evil empire," kills over 400,000 people every year and has done so for years. Their vast influence and political clout shouldn't be a factor in a lawsuit. Hopefully, it won't be in this one. The Bush Administration should put its full force behind this lawsuit - on the side of the government - and make the defendants pay for all the hurt and misery they have caused.

The Alabama Scene

Everything in Alabama is on hold until the Alabama Supreme Court rules in two pending cases. Hopefully, the court will rule soon and allow the lawsuits to continue. When you consider how the tobacco industry has intentionally caused so much misery and harm to so many innocent people who get hooked on this drug called tobacco, it is difficult to understand how they have continued to exercise undue influence over our politicians. Causing over 400,000 deaths per year by a manufacturer when a product is used by consumers as expected, should never be tolerated in a civilized society.

XXIV. RECALLS UPDATE

CPSC Warns Consumers

Despite recall notices and warnings, many consumers continue to use products that have the potential to seriously injure or kill. The Consumer Product Safety Commission has unveiled a list of many common hazardous consumer products and has urged consumers to use the list to check their homes and destroy or fix unsafe products. Consumers can read the current list of dangerous products by going to their Website www.cpsc.gov or can receive the list by mail. If you use the latter route, simply mail a postcard to "Recall Round-Up List," CPSC, Washington, D.C. 20207. In any event, find out if you

have products in use or stored around your homes that are on the recall list.

NHTSA Upgrades Probe Of GM Minivans

The National Highway Traffic Safety Administration has stepped up an investigation that may lead to a recall of 507,016 General Motors minivans because a rear axle part can break. The NHTSA inquiry involves 1997 through 1999 models of the Chevrolet Venture, Pontiac Transport, and Oldsmobile Silhouette. Two crashes and fifteen incidents were reported after a part called the rear-axle trailing arm broke. This obviously involves a serious defect. Hopefully, NHTSA will do its job and require a recall.

KIA Recalls The 2003 Sedona

NHTSA has released the following information concerning the 2003 KIA Sedona, which has been recalled. There are approximately 3,434 units affected. On certain passenger vehicles, there was a programming error in the anti-lock braking system (ABS) electronic control module logic. The programming error could cause reduced braking force at speeds below 25 mph, which could result in increased stopping distances. Such increased stopping distances could result in a crash. Dealers will reprogram the control module. At press time, KIA had not yet provided an owner notification schedule. Owners who take their vehicles to an authorized dealer on an agreed upon service date and do not receive the free remedy within a reasonable time should contact KIA at 1-800-222-5500.

Subaru Recalls 170,000 Vehicles In U.S.

Subaru has recalled about 170,000 vehicles in a number of Northern and Midwestern states, the so-called "salt belt" region, due to possible rusting of

the rear suspension. The automaker, a unit of Japan's Fuji Heavy Industries Ltd. 7270.T, said that the rear suspension components could rust after several years of exposure to road salts, used to clear ice during the winter. The corrosion could cause the subframe to break, which if it occurred during operation of the vehicle, resulting in loss of control. The recall covers some of the Legacy, Outback, and Baja vehicles from the 2000 to 2003 model years. Vehicles sold in or currently registered in 22 states and the District of Columbia are included in the recall. The company said it knew of no accidents resulting from the rusting. This recall doesn't affect our region directly, but vehicles don't always stay in the state of purchase. We included this notice just in case some find a way to the South.

Toyota Recalls The 2002-2003 Celica For Fuel System Problems

Toyota has recalled the 2002-2003 Celica. There are 15,048 units involved. The dates of manufacture are March through November 2002. On certain passenger vehicles, the fuel tank check valve, located in the fuel tank inlet pipe, may become separated from the inlet pipe and fall into the fuel tank. If the check valve falls into the tank, fuel may spill from the fuel inlet pipe when the fuel pump automatically shuts off during fueling. This condition may result a fire in the presence of an ignition source. Dealers will inspect and, if necessary, repair the fuel tank check valve. The manufacturer has reported that owner notification began in May 2003. Owners may contact Toyota at 1-800-331-4331.

Toyota Recalls The 2003 Lexus GX470 For Problems With Rear Seat Latch

Toyota has recalled the 2003 Lexus GX470. There are 3,666 units involved.

The dates of manufacture are March through November 2002. On certain sport utility vehicles equipped with the Lexus Link System (LLS), it may be difficult to lock one of the two latches on the bottom of the middle row left rear seat (larger side of the bench seat directly behind the driver). Due to the thickness of the Lexus Link System storage case, the stopper on the bottom of the seat is slightly elevated. This elevated position misaligns the latch to the striker. If the vehicle is operated with only one latch locked, the occupant of the seat may be improperly restrained in the event of a crash, increasing the risk of personal injury. Dealers will remove the LLS case panels around the seat stopper. The manufacturer has reported that owner notification began during April 2003. Owners may contact Lexus at 1-888-333-9376

Nissan Recalls Altima And Sentra Cars

Nissan Motor Co. Ltd. will recall 268,000 vehicles to fix an engine part that could cause a fire and has been working to fix another problem that could also lead to a fire. NHTSA said Nissan's recall covered 2002 and 2003 Nissan Altima and Sentra cars sold with 2.5-liter four-cylinder engines. A pin on the exhaust pipe hanger can catch road debris, which could catch fire from the heat of the engine. Dealers will remove the protruding part of the pin. NHTSA said Nissan was also trying to solve a problem with the catalyst that could eventually lead to the engine burning oil and possibly a fire.

GM Has Recalled The 2003 Trailblazer, Envoy And Bravada

GM has issued recalls on the 2003 Chevrolet Trailblazer, 2003 GMC Envoy, and the 2003 Oldsmobile Bravada. There are 44,653 units affected. Certain sport utility vehicles were built with a left-front brake pipe with a

circumferential score at a random location along the length of the pipe as the result of the manufacturing process. If the brake pipe at the scoring location corroded to the point that the brake pipe wall became very thin, and application of the brake developed enough pressure to partially or fully fracture the brake pipe, brake pedal travel would immediately increase and front brake performance would be reduced. Or, if the brake pipe wall at the scoring location partially or fully fractured due to a combination of pressure, vibration, or temperature induced fatigue, the brake pedal travel would immediately increase and front brake performance would be reduced. In these instances, braking would be limited to that available with the remaining half system (rear brakes). If this occurs when stopping distance is limited, a crash could occur. Dealers will replace the left-front brake pipe. At press time, GM had not provided an owner notification schedule. Owners who take their vehicles to an authorized dealer on an agreed upon service date and do not receive the free remedy within a reasonable time should contact Chevrolet at 1-800-222-1020, GMC at 1-800-462-8782, or Oldsmobile at 1-800-442-8006.

Ford Has Recalled The 1999-2000 Lincoln Continental

Ford has recalled approximately 43,459 Lincoln Continentals with model years 1999-2000. The dates of manufacture are May 1998 through February 2002. On certain passenger vehicles, the driver and/or passenger side airbag could deploy as a result of underbody impacts near the sensors. These would include those occurring from pieces of gravel or debris thrown from the wheels while the vehicle is being operated at moderate to high speed or being accelerated. Dealers will recalibrate the airbag sensors. Ford has reported that owner notification began March 31, 2003. This action is deemed a "safety improvement campaign" and is not being conducted

under the Safety Act. The company has informed NHTSA that it will provide the modifications described above free of charge. Owners may contact Ford at 1-800-392-3673.

Ford Has Recalled The 2003 Lincoln LS

2003 Lincoln LS models, manufactured from November 2002 February 2003 have been recalled. There are potentially 1,736 units involved. On certain passenger vehicles equipped with 17-inch chrome wheels, the wheels were not heat-treated. These wheels may crack at the lug-nut holes, which could result in the loss of the lug-nut torque. If this condition occurs, the driver may experience noise and/or vibration while driving the vehicle. Continued operation of the vehicle could result in the wheel separating from the hub, increasing the risk of a crash. Dealers will inspect the wheels to ensure that all the wheels have been heat-treated. Any wheel that has not been heat-treated will be replaced. The manufacturer has reported that owner notification began April 14, 2003. Owners may contact Ford at 1-800-392-3673.

Toyota Has Recalled The 2003 Toyota 4 Runner

Approximately 29,482 - 2003 Toyota 4 Runner vehicles have been recalled. These vehicles were manufactured from October 2002 through March 2003. On certain sport utility vehicles with V6 engines, the fuel pulsation damper, located on the fuel rail, may have been improperly assembled, causing a diaphragm in the pulsation damper to be damaged. If the diaphragm fails, fuel may leak. This could result in an engine compartment fire if a heat source or an ignition source is present. Dealers will replace the pulsation damper. The manufacturer has reported that owner notification began during May 2003. Owners may contact Toyota at 1-800-331-4331.

Nissan Has Recalled The 1994-1995 Altima

Nissan has recalled some 1994-1995 Nissan Altimas. There are potentially 190,000 units involved. These vehicles were manufactured from September 1993 through March 1995. Nissan is recalling certain passenger vehicles following reports that passenger airbag deployments in these vehicles had caused a number of moderate-to-severe eye injuries. Nissan has developed a new passenger airbag that is less powerful when it inflates in a crash to reduce the risk of airbag inflation-related injuries. Nissan dealers will replace the passenger airbag at no charge to the consumer. The manufacturer has reported that owner notification began during May 2003. This action is deemed a safety improvement campaign and is not being conducted under the Safety Act. Owners may contact Nissan at 1-800-647-7261.

Kia Motors Has Recalled The 2002 Kia Sedona

On certain 2002 Kia Sedona passenger vehicles, manufactured from May through June 2002, some of the second and third row seat strikers installed on the vehicle floor pan have been improperly heat treated and could break in a crash, resulting in injuries to occupants of these seats. There are approximately 4,276 involved. Dealers will replace the seat strikers. The manufacturer has reported that owner notification began April 25, 2003. Owners may contact Kia at 1-800-222-5500.

Ferrari Has Recalled The 1995 512M, 1991-1995 512TR And Testarossa 1987-1991

Approximately 2,008 - 1995 Ferrari models 512M, 1991-1995 Ferrari 512TR, and 1987-1991 Ferrari Testarossa have been recalled. These vehicles were manufactured from October

1986 through December 1995. On certain passenger vehicles, the passive restraint system may not function correctly. Inconsistent electrical operation of the automatic track assembly has been experienced. If the passive restraint system experiences an electrical or mechanical failure, the seat occupant would not be fully protected. Dealers will replace all the main components of the passive seat belt System. This includes the electronic control units, the retractor mechanism, and both the right and left motor driven track assemblies. The manufacturer has reported that owner notification began April 24, 2003. Owners may contact Ferrari at 1-201-816-2651.

BMW Has Recalled The 2003 325i, 325Ci And M3

BMW has recalled the following vehicles: the 2003 BMW 325i, the 2003 BMW 325Ci, the 2003 BMW 330i, and the 2003 BMW M3. Approximately 13,100 units, manufactured from August through November 2002 are involved in the recall. On certain passenger vehicles, the window lifting anti-pinching device might not function properly, and occupants could be pinched by a window that is being closed. Dealers will inspect, and if necessary, replace the electronic control unit for the window lifting anti-pinching device. The manufacturer has reported that owner notification during May 2003. Owners may contact BMW at 1-800-831-1117.

Other Recalls Announced By NHTSA

There were several other significant motor vehicle recalls that will be mentioned below:

Ford will replace the windshields on 67,894 Ford Taurus and Mercury Sable sedans that don't meet federal standards. A Ford spokesman said NHTSA found a problem with the windshields on some 2002 and 2003 models, which

Ford traced to an assembly problem.

GM will recall about 52,000 of its Cadillac CTS luxury sedans to fix a bolt on the steering shaft that could loosen. This could cause drivers to lose control of their vehicles. The automaker said it was aware of two instances where the bolt loosened, but no crashes resulted. Cadillac dealers will inspect the steering shaft and ensure that the bolt is tightened.

Chrysler will recall 287,725 - 2002 Dodge Ram pickups to fix a wiring problem that could cause the heater fan to shut off.

BMW AG will recall 5,110 of its Mini Cooper cars to fix a screw on the rear suspension struts that could break.

Firestone Has Recalled The STEELTEX A/T LT235/75R15

The National Highway Traffic Safety Administration has released information concerning the recall by Firestone of a small number of STEELTEX Radial A/T LT235/75R15 tires. The tires were built from March 9, 2003 through March 15, 2003. Due to an insufficient cure in the tread shoulder area, the tire may develop irregular wear, noise, or vibrations and with extended use, the tires with this condition may experience a tread separation. Tread separation of the tire can possibly lead to a vehicle crash, resulting in serious injury or death. BFS will notify its customers and replace the tires free of charge. Owner notification began in May 2003. Owners who take their vehicles to an authorized dealer on an agreed upon service date and do not receive the free remedy within a reasonable time should contact firestone customer service at 1-800-367-3872.

Disetronic D-TRON Insulin Infusion Pump Recalled

The Food and Drug Administration (FDA) has announced the Class I recall of the Disetronic D-TRON Insulin Infusion Pump, Models 8100001 D-TRON

(blue) and 8100005 D-TRON (anthracite). Class I represents the highest level of risk and is reserved for products that could likely cause serious health problems or death. The reason for the recall is that some pumps started programming a bolus (fast injection) of insulin that was not initiated by the pump user and the delivery of an unintended bolus was made unless it was stopped by the device user. The pumps are being recalled by Disetronic Medical Systems, Inc. St. Paul, Minnesota. The recall involves 3,357 insulin infusion pumps nationwide. A recall notice was originally issued in April 2002 for these pumps. After the receipt of new information, the health risk was reevaluated and upgraded to a Class I recall due to the potentially life threatening danger of the problem. The following recommendations were made: Contact your physician immediately before doing anything to your pump. Your physician can also help you determine if you are using one of the two models of Disetronic that have been recalled.

American Household, (Formerly Sunbeam) Has Recalled Star ME-1 Dry Fire Sprinklers

American Household Inc., formerly known as Sunbeam Corporation has recalled about 60,000 Star ME-1 dry fire sprinklers. Chemetron Corporation, an inactive subsidiary of AHI, manufactured these sprinklers from 1977 through 1982. This recall announcement follows the resolution of an administrative proceeding filed by CPSC on October 9, 2001, in which CPSC alleged these sprinklers are defective and are likely to fail to operate in a fire, thereby exposing consumers to the risk of death or serious injury. CPSC reports that samples of Star ME-1 sprinklers removed from several locations and tested by independent testing laboratories did not operate as intended. Although there have been no reports that Star ME-1 dry

sprinklers manufactured by Chemetron Corporation have failed to operate while in use, CPSC has received reports of two failures involving Star ME-1 dry sprinklers manufactured by other companies. One report involved a 1976 sprinkler, and the other, sprinklers installed in 1990.

Chemetron's Star ME-1 sprinklers have the following information molded onto the sprinkler: the name "Star," the designation "ME-1," and the year of manufacture, starting with 1977 and ending with 1982. These sprinklers were typically installed in areas of buildings where the sprinklers or water supply pipes may be subject to freezing. Examples of such areas include unheated attics, freezers and coolers, porches, and parking garages. The types of facilities in which the sprinklers were installed include nursing homes, convalescent and long-term care facilities, supermarkets and other stores, warehouses, hospitals, and office buildings.

Sunbeam Corporation filed for bankruptcy protection in February 2001. However, AHI has agreed to pay up to \$1 million to assist in the replacement of the Star ME-1 dry sprinklers that Chemetron manufactured from 1977 through 1982. To receive payment for sprinkler replacement, consumers must follow specific procedures and must submit claims by September 29, 2005. For more information, consumers should call 1-888-551-5014 toll-free anytime or visit the recall Website at www.starme1recall.com. CPSC previously announced that Mealane Corporation voluntarily agreed to recall Star ME-1 sprinklers manufactured from 1961 through 1976 and Central Sprinkler Company voluntarily agreed to replace Star ME-1 fire sprinklers manufactured from 1996 through 1998. The Sprinkler Corporation of Milwaukee, which manufactured Star ME-1 sprinklers from 1983 through 1995, has no assets with which to fund a recall, but is issuing a safety notice warning building owners to replace these sprinklers.

Homelite Recalls Chainsaws

Homelite has a recall of some 6,900 chainsaws. Consumers should stop using the recalled products immediately unless otherwise instructed. Homelite Consumer Products, Inc., of Anderson, South Carolina, the distributor, announced the recall. These saws can operate while the engine is at the "idle" setting, posing a risk of serious lacerations to the operator and bystanders. These Homelite brand chainsaws have model number UT10946 and manufacture dates of November 2002 or December 2002. The model numbers and manufacture dates are printed on the lower corners of a black data label located on back side of the chainsaw's engine housing, opposite the on/off trigger. They have a red housing with black trim and are sold in a rectangular black plastic case. The units were sold at home and hardware stores nationwide from December 2002 through February 2003 for about \$200. The chainsaws were manufactured in China, which may come as a surprise to some of our readers. You should contact Homelite to find the nearest Homelite-authorized service center for a free throttle adjustment. The stores where these chainsaws were purchased will not provide this service. You can call Homelite at 1-800-776-5191 or visit the firm's Website at www.homelite.com.

XXV. ALABAMA WATCH UPDATE

Alabama Watch Is Making Its Mark

Alabama Watch is gaining a strong foothold in Alabama and is doing a very good job on consumer issues for Alabama citizens. I read the newsletter from Alabama Watch, dated May 14, 2003, which contains a good deal of

pertinent information. This consumer advocacy group has established credibility with the news media and has done a great job of working for consumers in the Legislature. In its newsletter, Alabama Watch correctly reports that 2003 has been a tough year so far for consumers in the Legislature. I totally agree with that assessment, but that's nothing new. Consumers have been second-class citizens for the past 25 years. A prime example is the hog farm bill passed the House on May 13th, which is nothing more than excessive protection for large corporate farming operations. The worst offender of all time, however, may be the nursing home immunity bills, which make elderly citizens worse than second-class citizens. In any event, Alabama Watch has a lot of work to do on educating consumers about bills like the hog farm and the nursing home bills that erode consumer rights. In fact, both of these bills "smell" to high heaven and the odor may attack permanently to the sponsors of the bills.

The Special Session will do little to cool off a very long and hot summer for consumers. The emergence of the nursing home bills in the Senate during this "emergency" session should tell consumers in our state where the Senate leadership's priorities lie. This means groups like Alabama Watch and AARP will have to become involved in the fight again. In any event, Alabama Watch needs more volunteers to assist them in their fight to protect consumers in Alabama. A number of groups, including AARP, have pitched in to help Barbara Evans and her staff. Hopefully, others will join their efforts. An example of what groups can do involves UAW Local 1413 in Huntsville. The labor group hosted a news conference for Ms. Evans and has gotten actively involved in other areas. A number of committed people from that local will help Alabama Watch get consumer news out in their area. The combination of AARP members, union

people, families of nursing home residents, and lawyers are a great base for more work in all parts of the state. Joan Carter, State Director of AARP, has been a real friend of Alabama Watch. The AARP members have been especially active in leading efforts in the fight against the nursing home bills in the State Senate. The work of AARP and Alabama Watch has really kept the pressure on the small number of Senators who are carrying water for the nursing home owners. It is hard to ignore 400,000 members of AARP in Alabama and members of the Senate understand their influence back home. I hope all of you believe there is a need for a strong consumer advocacy organization in Alabama. If you want more information on Alabama Watch, visit their Website at www.alabamawatch.org or call them at 1-800-449-7515 or (334) 263-3022. If you are interested in making a donation to their cause, which involves consumer research, education, and protection, you can send a check to Alabama Watch, 400 South Union Street, Suite 245-B, Montgomery, Alabama 36104.

XXVI. FIRM ACTIVITIES

Beasley Allen Radio Shows

Our radio show, entitled "The Jere Beasley Show" on WACV - 1170 AM, has moved to a new day. The show can now be heard each Thursday from 5:00 p.m. until 6:00 p.m. The show will continue to simulcast with WRJM 93.7 The Rose, in Ozark. The show, which will be hosted by Temple Adams, can be heard in the Montgomery listening area and throughout South Alabama and the Florida Panhandle. It will continue to be a consumer news program with call-ins from the audience. We have enjoyed doing the Saturday show, but are told the new time slot will reach a much larger audience. I will do most of

the shows with help from our other lawyers.

We now have a second show entitled "The Jere Beasley Hour" on WLWI 1440 AM. It will air each Friday from 7:00 a.m. until 8:00 a.m. The host will be Kevin Elkins, a card-carrying Republican, who will keep me on my toes. Don't forget to also tune into this new show. I will do the majority of these shows during the year with help from other lawyers. Our goal is to inform Alabama citizens on consumer issues and to get input from callers.

Thus far, we have been unsuccessful in locating a station in Birmingham or North Alabama to carry our shows. This has been our fault due to the demands of a heavy trial schedule and the Legislature being in session. Nevertheless, we will continue to look for stations. If you have a suggestion, it would be appreciated. We believe a consumer-friendly talk show in all areas of Alabama is most important. The right-wingers have dominated the radio talk shows for years and we believe a balance is badly needed.

Beasley Allen Attorneys Admitted in Other States

Recently, our firm announced that Ted Meadows, Roger Smith, and Navan Ward were admitted to the Mississippi Bar. They were sworn in on April 29th and are admitted to practice before all State and Federal Courts in Mississippi as well as the Fifth Circuit Court of Appeals. Paul Sizemore has been admitted to the Georgia Bar and was sworn in on November 25th. Paul was also admitted to the Tennessee Bar in January. J. P. Sawyer was admitted to the Ohio Bar and was sworn in on November 13th before the Ohio Supreme Court in Columbus, Ohio. Rick Morrison was admitted to the Mississippi Bar in September of 2002 and is also admitted to practice before all State and Federal Courts in Mississippi as well as the Fifth Circuit Court of Appeals. The ability to practice in other states has

given our firm the opportunity to help persons in those states. We appreciate our lawyers being willing to take the bar exam in these states - that is hard work.

Jerry Taylor – An Important Member Of The Firm

Jerry Taylor came to the firm in April of 2001 from Birmingham. In October of 2001, Jerry organized the Nursing Home Section of the firm. This new section was divided into pre-suit and litigation areas to allow thorough review of all cases prior to filing. Since becoming the Nursing Home Section Head, Jerry has helped the firm expand its nursing home practice into numerous states throughout the southeast and into other areas of the country. He has been involved in numerous nursing home cases that have resulted in substantial verdicts and settlements for our clients. Recently, he was lead counsel in a case against a Beverly Enterprises facility in Mobile, Alabama that resulted in a \$7 million dollar verdict. This case was featured in The National Law Journal, the Nursing Home Law Letter, and the Andrews Nursing Home Litigation Reporter, as well as numerous other publications and newspapers. In addition, Jerry has had numerous seven-figure settlements against nursing homes. In the last few years alone, he has been involved in approximately \$60 million worth of verdicts and settlements in cases filed against nursing home corporations in Alabama and other states.

Jerry is a frequent lecturer of legal seminars locally and nationally on issues relating to nursing home litigation. He has authored numerous papers including "Nursing Home Malpractice in Alabama: Pre-Suit Preparation" and "Nursing Home Litigation: Taking a Case to Trial." He is a member of the Executive Committee of the Alabama Trial Lawyers Association and is involved in the Association of Trial Lawyers of America's Nursing Home Litigation Group. He is married to the

former Lisa Whigham of Louisville, Alabama, and they have three sons, Boyd, Christopher, and Rob. Jerry Taylor is a most important member of our firm. His section serves a significant segment of our state's population. Our Nursing Home Section is dedicated to bringing about real change in how nursing home residents are treated in Alabama.

Our Spiritual Leader

Willa Carpenter is the Human Resources Liaison for our firm. She has been with the firm for ten years and is regarded as the firm's spiritual leader. Willa provides guidance and support to the staff by listening, counseling and praying with them whenever they are in need. She oversees the firm's weekly devotions that have become a wonderful testament to the firm's spirit of Christian fellowship and also administers weekly prayer meetings with several of the shareholders' wives. Willa also supervises the firm's four receptionists and helps them carry out their important roles for our firm. Willa and her husband Sam have been married for 49 years and have three children and six grandchildren. They are elders at Christian Life Church in Montgomery. They love to entertain and work in their yard. We are most fortunate to have Willa Carpenter working for God and our firm - in that order - and hope she is around for many more years.

A Legal Assistant Who Is Important To The Firm

Our firm handles a high volume of cases and many of them are complex and extremely technical in nature. We depend on a mix of lawyers and non-lawyer personnel to handle our caseload. The position of legal assistant is an important part of a litigation team in our firm. The persons who fill these jobs have to be highly competent and well trained. We are fortunate to have a very good group of legal assistants. We

have 38 legal assistants currently employed in the firm. Carol Thompson, one of our most experienced legal assistants, works for Greg Allen in our Product Liability Section. Carol, who has been with the firm since 1990, has been involved in some of our most important cases. Her work product is always of an excellent nature. While having good support staff is critically important to the success of any case, it is especially critical in the products field. The work in product liability cases is hard, demanding, and intense for a number of reasons. These cases will always involve either a death or serious injury that permanently disables the victim, which requires a great deal of medical knowledge and expertise. Discovery is always intense and requires a good deal of plain old hard work. Our legal assistants are highly trained and proficient and Carol is as good as they come. One of her best traits is her ability to "bond" with our clients.

Carol is married to Mark Thompson, who is a veteran with the Montgomery County Sheriff's Department. They have three children, with a grandchild on the way. Carol's twin boys are outstanding football players at Prattville High School. The boys will be seniors next fall and are looking forward to a great year. Carol is a tremendous person and is a loyal member of our firm.

An Award That Is Sincerely Appreciated

I was honored and humbled to have been selected by the Alabama Democratic Conference as this year's recipient of the Martin Luther King, Jr. American Dream Award. This prestigious award is given annually to persons who serve their fellow citizens. I consider this honor to be one of the most rewarding things that has ever happened to me in my public life. I sincerely appreciate this recognition. When I realize that there are many persons much more deserving than I am, it makes me appreci-

ate and cherish this award even more. My firm is dedicated to serving victims of corporate wrongdoing and I am blessed to be a part of what we do for folks. I have never apologized for being a trial lawyer and I never will. I am proud to carry that label. Without trial lawyers who are both willing and able to fight for consumers and people generally, our country would be in a sad state of affairs. When it gets to the point in my life that I apologize for trying to help folks and righting wrongs, I will retire to the farm. I thank God for giving me the opportunity to serve people who need and deserve help.

XXVII. A TRIBUTE TO MY FRIEND - JIM FYFFE

The State Loses A Good Man

The State of Alabama suffered a loss of one of its best ambassadors when Jim Fyffe died suddenly on May 15th. While most folks identify Jim with Auburn University sports, in reality he was a salesman for all Alabamians. Jim was well known and well respected throughout the country as the voice of the Auburn Tigers. He came to Auburn with Pat Dye in 1981 and never left. I first met Jim in about 1975 when my son Jere, Jr. was playing peewee football on the old WCOV field. Jim was announcing those games at the time and went about it in the same manner and with the same enthusiasm as he did later when he hit the big time. We became friends at that time and our friendship lasted. I realized Saturday when I was reflecting back on the past 20 years or so that Jim never called me by my first name - it was always "Counselor." I attended Jim's funeral and a full house came from all over the state to pay their last respects to a good man who not only loved Auburn University

but also loved the State of Alabama and it's people. Perhaps, Karl Stegall, Jim's pastor, said it best when he described Jim's priorities to be his Lord, his family, and Auburn University. One common thread amongst all the folks who talked at the funeral about Jim's life and work was that he never forgot where he came from in the hills of northeastern Kentucky. Any person who ever heard Jim wind up one of his broadcasts or radio shows has heard his signature signoff, "my time's up, I thank you for yours." I would add at this juncture that we all are thankful for Jim's time with us. He will be missed. If you want to make a donation in Jim's honor, send a check to the American Diabetes Association. You can also contribute to an education trust fund for Jim's grandchildren. Colonial Bank locations can be contacted for details on the fund. It is also real important for us to keep Rose and the family in our prayers.

XXVIII. CLOSING REMARKS

The special session of the Legislature was in progress as we sent this issue to the printer. I hope and pray that the Governor and members of the House and Senate will get the job done that must be done. In my opinion, there has not been a more important session of the Alabama Legislature in my lifetime. Our state's future is hanging in the balance. We are truly at a crossroads in our history. There will have to be enough members of the House and Senate who have the courage to take on the powerful special interest groups, which will do their best to derail the Governor's package. Certainly, to move our state forward by raising taxes will take a great deal of courage. It would have been easy for Bob Riley to say "no more taxes" and instead utilize the customary "band-aid" set of solutions for the critical fiscal

problems facing our state. I thank the Lord he didn't do that. The Governor is taking a bold step in the right direction and has put his political career at great risk. Without sounding "corny," I believe that sort of thing is called statesmanship. The future of our state and the welfare of generations in years to come depend on what happens in the next few weeks. We can't afford to let this opportunity pass without getting the job done. However, not even an extremely popular Governor can do the job alone. He will need tremendous support from the Legislators, other public officials, and from the people of Alabama. The Birmingham News said it best in a recent editorial: "Alabama has the choice between repeating the failures of our past or one that leads to a better future." Hopefully, we will make the second choice, which I sincerely believe is the only course to take. For the good of our state and the welfare of our people, this session of the Legislature can't end in failure. In any event, the Governor and the Legislature will need our prayers and support.

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