THE JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

Exxon Deserved To Be Punished

On November 14th, after 4 weeks of trial, a Montgomery County jury awarded a record $11.8 billion punitive damages award against ExxonMobil Corp. The jury also awarded an additional $103 million in compensatory damages. The claims by the State of Alabama were based on breach of contract and fraud. Beginning in 1993, Exxon had cheated the State by intentionally and willfully underpaying royalties on natural gas from the Mobile Bay field. The future anticipated gain to Exxon, as a direct result of their fraudulent conduct, would have been almost One Billion Dollars.

The jurors heard evidence and saw documents that proved without a doubt that Exxon had committed a massive fraud on the State at the highest level of the company. In fact, it was undisputed that this was the only time that the President of Exxon had actually made a decision on how to pay royalties to any landowner, including states and the federal government. During the trial, we presented internal documents from Exxon that proved without a doubt that the company believed it could cheat the State and that their fraudulent actions would go undetected. In fact, one company document was presented to the President that revealed Exxon knew it had a zero chance of taking any deductions under the Alabama leases. In addition, another document showed Exxon's manager in Mobile knew that no cost-netting deductions could be taken under Alabama's gross proceeds lease form. A series of internal documents confirmed that Exxon believed that because of Alabama's inexperienced and weak regulatory staff, it would be relatively easy for Exxon to cheat the State. Interestingly, it was documented in one Exxon document that if caught, the company's exposure would be repayment of the royalties plus 12% simple interest. Finally, it was shocking to all of us when Exxon answered an interrogatory shortly after the suit was filed, saying—under oath—that the company was not taking deductions. Obviously, this came back to haunt Exxon once a deposition of a company accountant was taken and he spilled the beans.

I have been somewhat surprised to read the news releases put out by Exxon. This is the second jury in Montgomery County to find a massive fraud committed by Exxon on the State of Alabama. The first jury's verdict was set aside by the Supreme Court on a technicality. Now, a second jury—made up of persons with a very high level of formal education—has sent this strong message to Exxon: clean up your act!

The case was handled by our firm and the firm of Cunningham, Bounds, Yance, Crowder, and Brown from Mobile. However, the real heroes in this case are Bob Macrory, the State lawyer who wrote what was described by law professor Laura Burney as the best landowner lease she had ever seen, and

the 12 jurors who heard the evidence had made a courageous decision.

Voters Don't Trust Officials

It shouldn't have come as a big surprise for pollsters to learn that Alabama voters believe state government wastes a great deal of money. This revelation came from the results of a recent poll, which revealed that when the Legislature meets again in February of next year, Alabama citizens don't want lawmakers on their own to raise taxes or cut programs. Instead, they want lawmakers to develop a new plan for the people to vote on. The findings were released by the Capital Survey Research Center, the polling arm of the Alabama Education Association. The poll indicated that reform and accountability were hot topics. It is significant that 82% of those polled agreed the State has serious financial problems or is in a financial crisis. However, 66% said Alabama's financial problems are mostly because the State mismanages money. Having said all of this, I must add that the total amount of "waste" in state government is relatively small. I expect it would be pretty much what we see in most well-run companies in the private sector. In any event, the Governor and legislative leaders didn't have to be told that voters expect the State to be run like a business. However, I don't believe they want the State run like corporations such as HealthSouth, WorldCom, Tyco, Enron, and others.

Independent Study On Proposed LNG Site

While we were trying the Exxon case, there was another story involving ExxonMobil Corp. in Mobile that got lots of attention. This involved the oil giant's plans to build a liquefied natural gas terminal in Alabama. ExxonMobil now has a $38 million option agreement with the Alabama State Port Authority on 200 acres at the former U.S. Navy homeport. The oil company wants the property as an LNG terminal site. Federal permits are required. An independent safety study of ExxonMobil's proposal to build a terminal on Mobile Bay is essential. Clearly, the State's interests must be protected.

Governor Riley had wanted an independent safety study to be a condition of the land option granted by the Port Authority. Instead, on October 28th, the Port Authority defeated a measure, introduced by Chairman Tim Parker, that would have commissioned such a study in addition to any federal review. The authority voted 4-2 in favor of granting the land option to ExxonMobil. The Mobile County Commission, Mobile City Council, Daphne City Council and communities near the Theodore Industrial Canal have called for various safety studies on the proposed terminal. The Mobile County school board passed a resolution opposing the project, citing its proximity to a local elementary school.

The terminal would receive supercooled LNG and reconvert it to vapor form for distribution via pipeline. Officials have estimated that one or two ships per week would come through the bay if the terminal were built to its initial capacity of handling one billion cubic feet of gas a day. Scientists have said a catastrophic fire could result from an incident involving tanker ships that deliver the imported gas. The environmental watchdog group Mobile BayWatch has pushed for a safety study from the beginning. The $600 million terminal, which would take five years to permit and build, is expected to create only 50 permanent jobs, according to ExxonMobil. While the terminal would create a few jobs, the safety problems must be dealt with. Hopefully, all necessary studies will take place before the project is allowed to go forward. I wonder how many states on the coast are competing for this project.

Anti-Tax Group Gives Award To Alabama's GOP Chairman

As we all hear and read about all of the severe fiscal problems affecting state government, including all levels of public education, there are some who are being honored for defeating the recent tax and reform proposal. One of the national groups that opposed the tax plan has recognized Alabama Republican Party Chairman Marty Connors for successfully fighting the proposal. Americans for Tax Reform, which fights tax increases at all levels of government, gave its first "sword award" to Marty Connors of Birmingham. I am not sure that this is an honor that will stand the test of time. However, I suspect I am in the minority of Alabamians on this opinion at present. In any event, I congratulate Marty on his award.

Court Halts Atlanta Water Deal

A few weeks ago, in an order that received little attention, a Birmingham federal judge halted an agreement that allowed Atlanta to bypass years of negotiations and withdraw more water from Lake Lanier without the permission of Alabama and Florida. U.S. District Judge Karon Bowdre said the U.S. Army Corps of Engineers violated a previous court order when it promised the water to Georgia during a closed-door deal earlier this year. A court first ruled on the matter after Alabama sued the Corps of Engineers in 1990, saying the federal government could not promise more water from Lake Lanier to metro Atlanta without the consent of Alabama and Florida. In September of this year, five years of negotiations fell apart. Alabama and Florida sued to stop the deal that would have given metro Atlanta as much as 50% more water out of Lake Lanier. Judge Bowdre also ruled that Georgia may enter into no other storage or withdrawal contracts affecting the Apalachicola-Chattahoochee-

Flint river basin without approval of the court. Few people in Alabama realize how important this case is to the state. Water is becoming more and more important to states. In some areas of the country, the problem is already at the critical stage.

Massachusetts To Sue 13 Generic Drug Companies

Recently, the State of Massachusetts filed suit against 13 generic drug companies, accusing them of inflating prices of medicines purchased by the state's Medicaid program. The suit was filed in U.S. District Court in Boston. The complaint charged that the 13 companies, through their marketing and sales practices, violated state and federal laws by inflating generic drug prices paid by the Massachusetts Medicaid program. The suit seeks monetary damages and penalties. Massachusetts joins a growing list of states suing the pharmaceutical companies under similar legal theories.

II. COURT WATCH

Administaff Wins Breach-Of-Contract Suit Against Aetna

A Texas jury awarded Administaff Inc. $15.5 million in damages in its lawsuit against a unit of Aetna Inc. over health insurance costs. The lawsuit, filed two years ago by the personnel management company, was tried in the U.S. District Court in Houston. The lawsuit alleged that Aetna Life Insurance Co. threatened to terminate the Houston-based company's health insurance plan if Administaff didn't pay retroactive and immediate rate increases. In addition to the jury verdict, Administaff will receive $2 million from a settlement with National Union Fire Insurance Co. and American International Specialty Lines Insurance Co. (member firms of American International Group Inc.).

There Has To Be A Better Way

Over the past several years, there has been a great deal of controversy over the selection of federal judges. I am convinced that a better method of selecting federal judges is badly needed. Regardless of which party controls the White House, there is an urgent need for qualified persons to serve on the federal bench. As we all know, the U.S. Constitution provides that the President nominates candidates, with the U.S. Senate having the duty to either confirm or reject the nominees. Political motivations have kept a fairly good number of qualified candidates from making it through the confirmation process, particularly during the Clinton Administration, but to some degree among the current Administration too. This hasn't been good for persons who need the courts to be both open and functional. We all know that the federal courts are swamped with work. There is a definite need for additional judges. As long as judicial nominees are fair political game, talented people will continue to be driven from the process. The candidate pool may wind up with candidates being considered who have no business serving as judges. However, the process won't be changed in my opinion. Executive branch nominations and Senate confirmation will stay with us. Many observers believe that the judicial process, unlike its more flexible political counterpart in the Congress, can only take so much partisan political abuse. Personally, I would like to see a system developed that would take politics out of the nominating and confirming process to the extent possible. Both political parties should work together to improve what many consider to be a failed system.

NFL Sued Over Drunken Crash

The parents of a girl paralyzed in a car wreck caused by a drunken football fan have sued the National Football League. The lawsuit contends the NFL promotes the type of behavior that led the fan to drink 14 beers at a Giants game in 1999 and then try to drive home. As a result, the family believes that the NFL should be held responsible for the girl's injuries. The parents of the child were headed home from a pumpkin-picking trip with their 2-year-old daughter when their car was hit by a truck driven by the drunk driver. The child was paralyzed from the neck down, remains on a ventilator and isn't expected to regain use of her arms and legs. The drunk driver's blood-alcohol level was 0.26, nearly three times the legal limit. The NFL says it forbids beer sales after the third quarter. I understand the stadium mandates that fans can buy only two beers at a time. However, the vendor allowed this fan to buy six beers at a time. Either the NFL must tighten its rules or it should be held legally responsible for injuries such as we see in this case. I firmly believe that alcohol and football shouldn't mix. When alcohol sales are allowed at sporting events, those who profit by the sales must take extra precautions. It is clearly foreseeable that fans will drive home. It is equally predictable that a drunk driver will likely cause a collision and hurt or kill third parties.

Couple Sues Bar Over Traffic Crash With Customer

A recent case filed in Alabama may serve a useful purpose. A Gulf Shores couple has sued a Baldwin County bar under Alabama's Dram Shop Act. The owners and operators of the bar are accused of serving alcohol to a customer who caused a traffic accident two years ago. Two adults and a small child were riding in a vehicle that col-

lided with a Ford pickup driven by a drunk driver in October 2001. The lawsuit was filed in Baldwin County Circuit Court. The defendant driver was charged with driving under the influence of alcohol. He had left the bar in question just before the collision occurred. The lawsuit accuses the bar of serving its customer even though he was visibly intoxicated. The Alabama Dram Shop Act is a state law that allows people injured in drunken-driving accidents to file a lawsuit against the party responsible for putting the drunk driver on the road. Regardless of the outcome of this suit, it may get enough attention to make the owners and operators of establishments that sell alcoholic beverages more careful during the holiday season.

Supreme Court Allows Discrimination Suit To Proceed

The U.S. Supreme Court has allowed a lawsuit, filed by 2,600 current and former black managers against food services company Sodexho Marriott Services Inc., and called the largest employment discrimination case of its kind, to proceed. The Court was asked to clarify when judges should block large class action lawsuits. The black worker plaintiffs claim the company broke federal civil rights laws, and want the company to revise its promotion procedures.

Trial Consultants' Work Product Protected

We have just completed a lengthy trial against ExxonMobil Corp. Dr. Phil McGraw and a number of his employees served as "consultants" for the giant oil company during trial preparation and also in selecting a jury. Many lawyers in complex litigation rely on trial consultants to assist them in trial preparation and in some cases during the actual trial itself. The U.S. Court of Appeals for the Third Circuit ruled in a pending case that work product of a trial consultant is protected by the attorney work-product privilege. The judges overturned a district court ruling that the privilege did not cover predeposition preparation of a witness by a nontestifying trial consultant. This consultant was hired by Ernst & Young in its litigation with Cendant. The trial judge had reversed a special discovery master's finding that the work-product and attorney-client privileges protected Dr. Phil McGraw's efforts to help prepare the witness, a former Ernst & Young senior manager who prepared the financial statements at issue in the litigation. The witness was represented by a lawyer for Ernst & Young.

The appeals court left to the trial judge what questions Cendant could ask the witness in light of the privilege. However, it did say that Cendant could ask whether the witness had rehearsed or practiced his testimony. Even though the ruling involves preparation of witnesses, its logic may well extend to other consultant functions such as mock trials, focus groups and jury selection. The Cendant litigation began as a securities fraud class action suit over a $20 billion market capitalization loss. The main part of the case settled in 2000 with a $3.2 billion payment to shareholders—$2.85 billion from Cendant and $335 million from Ernst & Young, the company's former auditors. The settlement left pending cross claims by Cendant and Ernst & Young blaming each other for the loss. Under the settlement, the plaintiffs are entitled to half of any amount Cendant recovers from Ernst & Young.

Ford Rollover Suit Tests Punitives Ruling

A product liability lawsuit pending in a Georgia court is getting a great deal of national attention. The case involves the roadworthiness of the 1992 Ford Explorer. Ford Motor Co. is accused of designing and manufacturing a sport utility vehicle prone to rollovers. The suit also alleges that Ford failed to warn buyers of the danger. The suit is the latest in a series of lawsuits against Ford over alleged flaws in the Explorer's design. The Georgia case has attracted national attention because it is the first that will take place since the U.S. Supreme Court's decision in *State Farm Mutual Automobile Insurance Co. v. Campbell*, which addressed punitive damage awards.

While the media attention relates to the punitive damages issue, I suggest they should take a look at Ford's decision-making process regarding safety. In my opinion, Ford could easily have designed and manufactured a safer vehicle. Ford engineers knew that the Explorer demonstrated the same rollover tendencies that had plagued the now infamous Bronco II. Ford also knew it could not make the necessary changes to improve the vehicle's stability in the short time before it was scheduled to go on the market. This was a classic example of putting profits over safety. It also points out how the marketing arm of the company overrules the engineers on safety issues. In the Georgia case, the plaintiffs are seeking compensation for their medical bills, past and future care and treatment costs, and mental and physical pain and suffering. The plaintiffs also claim that Ford's actions were "reckless and willful" and "exhibited conscious indifference to the consequences of its acts." I agree with their assessment.

III. CAMPAIGN FINANCE REFORM

Bush Fundraising Machine Relies On Big-Dollar Donors

Regardless of how you feel about George W. Bush from a political perspective, you have to admire his team's

fund-raising abilities. The Bush-Cheney re-election campaign's fundraising effort over four months reveals a dramatic reliance on super-donors. It is expected that this effort will bring an unprecedented $100 million into the campaign coffers. There are 285 contributors who attained elite status with the Bush organization, according to WhiteHouseForSale.org. Analysis of newly released Federal Election Commission (FEC) data reveals that the campaign raised more than 80% of its funds from large individual donations. Most of the money was raised at exclusive, big-ticket events across the country. The 2004 Bush campaign named 217 Rangers and Pioneers in the most recent three-month reporting period, adding to the 68 individuals who were identified earlier this year. To reach the status of "Ranger," at least $200,000 in individual contributions must be raised. So far, there are 100 individuals who've reached the rank of Ranger. There are 185 donors anointed as Pioneers for putting together $100,000. In addition, the campaign has named 20 Mavericks—a new honorary title for junior rainmakers under age 40 who bring in at least $50,000. If you would like to learn more about how the Rove-led team operates, go to this Website: www.WhiteHouseForSale.org.

IV. PRODUCT LIABILITY UPDATE

NHTSA Institutes A Dynamic Rollover Test – A Good First Step

The National Highway Traffic Safety Administration was mandated by the United States Congress to develop a way to better evaluate a vehicle's rollover stability. NHTSA has made several attempts over the last 30 years to develop an appropriate method to determine the rollover stability of vehicles. In the early 1970s, NHTSA began to review the issue of rollover stability but gave up developing a test when it could not establish a consistent repeatable test. NHTSA again attempted to develop a test in the 1990s, but with heavy opposition from the automotive industry, no test was developed.

The new test that will be used by NHTSA to rate rollover stability is a modified "fishhook" test originally developed by Toyota Motor Corporation. The test involves a maneuver with a computer-equipped steering wheel that steers the vehicle three-quarters of a turn in one direction and then immediately turns the vehicle in the opposite direction. The use of a computerized steering controller ensures consistent results for each vehicle tested. The test will be conducted at speeds between 35 mph to 50 mph. If a vehicle exhibits two-wheel lift, it will be rated as having a high propensity for rollover. However, it is unclear how this new dynamic test will work in conjunction with the NHTSA's earlier mathematical test method for determining rollover propensities that was adopted in 2001.

In 2001, NHTSA began using the "static stability factor" to rate vehicles' rollover propensity. NHTSA used the star rating system to inform the public of a vehicle's rollover propensity. One star means a high probability of rollover, while five stars indicate a lower probability of rollover. The government's current rating system, based upon the static stability factor, is a mathematical equation that derives a number based upon the vehicle's track width and the height of the center of gravity of the vehicle. The use of the new dynamic test will assist the NHTSA in determining how SUVs and other vehicles will respond in more real-world accident avoidance maneuver conditions. The new test has been labeled the "Road Edge Recovery Test." The test is meant to simulate a driver's reaction upon inadvertently running off the side of the road and then making a quick steer to return to the road.

To demonstrate the effectiveness of the testing method, NHTSA demonstrated the maneuver with two different vehicles. NHTSA demonstrated for the press the maneuver with a 2000 Toyota 4-Runner, which had two-wheel lift during the initial test run of 35 mph. Another test involved the redesigned 2003 4-Runner. The redesigned 4-Runner had a wider track width and a longer wheel base, and featured an electronic stability control system that many manufacturers are now using. The electronic stability control system will evaluate the vehicle's movements and apply braking to individual wheels as needed to prevent loss of control, which usually precipitates rollover. The 2003 4-Runner completed five runs with no wheels lifting off the ground. The test runs involved speeds from between 35 mph and 50 mph.

SUVs have replaced the station wagon as the family vehicle. Unfortunately, approximately 61% of all SUV fatalities are related to rollover crashes, which is substantially higher than the fatalities that result from car rollovers. For this reason, it is very important that NHTSA establish this type of dynamic testing. The dynamic testing will help consumers in the marketplace push manufacturers toward safer SUVs that are less prone to roll over.

Unfortunately, NHTSA has declined to adopt a rollover standard that would require certain design modifications by all auto manufacturers. The federal government has adopted minimum standards for frontal and side impact performance, but still resists developing a minimum standard for rollover resistance. Automobile manufacturers continue their opposition to the development of such a standard claiming that current knowledge and test procedures are unreliable and unrepeatable. However, NHTSA's demonstration reflecting the results of the design dif-

ferences between the 2000 4-Runner and the 2003 4-Runner clearly shows that it is possible to build a better SUV that is less likely to roll over in accident avoidance maneuvers.

While NHTSA's adoption of the Road Eagle Rollover Test is a big step forward, there needs to be a minimum performance standard established. More than 10,000 people died last year in rollover crashes. Testing vehicles for rollover tendencies is fine, but it won't stop the carnage. A rollover safety standard was first petitioned for in 1985. Clearly, it's high time NHTSA put one in place. This test is a good place to start.

ATV Injuries, Deaths Reported Up In 2002

The number of people killed or injured using all-terrain vehicles is rising. The Consumer Product Safety Commission reported recently that 113,900 people were injured severely enough in 2002 to be taken to a hospital emergency room. These numbers were up from 110,100 in 2001. In addition, 467 people died in ATV-related accidents in 2001, the latest available figures, up from 446 in 2000, according to the report. Children under 16 years old suffered 37,100 serious injuries in 2002, up from 34,300 in 2001, and more than any other age group.

ATVs have three or four wheels with a wide stance and cushy tires. They can be driven on dirt, rocks and trails. No new three-wheel ATVs have been built since 1988 under an agreement between the industry and the federal government. Currently, the CPSC is considering a request from advocacy and consumer groups to ban the use of ATVs by anyone under age 16. A hearing on the issue was held on November 6th in Albuquerque, New Mexico. "This continuous growth in serious ATV injuries and fatalities demonstrates how pervasive this public health crisis is and why it is time for a new approach to ATV safety," according to Rachel Weintraub, assistant general counsel at the Consumer Federation of America.

Chevrolet Lumina – Fire Hazard

The fuel system of General Motors Chevrolet Lumina is defective and exposes occupants to an unreasonable risk of post-collision fire. GM has been aware of the problems with the Lumina's fuel system for years. The carmaker's own engineers have testified in deposition concerning the dangers associated with the Lumina's fuel system and their efforts to get management to fix the problems. However, to date, the problems have not been addressed because of cost cutting efforts by GM.

The hazard with the Lumina's fuel system has two sources. First, nearly all Luminas manufactured before 1999 contain a manufacturing defect. The Lumina's fuel system incorporates a design utilizing a filler pipe and vapor pipe attached to the inner-left rear fender. These two pipes make up one continuous piece and are mated to a two-inch inlet pipe on the fuel tank by two rubber hoses. Each end of the hose is secured onto the pipe by metal screw clamps. In 1994, GM's testing showed that these clamps were either not being tightened or were tightened with insufficient torque and would fail in foreseeable collisions. GM's safety engineers recommended quality assurance checks to assure the manufacturing defects were fixed. These checks were supposed to be in place by GM by 1995 to eliminate this potentially horrible hazard. However, the quality assurance back-up and/or check was not instituted until 1999. GM was aware from 1994 to 1999 that numerous Luminas were being shipped from its assembly plants with these manufacturing defects within their fuel system and did nothing to rectify the problem. Thousands of those Luminas are on the road today and no recall has been instituted by GM.

The Lumina's fuel system also contains design defects. The fuel tank on the "W" car is equipped with a check valve. This is a plastic component fitting in a steel sleeve immediately inside the inlet pipe of the gas tank. The pipe is made up of a plastic sleeve with a floating ball intended to seal the inlet pipe and prevent spillage of fuel on the consumer when he or she is filling the car with gas. Unfortunately, the design of the ball is too small to prevent escape of gas in a collision. In a collision, the fuel tank pressure during impact can force the safety check valve ball through the sleeve, allowing gasoline to escape back up through the pipe and spill, which easily can be ignited and cause a dangerous fire. GM has been aware of a quick fix to this problem for years. In fact, one of GM's fuel system engineers in the mid-1970s proposed sturdy check valves or "safety" valves to prevent escape of fuel in impacts rather than just when a consumer is filling the tank with gas. The fix would be relatively simple. GM could enlarge the diameter and strength of the ball or decrease the size of the pipe so that no gas could escape up through the pipe on impact. However, although this safety fix has been known by GM since the 1970s, the Lumina still contains this defect.

Another design defect with the Lumina's fuel tank is the lack of a shield. Since the Lumina's fuel tank is extremely weak, its design allows for deformation at its weakest point (the middle) in a rear impact. GM's own crash tests have revealed this weakness. Because the metal for the fuel tank is so thin, with its design allowing the tank to fold in half in a rear impact, the fuel tank on the Lumina should be equipped with a shield. Shields have been used in various forms by GM and other automobile manufacturers for years. Steel, plastic or synthetic-type materials have been used in various configurations to protect fuel tanks for decades. However, for no other reason

than cost, GM has chosen not to provide shields for their fuel tanks.

The Lumina's inadequate fuel system is another example of GM placing profits over safety. Numerous occupants have lost their lives in horrific post-collision fires because of the Lumina's defective and unreasonably dangerous fuel system. This is inexcusable, and the federal government should step in and fix the problem. A recall would be the logical next step, followed by a requirement that the design flaws be corrected.

Power Window Accidents Causing Serious Problems

Power windows kill about four Americans a year and injure 500, according to the National Highway Traffic Safety Administration and Janette Fennell, president of Kids and Cars, a child-safety advocacy group. American automakers are starting to follow the European lead by installing safety devices to prevent these kinds of injuries. In the meantime, most cars have windows that don't stop when they encounter an object, and that rise with considerable force. Kids and Cars has produced a video of a window neatly slicing a head of cabbage in half. Industry sources won't say how many times they have been sued. Automakers long have known about the danger of the windows' design. Most of the victims, as expected, are children. Many lawsuits are settled and the problems kept secret. The result is information that should be available being kept from the public.

Federal standards allow rocker and toggle switches for power windows. A rocker switch is pushed down on one side or the other to raise or lower the window; a toggle switch is pushed from side to side. Advocacy groups say pull-up, push-down switches would be safer. General Motors and Daimler-Chrysler are phasing in pull-up switches. A GM spokesman told the National Law Journal: "We're moving toward them because they do reduce the chances of inadvertent operation, if perchance the power-system lockout is disengaged." One of the problems is that data on accidents are elusive. Studies thus far appear to have undercounted them. The Centers for Disease Control and Prevention (CDC) began collecting data in 2000. A search of its database for 2001 and 2002 found only five power window-related injuries, none fatal. For example, the CDC missed 8 deaths identified by Kids and Cars. Two studies by the National Highway Traffic Safety Administration, relying on death certificates, found some, but missed others. It is significant that NHTSA's studies didn't include any children who survived accidents, but suffered catastrophic injuries.

It should be of concern to parents that the United States is far behind European countries in addressing this problem. For example, most European cars have an auto-reverse that engages if the window hits an object as it's closing. Germany has long required auto-reverse as a safety feature. Many American cars sold in Europe have this feature or offer it as an option. It's an option on the Ford Focus sold in Europe, but not the one sold in the United States. Ford says these safety features are demand-driven. I suspect the demand would be there if the public was made aware of the magnitude of the problem.

Jury Award In Seat Belt Lawsuit

Recently, a California jury has awarded $30.4 million in compensatory damages, and $15 million in a case against Ford Motor Co. The verdict, in a lawsuit arising out of a 1996 crash, found Ford liable for a defective seat belt design. Johann Karlsson was 5 years old when he was riding in a 1996 Ford Winstar struck by a 29,000-pound roll of steel that fell from a truck that had collided with another hauler. Johann was in a rear-center seat in the minivan that was equipped with a lap belt only. Everyone else in the vehicle was wearing lap and shoulder seat belts. Under the applicable state law, Ford was only liable for 40% of the compensatory damages, or $12.1 million, plus the $15 million in punitive damages, for a total of $27.1 million. Trans Continental Transport, which also was found at fault, had settled earlier out of court. The Karlsson family received settlements of about $12 million in 2000 and 2001 from three trucking companies involved in the accident. That money was placed in a trust fund for the child. Ford could not challenge the claim that the seat belt was defective because of a ruling by the trial judge, who punished the carmaker for its failure to turn over important documents.

Jury Award In Rollover Case

A jury has returned what is believed to be the largest-ever jury award in Nebraska to a woman severely injured when the Chevrolet sport-utility vehicle in which she was a passenger rolled over. The jury, after deliberating for 5 days, awarded $19,562,000 to the 36-year-old mother, who was left paralyzed from the neck down in the 1997 accident. The plaintiff suffered "complete spinal cord" injuries when the vehicle rolled several times. It was proved that the injury would not have happened had General Motors' Chevrolet division built the vehicle with a sturdier roof. GM has defended the Blazer and said it would appeal the verdict. The company claimed that the 1996 Blazer was a good vehicle with a good roof design and strength. The jury trial lasted for five weeks and included testimony from several experts on both sides. One of the plaintiff's experts testified that the Blazer roofs were too weak and that the roofs could have been made stronger easily and cheaply. Interestingly, this expert had been a

senior executive at GM in the 1960s.

Other evidence indicated that GM could have strengthened the Blazers' roofs for a mere $20 for each vehicle. Studies have shown that SUVs are much more likely to roll over than passenger cars. A recent report by the Insurance Institute for Highway Safety ranked the Blazer among the least-safe SUVs on the road. An estimated 6 million Blazers are currently in use. The amount awarded is close to the expected lifetime medical expenses the plaintiff will have because of the accident. To date, she has already had an estimated $700,000 in medical expenses.

Tire Aging Presents A Safety Issue

Real world accidents indicate that the older a tire, from date of manufacture, the higher the incidence of tread separation failure. Our firm is presently handling a case where three people were killed when a Firestone Firehawk tire experienced a tread separation during normal service, causing their vehicle to crash into a vehicle traveling in the opposite direction. The tire was sold as a new tire in the fall of 1999. The date of manufacture was in the ninth week of 1994. Thus, the tire was nearly 6 years old at the time of its purchase from the Firestone dealership. The evidence shows that the age of this tire contributed to its internal deterioration. In another tire failure case we handled a couple of years ago, two men were killed when the tread separated on an aged Firestone Steeltex tire two days after it was placed into service. It was new in appearance but was rotten to the core.

When you shop for a carton of milk, do you examine the sell by date to select the freshest milk? Most of us look for expiration dates on a variety of products to assure ourselves that we are purchasing a product that is fit for its intended use or consumption. However, this has not been true of consumers who are selecting tires for their vehicles. There is no government or industry imposed expiration dates for tires, but evidence is mounting that this should be placed into practice for consumer safety.

The British Rubber Manufacturers Association has suggested a tire aging practice by stating "BMRA members strongly recommend that unused tires should not be put into service if they are over 6 years old and that all tires should be replaced ten years from the date of their manufacture." A number of automobile manufacturers, such as BMW, Mercedes-Benz, Audi, GM's German-based Opal division, and Toyota, include warnings about tire age in their owner's manuals. BMW warns owners to replace tires that are 6 years old or older.

On June 26, 2003, NHTSA deferred action on developing three possible test protocols to artificially simulate aging tires and to subject tires to testing after they were aged. The deferral by NHTSA was based on industry opposition and lack of substantive information submitted in response to their request for comments on the issue. This inaction prompted Sean Kane and his group of folks at Strategic Safety to present evidence to NHTSA contrary to industry claims that there was no real world evidence of the need for an aging requirement and no need for an industry standard for tire aging. Strategic Safety put together an impressive array of documentation clearly establishing the need for NHTSA action.

The same manufacturers who oppose the new NHTSA standards are members of the British Rubber Manufacturers Association, who are actively warning consumers in the United Kingdom about age-related safety issues. Because vehicle manufacturers and the BRMA, along with others, have adopted some limited policy statements or warnings concerning aging, it is believed that tire manufacturers have methods to determine the performance of aged tires and have used these methods to devise recommendations about the shelf and service life of tires. According to Strategic Safety News, "a recent Bridgestone/Firestone recommendation in Europe suggested that consumers replace tires as soon as four years because of the affects of aging. Korean tire-maker, Kumho, has acknowledged that after six years, its tires are no longer safe."

For some people, this message comes too late. For those of you reading this article, please have a tire dealer examine the date reference on your tires, which is part of the DOT number stamped on your tire at the time of manufacture, to determine the age of your tire. To be on the safe side, replace tires which are four to six years of age. Be aware that full-size spare tires that are stored underneath a vehicle, in close proximity to the exhaust system, are especially prone to suffer degradation, which could result in a life-threatening incident if such a tire is placed in service. In fact, the hazard of placing a spare tire into service that has been stored for a long period of time, has been considered so great by BMW and Mercedes-Benz, that they no longer supply their vehicles with spare tires.

V. WORKPLACE HAZARDS UPDATE

Forklifts And Lower Leg Injuries

Each year, nearly 100 workers are killed and another 20,000 seriously injured in forklift-related incidents. Forklifts are compact electric-powered mobile machines used in work settings primarily to move materials. Persons who work on or around forklifts are exposed to numerous hazards, including overturns, falls and

collisions. Generally, there are two types of forklifts, which are differentiated by the method of operation, i.e., sit-down and standup forklifts. Sit-down forklifts are operated from a sitting position, while standup forklifts are operated from a standing position. This article will focus on standup forklifts because standup forklifts expose the operator to at least one additional hazard that sit-down operators are not exposed to. Standup forklift operators, because of the design of the operating mechanisms of the forklift, are exposed to the serious hazard of lower leg injuries.

Lower leg injuries sustained by standup forklift operators range from broken bones, nerve damage, and crush injuries to below-the-knee amputations. Stand-up forklift operators are exposed to lower leg injuries because of the design of the operator's compartment and the braking system utilized on these forklifts. The forklift uses a side-standing position for the operator, permitting visibility in both forward and reverse positions by looking right or left without changing body positions. The operator enters the forklift from the rear of the machine. The entry/exit area is not enclosed. The forklift moves and stops by pressing a pedal with the left foot. The operator presses down on the pedal to move the forklift and takes his or her foot off the pedal to stop the forklift. The combination of the method used to stop the forklift and the unenclosed compartment area exposes the operator to the hazard of lower leg injuries.

Lower legs injuries almost always occur in emergency situations when the operator has to stop his forklift abruptly to avoid colliding with another forklift, materials on the floor or any other obstruction. To stop the forklift, the operator lifts his left foot off the pedal. If the forklift does not come to a complete stop before colliding with another object, the operator's left foot can slip and become wedged between his forklift and another object. The injuries can be so serious as to require below-the-knee amputations. These type injuries occur frequently. The most common denominators are left leg injuries and unenclosed compartment areas.

Most major manufacturers of standup forklifts design them with unenclosed operator's compartments; however; there are some standup forklifts in which the operator's compartment is enclosed. At least one knowledgeable expert has testified under oath that he is unaware of a single lower leg injury on standup forklifts that were equipped with some type of enclosure for the operator's compartment. The manufacturers always defend these cases by arguing the operator misused the product. They always allege the operator intentionally put his/her foot outside the operator's compartment. Current standards do not require an enclosed operator's compartment. As a matter of fact, the manufacturers thwarted an attempt to make enclosed operator's compartments mandatory. As long as an enclosed compartment is optional, standup forklift operators will continue to be exposed to severe lower leg injuries. Manufacturers' continued production of defectively designed standup forklifts in the face of continuous severe injuries sustained by innocent people is yet another example of placing profits over the safety of human beings. We hope to keep you updated on the progress of our case against a major forklift manufacturer. Our client lost his left leg in a classic standup forklift injury scenario and now walks only with the assistance of a prosthetic device. His injury, like many others, was easily preventable.

VI. MASS TORTS UPDATE

Bayer® Continues To Settle Baycol Cases

According to reports, Bayer® has paid $614 million to date to settle 1,683 cases involving the cholesterol-lowering drug Baycol, which was pulled from the market in August 2001. These figures are up from the $477 million spent to settle 1,342 cases that the company reported on September 10th. Our firm has settled over 200 cases for more than $70 million on behalf of clients who suffered rhabdomyolysis as a result of taking Baycol. Currently, we have several cases set for trial early next year and anticipate several additional trial settings for next year. We would like very much to settle the rest of the Baycol cases that we have in our office. Hopefully, Bayer® will move quickly to resolve these cases so that our clients can get on with their lives.

FDA Warns Of Possible Drug-Suicide Link

The Food and Drug Administration has announced that some anti-depressant drugs undergoing trials in children may be associated with suicides. The FDA said reports in the press and medical journals describe suicide attempts and suicides in children receiving antidepressants. Many such reports also have been submitted to the FDA. While the data do not clearly establish an association between the use of the drugs on trials and increased suicidal thoughts or actions by pediatric patients, FDA now believes it is impossible to rule out an association. It is difficult to determine whether the drug was at fault since suicide attempts also occur in patients with depression who are untreated.

Nevertheless, the FDA is issuing a public health advisory to alert physicians to reports of suicidal thinking and suicide attempts in clinical studies of various anti-depressant drugs in pediatric patients. Currently only Prozac is approved for use in major depressive disorder among children. However, physicians often prescribe other drugs to children that are approved for adults. The FDA has completed a preliminary review of reports for eight anti-depressant drugs — citalopram, fluoxetine, fluvoxamine, mirtazapine, nefazodone, paroxetine, sertraline, and venlafaxine — in tests in children. In addition to the advisory, the agency has scheduled a meeting next February of its Psychopharmacologic Drugs Advisory Committee and the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee to discuss the issue.

Serzone® (Nefazodone) Pulled From Market In Canada

Reports of liver injuries associated with Serzone® led to discussions between Serzone® manufacturer Bristol-Myers Squibb Canada and Health Canada (Canada's FDA equivalent). Following these discussions, Bristol-Myers agreed to discontinue sales of its popular antidepressant Serzone® in Canada. Numerous hepatic adverse events have been linked to Serzone®, including incidences of liver failure requiring transplant. Announcing the withdrawal, the October 2, 2003, "Dear Health Care Professional" letter provides that the discontinuation of sales will be effective November 27, 2003.

According to Health Canada, cases of liver injury have occurred with Serzone® as early as a few weeks after initiation of Serzone® therapy or after continuous use for up to 3 years. "To date, no risk factor to predict patients who will develop irreversible liver failure with nefazodone has been identified." Health Canada also stated that routine liver function tests were not effective in reducing the risk of liver failure. Other hepatic events that have been reported include jaundice, hepatitis, and hepatocellular necrosis. Necrosis is a precursor to cirrhosis of the liver. Serzone® continues to be sold in the United States although it has been pulled from the market in Europe and now Canada. This prompts some serious questions: If it is too dangerous to be sold in Europe and Canada, why is it okay to sell to Americans? Where's the FDA?

Vioxx® Drug Allegedly Caused Woman's Stroke

An Iowa woman has filed suit against Merck claiming that the arthritis drug Vioxx® caused her to suffer a stroke. The suit alleges that the arthritis medication is defective and that the company did not adequately warn about the drug's ability to potentially cause strokes. Evidence linking Vioxx to significant edema, serious cardiovascular events and death has been noted and reported in a large study that was sponsored by Merck in 2000. The plaintiff claimed that she was taking Vioxx prior to a stroke she suffered in 2001 and that her injury was caused by her use of the drug. According to the suit, Vioxx is defective and unreasonably dangerous because the company "failed to warn of the dangerous propensities of said product, which risks were known or reasonably scientifically knowable." The plaintiff also contends Merck failed to adequately test Vioxx before marketing it. Inadequacies in the warning label are also a basis for the suit. It is claimed that the warning label was misleading and failed to include warnings pertaining to the risk of cardiovascular events and death. The complaint contends further that the manufacturer committed fraud and deceit by failing to disclose data from a large study sponsored by Merck, which found that patients using Vioxx had four times the risk of heart attacks compared to the general public and that the risk increased over time. Finally, it is alleged that Merck implemented an aggressive marketing campaign that also withheld this information from physicians as well as the general public.

FDA Acts Following Renewed Petition To Ban Meridia

Last month I reported that Public Citizen had recently supplemented their petition to the FDA to ban the diet drug Meridia. This renewed effort came as a result of new adverse event data that bolster their original petition filed on March 19, 2002. While acutely aware of the ever-increasing number of cardiovascular deaths in people using this drug, the FDA has nevertheless failed to set a hearing or otherwise respond to the original petition. However, it now appears that the FDA may quietly be taking some action with respect to this dangerous drug. With a year and a half of silence behind them, but just 3 weeks after Public Citizen filed their supplemental petition, the FDA has now decided to change the precautions and adverse reactions sections of the package insert. So far, those changes have not been publicized by the company or the FDA. Nevertheless, given the increasing numbers of serious adverse events being reported to the FDA, this is a step, although small, in the right direction and will assist doctors and patients in understanding the real risks of this drug. However, I agree with Public Citizen that nothing short of a complete ban of Meridia will truly protect the public.

In the meantime, our firm is preparing for what is expected to be the first Meridia trial. We filed that lawsuit in Corpus Christi, Texas, on behalf of a woman who is partially paralyzed as a result of a stroke that occurred while taking Meridia. Her case will go to trial in April of 2004. We also have a case

that was filed on behalf of the daughter of a woman who died of a heart attack while taking Meridia. Her case is set for trial in November of 2004 in Birmingham, Alabama. These filings will assist us in gathering and analyzing internal corporate information regarding what has gone on behind the scenes between the FDA and Abbott, the makers and marketers of Meridia.

I have previously written of my concern regarding the cozy relationship between the current FDA and the pharmaceutical industry. With the reluctance of the Bush Administration to act to protect consumers, it is easy to see the importance of watchdog groups like Public Citizen. It is also apparent that the civil jury system is absolutely critical in prodding pharmaceutical companies to do the right thing and to hold them accountable when they don't.

Be Cautious Of Crestor

Consumers should beware of the newcomer to the highly profitable market for cholesterol-lowering drugs. AstraZeneca's Crestor became the sixth statin available on the market when it was approved by the FDA in August of this year. It has recently come under scrutiny because of its potentially serious side effects. The application, filed in June 2001, was delayed when the clinical trials were stopped by AstraZeneca because of reports of kidney damage and muscle weakness in patients taking 80 milligrams of the drug. The company stopped development of the 80-milligram dosage because of safety problems. Now, Crestor will only be sold in 5, 10, 20 and 40-milligram doses. Also, restrictions have been placed on the distribution of the 40-milligram dosage.

WellPoint Health Networks, Inc., one of the largest private health insurers, announced that it will not reimburse patients who use Crestor, because of the concerns over the safety and benefits of the drug. Public Citizen issued a Do Not Use! warning about Crestor in the October issue of Worst Pills, Best Pills News. Public Citizen warns against taking Crestor because of the potential to cause kidney damage and failure, as well as muscle destruction. Public Citizen decided to list Crestor as a Do Not Use! drug for the following reasons:

- Crestor has not demonstrated a health benefit to patients that use it in reducing the serious cardiovascular consequences of high cholesterol such as a first or second heart attack or stroke.
- Crestor causes abnormal elevations in urine protein and blood, which are signals for serious kidney toxicity.
- Other statins are not associated with the risk of kidney toxicity.
- Crestor is the only statin that has caused life-threatening rhabdomyolysis in pre-approval clinical trials.

Public Citizen's Dr. Sidney Wolfe said the drug is possibly worse than Baycol, another cholesterol-lowering medication, which was removed from the market on August 8, 2001 because of reports of fatal rhabdomyolysis. Public Citizen warned consumers not to use Baycol more than three years before it was removed from the market. According to Dr. Wolfe, Crestor "is already showing signs it is too dangerous for people to take, and it is only a matter of time after 'enough' people have been injured or killed, that it will have to be pulled from the market."

Some Background Information On Cypher Coronary Stints

We are currently investigating injuries resulting from the use of the Cypher Sirolimus-Eluding Stent manufactured and sold by Cordis, a Johnson & Johnson company. The FDA approved the Cypher Stent for marketing in the United States in April 2003. Since then, the Cypher has been associated with over 290 incidents of thrombosis (blood clots) within thirty days of its placement and has been linked to 60 deaths. Stents are stainless steel or mesh-like devices used to hold open coronary arteries after angioplasty, a non-surgical procedure in which small balloons are used to dilate clogged arteries. Although successful in reducing the incidents of acute artery collapse after angioplasty, normal stents do nothing to prevent restenosis, or the formation of scar tissue, at the site of angioplasty. Approximately 30% of all stent recipients' arteries close due to restenosis within 6 months of angioplasty.

To prevent restenosis, Cordis manufactured the Cypher Stent coated with Sirolimus, an immunosuppressive agent thought to prevent restenosis. The company hoped that the slow-release of this drug would allow the slow growth of endothelial cells over the stent, without restenosis. Unfortunately, there have been numerous reports of thrombosis, or blood clots, forming at the angioplasty sites. It is thought that the metal stent surface stimulates thrombosis before the endothelial cells have time to develop, which is thought to take several weeks.

On July 7, 2003, the FDA required Cordis to send a "Dear Colleague" letter to physicians urging them to carefully select the appropriate stent size before inserting, and to not over-expand the Cypher Stent to fit vessels larger than intended. It also requested that cardiologists be diligent in reporting any adverse events surrounding the use of the Cypher. On October 29, 2003, the FDA issued a second warning letter advising cardiologists that the number of deaths and thrombosis cases had increased, and that there were new reports of allergic reactions to the stent. If you or someone you know has suffered an injury resulting from the Cypher Stent, please call us.

VII. INSURANCE AND FINANCE UPDATE

Court To Hear Important Insurance Case

The Supreme Court has announced that it will decide whether patients may sue health insurance companies that refuse to pay for health care recommended by doctors. The cases involve a contest between efficiency and treatment that could affect the rights of more than 130 million people covered by employer or union-provided group health plans. The issue in two related cases that the High Court agreed to hear is whether people who believe they suffered harm because insurers would not cover certain medicines or procedures have a right to sue the companies in state court, or whether they are barred from doing so under a 1974 federal law that gives the federal government exclusive power to regulate employee benefit plans.

As you will recall, the right to sue health insurance companies in state court was also the big stumbling block in the long-running debate over a federal patients' bill of rights in Congress. This legislation never passed because of the power of the insurance industry. Now, the U.S. Supreme Court will act in an arena where Congress failed to do its job. These two cases may well answer something that has been debated now for over a half-dozen years. The insurance companies in the cases, Aetna Health and Cigna HealthCare of Texas, appealed an adverse decision to the Supreme Court. They argue that coverage decisions are strictly about insurance, not medical care, and that subjecting insurers to suits in state courts over benefit determinations would violate the 1974 federal law known as the Employee Retirement Income Security Act.

The Fifth Circuit's decision was consistent with ERISA, which was never intended to exempt insurance companies from the duties imposed on all medical decision-makers by the states. ERISA has "nothing to say" about medical standards of ordinary care, a topic left entirely to the states. One of the patients involved in the cases is Juan Davila of Texas. His doctor prescribed the medication Vioxx for his arthritis, but Aetna, which ran the health maintenance organization in which Davila was enrolled, said he first had to try two less expensive medications. Davila suffered an adverse reaction to one of the drugs and was rushed to an emergency room with severe internal bleeding. Another patient, Ruby Calad, was enrolled in an HMO operated by Cigna, which refused to extend her one-day hospital stay after a hysterectomy despite a request from her surgeon. She was readmitted to the hospital under emergency conditions a few days later. Both Davila and Galad sued under a Texas law that gives patients a right to seek damages for insurance decisions that "affect the quality of the diagnosis, care or treatment provided to the plan's insureds or enrollees." Several other states have enacted similar laws, and the insurance industry says preexisting tort law would provide similar rights in states that have not passed special statutes. Oral argument will take place in early 2004, and a decision is expected by July. Obviously, the decision by the U.S. Supreme Court will affect a tremendous number of persons around the country. Hopefully, the Court will do the right thing. If so, consumers will be the beneficiaries.

Senator Proposes Federal Regulation Of Insurance Industry

The insurance industry has long been regulated on a state-by-state basis. At least one United States Senator, who wants to put an end to this state regulation, is pushing legislation to create federal regulation of insurance. "Due to the limits of this fragmented, state-by-state regulation, no one stopped the poor insurance investments made by insurance companies during the late 1990s that have helped drive up premium increases during the past three years," said Senator Ernest Hollings (D-S.C.), the senior Democrat on the Senate Commerce Committee, at a recent Senate hearing. Senator Hollings explains the basis for this proposal as follows: "First, the insurance industry itself comes to Congress asking for bailouts and backstops with increasing regularity. Then, the industry turns around and asks for further deregulation, and even the ability to pick their regulator, when there are significant problems in the market that call for more vigorous oversight. Of course, the insurance industry wants the regulator they get to have a light hand so they can compete with banks in a climate that emphasizes short term profits over long term stability."

Senator Hollings also relied on a recent GAO report, which reviewed insurance market conduct regulation by the states. The report found in part as follows: "States generally have the systems and tools in place to regulate financial solvency. But market regulation is hindered by limited resources, a lack of emphasis on important regulatory tools and the framework of the system itself, which requires individual states to oversee companies that operate in many states or nationwide. As a result, market regulation is currently based on overlapping and often inconsistent state policies and activities. While it provides some oversight, it may also place an undue burden on some insurance companies, and at times, may fail to adequately protect consumers." Senator Hollings believes the need for federal regulation stems in part from large increases in insurance premiums. "It is no coincidence that we have seen insurance premiums rise as

the stock and bond markets have lost value during the last couple of years. When a customer receives a larger bill for homeowner's insurance, it is not because the rate of homeowner's claims has dramatically increased; it is because the insurance company is looking to recover the lost revenue from poor investment decisions. These companies reap the gains when investment returns are good, but then stick policyholders with the bill when investments go bad," said Hollings.

Senator Hollings is very skeptical of the relationship between higher insurance premiums and the need for tort reform. The veteran Senator believes the rise in insurance premiums results from efforts to recoup losses from poor investing by the insurance companies is not caused by lawsuits. In fact, Senator Hollings cites instances where tort reform interest groups agree. His Website quotes Victor Schwartz, General Counsel of the American Tort Reform Association as saying, "insurance was cheaper in the 1990s because the insurance companies knew that they could take a doctor's premium and invest it, and $50,000 would be worth $200,000 five years later when the claim came in. An insurance company can't do that today." Donald Zuck, CEO of Scpie Holdings, Inc., a leading malpractice insurer in California, said that recent premium rate increases by insurance companies were "self-inflicted" by poor business management practices, and not caused by a spike in malpractice claims.

The Hollings bill would establish the Federal Insurance Commission, an independent commission within the Department of Commerce. This Commission would be the sole regulator for insurers who sell policies in more than one state. Companies that only do business in the state where they are located would still be regulated by that state. If the states had done a good job of regulation, this legislation wouldn't be needed. Personally, I have mixed emotions. I am afraid the powerful insurance lobby would be able to control the newly created regulatory agency.

Study Claims Blacks Denied Home Loans At Twice The Rate Of Whites

A recent study by an advocacy group of mortgage lending shows that blacks in Mobile were more than twice as likely than white applicants to be denied conventional home loans. The study by the Association of Community Organizations for Reform Now (ACORN) examined patterns in several types of home lending last year in 105 metropolitan areas. ACORN promotes the interests of low- and moderate-income families. Mobile had the eighth-poorest ratio of blacks being given home loans in relation to their share of the city's total population. Montgomery had the second-worst ratio of loans when upper income blacks were compared to their white counterparts. Other nearby similar-sized southern cities also fared poorly in the study.

The study found that since 1997 the number of conventional mortgage loans made to minorities has dropped. While the ACORN study focused on conventional mortgage loans, a look at government-backed mortgages showed a little more than half of blacks who applied received them compared to just less than 24% of whites. Almost 32% of the 873 conventional loans submitted last year by black applicants in Mobile were denied, the study says, while fewer than 13% of the 7,224 white applicants were denied. We should insist on a level playing field when it comes to the lending of money, and that certainly should apply to home loans.

VIII. TRANSPORTATION

Older Children More At Risk In Car Crashes

A recent report by the Automotive Coalition for Traffic Safety, Inc., a safety group financed by automakers, and Partners for Child Passenger Safety, a research organization funded by State Farm Insurance, indicates children who have outgrown car safety seats are more likely than infants to die in automobile accidents. Thirty-four percent of infants killed in accidents in 2000 were unbelted, according to the report. That number compares with 48% of children between the ages of 4 and 8 and 54% of those aged 9 through 12. In addition, 59% of youths aged 13 to 16 who died in accidents were not wearing seat belts. It appears that many of the deaths among older children could have been prevented if they were wearing seat belts.

The report found that the number of fatalities for infants and toddlers decreased by 24 and 15%, respectively, between 1991 and 2001, while the number of deaths among children ages 4-8 and 9-12 increased by 2% and 7%. The report used data from the National Highway Traffic Safety Administration. The following conclusions were listed:

- Researchers need to develop a child crash test dummy to make vehicles safer for children.
- Safety groups also need to concentrate funding on seat belt programs that are most effective with high-risk groups, including non-English speakers.
- Pediatricians, teachers and childcare providers also should be educated about proper belt use.

The federal government recommends car safety seats for children up to 40 pounds and booster seats for children over 40 pounds until they are 8

years old or 4 feet 9 inches tall. As most folks now know, all children should ride in the back seat until age 13.

Jury Awards $20 Million In Coal Truck Fatal Crash

A Bessemer jury awarded $20 million in a wrongful death action. The case involved a man killed last year when a coal truck hit his sport utility vehicle head on. The award was against Black Warrior Minerals. The accident occurred in July 2002 when the trailer of an approaching truck carrying 92,000 pounds of coal—two tons over the legal limit—separated from the truck's cab. The runaway trailer ran a church van in front of the decedent's vehicle off the road. It then demolished the victim's Chevrolet Tahoe. The two passengers in the church van were injured.

Plaintiff's lawyers argued that the wreck was caused because the truck was speeding and carrying too much weight. Testimony showed that the driver was going 70 mph in a 50 mph zone before he entered a curve. The posted speed limit when entering the curve is 35 mph. The victim's estate settled with the trucking company, L&W Enterprises, for $600,000 and that company was dismissed from the lawsuit. Ralph "Buddy" Armstrong and Clay Hornsby tried the case for the victim's family and obviously did a very good job.

Coal trucks are often illegally overweight and use the back roads of west Jefferson County to dodge scales, according to testimony at the week-long trial. At least 300 coal trucks use the road in question on a daily basis. The coal firms are paid $35 a ton for each load, giving them an incentive to load as much as they can onto the trucks. The legal limit is 88,000 pounds on a 5-axle truck such as the one involved in the accident. Black Warrior Minerals overloaded trucks by an average of 2,500 pounds 75% of the time, according to company records introduced at trial.

Rollovers Deadly In SUVs According To Study

According to a study released by the National Highway Traffic Safety Administration, mid-size sport utility vehicles are nine times as likely as passenger cars to be involved in fatal rollover crashes and twice as likely to kill the occupants of other vehicles in crashes. The study examined fatality data from 1995 to 2000 to determine the effects of vehicle weight. It found large passenger cars, such as the Lincoln Town Car, and minivans had the lowest fatality rates of all vehicle types. It should be noted that only vehicles manufactured between 1991 and 1999 were considered. The study found that the fatality rate for SUVs and passenger cars of similar weight was essentially the same in non-rollover crashes. But death rates rose significantly for SUV occupants in rollover crashes. In general, NHTSA found vehicles that weighed less were also less safe. Among small passenger cars such as the Toyota Corolla, there was a 4.4% increase in the risk of a fatality for every 100-pound reduction in the vehicle's weight. There was a 3% increase in fatality risk, or 234 deaths per year, for every 100-pound reduction in mid-size SUVs and light trucks such as the Ford Explorer.

California Privacy Law Shields Drivers

California has passed the nation's first law meant to protect the privacy of drivers whose cars are equipped with "black boxes." These boxes are actually data recorders that can be used to gather vital information on how a vehicle is being driven in the last seconds before a crash. The new law, which takes effect on July 1st, requires automakers to disclose the existence of such devices and forbids access to the data without either a court order or the owner's permission. An exception is when it is for a safety study in which the information cannot be traced back to the car. More than 25 million cars and trucks have the boxes that measure speed, air-bag deployment and the use of brakes, seat belts and turn signals. However, California's privacy law is the first of its kind. While most of the recorders are on General Motors vehicles, Ford and others have deployed a few. Other manufacturers have plans to do the same. Frankly, I have some difficulty understanding why the black boxes aren't a good thing for all vehicles.

South Carolina Jury Awards Family $15 Million

A South Carolina jury has awarded parents $15 million in a lawsuit against the South Carolina Department of Transportation. The suit arose over a missing sign that caused a 1999 wreck that took the life of the couple's 20-year-old daughter and seriously injured their teenage son. Another passenger, the son's girlfriend, was also in the car and was injured in the wreck. The suit claimed the state DOT was negligent in replacing a missing "merge right" sign near the accident site. The missing signs would have warned motorists about a road split and a need to merge right. At the time of the accident there were no signs indicating that traffic should bear right. It was proved at trial that the configuration of the merging roads was extremely confusing to motorists.

Emery To Pay Hazardous Material Fine

Emery Worldwide Airlines will pay a $6 million federal fine for violating hazardous-materials laws. In this case, Emery failed to identify shipments properly. Emery, an air cargo carrier that ceased operating in 2001, pleaded

guilty in a U.S. District Court to 12 counts of violating the Hazardous Materials Transportation Act, which regulates the shipment of hazardous materials. Emery also agreed to pay a separate $500,000 civil fine to the Federal Aviation Administration to resolve similar allegations. While this may not appear to be a significant matter, it certainly is. The FAA must tighten up its overall operations. In the current environment, everything possible must be done to make sure that cargo planes are checked carefully on a regular basis. This includes not just hazardous materials, but also items that can be used by terrorists. I am not at all sure the federal government is doing an adequate job with cargo planes.

Jury Awards $12 Million In Rail Crossing Death

A South Carolina jury has ruled for a family in a railroad crossing accident lawsuit. The mother of a man killed in a 2001 accident will receive $12 million under the jury's verdict. The first claim in the case involved whether CSX Transportation had kept a rail crossing free enough of vegetation so that approaching trains could be seen. A second issue related to the speed of an approaching track maintenance machine—in other words, how fast the machine was traveling as it hit the truck the decedent was driving. The 44-year-old water department worker was driving a city-owned truck when the 35,000-pound railroad machine struck it. The jury said CSX should pay $4.5 million in actual damages and $7.5 million in punitive damages. The Jacksonville, Florida-based railroad company will ask the trial judge to set aside the verdict. If that fails, the company is expected to file an appeal. It was proved that CSX Transportation Inc. failed to clear overgrown scrub oaks and other vegetation at the crossing that blocked the driver's view. CSX has been fined for not clearing vegetation at 137 crossings statewide since the mid-1990s. It was also proved that the machine was exceeding the self-imposed speed restrictions at the location where the accident happened.

Survivors Of Fatal Truck-SUV Crash Awarded $23.5M

A New Jersey jury has awarded $23.5 million to the family of a medical doctor who was killed when his sport utility vehicle was rear-ended by a tractor-trailer five years ago. The 52-year-old doctor was killed on May 22, 1998. His mother-in-law, age 79, also died in the crash. Three other family members were injured. The award in a state court followed a 12-week trial in which some 60 witnesses testified. The damages were assessed against the driver, the trucking company that employed him, and two other companies with a responsibility for the truck. The driver was transporting 15,000 pounds of General Electric silicone caulking material from Waterford, N.Y., to Port Elizabeth when the accident occurred. Both victims died at the scene. The doctor's wife, age 49, suffered a fractured vertebra, a punctured lung and eye injuries. Their son, age 11, sustained a fractured lower back, and their daughter, age 19, sustained a fractured pelvis.

The jury determined that the brakes on the truck cab worked, but the brakes on the trailer failed. There was evidence that the driver failed to properly inspect the brakes and just before the collision was driving too close for conditions. The award included $15.8 million for economic losses. The doctor, a retina specialist, earned $2 million a year. The widow was awarded $3 million for her injuries. The son was awarded $1.7 million and the daughter $1.4 million. The majority of the verdict—61%—was assessed against the driver, who had only a $1 million insurance policy. There were about a dozen other defendants who settled out of court for a total of $15 million. Those defendants have a confidentiality agreement.

FAA Suggests Airbus Modify Jets To Reduce Risks

As you know, there has been a great deal of discussion about the Airbus jets and fires. The Federal Aviation Administration is now proposing that airlines modify hundreds of Airbus jets to reduce the chances that a fuel tank can explode. The proposal is the latest in a string of similar actions taken after the fuel tank on TWA Flight 800 exploded. That explosion destroyed a Boeing 747 in 1996 and killed all 230 persons aboard the flight. Additionally, fuel tank explosions have downed four large jets around the world. The FAA wants U.S. airlines flying the Airbus A320 and the similar A319 model to improve the devices that measure the fuel level in tanks to prevent them from sparking. The FAA also called for inspections of the tanks. French regulators had already taken action that was apparently followed by the FAA.

Airbus told the *USA Today* that safety can be improved with the changes. On two previous occasions, the last being in June, Airbus urged airlines to take the same steps that the FAA is recommending. More than a thousand A320 jets and similar models are being flown worldwide. The proposal would affect 468 jets in the United States. It is projected that the total cost to modify the jets would range from $600,000 to $3.3 million. This, of course, depends on how much work is needed on each jet. Under the FAA proposal, airlines must complete the work within 30 months.

The FAA will accept comments on its proposal up until December 17th. Inspections of jets after the TWA accident showed that jets were more vulnerable than regulators and manufacturers had believed. The FAA has already required more than 50 changes in fuel tanks, and officials say more changes are on the way. The

National Transportation Safety Board has listed fuel-tank safety as one of its "Most Wanted" safety improvements. The safety board wants the FAA to go beyond changes in tanks and wiring and require that tanks be blanketed in non-flammable gas to ensure that tanks can never explode. While sparks in fuel tanks are rare, jet manufacturers must take all steps necessary to ensure that electrical failures cannot ignite the kerosene jet fuel.

Boeing has developed a system that pumps nitrogen gas, which prevents fuel from burning, into tanks. Airbus has tested a similar device. To date, the FAA has made no decision on whether to require the devices. Obviously, fuel tanks are most flammable after they heat up. On many jet models, equipment located next to fuel tanks in the center of the fuselage give off heat. On a hot summer day, the center tanks can quickly be heated to well over 100 degrees. The NTSB found that this is actually what occurred on TWA Flight 800.

IX. THE NATIONAL SCENE

Supreme Court To Revisit Online Porn Law

The U.S. Supreme Court has agreed to hear a most important case. The court stepped into a fight over how the government can protect children from online smut without resorting to unconstitutional censorship. On numerous occasions since 1997, fights involving Internet regulations have found their way to the High Court. The Court struck down Congress' first comprehensive attempt to punish people who make it too easy for children to find racy material online. The latest case asks whether a subsequent law, twice rejected by an appeals court, restricts too much material that adults have the right to see or buy. The Court will decide whether the government can require some form of an adults-only screening system to ensure child computer users cannot see material deemed harmful to them.

The justices have an opportunity to take a step to protect children and thereby take a stand for morality. Congress passed the Child Online Protection Act in 1998 to crack down on Internet sites that do not block pornography and other inappropriate material from children. This Act calls for six months in jail and $50,000 in fines for first-time violators and additional fines for repeat offenders. It is now on hold pending court challenges. The American Civil Liberties Union, representing booksellers, artists, explicit Websites and others, challenged the law as an unconstitutional damper on free speech. The U.S. Court of Appeals for the Third Circuit has twice struck down the law.

The Justice Department appealed to the U.S. Supreme Court, arguing children are "unprotected from the harmful effects of the enormous amount of pornography on the World Wide Web." I agree with Solicitor General Ted Olson that the Child Online Protection Act is a "reasonable solution." Ted told the Court that "the main target is commercial pornographers who use sexually explicit 'teasers' to lure customers." The free teasers are available to nearly anyone surfing the Internet, and sometimes appear even when computer users are not seeking out pornography. They typically lead potential customers to a Website that may require payment and age verification.

The law, signed by former President Clinton and endorsed by President Bush, was written to replace a 1996 statute, the Communications Decency Act, that the Supreme Court struck down as unconstitutional on free speech grounds in 1997. The Supreme Court since has upheld an Internet anti-pornography law against free speech challenges, ruling that the federal government can withhold money from libraries that won't install Internet blocking devices. The Child Online Protection Act does not affect foreign pornographic Websites, so its reach is limited. I believe the American people want our children protected. Any person or corporation that deals in child pornography should be tracked down and the responsible individuals jailed. Unfortunately, we have had to "tip toe" through the courts when attempts are made to deal aggressively with this most serious problem. The time has come for the American public to take a stand for morality and against pornography—especially when the latter affects our children. The courts should strain to find a way to protect children.

Court To Hear Pledge Case

The U.S. Supreme Court has agreed to decide whether it's unconstitutional for children in public schools to pledge their allegiance to "one nation under God." The Pledge of Allegiance case, in my opinion, gives the Court an excellent opportunity to take a stand for morality. Generations of schoolchildren have started their school day by reciting the oath that begins, "I pledge allegiance to the flag of the United States of America."

The Supreme Court already has said that schoolchildren cannot be required to recite the Pledge of Allegiance. The Court also has repeatedly barred school-sponsored prayer from classrooms, playing fields and school ceremonies. This case represents an important opportunity to put a halt to a national effort aimed at removing any religious phrase or reference from our culture. The Court could have resolved the matter without hearing the case on its merits. I take that as a good sign. It amazes me that there has been such an organized effort over the years to remove any reference to God in our society.

Consumers Lose Again

I understand from my friends at Public Citizen that a two-year-old company whose top brass had ties to companies fined for energy market manipulation arranged to have some language inserted into the pending energy bill that gives them a terrific break. This would provide the company with $800 million in federal loan guarantees to build a polluting coal gasification power plant in Minnesota. According to a Public Citizen report, the company, Wayzata, Minnesota-based Excelsior Energy, was created by lobbyists and executives with ties to NRG Energy, a company that filed for a $9.2 billion bankruptcy in May and whose subsidies and affiliates have been fined $25 million for manipulating energy markets. Excelsior arranged to have the language inserted during the conference committee process, without a vote being taken by the U.S. House of Representatives or the U.S. Senate, according to news reports. This is all too typical of how special interests manipulate the system in Washington.

U.S. Contractors Reap The Windfalls Of Post-War Reconstruction

More than 70 American companies and individuals have won up to $8 billion in contracts for work in postwar Iraq and Afghanistan over the last two years, according to a new study by the Center for Public Integrity. Those companies donated more money to the presidential campaigns of George W. Bush — a little over $500,000 — than to any other politician over the last dozen years, the Center found. Kellogg, Brown & Root, the subsidiary of Halliburton — which Dick Cheney led prior to becoming Vice President, was the top recipient of federal contracts for the two countries. It is interesting to note that more than $2.3 billion was awarded to the company. Bechtel Group, a major government contractor with similarly high-ranking ties, was second at around $1.03 billion. That's not too shabby when you consider how we were led into the region by the Bush Administration.

The results of the Center's six-month investigation provide the most comprehensive list to date of American contractors in the two nations that were attacked in Washington's war on terror. Based on the findings, it did not appear that any one government agency knew the total number of contractors or what they were doing. Congressional sources said they hoped such a full picture would emerge from the General Accounting Office, which has begun investigating the postwar contracting process amid allegations of fraud and cronyism.

Class Action Legislation Victory In U.S. Senate

Several weeks ago, the U.S. Senate today stopped the anti-consumer class action legislation from moving forward. The vote was 59 to 39, only 1 vote short of the 60 required to proceed with the legislation. This is a major victory for consumers, environmentalists, workers, civil rights groups and the entire public interest community. It is also a testament to the power of political action by thousands of ordinary folks around the country. The public interest was definitely served. Senator Richard Shelby (R-AL) voted for the public interest. Most Democrats voted the pro-public interest position. Those deserving a special thanks are Senators Chris Dodd (D-CT) and Mary Landrieu (D-LA). It is most interesting that Senator Lieberman, who has missed most votes this year because of his run for the presidency, managed to come in to cast this anti-consumer/pro-business vote. However, just as we were going to the printer, I learned that the tort-reformers were attempting to cut a deal that would bring this matter back up for a vote. I hope that was just a rumor.

X. THE CORPORATE WORLD

Tyco Trial Jurors See Video Of $2 Million Party

I hope the following episode is not typical of how Corporate America is operating these days. A few weeks ago, jurors saw a videotape of "dancing women, half-naked male models and 'Margaritaville' singer Jimmy Buffett" at a $2 million party that L. Dennis Kozlowski, former CEO of Tyco International, put on for his wife's birthday. The bash was held on a Mediterranean island. At the trial, prosecutors maintained the party, more than half of which was paid for with "company money," was a "stark example" of how Kozlowski and former chief financial officer Mark Swartz looted hundreds of millions from Tyco for their personal benefit. "It's going to be a fun week," the tape shows Kozlowski telling about 75 guests arriving to celebrate his wife's 40th birthday on the Italian island of Sardinia. "Eating, drinking, whatever. All the things we're best known for," was Kozlowski's announcement to his guests.

According to media reports, the tape shows five young women in "scanty, diaphanous frocks cavorting around a swimming pool, half-naked male models posing in snapshots with female guests and a performance from a pop star." The jurors saw 21 minutes of what had been a four-hour videotape. The judge who is presiding at Kozlowski and Swartz's larceny trial, ordered some segments removed, saying they could prejudice the jury against the defendants and were irrelevant to whether they had committed any crimes. The portions removed

include shots of an "anatomically correct ice sculpture of Michelangelo's 'David' urinating vodka, two men dressed as ancient Romans carrying Kozlowski's wife over their heads, and a scene in which a man drops his pants for the camera." Buffett and his group were flown in at a cost of $250,000. It is shocking to learn that the total cost for the party was about $2 million. Maybe to folks like this, $2 million isn't really that much, and maybe that's because it is somebody else's money.

Kozlowski and Swartz are on trial charged with grand larceny and enterprise corruption for allegedly stealing some $600 million from Tyco. Each faces up to 30 years in prison if convicted. Prosecutors say the two stole $170 million from Tyco by taking and hiding unauthorized pay and bonuses, raiding company loan programs and forgiving loans to themselves. The government says the defendants made another $430 million on their Tyco stock by lying about the conglomerate's financial condition from 1995 into 2002. Defense lawyers claim Kozlowski and Swartz "earned" all the compensation they got from Tyco and all the appropriate overseers knew about their compensation and loans. If they can "sell" that defense, I will be greatly surprised.

Ethics Rules Expanded For Medical Journals

A leading group of British scientific journals has decided to require researchers writing in their pages to disclose financial ties to industry. This comes as a direct result of mounting criticism in the scientific community. The new policy at the London-based Nature publishing group means authors of reviews and commentaries must reveal any financial connections to companies that might benefit from their articles. Previously, Nature required such disclosures only from scientists submitting primary results from experiments. The changes were announced in the October issue of the monthly journal Nature Neuroscience. However, the new policy will apply to all Nature journals. Complaints had come from at least 32 prominent scientists who believed biotech and pharmaceutical companies were exerting undue influence over research labs and medical schools. The leading American scientific journal, Washington-based Science, requires financial disclosure for primary research papers, reviews and opinion essays. According to an Associated Press report, editors said they are considering a stricter policy. I have to wonder why it took pressure from any source for the publishing group to recognize this problem.

Class Action Lawsuit Against Tyson Approved

A federal court has ruled that shareholders who sold their shares in IBP Inc. when they heard poultry giant Tyson Foods Inc. had aborted its purchase of the meatpacking company may file a class action lawsuit against Tyson. A U.S. District Judge decided that IBP shareholders who sold stock between March 29, 2001, and June 15, 2001, could sue Tyson on grounds of making false statements that unnaturally drove IBP's stock price down. There could well be hundreds of participants in the class action. Because of the proposed merger, there were many institutional shareholders at the time. Four hedge funds, Aetos Corp., Pelican LP, Stark Investments LP and Shepherd Investments International Ltd., lost more than $20 million on IBP stock and were named representatives for the class action.

XI. BUSINESS LITIGATION

IBM Workers' Cancer Claims Cleared To Go To Trial

Claims of two former IBM employees that their workplace exposure to toxic chemicals caused them to develop cancer have made it to trial in state court in Santa Clara County, California. The plaintiffs contend that they got non-Hodgkin's lymphoma and breast cancer, respectively, from handling dangerous chemicals over a number of years at IBM's San Jose plant, where computer disk drives are made. The claims are the first against IBM to go to trial.

There are a reported 257 pending IBM worker suits alleging chemical-related health problems in California, New York and one other state. The first such suit was filed in New York in 1996. The lawyers targeted Union Carbide and other manufacturers of the chemicals used by IBM. That suit now involves about 150 plaintiffs, including the families of 11 people who died from cancer.

The latest plaintiffs are among approximately 70 workers who have sued IBM in California for creating a hazardous workplace that caused them to develop cancer. The California plaintiffs have also sued chemical manufacturers Shell Oil Company, Union Carbide Corporation, Dow Chemical Company, Fisher Scientific, DuPont Company, and Ashland Inc. for making and supplying IBM with the cancer-causing chemicals.

The cases are being watched closely, not only by IBM, but also by electronics manufacturers and the $141 billion dollar semiconductor industry. Manufacturers fear that a verdict for the workers could trigger more cases based on evidence discovered in the

California case. They also worry the outcome could influence cases set for trial against IBM early next year, as well as cases brought by employees of National Semiconductor Corporation. In our experience, too many powerful corporations that use toxic chemicals in their business are playing "Russian roulette" with their workers' health. From the reports I've seen of the evidence these California plaintiffs have developed in discovery—much of it from IBM's own files—IBM and its Big Chemical co-defendants have every reason to be worried.

Paper Companies Pay for PCB Clean-Up

P.H. Glatfelter Company and WTMI Company have agreed to pay $60 million dollars towards cleaning up the Fox River site in Wisconsin, which is contaminated with polychlorinated biphenyls. The two companies will also make a $3 million dollar partial payment for natural resource damage and a $1.05 million payment to reimburse the Environmental Protection Agency, the State of Wisconsin and the U. S. Fish & Wildlife Service for clean-up cost, according to the EPA. The two paper companies produced and reprocessed "carbonless" copy paper containing PCBs from the 1950s until the early 1970s. The EPA says that the U. S. Fish & Wildlife Service has estimated the total cost of damages to natural resources in this area to be between $176 million and $333 million. The clean-up area covers six miles of the river area, designated by the EPA as one of five separate contaminated areas in the Fox River site.

Unocal Ordered To Pay $10 Million In Punitive Damages

A California jury has ordered Unocal, the oil and gas conglomerate, to pay $10 million in punitive damages arising from an underground oil spill that occurred several decades ago. The case began when the owners of commercial property adjacent to property owned by Unocal filed suit in 2001. The plaintiffs purchased their property in the mid-1970s and built warehouses for commercial leasing. After purchasing the property the landowners learned that a plume of crude oil, gasoline and other products was sitting under the ground. An oil pipeline operated by Unocal since the beginning of the 20th Century was the source of crude oil leakage. The plaintiffs argued at trial that Unocal failed to properly maintain its oil pipelines and failed to help the plaintiffs deal with the oil leak problem. Unocal's failure to help the plaintiffs' eliminate the oil pollution allowed an underground plume of oil pollution that was 300 feet wide and 2,200 feet long to contaminate the plaintiffs' property. Because of the pollution, the plaintiffs were unable to obtain bank loans to adequately develop their property for commercial use. While a $10 million verdict should at least get the attention of large conglomerate polluters, the "verdict" is still out on whether Unocal has learned its lesson. In the past, five years Unocal has paid out more than $100 million for oil leaks in the California area. Unless punitive damages "hurt" a little, lessons generally go unlearned.

SEC Admits Lax Oversight Contributed To Recent Investor Losses

The current crisis in confidence in Corporate America has been caused by the unchecked greed of corporate executives. An SEC official has finally acknowledged the SEC's role in the nation's recent corporate scandals that have cost investors hundreds of billions of dollars. Hal Degenhardt, the Fort Worth district Securities and Exchange Commission Administrator, recently admitted that the SEC missed a lot of corporate wrongdoing. When discussing recent scandals such as WorldCom, whose investors lost $2.6 billion from its five-year high, and Enron, whose investors lost a staggering $64.2 billion from its five-year high, Degenhardt said regulators, politicians and corporate executives had "betrayed" the nation. Degenhardt's admissions come in the wake of SEC investigations of Global Crossing Ltd, HealthSouth Corp, ImClone Systems Inc., Merrill Lynch & Co, and many others. The SEC's action has come only after the worst of the damage of the 1990s was done. These scandals only underscore the vital role private lawsuits play in exposing corporate wrongdoing.

Independent Pharmacies File Suit

An important case is now pending in an Alabama federal court. Two independent pharmacies filed suit against the nation's four biggest pharmacy-benefit managers, alleging they used "anticompetitive practices" against small operators. The lawsuits seek class action status to represent all the nation's 25,000 independent pharmacies against Medco Health Solutions Inc., Caremark Rx Inc., AdvancePCS Inc., and Express Scripts Inc. Pharmacy-benefit managers act on behalf of employers and other large health-care payers to broker prescription discounts with drug manufacturers. They then contract with pharmacies to fill the prescription orders. The lawsuits allege that the four used their status as middlemen to artificially fix prices and force "unconscionable" reimbursement rates on community pharmacies. They also allege secret deals were struck with drug manufacturers to push prescriptions on doctors and pharmacies in return for kickbacks. This case will be watched with great interest.

XII. ARBITRATION UPDATE

High Court Says AT&T Can't Force Arbitration

Approximately 7 million California long-distance customers of AT&T have secured the right to keep taking their complaints to court, instead of to a secretive arbitration system. This came about thanks to the U.S. Supreme Court's rejection of AT&T's appeal. The justices, without comment, denied review of a decision in February by the U.S. Court of Appeals for the Ninth Circuit in San Francisco that found AT&T's arbitration rules oppressive and unenforceable. That Court's ruling upheld a Magistrate Judge's January 2002 decision that allowed California customers to sue AT&T in court with none of the restrictions the company sought to require. This is one of several recent cases in which state and federal courts in California have overturned major companies' arbitration rules. The basis for those rulings is a state Supreme Court decision in 2000 that said one-sided arbitration programs could not be imposed on consumers or employees.

AT&T, California's largest long-distance carrier, adopted mandatory arbitration in 2001 for its 60 million customers nationwide. Under the system, customers must refer all complaints to a panel of arbiters, whose rulings are nearly impossible to appeal. In striking down the arbitration requirement, the appeals court said arbitration standards were written in fine print in new contracts mailed by AT&T to California customers, were offered on a take-it-or-leave-it basis, and contained several unfair provisions, including:

- A ban on class actions filed on behalf of multiple customers. The company decreed that arbitrators could consider only individual claims.
- A rule that allowed victims of willful misconduct to collect damages only for the amount they were improperly charged for phone service and barred damages for additional losses and punitive damages.
- A requirement that customers split the cost of arbitration with AT&T.
- A secrecy clause banning customers, as well as the company, from publicly disclosing the existence or results of arbitration.

The appeals court rejected AT&T's argument that long-distance phone service must be subject to uniform national standards, saying federal law allows states to use their own laws to protect consumers. AT&T's arbitration system remains in effect in all other states, but the company has changed some of the disputed provisions nationwide since the U.S. Magistrate Judge in San Francisco first ruled the system invalid in January 2002. Hopefully, other states, including Alabama, will follow California's lead and come down hard on arbitration.

XIII. HEALTHCARE UPDATE

Problems At Walgreen Co.

Walgreen Co. has acknowledged that one of its pharmacies mistakenly dispensed synthetic heroin to a 7-year-old New Mexico boy, instead of his doctor-prescribed Ritalin. The company admitted it used a forged prescription to cover up the error. Walgreen says no one in corporate management knew about the forgery until it was revealed in August in a New Mexico state court. However, it appears that there may well be "direct knowledge of this fraud at high levels" within the company. The trial judge is being asked to fine Walgreen Co. at least $25 million for unethical behavior. In addition, damages will be sought for the child, who spent six days in a coma and was left with permanent brain damage.

The forgery issue has pitted Walgreen Co. against its own pharmacist and the pharmacist against the company's former lawyer. This creates an interesting legal predicament that shows no sign of resolving itself quickly. A Walgreen's pharmacy gave their customer a 60-pill bottle of methadone, labeled as Ritalin. The powerful painkiller, used to wean addicts off heroin, was subsequently given to the child. The methadone built up silently in the child's body for 3-1/2 days before triggering a strange, overwhelming sleepiness and then hospitalization. The mix-up most likely stems from the similar spelling of methadone and methylphenidate, the generic name for Ritalin. Last year, the U.S. Food and Drug Administration warned pharmacies not to confuse the two drugs, citing six cases in which there was a mix-up, including one that killed an 8-year-old boy in 1999. This case points out how some, if not all, of the large chains operate to the detriment of their trusting customers. The error in this case should never have happened.

Medco Probe Leads To Lawsuit

A company handling the pharmacy benefits for 60 million Americans was sued recently by federal prosecutors. The suit accused Medco Health Solutions, Inc. of "shorting" prescriptions, canceling some mail orders and inappropriately switching patients' drugs. Medco, the nation's largest pharmacy benefit manager, has been under investigation for four years. This is part of a wider probe of the industry by the U.S. attorney's office in Philadelphia. The government's civil lawsuit alleges that actions by Medco threatened patient safety and resulted in overbilling of gov-

ernment health programs. The company is accused of ignoring safety rules at its mail-order drug centers, altering its records to avoid paying penalties and failing to follow state laws requiring pharmacists to consult with doctors about certain prescriptions. Medco officials called the allegations either "false or overstated." Medco was spun off from drug maker Merck earlier this year. The lawsuit complaint does not spell out how often or when the alleged violations occurred. The case alleges that Medco did the following:

- Favored Merck drugs over competitors' when switching patients to drugs other than those their doctor ordered, even when Merck drugs were more costly.
- Canceled some patients' mail-order prescriptions to avoid penalties from its customers for failing to fill orders in a timely manner.
- Mailed prescriptions with fewer pills than ordered.
- Failed to contact physicians when prescriptions were ambiguous or needed checking to make sure the patient was not receiving an improper drug.

The government investigation began after two pharmacists who worked for Medco until 1998 filed a sealed whistle-blower lawsuit in 1999. A doctor in private practice also has filed a case. Medco has questioned that doctor's credibility, saying he has been convicted of fraud. The information in the whistle-blower cases is said to be only a starting point for the probe. Pharmacy benefit management companies act as a middleman between heath insurers and patients—processing claims, filling orders and, in many cases, running mail-order pharmacies. The industry says it saves money for its customers—generally large health plans and employers, including the federal government—by negotiating favorable rates on medications.

It is interesting that the federal prosecutors said Medco also assigned poorly trained assistants to a range of duties normally performed by pharmacists, including calling doctors to confirm prescriptions. Those assistants were expected to speak with 20 to 25 physicians each hour—a quota the government said was too difficult to meet. As a result, the lawsuit claimed that the assistants sometimes skipped physician calls and then fabricated records to make it appear as if they had taken place. If this doesn't shock consumers, I will be greatly surprised.

XIV. NURSING HOME UPDATE

Investigation Finds Common Thread Connecting Serious Nursing Home Violations

A recent study by *Gannett News Service*, published in *USA Today*, has found that where a nursing home is located and who owns it can be "critical in determining the care given to America's most frail and vulnerable." For example, nearly three-fourths of the most severe and repeated nursing home patient care violations found by state and federal surveyors in the past four years were concentrated in a dozen states. Additionally, patients at homes operated by for-profit corporations faired much worse in relation to the care they received than did residents in government and non-profit nursing homes. "There are many flaws in the long term care system," said Thomas Scully, Administrator of the Centers for Medicare and Medicaid Services, which directs federal nursing home programs. "We're trying to look at them and fix them."

These findings were the result of a four-month Gannett News Service ("GNS") investigation. GNS interviewed dozens of people and analyzed four years' worth of federal data on inspections and patient well-being at the nation's 16,000 nursing homes. The investigation revealed significant weaknesses in the safety net designed to protect the nation's approximately 1.5 million nursing home residents. These weaknesses were not apparent on a nursing home quality Website that the federal government has created. Some of these findings include:

- For-profit nursing homes accounted for 83% of the more than five hundred nursing homes with repeated, serious violations, yet are only 65% of all Medicare and Medicaid certified nursing homes.
- Patients at for-profit homes had, on average, higher rates of infections and pressure sores than those owned by governmental and non-profit agencies.
- Homes monitored by resident councils and family members tended to have a lower rate of patients in pain.

Many consumer advocate groups who reviewed the GNS findings stated that they were not surprised that the investigation found a substantial number of repeated violations and links between poor care and for-profit ownership. Indeed, the National Citizens' Coalition for Nursing Home Reform recently published a book depicting in graphic, heart-wrenching detail the neglect and pain eighty-two Texas nursing home residents suffered. The Coalition is the nation's largest consumer advocacy group focused solely on nursing homes. The eighty-two residents depicted in this book include a 93-year-old female who entered a nursing home in relatively good condition, but twenty months later was taken to the hospital suffering from deep, infected pressure sores, dehydration, malnutrition and gangrene. Another was a 65-year-old male

suffering from Alzheimer's disease who, after a less than two-year stay at the nursing home, died from pressure sore infections he developed at the home. State inspectors found the nursing home and nursing home staff were negligent in both of these incidents.

Incidents like those above continue to occur despite government officials' claims that care in nursing homes is improving, said Donna Lenhoff, the Coalition's executive director. "These are severe breakdowns in the provision of healthcare services and in the provision of basic human decency," she said. "There are a lot of nursing homes that are giving a lot of bad care." Unfortunately, most of this bad care appears to be occurring in large, nationally based, for-profit nursing home chains.

As noted above, this study found that nearly three-fourths of the severe and repeated violations of federal patient care standards from 1999 to 2003 at nursing homes were localized primarily in twelve states. They are in descending order: Texas, Illinois, Arkansas, Washington, New Jersey, Kansas, Missouri, Indiana, Oklahoma, North Carolina, Mississippi and Tennessee. These violations included failing to protect patients from mistreatment, hiring staff without conducting criminal background checks, and allowing patients to be abused and physically punished.

Our firm's Nursing Home Division practices primarily in the southeast region, including Alabama, Georgia, Tennessee, Mississippi, Arkansas, and South Carolina. It is interesting to note, therefore, that three of the states listed on the GNS investigation results as containing some of the most frequent incidents of poor resident care are also three of the states from which we receive most of the calls to our office concerning deficient care. It is a shame that in a region of the United States where the elderly population is held in such high regard, several of the states in this region also treat their nursing home dependent elderly in the poorest fashion. Our offices are fighting to make a difference in the care given to our elderly in the southeast's nursing homes. Unfortunately, our experience has mirrored the results of the GNS survey. Indeed, more than 95% of the cases that we file against nursing homes are against large, national, for-profit nursing home chains. Thus, our experience, and the experience of the residents monitored in the GNS investigation, clearly indicate that the readers of this report need to be cognizant of the apparently systemic problem of residents receiving poor care in large, national, for-profit nursing homes. Please keep this information in mind when choosing a nursing home for your loved one.

Feeding Assistants Proposed For Nursing Home Residents

The Bush Administration has announced a new proposal that would allow "feeding assistants" to feed nursing home residents who do not have the ability to feed themselves. The Administration touts this proposal as its "latest step" to strengthen the quality of care provided the nursing home residents. However, it is difficult to see how this proposal will work to improve the quality of care for nursing home residents. Currently, certified nursing assistants provide most of the care of nursing home residents. This care includes feeding, bathing, toileting, and other daily care needs. Certified nursing assistants are required to have 75 hours of training and complete a required competency test before delivering care to residents. The Bush Administration proposal would allow "feeding assistants" to perform the tasks of feeding residents after having completed only an 8 hour training course. Further, the Administration has yet to state whether the "feeding assistants" will be required to complete any type of competency exam. This relaxation of the regulations concerning nursing home employees is troubling since nutrition and hydration are critical elements of nursing home care provided to residents.

Several resident right advocates have spoken out against the proposed rule. Senator Charles Grassley, the Chairman of the Senate Finance Committee, has correctly asserted that "malnutrition and dehydration are chronic nursing home problems," and the feeding of residents should be performed by skilled employees. David M. Certner, Director of Federal Affairs for AARP, has stated that this proposal could cause "real harm to nursing home residents." In my opinion, this proposal is simply another way for nursing home owners to increase their profit margin by failing to employ a sufficient number of qualified individuals to care for elderly residents. This proposal will allow nursing homes to hire individuals with little training, who will be paid very low wages, to carry out one of the most important activities of daily living required by nursing home residents. Clearly, the federal government should require nursing homes to provide a sufficient number of qualified staff to meet the needs of nursing home residents, as opposed to creating a loophole that will allow nursing home owners to hire less-qualified employees at a lower wage. Our concern is that nursing homes will most likely assign these assistants to inappropriate tasks or reduce their staffs of trained health workers. I believe there is more harm than good in this move.

Almost half of all nursing home residents require some help in eating and drinking, a task performed mostly by certified nurse's aides. Under the new rules, the task can be performed by part-time feeding assistants. Advocacy groups worry that an untrained feeding assistant will not be able to cope if a patient chokes or suffers a heart attack. They fear that some nursing homes might simply replace their nurse's aides with feeding assistants or press the

assistants to perform tasks above their skill level. I suspect they are correct in making that prediction. The new rules could help nursing homes ease the burden on health care staffs. However, state regulators should increase the training and supervision requirements before authorizing the use of feeding assistants. Congress and its General Accounting Office will need to monitor the impact on quality of care. Unfortunately, the federal government has done very little to protect the residents in nursing homes around the country. I hope this latest development doesn't cause more problems for residents and their sponsors. Simply put, it doesn't meet the "smell test" and will likely make bad matters worse for nursing home residents.

State Settles Lawsuit Over Fire Ant Attack On Disabled Woman

The State of Alabama and a pest control company have settled a lawsuit filed by the mother of a disabled woman who was attacked by fire ants at a state institution. The disabled woman was bitten hundreds of times on August 20, 2000, while in her bed at the Albert P. Brewer Developmental Center in Mobile. She has Rett's Syndrome, which left her unable to move her limbs or call for help. The Department of Mental Health and Mental Retardation agreed to pay $750,000. A pest control company that serviced the facility agreed to pay $300,000. The lawsuit, which was filed in Montgomery County, contended supervisors had been warned about an ant problem, that staff had not done required bed checks and that bed check records were falsified. The Alabama Mental Health Commissioner said any problems at Brewer have been alleviated. It is one of three institutions for the mentally retarded scheduled to close by March as part of a consolidation to save money. Two of my former law partners, Mays Jemison and Kenny Mendelsohn of Montgomery, handled this case and did a very good job.

Nashville Nursing Home Fire

As previously reported, a fire broke out in a Nashville nursing home recently, killing several residents and critically injuring numerous others. The fire occurred at a nursing home owned by National Healthcare Corporation, a Murfreesboro, Tennessee company that is said to own and operate 78 long-term health care facilities in several states. The nursing home was a four-story building, but the residential area of the nursing home had no sprinkler system. Older nursing homes in Tennessee are not required to comply with recent legislation passed in that state that would require sprinklers in such a building. Likewise, the Centers for Medicare and Medicaid Services recently adopted regulations that allow older buildings to operate without automatic sprinkler systems. These "loopholes" need to be changed immediately. Nursing home residents suffer from disabilities that make it impossible for them to run to safety from a burning building. In any event, it should be obvious that a sprinkler system is an absolute necessity in a nursing home regardless of any regulatory requirement.

Any nursing home operator should know that if fire breaks out in a facility that does not have a sprinkler system, the result will be disastrous. At last report, the total number of deaths from the Nashville fire was sixteen. I should also add that the National Healthcare Corporation, after this fire occurred, made the decision that it would retrofit its 16 existing nursing homes that were without sprinkler systems. I commend NHC for finally doing the right thing, but it is terribly unfortunate that nursing home residents had to die before this type of common sense decision was made.

Alabama Operator Charged With Medicaid Fraud In Arkansas

Northport Health Services, a nursing home operator based in Tuscaloosa, Alabama, has been charged with Medicaid fraud in the state of Arkansas. The lawsuit was initially filed by former employees of Northport Health Services pursuant to the federal False Claims Act. This Act, commonly referred to as the "Whistleblower Act," allows individuals with "inside information" to bring complaints of alleged fraud involving the misuse of federal funds. In this case, however, the federal government has decided to intervene in the lawsuit to assist in prosecution. The federal government made this decision following an investigation by the U.S. Department of Health and Human Services. According to a U.S. Attorney involved in the matter, an investigation was also performed by an Arkansas Medicare Fraud Unit.

The complaint sets out several causes of action against Northport Health Services. These allegations include claims that the operator knowingly filed improper or false claims for Medicare and Medicaid eligibility by keeping patients on Medicare when they were no longer eligible; falsified records and charts; caused patients near the end of their Medicare eligibility to "require" additional care; transported residents by ambulance when it was not medically necessary; transported patients to and from hospitals to provide income to the ambulance service and to re-qualify patients for Medicare benefits; and received money for services either not provided or not provided in a timely fashion. The lawsuit also alleges that the operator failed to provide the resident care required by Medicare at the same time the company billed the government and was paid for providing the services. The most astonishing allegation is that Northport Health Services received social security funds for resi-

dents and kept the money rather than reimbursing the proper amount to the government. It should be noted that Northport Health Services has denied all of the allegations contained in the lawsuit. Northport Health Services was founded in 1981 by Norman Estes, President and Chief Executive Officer of the company. Mr. Estes is also the former President of the Alabama Nursing Home Association. The company operates nursing homes in four states, including 22 homes in the state of Alabama.

HealthCare Center Ordered To Pay $2.4 Million

For the second time in two years, a Clovis, California, healthcare center has been hit with a multimillion-dollar verdict by a jury. Willow Creek Health Care Center was ordered to pay $2.4 million to the daughter of a stroke victim who sued over her mother's death, claiming the woman was left in her own waste for days at a time, resulting in massive infections and other problems. Two years ago, a $5.2 million verdict was returned against Willow Creek and its two parent companies—Fountain View Inc. and Summit Care Corp. In the latest case, the 73-year-old resident died after being cared for at Willow Creek.

The jury hearing the case returned an award of $2.4 million for compensatory damages and was to begin a punitive-damage phase when a settlement was reached. The settlement amount was confidential. The resident, who was in Willow Creek for several years for rehabilitation from the effects of a stroke, was found May 21, 1998, comatose and suffering from an infection that ultimately led to her death. A huge pressure sore had become infected and, according to court documents, was the result of the lady "being left for days at a time in diapers soiled with urine and feces, not being turned and repositioned as ordered by the physician and by being utterly neglected."

Staffing shortages and the unwillingness of Willow Creek's owners to spend the money necessary to provide adequate care for residents appear to be the culprits in this case. There was evidence in the case that Willow Creek increased its staffing levels by bringing in workers from another facility and bought things like fresh sheets when state inspectors were expected. A family member told reporters who covered the case that no one should have to go through what her mother and the family went through. She added that she hoped laws will be changed to protect the elderly in health-care facilities.

XV. ENVIRONMENTAL CONCERNS

More Budget Cuts At ADEM

The rejection of Governor Riley's tax plan by Alabama voters last month has forced unprecedented budget cuts for nearly every state agency. The Alabama Department of Environmental Management (ADEM) is no exception. The budget that was recently signed into law slashed ADEM's funding, and the consequences may prove to be catastrophic. To cite just one example, Alabama landfills will now receive two-thirds fewer visits from inspectors next year than in the year 2000 because of the state budget cuts. Larry Bryant, chief of the Solid Waste Branch at ADEM, recently told the Montgomery Advertiser that his department has just two inspectors now to handle visits to about 370 landfills, to make sure they follow the rules intended to protect the public and the environment. A greater concern, according to Bryant, is the fact that the cut-backs will make it extremely difficult to respond to complaints of illegal dump sites. For years, illegal dumping has created public health problems for communities all over the state.

The Legislature cut $1.2 million, or 21%, from ADEM's state funding for this year. The Solid Waste Branch of ADEM depends almost entirely on that state funding. Alabama has 40 municipal solid waste landfills that accept household garbage. Other landfills are permitted to accept construction materials or industrial waste. ADEM was grossly under-funded before the recent round of budget cuts. Over the past several years, neighboring states like Georgia, Tennessee, Florida, and even Mississippi spent two to five times more than Alabama on their state environmental regulatory agencies. With the inevitable budget cuts that followed the rejection of Governor Riley's tax plan, ADEM has now become the most critically underfunded state environmental agency in the United States.

It goes without saying that when landfill operators fail to follow the rules, the impact on surrounding neighborhoods and waterways can be tremendous. Landfills that do not operate properly can quickly create public health problems that may take years to correct, if they can be corrected at all. All of this may not bother the average Alabama voter at this point, but ten years from now, when there truly aren't any safe areas left in the state to fish, hunt or swim, citizens will begin to get the picture. When ADEM does not have the money to enforce even minimal environmental standards, our state's precious natural resources and our children's futures are at serious risk.

Chemical Compound Being Phased Out

There has been growing debate about Polybrominated Diphenyl Ether (PBDE). The issue is largely whether the flame retardant is toxic. Great Lakes Chemical Corporation of Indianapolis, Indiana, has announced it will cease production of two controversial chemi-

cal compounds, including PBDEs, by the end of 2004. The apparently expedited phase out of PBDEs comes after several weeks of talks between Great Lakes Chemical Corp. and the Environmental Protection Agency (EPA). Clearly, EPA support for an alternative to PBDEs, the most widely made flame retardant, is growing.

The flame retardant, commonly known as Penta, is used in furniture foam. Great Lakes has confirmed that the company also intends to replace another chemical compound known as Octa, which is used in smaller volumes in casings for electronics. Great Lakes Chemical Corp. is the only U. S. manufacturer of Penta and Octa. Studies show that accumulations of PBDEs in humans are doubling every two to five years. While there is some debate on whether the chemical compounds will prove harmful to people, scientists have found that Penta impairs learning, memory and other behavior in mice. The EPA has maintained that PBDEs do not present an unreasonable risk to human health or the environment. The EPA is clearly under pressure to act. This is because Penta and Octa have been banned in the European Union beginning next year and in California beginning in 2008.

Great Lakes had apparently intended to take until the end of 2005 to phase out production of Penta, but EPA support for an alternative known as Firemaster 550 has allowed the company to act more swiftly. The EPA says Firemaster 550 is neither persistent, bio-accumulative or toxic to aquatic organisms. Great Lakes has noted that the switch to Firemaster 550 will cost the company somewhere in the neighborhood of $10 million dollars in plant modifications and equipment.

JSU Will Lead PCBs Health Study

Jacksonville State University will lead a coalition of groups studying health effects related to polychlorinated biphenyls (PCBs) in Anniston, Alabama. The $3.2 million effort will include participation by the University of Alabama at Birmingham and Emory University in Atlanta. Data collection for the health study could begin early next year. Funding for the health study comes from the Agency for Toxic Substances and Disease Registry (ATSDR), a federal environmental health agency. ATSDR has also awarded a related $150,000, two-year grant to the West Anniston Foundation, to study access to health services in western Anniston.

There are several other partners in the health study, including the State University of New York and Community Against Pollution. Senator Richard Shelby told the Anniston Star: "This study is important to the Anniston community and I believe this is a crucial step toward the continued revitalization of Calhoun County." Senator Shelby has held Senate hearings on Anniston's PCB pollution and pushed hard for the study money. The goals of the project are to collect information on local exposure to PCBs, study the relationship between the chemicals and a health disorder such as cancer, and educate the community about PCBs.

Clean Air Act Program Gutted

Clean air and power plant pollution have become hot topics in our nation's capitol since the Bush Administration issued changes to the Clean Air Act's New Source Review Program. This program required old power plants, when making modifications to prolong the life of the plant, to install modern pollution controls. Enforcement of this program would dramatically cut emission from the nation's dirtiest power plants. In changing the rules for the New Source Review program, the Administration broke a significant campaign promise to support mandatory caps on power plant emissions of carbon dioxide. This about-face came after intense pressure from electric utilities and the coal industry.

Power plants are responsible for soot, smog, mercury emissions and acid rain. Soot and smog are particularly dangerous to children and the elderly. These particulates have been scientifically linked to an increased risk of Sudden Infant Death Syndrome (SIDS), heart attack, asthma and chronic bronchitis. Based on national estimates from 1994-95, power plants were responsible for 32.8% of total mercury emissions. Mercury is of extreme concern for pregnant women and very young children because of the harm it does to developing nervous systems. This toxic heavy metal, when ingested, can cause tremendous neurological damage to developing fetuses, infants and children. A CDC report indicates that mercury puts approximately 322,000 newborns per year at risk.

Residents of the Southeast and particularly Alabama will suffer greatly from the New Source Review rule change. Alabama ranks in the top ten states for air pollution from power plants. Kentucky, Georgia and Florida are also at the top of the list. The South needs to finally stand up for its natural resources and environment before they are permanently destroyed. Regions can be clean and have economic prosperity. New England, for instance, emitted over 700,000,000 tons less carbon dioxide than did the South.

EPA To Drop Pollution Cases

The Environmental Protection Agency has announced it will drop investigations into 50 power plants for past violations of the Clean Air Act. The effect will be that the cases will be judged under new, less stringent rules effective December 2003, rather than the stricter rules in effect at the time the investigations began. The new rules include exemptions that would make it almost impossible to continue the investigations into the plants, which are scattered around the country and

owned by approximately ten utilities.

Based on information received from lawyers at the EPA, it is pretty clear the change grew out of recommendations by Vice President Cheney's energy task force. This group urged the government two years ago to study industry complaints about its enforcement actions. Critics in Congress, environmental groups and officials in some northeast states have described the changes as major victories for the utility industry and a defeat for environmentalists. They had wanted companies to install new and better pollution controls. Representatives of the utility industry, however, have been among President Bush's biggest campaign donors, and a reduction in enforcement policies has been a top priority of the utility industry's lobbyists. I wonder why that comes as a surprise to some.

The old rules were called the New Source Review Program. Under those rules, power plants, oil refineries and industrial boilers that were modernized in ways that increased harmful emissions generally had to install more pollution controls. Under the new rules pushed by the Cheney task force, any renovation project that costs less than 20% of the power-generating unit's value will be exempt, and no pollution controls will need to be added even if the project increases emissions. Critics contend that a threshold set at this level would exempt most of the power plants that have been under investigation. It has been estimated by some observers that the decision, coupled with changes in the underlying rules, could mean that the utility industry could avoid making as much as $10 billion to $20 billion dollars in pollution control upgrades. If this is true, we all suffer in the long run.

XVI. TOBACCO UPDATE

RJR, Brown & Williamson To Merge

R.J. Reynolds and rival Brown & Williamson Tobacco Corp. will merge, uniting the nation's second- and third-largest tobacco companies. The deal vastly expands the reach of the two tobacco giants as they struggle with multibillion-dollar lawsuits and competition from cheaper cigarette brands. Under the deal, a new company will be formed called Reynolds American, which will rank second in U.S. market share behind Philip Morris. R.J. Reynolds is the maker of cigarette brands including Camel, Winston, Salem and Doral, while Brown & Williamson's top brands include Kool, Lucky Strike, GPC and Capri. Brown & Williamson is the U.S. subsidiary of British American Tobacco PLC. The new company will have annual sales of about $10 billion and capture about 30% of all cigarette sales in the United States. The new company plans to consolidate headquarters and operations in Winston-Salem, North Carolina, RJR's current home. The merger is expected to result in more than $500 million in annual savings.

XVII. THE CONSUMER CORNER

Customers Suing Comcast Corporation For Cable Fraud

Our firm recently filed a lawsuit against a national cable company charging it intentionally misled customers about the cable service they were purchasing. We alleged that Comcast Corporation was marketing the service as digital video and audio when, in fact, it was not. The lawsuit brought on behalf of a national class charges Comcast with fraud, suppression, unjust enrichment and breach of contract. Filed in Mobile County Circuit Court, the suit also alleges Comcast employees were trained and instructed by the company to promote and sell Comcast digital services and products across the United States for a premium price when the company had no intention of providing such services to their customers. In some cases no digital service was being provided at all, and in other cases there was only limited digital services being provided. Comcast deliberately continued to charge customers for digital services that our clients never received. Among other relief, the plaintiffs are asking the courts to have their money refunded by the cable company. Comcast is a national television, Internet, and telephone cable communications company based in Philadelphia, Pennsylvania.

Consumers Union Case Tests Libel Law

The lawsuit filed by Suzuki against Consumers Union arose out of negative ratings for the car first published 15 years ago in Consumers Union's magazine *Consumer Reports*. As previously reported, the dispute now is before the Supreme Court, with Consumers Union asking the justices to overturn a pro-Suzuki ruling in the case by the U.S. Court of Appeals for the Ninth Circuit that, if upheld, could make it far easier for libel plaintiffs to bring their complaints to trial—an outcome the media are fervently trying to guard against.

A broad range of media organizations have joined to urge the High Court to review the case, asserting that the Ninth Circuit ruling "threatens to curtail reporting about product safety, public health, scientific debate and other issues of public importance." In a 1988 Consumer Reports article, the mini-SUV Suzuki Samurai received a "not acceptable" rating after the vehicle tipped up

on two wheels during a test drive on a Consumers Union test course. The Consumers Union brief, written by longtime in-house counsel Michael Pollet, notes that the magazine republished its rating of the Samurai 24 times between 1988 and 1995 without any complaint from Suzuki. But in an anniversary issue in 1996, the magazine highlighted the Samurai rating as a milestone in its history that caused sales of the vehicle to "dwindle away." Even though the Samurai had gone out of production, Suzuki sued in California, claiming product disparagement. In extensive discovery at the district court level, Suzuki built its case on the theory that in order to boost lagging circulation, Consumers Union had rigged its road test to make the Samurai appear unsafe.

Consumers Union sought to have the complaint dismissed summarily, and in May 2000, U.S. District Judge Alicemarie Stotler of the Central District of California granted Consumer Union's motion for summary judgment, dismissing all of Suzuki's claims. But in June 2002, a divided Ninth Circuit reversed the dismissal and held that, based on evidence presented by Suzuki, a "reasonable jury" could find evidence of Consumer Union's malice, thereby necessitating a trial. In its appeal to the High Court, Consumers Union argues that the Ninth Circuit's decision conflicts with numerous other appeals courts and with the Supreme Court's own decision in 1984. That case, Bose Corp. v. Consumers Union, calls for independent examination of the whole record—not just the plaintiff's evidence—when libel cases are appealed.

Companies Fined For Violating Mississippi's No-Call Law

Recently, the Mississippi Public Service Commission announced fines of $810,000 against two out-of-state companies for violation of the state's no-call list. Debt Management Foundation of Largo, Fla., was fined $550,000, and Credit Foundation of America, located in Corona, Ca., was fined $260,000. The companies have 30 days to meet with PSC staffers to respond and seek settlement, said Central District Commissioner Nielsen Cochran. The Commission levied its first fine of $125,000 against Krane Products Inc. of Boca Raton, Florida. The companies are accused of using caller ID blocks or pre-recorded messages to reach Mississippians. Both methods are illegal. The Mississippi law went into effect in October, and requires telemarketers to purchase an $800 No Call List from the state. So far, about 72 companies have bought it. Money collected will be used to continue enforcement for the No Call List, and commissioners must have legislative approval to do so. There have been 640 complaints filed to date and 176 investigations are active.

Agency Moves To Regulate Bath Seats

After nearly 10 years of periodic debate, federal government regulators moved to try to prevent accidental drownings by requiring that baby bath seats be made safer. The three-member Consumer Product Safety Commission voted unanimously to propose a mandatory safety standard for baby bath seats. The product, a ring attached to a bathtub with suction cups, has been linked to 104 drowning deaths and 162 non-fatal accidents over the years. Eighty of the deaths have come since the Commission began considering a ban in 1994. It has been one of the most controversial issues confronting the agency in recent years. Consumer groups have repeatedly pushed for a complete ban on the seats, about 800,000 of which are sold each year. The Commission signaled two years ago that it would begin considering a government standard. Until then, a majority had stopped short of pushing a requirement, arguing that the deaths and injuries were caused by inattentive parents who left their children alone in the bathtub.

The agency cited three major hazards that have led to drownings and other accidents: the seat tipping over, a child becoming trapped in the leg openings and submerged, and a child climbing out of the bath seat. To reduce the risks, the agency is proposing a stability test to prevent tip-overs and a test to prevent a child from slipping through leg openings. It also wants to require a new warning label: "Children have drowned while using bath seats. ALWAYS keep baby within arm's reach." Industry officials said firms are already moving to develop products to meet new voluntary industry safety standards for bath seats. Under federal law, the agency must defer to an industry's voluntary standard if it adequately addresses the safety hazards. But without threat of a government rule, consumer groups said, the industry would not have acted.

Car Loan Rates Marked Up More For Blacks

It appears that African Americans were almost three times as likely as whites to be charged markups on loans financed by General Motors Acceptance Corp. This comes from an analysis by an expert working for minority borrowers in a lawsuit against the nation's second-largest auto lender. When charged a markup—a higher-than-normal interest rate—black borrowers paid an average of $1,229 in extra interest over the life of the loans. This is compared with the average of $867 paid by whites. The study was made of more than 1.5 million GMAC loans made between 1999 and April of this year. Black postal workers paid an average of $811 more than white postal workers to get car loans, the report said. Black teachers paid an average of $595 more than white teachers. Even black GM employees paid more than their white counterparts to get a loan.

Vanderbilt University business professor Mark A. Cohen wrote the report, which was filed in a U.S. District Court in Nashville.

Treated Wood Poses Cancer Risk to Children

A new Environmental Protection Agency study concludes that children who repeatedly come in contact with commonly found playground equipment and decks made of arsenic-treated wood face increased risk of developing cancer. The study suggests the risk to children is considerably greater than EPA officials indicated last year in announcing the products were being taken off the market. Although manufacturers have agreed to stop producing arsenic-treated wood products beginning in 2004, such wood remains in many public playgrounds and back yards. I have written on this subject in prior issues.

The preliminary findings show that 90% of children repeatedly exposed to arsenic-treated wood face a greater than one-in-1-million risk of cancer—the EPA's historic threshold of concern about the effects of toxic chemicals. The problem appears to be greater in the warmer climates of southern states, where children tend to spend more time playing outdoors. There, 10% of all children face a cancer risk that is 100 times higher than children in the general population, according to a review of the EPA data by the Environmental Working Group (EWG). EPA officials cautioned that the findings are preliminary and are subject to review next month by the agency's Scientific Advisory Panel.

XVIII. RECALLS UPDATE

The S3 And S3T Thunderbolt And The X1 Lightning Recalled

The National Highway Traffic Safety Administration has announced a recall of the following motorcycles: 1999 Model S3 Thunderbolt; 2000 Model S3 Thunderbolt; 2000 Model; S3T Thunderbolt; 1999 Model X1 Lightning; and 2000 Model X1 Lightning. On certain motorcycles equipped exclusively with a fuel injection system, the idle control cable can become dislodged from the fuel injection system cable guide as a result of improper adjustment of the throttle control system. Should this occur, the throttle may not return to the idle position when the operator's hand is removed from the twist grip, increasing the risk of loss of control of the vehicle, which could result in a crash. Dealers will install a throttle cable clamp, which serves to ensure retention of the throttle control cables in the cable guide. Owner notification was expected to begin during November or in December 2003. Owners should contact Buell at 1-414-343-8400.

Metzeler Has Recalled Motorcycle Tires

The National Highway Traffic Safety Administration has announced a recall of Metzeler Sportec M-1 P tires built between January 26, 2003 and February 8, 2003. During production, an excessive belt tension was used, causing high compression between the belt and carcass. As a result, the tire may change shape and a bubble may appear in the tread area, causing the front tire of the motorcycle to vibrate. Sudden vibration of the front end could cause the driver to lose control, possibly resulting in a vehicle crash. Metzeler will notify its customers and replace the tires free of charge. Owner notification was expected to begin in November 2003. Owners who take their motorcycles to an authorized dealer on an agreed-upon service date and do not receive the free remedy within a reasonable time should contact Metzeler at 706-368-5426.

Suzuki Has Recalled The 2004 Verona

The National Highway Traffic Safety Administration has announced a recall of the 2004 Suzuki Verona. On certain passenger cars, the dual stage driver's air bag deploys in an improper sequence. If the driver's air bag deploys in an improper sequence during a frontal vehicle crash, the driver could be severely injured or killed. Dealers will install an adapting wiring harness. Owner notification was expected to begin during November 2003. Owners should contact Suzuki at 1-800-934-0934.

Honda Has Recalled The 2002 CR-V

The National Highway Traffic Safety Administration announced recall of Honda's 2002 CR-V. On certain sport utility vehicles, metal particles in the key cylinder body could interfere with interlock lever operation, making it possible to remove the ignition key without shifting the transmission to park. If the vehicle operator does not shift to park before removing the key and fails to engage the parking brake, the vehicle could roll and a crash could occur. Dealers will inspect and test ignition switches for contamination interference. Any switches that fail the test will be repaired. Owner notification was expected to begin during November 2003. Owners should contact Honda at 1-800-999-1009.

DaimlerChrysler Recall

DaimlerChrysler Corporation has recalled approximately 21,000 of the 2004 model year Chrysler 300M and Chrysler Concordes. These vehicles were manufactured between March and June 2003. On certain passenger vehicles, an internal hood latch component may have been manufactured with a crack, which could propagate and break, allowing the primary/sec-

ondary latch spring to disengage. This could result in loss of both primary and secondary hood latch function, in turn allowing the hood to open without warning. This could increase the risk of a crash. Dealers will inspect and, if necessary, replace the latch assembly. The manufacturer has reported that owner notification began in September. Owners may contact DaimlerChrysler at 1-800-992-1997.

General Motors Recall

General Motors Corporation has recalled the 2004 model year Cadillac CTS and Cadillac SRX. These vehicles were manufactured from June through August 2003. Certain passenger and sport utility vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard No. 207, "Seating Systems." One or both front anchor tabs for the front bucket seats are not engaged in the floor pan reinforcement slots. A seat with only one tab engaged or with neither engaged would not meet the static rearward loading test requirements of the standard. In some crash conditions, the seat could pivot rearward and its occupant or a rear seat occupant could be injured more severely. Dealers will ensure that both front anchor tabs are fully seated in the floor pan reinforcement slots. The manufacturer has reported that owner notification began in October. Owners may contact Cadillac at 1-866-982-2339.

2003 Pontiac Grand Prix Recalled

General Motors Corporation has recalled approximately 60,000 Pontiac Grand Prix, model year 2003. These vehicles were manufactured from October 2002 through August 2003. Certain passenger vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard No. 135, "Passenger Car Braking Systems." On some of these vehicles, the right rear brake hose fitting may not be tightened properly, and a brake fluid leak could occur. If enough fluid leaks, the brake pedal will be lower than normal, stopping distances will be longer, and a crash could occur. Dealers will tighten the right rear brake hose fitting to the proper torque specification, and add brake fluid if necessary. The manufacturer has reported that owner notification began September 4, 2003. Owners may contact Pontiac at 1-800-620-7668.

General Motors Has Recalled the 2003 Chevrolet Astro

The 2003 Chevrolet Astro and GMC Safari have been recalled by General Motors Corporation. Dates of manufacture for these vehicles were from March 2002 through June 2003. Some of these minivans have an interference condition between the lower ball joint rubber boot and the steering knuckle (both left and right sides), which could result in cutting of the boot that is intended to seal the ball joint. If the lower ball joint boot were cut, contamination from the road (salt, dirt, water, etc.) could enter the ball socket area of the ball joint, causing the joint to wear out too quickly. The steering knuckle could separate from the lower control arm, dropping down the affected corner of the vehicle. The coil spring would push the control arm down into contact with the ground, creating a drag that would slow the vehicle. The driver could have difficulty in maintaining the directional control of the vehicle. In addition, the affected wheel assembly could separate from the vehicle if forces resulting from the wheel's dragging action were sufficient to fracture the tie rod end and upper ball joint connections. Separation of the wheel assembly would also sever that wheel's hydraulic brake hose, resulting in lost braking performance from the front brake system. Vehicle stopping distance would increase, which could result in a crash. Dealers will replace the steering knuckles. The manufacturer has reported that owner notification is expected to begin during the first quarter of 2004. Owners may contact Chevrolet at 1-800-630-2438, or GMC at 1-866-996-9463.

2004 New Beetle Recalled

Volkswagen of America, Inc. has recalled its 2004 VW New Beetle. These vehicles were manufactured between July and August 2003. On certain passenger vehicles, the passenger detection function of the passive occupant detection system (PODS) may become disabled. Should the PODS control unit malfunction, the air bag system in the vehicle will not work as designed and may not be able to properly protect occupants in a crash. Dealers will reprogram the PODS. The manufacturer has reported that owner notification was expected to begin during October 2003. Owners may contact VWoA at 1-800-822-8987.

Koyker Manufacturing Announces Recall Of Utility Vehicles

Consumers should stop using the Raptor Utility Vehicles immediately because the brass gear in the steering sector can break. This could cause drivers to lose steering capabilities. These vehicles were manufactured by Koyker Manufacturing Company, of Lennox, South Dakota. There have been 34 reported incidents of drivers losing steering control. Fortunately, no injuries have been reported. This recall involves Raptor 1000M off-road utility vehicles. The two-wheel drive vehicles have two seats and a back bed. "Raptor" is printed in black under the vehicle's gas cap. Only two-wheel drive vehicles with transaxle manufactured between April 12, 2001 and July 31, 2003 are included in this recall. These vehicles were sold at utility vehicle dealerships nationwide from June 2001 through August 2003 for about $6,600. You may contact Koyker toll-free at (800) 456-1108.

Kawasaki Announces Recall Of ATVs

Unless instructed otherwise, consumers immediately should stop using the Kawasaki Prairie all-terrain vehicles (ATVs), manufactured by Kawasaki Motors Manufacturing Corp. USA, of Lincoln, Nebraska. The lower front suspension arm can separate from the steering assembly, resulting in a loss of steering control and posing a serious risk of injury to the rider. Kawasaki has received 42 reports of incidents, including nine injuries, such as broken bones, bruising, scrapes, and lacerations. The recalled Kawasaki ATVs include both 2-wheel and 4-wheel drive versions of the Prairie 300 and 400 models, which were manufactured between 1997 and 2000. The ATVs come in green or red and have the words, "Kawasaki" and "Prairie" printed on each side of the vehicle, "300" or "400" printed on the left side, and "4x4" printed on the side of the seat (for the 4-wheel drive models only). Authorized Kawasaki dealers nationwide sold the ATVs from September 1996 through December 2000 for between $4,500 and $6,100. Consumers should stop using the ATVs immediately and contact their Kawasaki dealer to schedule an appointment for a free inspection, replacement of the pinch bolt or repair of damaged parts.

XIX. FIRM ACTIVITIES

Beasley Allen Attorneys Appointed To Advisory Board

Our firm has been very active with the Thomas Goode Jones School of Law. In fact, we are proud to say that twelve of our lawyers graduated from Jones. Greg Allen, Andy Birchfield, and I were recently appointed to the school's Advisory Board for 2003-2004. Greg and Andy are graduates of Jones School of Law and are excellent lawyers. Greg has been recognized as one of the country's leading product liability litigators. Andy serves as head of our Mass Torts Division and has handled a number of complicated cases with excellent outcomes. While Jones has done extremely well over the past several years, there are some changes that are currently being considered that may not bode well for the school. One is the getting away from night classes. In my opinion, that would be a major mistake.

Beasley Allen Hosts Semi-Annual Blood Drive

Recently, we held our semi-annual Blood Drive with LifeSouth Community Blood Center. LifeSouth brought two buses for the event, which attracted over 50 prospective donors. Donors received a free T-shirt and cholesterol screening. LifeSouth is a primary blood supplier for Montgomery, Autauga, Elmore and Crenshaw Counties. We believe that projects such as this one are extremely important.

Employees Support National Denim Day Fundraising Campaign

In honor of Breast Cancer Awareness Month, our firm participated in the eighth annual Lee National Denim Day®. Each year, Lee Jeans invites companies and organizations nationwide to participate by allowing employees and members to wear denim in exchange for a $5 donation to the Susan G. Komen Breast Cancer Foundation. On October 10th, these individuals joined together in an effort to raise awareness and funds for the fight against breast cancer.

Spotlight On Mark Englehart

Mark Englehart joined the firm in January 1999. Mark currently practices in the firm's Toxic Torts Division and specializes in complex business, environmental, and toxic tort cases. Mark, a graduate of Harvard University Law School, is admitted to practice in Alabama and Texas. Since joining the firm, he has been involved in two verdicts or settlements of eight figures or more, as well as the nine-figure Monsanto settlement. He also serves as a contributing editor for this Consumer Report and does an outstanding job. Mark and his wife, Debbie, are the proud parents of Stephanie, who is pursing a Master's degree in landscape architecture at Auburn University. The Engleharts are members of Eastmont Baptist Church in Montgomery. We are proud to have Mark in the firm.

Navan Ward Jr. In The Spotlight

Navan Ward began his work at the firm in the Mass Torts Division. Navan has since moved to the Nursing Home Division, where he litigates nursing home neglect and abuse cases in Mississippi, Tennessee, Alabama, and Georgia. Navan graduated from the University of Alabama in 1999. While attending Alabama, Navan was a member of Jasons Men's Senior Honor Society and was the recipient of the Authurine Lucy Foster Outstanding Minority Leadership Award. Navan was also a member of Bench and Bar Legal Honor Society, served as an Honor Court Associate Justice, was the president of Student Farrah Law Society and was a member of the Black Law Student Association. He is currently active in the Montgomery Trial Lawyers Association, the Alabama Bar Association and the Farrah Law Society. Navan has quickly become a most valuable member of the team.

Spotlight On Chris Sanspree

Chris Sanspree is an associate in our Consumer Fraud Division. He is concentrating his practice in insurance fraud

and bad faith. Chris, who is licensed to practice in both Alabama and Mississippi, has worked on many cases against insurance companies that have resulted in several million dollars in settlements. He is a graduate of Cumberland School of Law. Chris has also received a Master's Degree in Environmental Science from Samford University. He is a member of the Alabama State and Mississippi State Bar Associations, the Association of Trial Lawyers of America, and the Alabama Trial Lawyers Association. Chris and his wife Rachel have one son, Christopher, who is 3 years of age.

Stephanie Robinson In The Spotlight

Stephanie Robinson serves as legal assistant to Julia Beasley. Under Julie's direction, Stephanie maintains close contact with clients and helps get cases ready for trial. She works closely with our Investigators in case development. Our legal assistants attend trial with their lawyers and are valuable members of the litigation team. Stephanie received her Paralegal Certificate from Huntingdon College in 1998 and is currently working on a Bachelor of Arts Degree in Business Administration. She also holds an Alabama Real Estate Salesperson's License. The work of our legal assistants is most important and Stephanie does an outstanding job.

Spotlight On Nancy McDill

Nancy McDill has been with the firm for three years as legal secretary to Jay Aughtman. Nancy assists Jay in his law practice and has frequent contact with his clients. As part of her duties, she also deals with referral attorneys and defense counsel. Nancy is married to Charles McDill, who is from Birmingham. Charles operates Famous Burgers & Spuds, Inc., which is currently located on Plantation Way in Montgomery. He runs the business, which means he occasionally prepares the food products sold to customers. Nancy and Charles are avid power boaters and currently have a 41-foot Sea Ray Sundancer Sport Yacht moored on Lake Martin. Nancy does a real good job for the firm and is very popular with her co-workers.

Lisa Smith In The Spotlight

Lisa Smith has been with the firm for three years as Jay Aughtman's legal assistant. Her main job is dealing with discovery. Lisa works a lot on the class action opt-out cases and spends a good bit of time communicating with clients, updating them on their case or getting new information. Our legal assistants are a valuable part of the litigation team. Lisa has been married to David Smith of Prattville for 17 years and they have 2 boys, Dustin (age 16) and Donnie (age 10). We are extremely pleased to have Lisa with the firm.

Spotlight On Bill Robertson

Bill Robertson works as a Staff Assistant in our Nursing Home Division. As a part of his job, Bill manages the potential claims pending in that Division. This involves requesting all of the relevant medical records involved with the claim. Staff assistants have to obtain other important documents and records for the file. They also make sure any probate matters are completed when necessary. Once all of the records have been obtained, they are then sent off to our nursing experts who review them to determine whether the claim has merit. As soon as this process has been completed, the file is carried forward by one of our nursing home lawyers. If the claim is found to have merit, it is then filed in court. If not, the client is notified with a full explanation of why we can't handle the case. In June, Bill married Leslie Gaither of Eufaula, which was a good day's work for him. Bill has a Bachelor's Degree in Political Science from Auburn University and is currently attending Jones School of Law in Montgomery. I predict that Bill will become a very good lawyer and may one day go home to practice with his Dad, a retired judge, who has a successful practice in Eufaula.

XX. CLOSING REMARKS

We are combining the November and December issues. This comes about because I was in trial in the Exxon case for four long weeks, with three weeks of getting ready before jury selection. As a result, I was pretty late finishing this issue. Hopefully, missing an issue late in the year won't be too bad. The next issue will be mailed in early January of next year. It is most significant that we will have enjoyed two most important holidays before the next issue is in the mail.

This season is an excellent time for all of us to take stock of all our blessings. I know that God has been very good to all of us at Beasley, Allen. We are truly blessed in so many ways. I have learned the hard way over the years that without God's guidance and direction, I can accomplish nothing. It took me a good while to realize this and to acknowledge His power and authority in both my private and public life. Once I did, it became much easier to handle the most difficult of tasks. I was also better able to cope with the "best" of times and also to deal with the "worst" of times. Like most folks, I have had some in each category.

The Thanksgiving and Christmas holidays are special times for families. I hope each of you will take time to enjoy some real quality time with your family and friends. We should all make a special effort to do something good for folks who are less fortunate and in need. There are lots of folks who are really hurting financially and spiritually. Each of us has an obligation to help others. I wish for you a blessed holiday season and a happy and prosperous New Year.

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