

THE JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

Wrongful Death Cases Settled

Our firm recently handled a most significant case that settled prior to trial. The case involved the deaths of three ladies who were on their way to do some shopping when they collided with a concrete truck owned by Anderson Materials. The 70,000-pound concrete truck slammed into their Cadillac, and all three victims were killed instantly. The concrete truck driver, who was unhurt, testified that an 18-wheeler owned by Pichard Trucking Company had passed on a double yellow line and forced his truck off the road, causing him to lose control. The concrete truck then went all the way across the highway—hitting the car, which was all the way off the road. We proved that, in addition to the gross negligence of the Pichard truck, the concrete truck should not have been on the road because of three out-of-service violations. These violations included a cracked frame, excessive steering play and a broken leaf spring. Any one of these would have contributed to the driver's loss of control and his oversteer. The combination of all three made the collision a certainty. Just after the collision, two off-duty truck drivers were approaching the scene and were able to identify the 18-wheeler as it left the scene. The Pichard truck driver vehemently denied being involved in the crash. However, recon-

struction of the crash, including a site analysis, proved that the 18-wheeler did force the concrete truck off the road just as the driver of the concrete truck testified.

During discovery, we learned that the Anderson Materials had an insufficient inspection procedure and an inadequate maintenance procedure that had allowed the defects to exist at the time of the collision. The investigating state troopers supported our claims relating to the defective nature of the vehicle. We put together an animation that showed by video exactly how the collision occurred.

At the request of the victims' families, we insisted that, as a part of the settlement, Pichard be required to re-train its truck driver and that Anderson implement additional safety procedures to prevent this type of tragedy from occurring in the future. The defendants agreed to this part of the settlement, which was approved by the trial judge. Our clients also insisted that the liability feature of the case be public knowledge and not confidential, as sometimes is required in settlements. This was a tragic situation that took the lives of three innocent victims. Their families want the highways to be made safer for people. They sincerely desire more effective regulation of the trucking industry so that safety is made a top priority. The case was handled by Greg Allen and Julie Beasley from our firm. Shane Seaborn and Tom Kelly were local counsel.

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Monsanto Settlement Administration Process Moving Forward

As we reported earlier this year, our firm and the Cochran Firm helped to spearhead the \$700 million dollar global settlement of the PCB damage claims of over 21,000 current and former residents of Calhoun County, Alabama and the surrounding area. Three months of settlement talks that began in our 18,000-plaintiff federal court case (*Tolbert v. Monsanto*) eventually led to a global resolution of not only that case, but also the long-running state court trial (*Abernathy v. Monsanto*) in Gadsden, Alabama, which involved more than 3,000 additional plaintiffs. As part of the settlement, our clients will be eligible for payments administered by a Court-appointed Settlement Administrator from a \$300 million dollar settlement fund. Our clients will also have access to certain prescription drug benefits and will be able to receive treatment from a community health and environmental medical clinic that will be created in the near future. Another \$50 million dollars has also been earmarked for a variety of community-based projects designed to improve the lives of the residents and the community. Finally, U. S. District Judge U. W. Clemon recently entered a consent decree that will insure that residential and commercial properties affected by PCB contamination will be cleaned up and further steps will be taken to study and remedy PCB problems existing in public lands and waterways in the area.

Over the past 30 days, the settlement administration process has taken several giant leaps forward. To begin with, Judge Clemon has appointed attorney Ed Gentle of Birmingham to head up the settlement administration process. Since his appointment, Gentle has taken several important steps to ensure that the process of paying the claims of our clients proceeds as

quickly and fairly as possible. Judge Clemon recently authorized advance payments in the sum of \$500 dollars to each of the Tolbert claimants. In addition, a series of town hall meetings have been held in Anniston where Mr. Gentle and Judge Clemon have openly discussed the settlement administration process with our clients and answered their questions about various issues related to the settlement and the timing of payments. During the town hall meetings, residents were advised that a blood-testing program is about to get underway, which will go a long way towards determining the value of their claims. It is expected to be the largest environmental blood-testing program ever undertaken in any case in the United States. According to the Settlement Administrator, the results of the blood testing, along with other factors such as the claimant's proximity to the contamination site and whether he or she suffers from a condition in certain disease categories, will be used in determining payments.

Without question, the events of the past month are a positive sign that the settlement administration process is moving forward as quickly as it possibly can. As always, our firm will continue to do everything that it can to assist the Settlement Administrator and the Court in this process.

Attacks On The Legal System

I predict that we will see mounting attacks on the civil justice system during the remaining months of this year. We have already witnessed the first blast in a recent article in *Newsweek* entitled "Civil Wars." It is now evident that the tort reformers will portray doctors, teachers, coaches, pastors, and others as victims of "lawsuit abuse." A special series appeared on NBC News and on MSNBC cable in conjunction with the *Newsweek* Magazine article. All of this is part and parcel of a carefully planned and well-financed campaign

designed to destroy the jury system. Their goal is quite apparent and that is to protect wrongdoers. Groups such as Common Good have been created for the sole purpose of being messengers for the movement. If there is any doubt, you can go to Common Good's website (www.commongood.com) to see how the plan is unfolding. It was no coincidence that Philip Howard, the founder of Common Good, and a senior partner in a major Washington, D.C. law firm that represents tobacco companies and many other big corporate interests, was a driving force behind the *Newsweek* story.

When you consider that many of the major corporations in this country are being investigated for fraudulent and illegal conduct of all kinds, it is shocking that those in power in Washington are attempting to protect the corporate wrongdoers instead of helping their victims. If the same effort went to regulation and enforcement that we are now experiencing in the tort reform movement, our country would be in much better shape. If that happened, there wouldn't be such a need in the U.S. for courts and juries.

Hundreds of millions of dollars are being spent by Corporate America to destroy the jury system. Many observers believe the tort reformers will be successful because of their deep pocketbooks and the willingness of politicians to take their money. Corporate wrongdoers such as Enron, Tyco, WorldCom, HealthSouth and many more are most likely waiting with great anticipation for the court system's demise. Heaven help the average citizen in America if the court system in this country is destroyed!

Public Citizen Speaks Out On Newsweek Article

Public Citizen has been on the frontlines in the fight to preserve the jury system. I received the following release last month from the consumer group and pass it on to our readers. This will

give you a pretty good overview of what was behind the recent assaults on people's rights.

In a much-touted December 15 cover story entitled "Lawsuit Hell," Newsweek published a one-sided diatribe masquerading as journalism. In what purported to be an in-depth look at what business interests have erroneously labeled a "litigation crisis," the magazine went well beyond advocacy journalism to launch an unprecedented crusade against consumers' access to courts. Not content to simply run a highly questionable article, Newsweek partnered with NBC for a week of broadcast tie-ins and online chats.

Newsweek fell for myths and distortions spread by a well-organized campaign funded by big business to strip consumers—but not businesses—of their legal rights. Because of the article's glaring deficiencies, Public Citizen today sent a letter to the magazine calling on the editors to review journalistic standards. The article includes:

Many false and exaggerated examples to present an unbalanced and negative caricature of the legal system; major factual inaccuracies about the legal system and lawsuits; and proposed solutions that have no basis in experience. Many of the examples Newsweek used were wild exaggerations or anecdotes that never involved lawsuits to begin with, and Public Citizen provides a detailed critique of them. Many of the "facts" cited in the article have been debunked by independent sources such as the General Accounting Office and the Congressional Budget Office.

The article's lead author, Stuart Taylor Jr., is a former corporate attorney who admitted to Newsday that his writings are primarily commentary. Further, when writing the Newsweek piece, Taylor relied

heavily on a book by corporate defense lawyer Philip K. Howard, adopting many of Howard's faulty arguments.

A Victim Speaks Out

The following article was written by Linda McDougal and is reprinted for your information. This comes from a lady who certainly has firsthand knowledge of the need for a strong court system and juries. It is difficult for a person who hasn't walked in the shoes of a real victim to understand fully the need for the jury system. I believe Ms. McDougal's perspective will be worth your reading.

Taking away our legal rights isn't reform. In cases like mine, the civil justice system is our only hope. Like most people, I never expected to be involved in a lawsuit. But then, in May 2002, two doctors switched the pathology slides of my breast biopsy with another woman's. Following my double mastectomy, the surgeon told me I didn't have cancer. What a relief! The operation had been a success. "You don't understand," the surgeon explained. "You never had cancer." And so I became involved in a lawsuit against the hospital and the people who wouldn't even own up to their error.

According to "Lawsuit Hell," Newsweek's cover story on our civil-justice system last week, I guess that makes me just another freeloader looking to hit the jackpot. I'd take offense—being maimed by someone else's negligence isn't winning the lottery—except that I'm used to these articles. They all use the same words to discredit the system and people who get some justice from it. Don't get mad, get even, someone once said. I'm a wife, the mother of three sons and an accountant for a small company in Wisconsin, so I'm

busy. But I've also made appearances around the country over the past year, reminding people that our jury system is the only hope an ordinary citizen like me has when she's been wronged. The system isn't perfect—what is? I assume some lawsuits really are "frivolous," but our system has a lot of safeguards against abuse. Just as I don't judge the medical profession on the basis of the people whose errors changed my life forever, I don't judge the justice system on the basis of a few bad cases. I judge it on the thousands of people throughout American history who have gotten some measure of justice from a judge or a jury that they would never have gotten from an insurance company, an HMO or some vast conglomerate.

I've read the experts who say we need all kinds of limitations on injured people and juries because insurance companies and corporations need "predictability" about their potential liability. They want predictability? What about me? What happened to me was unpredictable. I'm tough, I have a wonderful family, so don't feel sorry for me—but don't ask me to feel sorry for those companies, either. "Sometimes, the malpractice is egregious," Newsweek admits. But who's in the best position to determine if a case is egregious or frivolous? The choices seem to be a panel of experts of some sort, or a panel of ordinary citizens—a jury. I don't apologize for trusting ordinary citizens—our friends, neighbors and co-workers. The story mentions a case in Kentucky in which "a mother sued her daughter's school after the girl had performed oral sex on a boy during a school bus ride... The woman blamed poor adult supervision, saying her daughter had been forced."

When the subject is tort "reform," I've learned to pay close attention, because most of the cases that make the rounds on the Internet and talk shows are urban legends, either misleading or flat-out false. A simple Internet search told me that the board of education had determined that the girl had been the victim of a sexual assault. Prior to this conclusion, the principal had suspended her for 10 days. After this conclusion, she was suspended again, this time for not reporting the assault. This was the last straw for the mother, and why she filed her lawsuit. Among her demands: that the board set up training for its employees on dealing with sexual assaults. Ask any parent whether this was a reasonable response to what happened.

Newsweek says people sue ministers for failing to prevent suicides, but I believe that every state court that has considered the question of clergy malpractice has rejected the claims. You say volunteers of all sorts are supposedly worried about lawsuits, but I know that both federal and state laws prohibit suits against volunteers. I think journalism's obligation is to set the record straight, not spread misinformation.

Naturally I'm drawn to the case mentioned in the cover story about the couple's lawsuit against a hospital "for failing to prevent their child from becoming disabled by a rare birth condition." I haven't been able to find details, but I'll bet that one sentence cannot do justice to the facts here—or to the tragedy. You see, I know how tort-reform journalism works. I know how these stories get written, and who writes them. I also know whose interests are served.

Not mine in Wisconsin. Not that girl's and that mother's in Kentucky. Not that California family's. I also know that if all those who want to restrict the legal rights of ordinary

citizens have their way, I wouldn't have waited seven months for an apology from the doctors, which I got only after my story became public. I would have waited forever.

We Must Support Our Troops

The capture of Saddam Hussein has captured all of the media attention lately and that is to be expected. Certainly, that event was newsworthy and highly significant. Even before that, however, most U.S. citizens were well aware of what was really happening in Iraq. As expected, we won the "war" in short order and then the occupation phase began. The almost daily loss of life has taken its toll back in this country. Many communities in Alabama know firsthand what this war and occupation is all about. This is because of the presence of many Alabamians in that devastated country as a part of the war and now with the occupation force. Thus far, a tremendous number of Alabamians have been called to active duty with the prospect of more to come. The Alabama National Guard is well known in Army circles for their competence and training, and that may account for the number of Alabama units having been called up. Major General Mark Bowen, the State Adjutant General, has had nothing but praise for the men and women who serve in the National Guard.

Currently, there are over 2,000 members of the Alabama National Guard assigned to the Persian Gulf. We are told there will be additional call-ups in the near future. As I understand it, the Alabama units will each serve up to a year in the Gulf. Our prayers are with all of the men and women serving our country in the military and especially those from Alabama who are now in the Persian Gulf. While our main concern has to be the troops who are in harm's way, we must not forget their families who were left behind. All deserve and must have our full support. This is especially needed during the holiday season.

May God bless and protect all who are involved directly or indirectly with our military efforts.

Alabama Senator Named To SCLC Post

State Senator Charles Steele and the Reverend Fred Shuttlesworth have been selected to serve as interim national leaders of the Southern Christian Leadership Conference. Reverend Shuttlesworth, who was a leader in the civil rights movement in Birmingham in the 1950s and 1960s, was named interim president and chief executive officer of the SCLC. The Atlanta-based civil rights organization was co-founded by the Rev. Martin Luther King Jr. Senator Steele (D-Tuscaloosa), the SCLC Alabama chapter president, was named interim vice-president at an SCLC executive board meeting in Detroit. Without question, Reverend Shuttlesworth, who now lives in Ohio, is one of the icons of the civil rights movement in this country. Senator Steele, an outstanding member of the State Senate, has continued the battle for equality and fairness in our state. His selection is a good one in my opinion.

II. LEGISLATIVE HAPPENINGS

The Upcoming Session

The regular session of the Alabama Legislature will begin in February. From all indications, it will be the toughest in many years. In fact, I don't recall any prior session that would even come close. Years of problems have been dumped in the collective laps of Governor Riley and the members of the Legislature. Finding solutions to the fiscal problems will be impossible without new funding and that means more taxes! We must fund state government

adequately or drastically cut services. The problems are real and the challenges quite apparent. Unfortunately, the solutions will be hard to come by.

Legislative Leaders Predict New Tax Plan

As the year 2003 closed out, legislative leaders were predicting that a new tax package will be presented when the Legislature meets in February. Needless to say, a great deal of work will have to be done in advance of the session if any tax proposal has a chance of passage. "We intend to somehow address the revenue shortfall, and we hope that will be in concert with the Governor," House Speaker Seth Hammett told the Associated Press. Lieutenant Governor Lucy Baxley also believes that some tax proposal will be presented during the session. We don't have to be reminded, however, that Alabama voters rejected the latest tax plan by a 2 to 1 margin in the September 9th referendum. After that vote, the Legislature approved scaled-back budgets for the current fiscal year that started October 1st. Cuts of 10% to 18% for many non-education programs were put into effect. Without a doubt, the public schools were hurt badly, with many school systems being crippled.

It is now most clear that unless additional revenues are made available when the Legislature meets in February, the state will be in for some extremely difficult times. The state's bleak financial picture and rising costs of health care and pensions will likely cause some state programs to be cut 50%. Voters have intended they want reform of state government, and I guess that includes public education. Personally, I favor some of both—tax increases and reform. I am convinced that people around the state want reforms to come before any tax increases. It won't be a good time to be a member of the Legislature. But, it is a great time for real leaders with vision and courage to emerge. Governor Riley has shown he

has courage and is willing to lead. He now needs lots of help.

Special Interest Legislation

I predict there will be more special interest legislation put in the hoppers of the House and Senate in the upcoming session than ever before. The lobbyists are already "licking their chops." There are currently over 500 paid lobbyists who have had more control in recent years over the legislative process than has the Governor. That's a sad state of affairs. Until we control the excessive flow of campaign money, consumers will never have the protection they badly need and deserve. The newspapers write about all the so-called "pork" issues, but have really failed to get behind any type legislative reform effort, which necessarily would include controlling the powerful lobby groups.

Judge Dismisses Extortion Case Against State Senator

On December 10th, a circuit court judge threw out the extortion charges against state Senator Roger Bedford, saying the state failed to prove the lawmaker had made a threat to commissioners in Marion County. According to an Associated Press report, Circuit Judge Jerry White, a retired judge from Dothan, who was assigned to hear the case, said, "I don't think any crime occurred." Senator Bedford was accused of trying to get county commissioners to buy land from a friend. Judge White dismissed the charges after the prosecution rested its case on the third day of the trial. The judge said the prosecution had to show that Bedford threatened the commissioners and had the ability to carry it out. Based on media reports over the past several months, it was quite clear that no criminal offense had occurred. If there isn't enough evidence to get a case to the jury, there simply isn't a case to start with. Unfortunately, Senator Bedford and his family had to go through

months of anguish before this chapter in their lives finally came to a conclusion. The Franklin County lawmaker is guilty of one offense, and that is he "represents" the folks in his senatorial district extremely well. Fortunately, that's not a crime. I have known Roger Bedford for a number of years and I never believed that he had violated any laws. It now appears that I was right.

III. COURT WATCH

Selecting Jurors

I am not sure who commissioned a study that came up with some "interesting" advice for lawyers who represent victims on how to select jurors. A new guide apparently sanctioned by the Association of Trial Lawyers of America advises trial lawyers to be wary of Americans with "extreme attitudes about personal responsibility" when selecting jurors in personal injury lawsuits. The author of the guide says such jurors typically "espouse traditional family values" and often "have strong religious beliefs." I understand that ATLA named a former psychotherapist as co-chairman of a "Blue Ribbon Committee on Juror Bias." Frankly, I was unaware that such a guide even existed.

I have probably tried as many cases as any lawyer in the country. Selecting jurors for my cases has never been easy and I have made my share of mistakes. It is always possible to make an error in judgment on potential jurors because a person may not have disclosed an event in his or her life that would influence their thought processes. However, I learned long ago that 12 persons sitting as a jury will reach the correct decision in 98% of the cases. Of course, there will always be the chance for a result that may not be considered a correct one. Nevertheless, I trust persons who serve on juries to try to

do the “right thing” in cases I handle.

All good lawyers will try to determine if there is any evidence of prejudice on the part of potential jurors. However, I have never felt that jurors who have “strong religious beliefs” are bad jurors for my clients. In fact, such jurors know the difference in right and wrong, and that’s important regardless of the nature of the case. I have left many pastors and church leaders on my juries and have never regretted a single decision. I suspect each of those persons had “strong religious beliefs.” I believe it is a grave mistake for a lawyer to make sweeping generalizations about people of faith serving on juries. It concerns me that some trial lawyers may be moving in that direction. Lawyers who represent victims should welcome persons who have compassion for the less fortunate on their juries. My advice for my fellow trial lawyers would be to use their own judgment and instincts rather than relying on the ATLA guide in selecting jurors.

ExxonMobil Funds Studies

ExxonMobil filed its post-verdict motions in the State’s case on December 17th. These motions are obviously designed to reduce the \$11.8 billion jury verdict returned in the case. A reporter from the *Los Angeles Times* called me several weeks ago and filled me in on some disturbing news. It appears that the giant oil company has been involved in some highly questionable activities designed to influence judicial decisions in other states. The following is an article from the *Los Angeles Times* on this subject:

In the 1990s, Exxon began paying for research into juries and the damages they award. The findings have served the firm well in court. In 1994, it was the biggest punitive damages judgment in history: \$5.3 billion that an Alaskan federal jury awarded to fishermen and others whose livelihoods had been devastated by the Exxon Valdez oil tanker

spill. Three years later, as Exxon waged its appeal, a new line of research began to appear in several respected academic journals and Ivy League law reviews. Some articles challenged the competence of juries to fairly set punitive damages. Others suggested that such awards are ultimately bad for society. Exxon cited several of the articles in the appeal. What it did not say in court filings is that it had funded the research.

Companies frequently contract with professors to testify as expert witnesses in court, but Exxon went a step further. It hired at least nine esteemed psychologists, economists and law and business school faculty members, giving them research funding that most social scientists can only dream about. Now, the 13 papers they published — several of them rewritten and reissued in a book that came out last year — are popping up in legal arguments in other punitive damages cases cited both by companies defending themselves and by judges issuing opinions. And they are ruffling the feathers of competing professors who dispute their conclusions and complain about the difficulty of raising money for independent research.

The social sciences have long been seen as low-stakes disciplines, free from the funding controversies that have roiled the harder sciences. But with public money for social science research waning, universities have not stood between professors and the corporations willing to fund their work. Such arrangements have raised ethical debates over whether academic researchers are becoming hired guns for industry. “It is very troublesome that work published as scholarship ... is being vetted by lawyers” for Exxon, said Richard Lempert, a law professor at the University of Michigan

and a leading critic of the Exxon-sponsored studies.

“It was designed to serve Exxon. It was not done because they wanted to know how juries behaved.” Tom Cirigliano, a spokesman for Exxon Mobil Corp. (formed in a 1999 merger), said a better understanding of punitive damages not only helps his employer — which he described as “the target of a number of suits that are just a matter of a trial attorney going after a company with deep pockets”—but also benefits “everyone else in this country.” He said the company had not exerted any control over the conclusions of the studies. But the research that was ultimately published served Exxon’s interests.

Punitive damages have been big news since the early 1990s. Some cases that attracted attention seemed to spoof the U.S. legal system—among them the \$2.7 million that a court ordered McDonald’s to pay a customer who had spilled hot coffee on herself (the award was ultimately reduced). Others, such as massive damage awards against tobacco companies, affect many more people.

Earlier this month, an Alabama jury ruled that Exxon Mobil had cheated the state out of natural gas royalties and handed down a verdict that included \$11.8 billion in punitive damages—a judgment the company has vowed to appeal. Although most punitive damage cases are mundane—typically companies suing companies—industry leaders live in fear of large awards and often campaign against them.

The Exxon research has provided them with ammunition. The first use of the research in court came in the Exxon Valdez case itself. The accident dumped 11 million gallons of crude oil into Prince William Sound on March 24, 1989, and devastated the

local fishing industry. In its appeal of the \$5.3-billion verdict to the U.S. 9th Circuit Court of Appeals in San Francisco, Exxon—as well as industry groups—cited several of the Exxon-sponsored papers. With no mention that it had funded the work, the company argued that “these articles present recent social science research demonstrating that jurors are generally incapable of performing the tasks the law assigns to them in punitive damage cases.”

Plaintiffs’ attorneys submitted a counter-brief dismissing the studies as “junk social science.” Arguments ensued, stretching the appeal on and on. In 2001, the 9th Circuit ruled in Exxon’s favor. The justices returned the case to the judge in Alaska federal court with an order for reduction of the penalty. The judge complied, lowering the award to \$4 billion, a figure that the company has continued to challenge in court. The case remains unresolved, though the Exxon-funded research apparently is having an effect, at least indirectly.

In a separate U.S. Supreme Court case involving State Farm Insurance, leading corporations filed a brief that repeatedly cited Exxon-funded research. The plaintiffs, backed by 21 academics, countered with a lengthy attack on the studies. In April, the High Court, which has generally opposed large punitive damage awards, overturned a \$145-million judgment against State Farm.

In light of that ruling, the 9th Circuit justices in February again returned the Exxon case to the lower court to consider whether the \$4-billion award still held up legally. Thus, Exxon-funded studies had been used in a separate case that now was coming back to help Exxon. Judges have also used the research in their opinions. A search of legal databases turned up 10

cases since 1999 in which judges have invoked studies funded by Exxon. “Random and freakish punitive awards have no place in federal court, and intellectual discipline should be maintained,” a judge in Illinois wrote, citing one of the articles in 2002.

In New York in 2003, a judge cited two of the articles in ordering a new trial in a case in which Island Def Jam Music Group had been ordered to pay \$132 million in punitive damages to TVT Records. The Exxon-funded research became the backbone of “Punitive Damages: How Juries Decide,” published last year by the University of Chicago Press. The authors conclude that juries are erratic and unpredictable in awarding punitive damages. Calling the Exxon-funded book a “path-breaking multidisciplinary study,” another judge invoked it in a discussion of a class-action suit against cigarette makers, but ultimately decided to let the case proceed.

“Individual articles don’t make a difference,” said Theodore Eisenberg, a Cornell law professor who has written extensively about the Exxon-funded work. “But when the same story is repeated over and over—judges are part of society. Whatever shapes your beliefs will shape theirs.”

The biggest public grants for mock jury studies—in which juries composed of paid research subjects are presented with cases and observed while they make decisions—come from the National Science Foundation and top out at \$250,000, enough for a 3,000-person experiment. The jury studies that Exxon funded used more than 8,000 subjects. Exxon Mobil said in a written statement that the cost of its studies was a “confidential matter,” but academics estimate the total bill at more than \$1 million.

Such investments have some scholars worried that industry will set the research agenda. Edith Greene, a psychology professor at the University of Colorado and coauthor of the book “Determining Damages: The Psychology of Jury Awards,” published this year, suggested that some of the money Exxon had paid would have been better spent on other questions: What sorts of technology could help jurors in determining punitive damage awards? How do judges influence decision-making?

“No corporate bottom line is hanging out there waiting for the answers to those questions,” she said. The Exxon-funded professors insisted that they had retained intellectual control, although they acknowledged that company officials had commented on drafts, charted progress and coordinated meetings. All the papers acknowledge Exxon funding.

“I want to be very clear here,” said John Payne, a business school professor at Duke University. “We were the ones who decided what the design would be, what the questions would be, how it would be written up for the journals.” He and others noted that some of the published work had fallen short of Exxon’s hopes. For example, he said, the company probably would have liked to demonstrate bias against out-of-town defendants, but the data did not support that. Cass Sunstein at first refused to join the project when a group of Exxon officials visited the University of Chicago, where he is a law professor. But he changed his mind after a fellow researcher, Daniel Kahneman, a Princeton psychology professor who went on to win a Nobel Prize in economics in 2002, persuaded him that they could remain independent.

Still, Sunstein refused to accept money other than travel expenses. “I

felt it was very important just for me personally to feel that the research was not affected by money, even though Exxon imposed no restrictions or strings, direct or indirect," he said. The others refused to say how much they had earned. "That is personal," said David Schkade, a business professor at the University of Texas at Austin.

"I don't keep tabs on that," said Kip Viscusi, a Harvard law professor, suggesting that some of the criticism stemmed from professional jealousy. "We can say we had complete freedom, and nobody believes us." His work also used funding from Harvard Olin Center for Law, Economics and Business. Another researcher, Reid Hastie, a University of Chicago psychology professor, combined Exxon funding with a \$113,100 grant from the National Science Foundation.

About half of the work originally appeared in peer-reviewed journals, meaning that articles were sent with the authors' names blacked out to anonymous reviewers who advised editors on whether the work should be published. Rich Wiener, editor of *Law and Human Behavior*, where three Exxon-funded articles were published, said those papers had undergone "exactly the same" review process as all others. Reviewers, who were informed of Exxon's involvement, approved the papers, "based on the quality of the research and the methodology, independent of any funding source," he said.

The articles are the only ones in his seven years as editor that were funded by a corporation, he said. In at least one case, Exxon cut off funding for research that didn't match its interests. In the summer of 1996, William Freudenburg, then a professor of sociology at the University of Wisconsin, received an offer from Exxon. In return for \$240 an hour, Freudenburg agreed to write

an article about whether punitive awards actually deterred bad behavior and thus reduced risks to society. He signed a contract giving the company the rights to his work for one year.

According to Freudenburg, a company official told him that Exxon was specifically looking for articles that could be used in court to argue that "punitive awards don't make much sense." Freudenburg presented a paper in August at the annual meeting of the American Sociological Assn. about his experience. Although he did not name Exxon or its representative in the article, he confirmed their identities in an interview with *The Times*.

Last month, the Exxon contact he identified, Terry Gardner, told *The Times*: "I am not authorized to speak about this project." Gardner proved a valuable and friendly resource, suggesting articles to read and sending books he deemed useful, said Freudenburg, who kept Gardner abreast of his progress. In late 1996, he sent Exxon a 19-page draft of a paper that he planned to submit to the journal *Risk Analysis*. It was not welcomed enthusiastically, Freudenburg said.

The draft argued, in part, that fears of punitive damage awards do not improve public safety, an argument that suited Exxon's appeal. But the thrust of the paper was that more openness in corporations is an important way to reduce the likelihood of environmental disasters. That was a position Exxon did not want to support, Freudenburg said. The contract, which had netted Freudenburg "maybe \$10,000," was terminated. In its written statement, Exxon Mobil did not dispute Freudenburg's version of events. But the statement said: "While Exxon Mobil had no interest in his paper, we at no time discouraged him from publishing it himself." Now a

professor at UC Santa Barbara, Freudenburg has yet to do so. As for his experience with Exxon, he is philosophical. "They treated me very well. But that doesn't make it any better for society!"

My discussion with the reporter who wrote this excellent article—after months of investigation and study—certainly got my attention. When I read his article, I became greatly concerned. It appears that ExxonMobil believes it can "buy" justice and manipulate the system. This type exposé would sink the ship of most corporate wrongdoers. However, we know from experience that this powerful and influential company believes it is above the law. It is good that this information is now in the public domain. However, the media in Alabama apparently have not seen the *Los Angeles Times* story.

The Frivolous Lawsuit Myth

Tort reformers have done a good job of selling their message around the country that frivolous lawsuits are being filed in the courts on a daily basis. In fact, the multi-million dollar public relations campaign financed by corporate wrongdoers has done a masterful job of creating this "frivolous lawsuit myth." It is interesting that a significant number of people now consider all lawsuits to be frivolous. Corporate defendants don't like getting caught when they harm people. Instead of accepting responsibility for their actions, the corporate bosses try to shift blame to their victims. Corporate America is not willing to admit its guilt, regardless of what the evidence in a specific case happens to be. Under the law, wrongdoers must be held accountable for their wrongdoing.

In Alabama there is a legal remedy available to any defendant who is sued in a frivolous lawsuit. While this law (the Litigation Accountability Act) has been on the books for years, it is rarely used. No lawyer would intentionally file a frivolous lawsuit since such a lawyer

and the client could be sued in return by the defendant. I have to wonder why the tort reformers don't let folks know about this law. As for frivolous lawsuits, I also wonder whether Karl Rove, the designer of the tort reform movement in this country, would consider a lawsuit frivolous where a defective vehicle maims or kills a member of his family. Heaven forbid that ever happens.

Businesses Suing Businesses

While all of the media attention in recent months has been diverted to the lawsuits filed by consumers against corporate defendants, there is another side to the story. Court statistics reveal that lawsuits filed by businesses make up a significant percentage of the number of lawsuits filed each year. The following gives some interesting information on lawsuits filed by businesses.

- Business cases account for 47% of all punitive damage awards. In contrast, only 4.4% and 2% of punitive damage awards are due to product liability and medical malpractice cases, respectively (Rand Institute for Civil Justice, 1996).
- Cases in which businesses sue each other over contracts comprised nearly half of all federal court cases filed between 1985 and 1991 (*The Wall Street Journal*, 12/93).
- Contract and property cases - most involving business - comprise more than one-third of all civil cases in state courts.
- In comparison, only 0.21% of all civil cases were product liability claims (National Center for State Courts, 1995).

Maybe there are a few "frivolous" lawsuits being filed. Take a look at these:

- In 1998, Kellogg Co. sued Exxon Corp., claiming that Exxon's "whimsical tiger" logo, which had been in existence for over 30 years, would confuse consumers who associate the tiger logo with Kellogg's Frosted Flakes mascot, "Tony the Tiger." A

federal judge in Memphis threw out the suit, saying that Kellogg was "grossly remiss in failing to assert its rights" sooner. This didn't stop Kellogg, which further clogged the courts by appealing the verdict to the Sixth U.S. Circuit Court of Appeals in Cincinnati. In its brief, Kellogg argued that the Exxon tiger, like Tony, "walks or runs on his two hind legs and acts in a friendly manner."

- In 1998, Enterprise Rent-A-Car filed lawsuits against Rent-A-Wreck of America (a tiny rental company) and Hertz Corp. and threatened to file lawsuits against several other car-rental companies who use the phrase "pick you up," claiming that "We'll pick you up" is Enterprise's slogan. While those suits were pending, Advantage Rent-a-Car counter-sued Enterprise, claiming that Advantage had used the phrase "We'll pick you up" long before Enterprise did. Enterprise argued in its lawsuits that the phrase means more than "We'll give you a ride"; it means "We'll pick up your spirits." Competitors said that there was no other way to say "We'll give you a ride." Enterprise attorney Rudolph Telscher said that "We'll decide in the courtroom who is correct here."
- In November 1995, Hormel Foods, the maker of the luncheon meat SPAM, sued Jim Henson Productions to stop the creator of the Muppets from calling a character in a new movie Spa'am, claiming that the character was unclean and grotesque and would call into question the purity and quality of its meats. A federal court rejected Hormel's claims, and Hormel also lost on appeal.
- Mattel, Inc., the maker of Barbie, is waging an aggressive trademark war against unsanctioned use of the Barbie name, attacking the founders of the "Barbie Makes a Wish" weekend that raises money for critically ill children; artist Paul Hansen, sued for \$1.2 billion for making

\$2,000 from the sale of his Exorcist Barbie, Tonya Harding Barbie, and Drag Queen Barbie; and Mike Grove, who distributes Sizzler toy cars to sick and dying children. Mattel made almost \$4 billion in annual sales in 1996, but has filed copyright and trademark infringement suits against all three toy enthusiasts.

- In November 1995, PepsiCo's Frito-Lay snacks division filed a lawsuit against Procter & Gamble over advertisements claiming that Procter & Gamble's Pringle's Right Crisps Potato chips are "more nutritious than Frito-Lay's Chips."
- Coca-Cola, the producer of Minute Maid orange juice, sued Procter & Gamble charging that ads for Citrus Hill Select "falsely" claimed that the juice was made from the "heart" of the orange.
- In 1989 Walt Disney Company used a lawsuit to force a public apology from the Academy of Motion Picture Arts and Sciences for an "unflattering" representation of Snow White in the opening sequence of the 1989 Academy Awards ceremony.
- In 1980 the manufacturers of Haagen-Daz ice cream, in a suit against Frusen Gladje, tried to lay claim to the concept of premium ice cream with a "Scandinavian flair."

The Truth About The Civil Justice System

Supporters of so-called tort reform bills in Congress claim that there are too many lawsuits and that juries can no longer be trusted to render fair verdicts. These assertions are simply not true. This country doesn't need tort reform. Tort reform would take away our system's ability to force wrongdoers to change their harmful conduct. Instead of reforming the courts, what we actually need is some meaningful corporate behavior reform. Tort claims accounted for only about 5% of all civil claims filed in state courts in 1992,

according to data compiled by the non-partisan National Center for State Courts (NCSC). Tort filings in state courts actually declined 1% between 1989 and 1998, according to an NCSC study of tort filings in 28 states. This is particularly significant because over 95% of all tort cases are filed in state courts, and states' populations increased between 1989 and 1998. In a study of 16 states, NCSC found that the number of tort filings decreased 16% between 1996 and 1998.

About 6,000 deaths and millions of injuries are prevented each year because of the deterrent effect of products liability, according to the Consumer Federation of America. A Rand study estimated that medical spending for the treatment of injuries cost the U.S. economy nearly \$154 billion in 1997, which is just about 20% of the nation's health care bill. Lost work time adds another \$100 billion. The National Safety Council estimates that accident costs totaled \$480.5 billion in 1998. Without the jury system's involvement, Corporate America would not have implemented some of the safety programs and changes that we have seen over the years. Let's consider some of the things that have been done because of the availability of the jury system. For example, today, flammable children's pajamas have been taken off the market, defectively designed cribs no longer strangle infants, medical devices that were once harmful have been redesigned, automobile fuel systems have been redesigned and strengthened, and farm machinery are fitted with safety guards. The tort reformers, who are determined to destroy our civil justice system, blame tort cases for clogging our courts and driving up costs. However, they can't back up their claims with real facts. Tort reform limits the rights of individuals to hold wrongdoers accountable, while allowing corporate wrongdoers to avoid accountability. It is a classic example of the rich and powerful using their influence to run roughshod over ordinary folks.

Appellate Mediation

Many people still don't know the difference between arbitration and mediation. Simply put, arbitration is binding and mediation is not. Arbitration is unfair, while mediation is fair to all parties. While arbitration doesn't work for consumers, mediation can in most cases. Beginning January 2004, Alabama will have an official mediation program at the Supreme Court of Alabama and the Alabama Court of Civil Appeals. There can be many advantages to a mediated settlement at the appellate level. Obviously, parties to litigation can end their case if mediation results in a settlement. The closure in mediation means that the underlying lawsuit is over. Because parties to mediation are not confined to "legal" remedies, sometimes that can lead to cases settling that otherwise would not. For example, it is possible to include provisions in a settlement that couldn't be put in a jury's verdict. Also, mediation can sometimes help to heal the wounds that can result from litigation. Mediation at the appellate level can avoid unfavorable precedent from an appellate court that may be used in a later proceeding of the same or similar cases. Often, that appeals to defendants.

The Supreme Court Standing Committee on Appellate Mediation, chaired by Justice Champ Lyons, Jr., began meeting in May 2003, and has worked to develop a mediation program for both courts. Members of the committee include Justice R. Bernard Harwood, Justice Thomas A. Woodall, Judge Sharon G. Yates, Judith M. Keegan, and Rhonda P. Chambers. On July 17, 2003, the Supreme Court of Alabama adopted Rule 55, Alabama Rules of Appellate Procedure. This rule establishes a confidential mediation program at the appellate level. Rules for the program were completed last month, and at press time it appeared that the program will begin this month. If so, that is good. Alabama mediators who have elected to participate as appellate

mediators were trained in a one-day seminar. The training was hosted by the Alabama Center for Dispute Resolution at the ASB. For the entire text of the Rule and the Court Comment to the Rule, you can go to www.alabar.org.

U.S. Supreme Court Dodges Gun Rights Case

The U.S. Supreme Court disappointed gun owner groups last month when it refused to consider whether the Constitution guarantees people a personal right to own a gun. Many citizens don't realize that the High Court has never said whether the right to "keep and bear arms" applies to individuals. It is my opinion that it should. Interestingly, the Bush Administration did not encourage the justices to resolve the issue in a case involving a challenge of California laws banning high-powered weapons. However, many groups, including the National Rifle Association, encouraged the Court to take the case. Timothy Rieger, California's Deputy Attorney General, said in court filings the case involved regulations on "rapid-fire rifles and pistols that have been used on California's school grounds to kill children." The argument on the other side was that "citizens need the Second Amendment for protection of their families, homes and businesses."

For the "uninformed," the Second Amendment reads: "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." A panel of the U.S. Court of Appeals for the Ninth Circuit had said the amendment's intent was to protect gun rights of militias, not individuals. However, another appeals court in New Orleans had ruled that individuals have a constitutional right to guns. The U.S. Supreme Court refused, without comment, to review the 9th Circuit decision. I learned years ago that one can't always predict whether or not the U.S. Supreme Court will accept a case

for review. So, from a legal standpoint, I don't know exactly where individual citizens now stand.

The California law is said to be a model for legislation pending in Congress designed to renew and strengthen the 1994 federal assault weapons ban. For your information, the Supreme Court's last major gun case was in 1939, when justices upheld a federal law prohibiting the interstate transport of sawed-off shotguns. Many believe that the High Court should decide "once and for all" what protections gun owners have. I agree and hope that when it comes, the decision will allow protection for individual gun owners.

IV. THE NATIONAL SCENE

Halliburton Influence

The mounting death toll in Iraq is causing a great deal of concern in this country. Obviously, this has to be our primary concern. However, the American people also have to be greatly concerned over the financial cost of the occupation and rebuilding of Iraq. With all of the economic problems back home, it is distressing that corporate bosses would cheat the government during such trying times. For example, it is shocking that Halliburton Corp. has apparently overcharged the Army by as much as \$63 million for gasoline in Iraq. Kellogg, Brown & Root, the Halliburton subsidiary involved in Iraq reconstruction work, submitted a proposal for cafeteria services that ran \$67 million too high. Fortunately, the Pentagon has rejected that proposal. It is significant that Defense Department officials labeled the problems with Halliburton as being "stupid mistakes." The fact that Vice President Dick Cheney came out of Halliburton to be Vice President may have very little to do

with Halliburton's actions. I hope that is the case. However, the appearance of impropriety, even though it may be simply perception, cannot be justified by any standard.

Many persons believe that the Halliburton contracts were nothing more than political payoffs for a company with strong ties to the GOP. It is well-documented that Halliburton executives made generous campaign contributions to the Bush campaign in 2000. It is significant that the KBR contracts were awarded without competitive bidding and amounted to approximately \$15.6 billion to rebuild Iraq's oil infrastructure and assist U.S. troops in Iraq.

Even President Bush has had to acknowledge that he believes Halliburton overcharged the Pentagon in Iraq and that the company should repay the overcharges. Preliminary findings by a Pentagon audit—that Halliburton may have overcharged the Army for gasoline—are proof that the Bush Administration has given favorable treatment to its friends and supporters. The audit found that Halliburton, of which Cheney was chief executive before becoming Bush's running mate, may have overcharged the Army by \$1.09 per gallon on nearly 57 million gallons of gasoline delivered to citizens in Iraq by buying from Kuwait instead of Turkey. The charges were part of another no-bid contract Halliburton received to rebuild the Iraqi oil industry.

The New Medicare Law

The fight over adding a prescription drug benefit to the Medicare program has been going on for the past several years. Now, a bill has passed. It might do well to look at the historical picture of Medicare. Most American citizens have become accustomed to having Medicare benefits available when needed. The bill that created Medicare was signed into law by President Lyndon Johnson on July 30, 1965. President Johnson told the American

people, "No longer will older Americans be denied the healing miracle of modern medicine." Clearly, Medicare was a desperately needed program and it grew rapidly to be a popular one. We should all recall that "conservatives" were outraged that the Democrats were able to obtain passage of what the Republicans considered a "socialistic" program. President Truman had proposed a health care program for the elderly back in the 1940s and it went nowhere. President Kennedy rekindled the fire in the early 1960s with a like result. It took the skills of President Lyndon B. Johnson, with his legislative genius and his enormous mandate from the 1964 presidential election, to bring the program into being. History will record, however, that there was strong opposition and that creating the program wasn't easy. For example, Ronald Reagan, according to a book on Johnson's life, "saw Medicare as the advance wave of socialism, which would invade every area of freedom in this country." Reagan, according to the book, "predicted that Medicare would compel Americans to spend their sunset years telling our children and our children's children what it was like in America when men were free."

The vocal opposition to Medicare by a good number of right-wingers continued. For example, Newt Gingrich in the 1990s compared its operations to "centralized command bureaucracies" in Moscow. And George W. Bush tried to fashion a prescription drug benefit that would require senior citizens to leave the traditional Medicare program before they could get the benefit. Without question, Medicare has significantly improved the health and economic conditions of the nation's elderly. The unrelenting hostility to the program appeared to be a Republican obsession. Now President Bush has signed into law a prescription drug benefit under Medicare that runs contrary to the GOP's long dream of dismantling Medicare. In fact, it makes the President a left-wing liberal to a

number of Republican leaders.

Remember, Republicans, who have been hostile to Medicare, now control the presidency and both Houses of Congress. It now appears that the bill signed by President Bush may actually be a giant windfall for the drug companies. It opens up a huge new market with virtually no effort to restrain prices. It will give Medicare recipients a modest drug benefit, but at a potentially tremendous cost. Many believe this bill starts the process of undermining Medicare by turning parts of it over to insurance companies, HMOs and other private contractors.

The drug benefit will be delivered almost entirely through private insurance plans. It would have been more efficient and cheaper to deliver it the same way other Medicare benefits are delivered. Unfortunately, that's not the way it will work. The Bush Administration will deliver tremendous sums of government money, which obviously comes from taxpayers, over to the special interests. It shouldn't have been a surprise when drug company stock prices went through the roof with passage of the Medicare bill. Folks should be shocked to learn that the bill specifically prohibits the government from negotiating discounts or lower drug prices. It also bars the importation of cheaper drugs from foreign countries, including Canada. The "demonstration" project, which will begin in 2010, will pit Medicare against private, profit-making health plans. The private plans will be heavily subsidized by Medicare money and will be able to cherry-pick the healthiest patients. That, among other things, will make it something less than real competition. While the bill clearly represents the biggest overhaul in Medicare history, it appears that the terrific cost could well be its undoing. I predict that once people around the country—especially seniors—find out what the new law really is, they won't be too happy.

Alabama Seniors Skeptical About Medicare Bill

It appears that few U.S. citizens now favor the Bush Medicare plan. In Alabama, the findings from a recent poll conducted by the Mobile Register/University of South Alabama are following the national trend. Fewer than one in six Alabama seniors completely support the Bush Medicare prescription drug benefit approved by Congress. More than half have some reservations, according to the poll. Among those under 40, the full approval rate was 19%, according to the poll. For those 60 and older, the figure dropped to 9%. Overall the survey found 15% approve of the new Medicare law without reservations, 45% approve of it with some reservations, 12% disapprove and 28% don't know or had no answer. The poll of 418 adult residents had a margin of error 5 percentage points.

The results roughly parallel the findings of a national poll taken last month as the Medicare bill neared final approval. That poll, conducted by the University of Pennsylvania's National Annenberg Election Survey, found that opposition to the measure ran strongest among those age 65 or older. People who are now on Medicare are suspicious of change, according to the survey's political director. It appears that the seniors have a system they are pretty satisfied with. As a result, they are less interested in taking a chance on something like the Bush plan.

Although the prescription drug benefit has drawn the most attention, the bill also would increase reimbursements for rural hospitals and make changes designed to foster competition among insurers and slow the steadily climbing expenses. Some Republicans in Congress voted against the position of their party leaders because of concerns that the estimated \$395 billion cost over 10 years was too much. Several Democrats objected that the coverage did not go far enough and

that privatization measures would do more to help companies than patients. Although Medicare recipients can begin getting government-sponsored drug discounts next year, the actual prescription benefit program does not kick in until 2006 and even then it will not provide full coverage.

AARP May Have Reason To Be Concerned

AARP's decision to support the corporate friendly Medicare bill at the expense of seniors has had some serious repercussions. I understand that about 20,000 members have told the organization to cancel their membership because of the endorsement. Obviously, AARP is really worried by the membership reaction since that could erode its position as spokesman for seniors. Obviously, this powerful group has already received a huge amount of negative press. In fact, the early readings on the bill from seniors haven't been encouraging at all for AARP. Instead of fighting to amend the legislation to reflect concerns of seniors, AARP used its resources for a public relations campaign to try to talk seniors into believing the legislation isn't harmful. Since the bill's passage, each member of AARP received a two-page letter in an attempt to justify the group's position.

Many believe that several million of the nation's poorest elderly and disabled beneficiaries will be made worse off by the new legislation. This is because they will have to pay more for drugs than they currently pay under Medicaid. They will also be denied coverage for some drugs they currently receive through Medicaid. For more information on the Medicare bill generally, see www.AmericanProgress.org.

Bush Retracting Steel Tariffs Early

President Bush has fallen under tremendous political pressure to follow the wishes of the World Trade Organiza-

tion. We have witnessed the leader of the world's most powerful country being forced to reverse his policy and eliminate steel tariffs. U.S. trade safeguard laws apparently don't amount to very much. The rollback of the steel safeguards may serve as a wake-up call to Congress about the WTO's erosion of democratic decision-making. When Congress approved U.S. accession to the WTO, U.S. trade safeguard laws had to be rewritten to conform to the WTO's terms. The changes - mainly regarding timelines and the damage calculations rather than substantive requirements for initial determinations - were extremely controversial with manufacturing and agricultural interests, as well as with many members of Congress who were otherwise supportive of the WTO. President Bush had an opportunity to stand up for the superiority of U.S. law over WTO dictates. The European Union has refused to implement a WTO ruling that European countries must accept imports of beef grown with artificial hormones. Unfortunately, for obvious political reasons, the White House, unlike the EU, bowed to the power of the WTO. I suspect the President's action will be debated thoroughly in this year's election.

Donors To Bush Appear To Do Well

As we have previously reported, most of the campaign funds collected by President Bush come from a group the President and his merry men refer to as Rangers and Pioneers. What's important to know is that each of these raises at least \$100,000 for the Bush campaign. Most of these Rangers and Pioneers have big business before the government. They include stockbrokers and bankers on Wall Street who got their dividend tax cut worth hundreds of billions. You will also find executives from drug companies that were spared price cuts under the Medicare bill. Energy company chieftains who got subsidies, tax breaks and other goodies in the

energy bill are also on the rolls.

In return for campaign cash, the Rangers and Pioneers may expect to get back a handout from the government. The electric utilities have hit pay dirt as a result of their contacts with the Bush Administration. Back in 1999, the utilities started getting sued by the EPA under the Clean Air Act for not putting pollution controls on their old coal-fired plants that put out tons of toxins. The utility bosses figured out how to stop the lawsuits that could cost single companies hundreds of millions of dollars in pollution controls. All they had to do was make a small investment to elect George Bush president. It has been reported that their Pioneers and lobbyists raised nearly \$5 million for the Bush campaign apparatus in 2000.

What did they get in return? It may not be a coincidence that their leaders were appointed to the Bush Energy Department's transition team. Vice President Cheney's secret energy task force then recommended the changes they wanted to the Clean Air Act, to eliminate the requirement that such pollution controls be added. Their lobbyists were conveniently installed at the EPA to make it happen. The only way to get polluters' money out of presidential elections is to overhaul the presidential public financing system. It is time for public financing of campaigns—rather than campaigns fueled by interest group money—but don't hold your breath waiting for this to happen.

Bush Rewards Generous GOP Donor

Recently, President Bush made two interesting stops in Maryland. The first stop was an exclusive, big-ticket fundraiser in Baltimore, where the President added a few more million dollars to his already massive campaign war chest. His next was to deliver a speech on the economy to workers at a Home Depot. You probably are asking, what did the President need at the store? That was the question posed by the

media in Maryland. Research by Public Citizen suggests the president's visit was yet another way to reward the nation's second-largest retailer for its generosity to the Bush campaign. Home Depot employees and their families have given \$1.5 million to the GOP since 1999, according to data provided to Public Citizen by the Center for Responsive Politics. During that time, no candidate has benefited from Home Depot's largesse more than Bush. The total includes \$907,950 in mostly "soft money" donations to the Republican National Committee before such giving was outlawed by the Bipartisan Campaign Reform Act. So far this year, Home Depot employees and the company political action committee have contributed \$31,000 to the 2004 Bush-Cheney re-election campaign. Frank Clemente, director of Public Citizen's Congress Watch, made this observation: "Every time Bush has a fundraiser, he also schedules a purportedly public event to pass the cost onto the taxpayers. These carefully staged performances before a captive audience of workers are a sham. The president has managed to turn policy pronouncements into free PR for his most generous political supporters." It is pretty clear that campaign contributions have helped cement a close working relationship between Home Depot and the Bush Administration.

By the way, I have to wonder who put the language in the massive energy bill that would lift a tariff on Chinese-made ceiling fans sold by Home Depot. The new language was inserted on page 710 during the closed-door conference committee meeting even though it had never been debated by either branch of Congress. According to estimates by the Joint Committee on Taxation, suspension of the tariffs would cost the U.S. Treasury \$48 million over five years. Home Depot CEO Robert Nardelli made the trip up to Maryland from Atlanta to appear alongside the President. According to internal documents uncovered by *The*

Wall Street Journal in 2001, Home Depot secretly gave \$1 million to the Institute for Legal Reform, an arm of the U.S. Chamber of Commerce, to buy ads aimed at electing business-friendly judges. If you would like to see how closely the Bush Administration is tied to Home Depot, go to Public Citizen's website: www.citizen.org.

Polluters And Influence Peddlers In Virginia

There was another meeting that is worth mentioning concerning the President's travels. Environmental and public interest groups gathered last month near the site of an exclusive northern Virginia fundraiser to protest President Bush's practice of paying back his biggest contributors with weakened environmental regulations, pork-barrel projects and choice presidential appointments. The \$2,000-a-plate luncheon in McLean was the 43rd and final fundraiser headlined by Bush for 2003. The Bush-Cheney campaign exceeded the \$111 million mark for a primary contest in which the president is running unopposed. The Bush campaign has averaged about \$5 million a week in contributions. The campaign has held 91 publicized events headlined by President Bush, Vice President Cheney, or First Lady Laura Bush since June. In a news release, Frank Clemente, director of Public Citizen's Congress Watch, stated: "In exchange for millions in campaign cash, the Bush Administration has rewarded its rain-makers with environmentally destructive policies that include a radical alteration of clean air laws and a pork-laden energy bill filled with billions in handouts to polluters." For more information on the amounts and sources of the campaign's fundraising activities, go to WhiteHouseForSale.org, a Web site created by Public Citizen.

Marriott Settles Claim For \$370 Million

Host Marriott Corp., the owner of the New York Marriott World Trade Center

hotel, destroyed in the September 11th attacks, has settled its claim with its insurers. The corporation will receive approximately \$370 million in net settlement proceeds. In conjunction with the agreement the company also surrendered the WTC site and terminated its ground lease rights, thus eliminating one more potential legal wrangle that could delay reconstruction of the WTC. While Marriott is now free of any obligation to rebuild on the site, it has in exchange been given a right of first refusal, good for 20 years, to develop a hotel on the site.

A subsidiary, Marriott International, Inc., had already received a \$36.25 million payment from the property insurer for the New York Marriott World Trade Center hotel. It indicated the amount had been paid "in connection with the loss of the hotel and the settlement of all outstanding matters related to the events of September 11, 2001." It is significant that Marriott's settlement brought good news to investors in the company. The company lowered projected loss forecasts and enabled the company to pay a fourth quarter dividend that it had indicated it planned to skip.

V. CONGRESSIONAL UPDATE

Looking Back At 2003

Fortunately, for most American citizens, the First Session of the 108th U.S. Congress is now over. After acting on the omnibus appropriations bill, which was pushed through by the Republicans, Congress adjourned in December and will start back up when the Second Session convenes on the 20th of this month. The past year in Congress has tested the endurance of those who worked long and hard to protect U.S. consumers. There were numerous carefully planned attacks by the tort

reformers on the civil justice system. Most of them were launched from the White House and sent to Capitol Hill. Following the elections of last November, the Republican leaders of both Houses of Congress, as well as the President of the United States, were totally committed to dismantling civil justice and taking away the legal rights of American families. While most of their measures failed to pass, I suspect we have just seen the tip of the iceberg. Fortunately, there were enough members of Congress willing to stop the anti-consumer onslaught during 2003. However, asbestos, class actions, firearms liability, product and medical liability, and federal auto no-fault will be on Congress' agenda in 2004.

Without question, there will be an increasing number of anti-consumer bills on Congress' agenda this year. As we all know, 2004 is an election year. Generally, this can be bad news for consumers. Clearly, it heightens the already partisan tone in Washington. We have already seen the "early shelling" from the tort reformers and now await the "landing" of their well-financed tort reform troops. The fight has just begun! I have stated on numerous occasions that Common Good, the newly formed tort reform group, is nothing but another stalking horse for Corporate America. They are actively engaged in the "early shelling." Perhaps a look at Common Good's mission statement, which reads as follows, will give us some insight into their "real mission:"

Common Good has started the revolution to overhaul America's lawsuit culture. The fear of litigation has undermined our freedom to make sensible decisions. Doctors, teachers, even little league coaches find their daily decisions hampered by legal fear. Our system of justice, long America's greatest pride, is now a tool for extortion, not balance.

This tells us clearly that victims of corporate wrongdoing and consumer groups had best buckle their chinstraps

because this session of Congress is going to be a tough fight for consumer groups. Those of us who represent the victims and their families have an obligation to remain involved in this fight. I can only speak for one trial lawyer. Regardless of the odds, I will never give up the fight to save the jury system.

VI. CAMPAIGN FINANCE REFORM

Campaign Finance Reforms Upheld

Now that the election year is here, I believe the need for completing the reform of our campaign spending laws is more urgent than ever before. Fortunately, the recent decision by the U.S. Supreme Court concerning the constitutionality of the McCain-Feingold campaign finance reform law now gives us some hope that things may get better. A sharply divided Court upheld key features of the nation's new law intended to lessen the influence of money in politics. The Court's ruling came last month and says the government may ban unlimited donations to political parties and restrict some TV and radio "issue ads" right before elections. Those donations, called "soft money," had become a mainstay of modern political campaigns, used to rally voters to the polls and to pay for sharply worded television ads. It is now clear that Congress may regulate campaign money to prevent the real or perceived corruption of political candidates. That goal and most of the rules Congress drafted to meet it outweigh limits on the free speech of candidates and others in politics, a majority of the Court said.

The Court also upheld restrictions on political ads in the weeks before an election. The television and radio ads often feature harsh attacks by one politician against another or by groups running commercials against candidates. Clearly, the decision is a "major

victory for American democracy." While the new law won't stop all forms of abuse in the system, it is certainly a step in the right direction. At the same time, however, the High Court acknowledged that the 2002 law won't stop the "flow of money in politics." I hope it is the beginning of a serious effort to stop "special interest groups" from controlling the national political parties and underwriting federal campaigns by writing unlimited checks.

The Flow Of Big Money

As pointed out, clearly the new law has not stopped the flow of big money. However, it has changed its course and that is important. In the months since the law took effect, several partisan interest groups have been created to collect corporate, union and unlimited individual donations to try to influence next year's elections. Supporters of the new law said the donations from corporations, unions and wealthy individuals capitalized on a loophole in the existing Watergate-era campaign money system. For those who may not be familiar with campaign funding, "soft money" is a catchall term for money that is not subject to federal limits on how much individuals may give. It is outside the old law prohibiting corporations and labor unions from making direct campaign donations. Federal election regulators had allowed soft money donations outside those restrictions so long as the money went to pay for get-out-the-vote activities and other party building programs run by the parties. For example, the Democratic committees raised about \$246 million in soft money in the last election cycle, compared with \$250 million for the Republicans.

The Supreme Court decision mentioned above marked the Court's most detailed look in a generation at the complicated relationships among those who give and receive campaign cash. The case also presented a basic question about the wisdom of the govern-

ment's policing political give-and-take. The Court has now given government an extensive role in the area on the ground that there is a fundamental national interest in rooting out corruption or even the appearance of it. That concern justifies limits on the freedom of speech. Personally, I believe the Court's decision is a tremendous victory for people in this country. It is a vindication of a decade of work by reform groups and key members of Congress who fought for its passage. The decision helps ensure the removal of the corrupting influence of "soft money" from federal elections so that corporations and labor unions, as well as wealthy donors, will no longer be able to buy influence and access through our national political parties.

The High Court's decision will limit the influence of special interests in our elections. The raising of soft money and the broadcasting of sham issue ads was definitely on the increase. The law passed by Congress was the broadest reform since 1974, when President Ford signed a law creating the Federal Election Commission in the wake of the Watergate scandal. It limited individual and political action committee contributions to candidates to \$1,000 and \$5,000 per election, respectively. That effort turned out to be an ineffective method of controlling spending in federal elections. Soft money donations were not included in the law, and the parties exploited the loophole. Had the Court failed to uphold this law, politicians and parties would have been further indebted to special interest groups. There is now hope that we can stop the erosion of our democracy. Now Congress needs to complete its work and do it during the early part of this Congress. Groups such as Public Citizen will have to remain on guard to be sure that its most corrosive influences on the political process are brought to the public's attention and that Congress remains ever vigilant in safeguarding our democracy and the electoral process.

VII. THE CORPORATE WORLD

Medicare Overpayment Rate

I was shocked to learn that the Inspector General of the Department of Health and Human Services has stopped reporting the amount it is overpaying doctors, hospitals, and other healthcare providers for Medicare. The Government Management Reform Act of 1994 requires an independent audit of all major public payment programs. That audit has been conducted since 1997 by the Inspector General. In 1997, the Inspector General put the fee-for-service error rate at 14%. This was the equivalent of \$23.2 billion in Medicare overpayments. That report created a public uproar when it was published in major newspapers throughout the country.

It is extremely interesting that earlier this year the Inspector General's office said it would no longer be publishing the error rate. What good is an independent audit if the information is not made public? It is even more shocking that the Inspector General will leave it to the Centers for Medicare and Medicaid Services to determine its own error rate. It is estimated that healthcare fraud costs—while undetermined—could be as high as 30 to 40% of all healthcare expenditures. If so, this would amount to hundreds of billions of dollars. If you would like additional information on this, I suggest that you see *License to Steal: Why Fraud Plagues America's Health Care System* (Westview, 2000). This was authored by Malcolm Sparrow, a professor at the Kennedy School of Government at Harvard University.

False Claims Act Settlements

A recent report released by Corporate Crime Reporter contains some

rather interesting and significant information. The report ranks the top 100 False Claims Act settlements by amount of the settlement. The top 10 settlements ranged from a high of \$731 million in a December 2000 settlement with HCA, the healthcare giant, run by the family of U.S. Senate Majority Leader Bill Frist (R-TN), to a \$13 million settlement with each of three companies tied for the 100th spot. The qui tam provisions of the False Claims Act allow private individuals to sue companies that defraud the federal government and recover damages and penalties on the government's behalf. Whistleblowers are entitled to 15 to 25% of the funds the government recovers as a result of the lawsuit when the government joins the case.

Fifty-six of the top 100 false claims settlements were with healthcare corporations. Twenty-three were defense contractors. The top 10 recoveries brought in a total of \$8.2 billion—which is more than 65% of the \$12 billion recovered in total under the False Claims Act since it was amended in 1986. The second largest settlement was also with HCA for \$631 million in June 2003. Rounding out the top five settlements were:

- TAP Pharmaceuticals - \$559 million
- Abbott Labs - \$400 million
- Fresenius Medical Care - \$385 million

A Champion For Consumers

New York's Attorney General is probably not getting invited to many Christmas parties sponsored by the bosses in Corporate America. At a time of broad skepticism and disenchantment with government's ability to regulate America's economic giants, Eliot Spitzer has become a modern-day crusader for the common man. As New York's Attorney General, he is now shaking the foundations of the \$7 trillion mutual fund industry with a team of 15 lawyers. The Spitzer team pales in comparison with the legions of federal

regulators and prosecutors who have been driven by his revelations to confess their failure to adequately regulate fund trading. The 6-month probe by General Spitzer has uncovered significant problems among the country's biggest and best-known fund families. Since the investigation began, Spitzer's office has brought three criminal cases and has won two felony pleas. The still-unfolding mutual fund probe is just the latest in a series of regulatory triumphs for the 44-year-old prosecutor.

With a small team of lawyers, General Spitzer has gone after General Electric Co. for polluting the Hudson River, sued power companies in the Midwest for causing acid rain, and taken on armies of Korean grocers for not paying minimum wage. Last year, he shook up Wall Street when he uncovered corruption involving stock analysts and the powerful investment banking firms they work for. His investigation led to sweeping changes in the way analysts do their jobs and forced the nation's largest investment firms, including Merrill Lynch & Co., Morgan Stanley and Citigroup Inc., to pay more than a billion dollars in fines in a settlement agreed to in April.

Regardless, there is little doubt that the New York Attorney General has done more to address corrupt financial practices than any other official or institution in the country. Protecting investors from malfeasance and outright robbery is a noble cause in my opinion. The Attorney General says his motivation is straightforward—"to punish wrongdoers and help small investors—especially when no one else is doing it." Fortunately, his investigation is just cranking up. He says there will be more criminal cases. Without a doubt, General Spitzer's quest to clean up Wall Street has made him famous. I say, more power to him!

Front Groups Created

Apparently, the chemical industry is planning to conduct a covert campaign

attacking the growing movement in California for more chemical safety testing. Tactics include the creation of phony front groups and spying on activists. This is according to an internal American Chemistry Council memo-randa obtained by the Environmental Working Group. Where have we heard this sort of thing before? The memo offers a rare inside view of the deceptive and underhanded tactics used by some corporations in public relations firms to lobby against tougher environmental regulations. An interesting revelation from the memo is the recommendation to ACC members that they pay \$120,000 per year to a Washington-based firm that hires former FBI and CIA agents to conduct "selective intelligence gathering" relating to opposition activists. If a trial lawyer group did this sort of thing, what do you think would happen?

Mutual Fund Industry May Face Overhaul

A major overhaul of the mutual fund industry, which is estimated to have a total value of \$7 trillion dollars, is very likely to occur. Fund board chairmen must be truly independent from the mutual fund management companies that run the funds. Ineffective boards of directors of funds and high fees being charged to investors are also among the problems that must be addressed. Many on Wall Street have indicated that the Securities and Exchange Commission (SEC) was embarrassed by the New York Attorney General leading the charge to end the conflict of interest between analysts recommendations and investment banking. His efforts resulted in the brokerage industry agreeing to a \$1.4 billion dollar settlement.

CFTC Fines Energy Firms

The Commodity Futures Trading Commission (CFTC) has fined three energy firms \$34 million for manipulating natural gas prices. The three compa-

nies are Reliant Energy Services, Inc., a wholly-owned subsidiary of Reliant Resources, Inc.; CMS Marketing Services & Trading; and CMS Field Services. The latter two companies are current and former subsidiaries of CMS Energy Corporation. The CFTC found that the companies reported false and/or misleading information including price and volume information, concerning natural gas cash transactions to certain reporting firms. In the process, the companies violated the Commodity Exchange Act.

Documents Link Metabolife®, Offshore Banks

Some recent news on Metabolife® got my attention. A recent survey by Copley News Service is certainly worth reading. According to the study, three owners of Metabolife® International allegedly orchestrated an elaborate tax evasion scheme that used offshore tax havens and kickbacks to avoid millions in taxes. This comes from documents unsealed in federal court. There is currently an ongoing Justice Department probe into whether Metabolife® lied about the safety of Metabolife® 356, its flagship diet product. In an affidavit, an IRS Special Agent alleges that Metabolife® owners skimmed millions of dollars in cash from Metabolife® and hid money in offshore accounts. Their accountant allegedly knew about and helped conceal the illegal activities. The documents were unsealed on November 5th. Interestingly, on November 14th, Metabolife's outside accountant, Michael Compton, apparently committed suicide.

Metabolife® failed to account for \$93.7 million in income between 1996 and 1999, a period in which the company sold Metabolife® 356 through a network of independent distributors who were encouraged to pay cash for wholesale supplies of the product, according to the affidavit. The affidavit also indicates that Metabolife® 356 proved to be a "cash cow" for the

company. A former director of retail operations for Metabolife® told investigators that the privately held company received up to \$500,000 per day in cash from distributors who purchased the diet pills for resale during 1998 and 1999. A former Metabolife® director of operations put the figure lower, saying the company received as much as \$125,000 in cash on some business days. It was indicated that on one occasion there was \$750,000 in cash in a company safe. Even with a conservative figure, IRS investigators speculated that Metabolife® was generating between \$1 million and \$5 million per month in cash. A review of bank records indicated that the company made comparatively small cash deposits that didn't reflect the millions it presumably received from distributors, according to the affidavit.

A number of former Metabolife® employees, including a former chief financial officer, told investigators that the owners were skimming large amounts of cash before deposits were made. Former employees said the company maintained multiple sets of books to conceal its true financial activities, as well as "off-the-books" bank accounts that helped disguise the skimming activities. Metabolife® 356, for years the leading herbal diet pill, contains the herbal stimulant ephedra. As we all know, ephedra has been linked to numerous deaths and injuries. Metabolife®, along with several ephedra companies, face a tremendous number of personal injury lawsuits in several states. Our firm currently has one pending case and several others under review.

Freddie Mac Accused Of Misstating Earnings

While some of the news on Freddie Mac (the Federal Home Loan Mortgage Corporation) reported in this issue is good, there is some that isn't. Freddie Mac is paying a \$125 million fine and faces possible curbs on its growth.

Federal regulators are blaming management misconduct for a \$5 billion misstatement of earnings by the buyer of home mortgages. In its report, regulators accused the government-sponsored company of violating its public trust. Findings of the Office of Federal Housing Enterprise Oversight indicate that a pliant board of directors and a system of compensating executives tied to annual earnings targets contributed to an accounting crisis that has brought down four leading Freddie Mac executives since June.

This appears to be a record fine, which came from a settlement announced last month by the federal agency. The agency, which supervises Freddie Mac and its larger rival Fannie Mae in the multi-trillion-dollar home mortgage market, cited “a pattern of inappropriate conduct and improper management of earnings” at Freddie Mac and even “a disdain for appropriate disclosure standards” among former top executives. The company “disregarded accounting rules, internal controls, disclosure standards, and ultimately, the public trust in pursuit of steady earnings growth,” the agency’s report found. Some of the directors of the two politically influential companies are presidential appointees.

Freddie Mac and Fannie Mae were created by Congress to pump money into the home mortgage market by buying home loans from banks and other lenders and bundling them into securities for sale on Wall Street. The two corporations, whose stock is publicly traded, have grown rapidly in recent years and are among the nation’s largest financial institutions. Freddie Mac’s settlement still leaves unresolved a criminal investigation by the Justice Department and a civil inquiry by the Securities and Exchange Commission.

U.S. Charges KPMG With Obstruction

The U.S. Justice Department has accused accounting firm KPMG LLP of

stalling an Internal Revenue Service probe by hiding the full extent of its role in promoting tax shelters. KPMG’s actions “demonstrate a concerted pattern of obstruction and non-compliance, threatening the integrity of the IRS examination process,” the U.S. Justice Department alleged in a filing in federal court in Washington on December 8th. The allegations came as regulators and Congress scrutinize the role of accounting firms in creating what regulators view as dubious tax schemes for wealthy clients. The government accused KPMG of handing over documents in an untimely fashion, thus delaying the IRS investigation. KPMG has consistently claimed it did not push tax shelters. However, the Justice Department called that argument an “illusion.” The IRS has been seeking information about transactions that it has listed as potentially abusive tax shelters. KPMG has known this for a good while, according to the government’s filing. It is shocking that KPMG continues to assert—contrary to literally volumes of evidence in its own files—that it has never developed, sold or promoted a tax shelter.

The recent filing is part of the Justice Department lawsuit against KPMG brought in July 2002 to force it to divulge tax shelter information, including client names, to the IRS. Tax shelters, which had been a moneymaker for accounting firms and a money saver for corporations in the 1990s, have turned into a major problem in recent months. Last July, Ernst & Young agreed to pay \$15 million to end a probe of its marketing of tax shelters. PricewaterhouseCoopers then made a deal with regulators last year for an unspecified amount. A good number of lawsuits have been filed by former clients over their tax advice and the shelters put together by the accounting firms. In November of last year, Congress held hearings on the problem.

VIII. PRODUCT LIABILITY UPDATE

Automakers To Redesign SUVs To Reduce Risks

The automobile industry has finally agreed to make design changes to sport utility vehicles and pickup trucks sold in the United States. If this happens, these vehicles will be less dangerous to the occupants of passenger cars. For years, the industry has disputed critics’ contentions that the increasing prevalence of SUVs posed a serious danger to other vehicles in collisions. Now 15 automakers from four nations have agreed to redesign their light trucks, specifically SUVs and pickups. This will reduce the likelihood that they would skip over the front bumpers of cars in collisions. The companies also agreed to increase protection of passengers in vehicles struck in the side, most likely by making side airbags that protect heads standard equipment in vehicles sold in the United States.

The changes are particularly aimed at helping people in cars survive when struck by light trucks. The changes, which are expected to cost at least \$300 a vehicle and be phased in from 2007 through 2009, could save thousands of lives annually, according to projections included in a jointly signed letter released last month by the Insurance Institute for Highway Safety and the Alliance of Automobile Manufacturers. Those groups coordinated the voluntary effort to develop the standards. The automakers also laid out a timeline to make more ambitious design and equipment changes. It included examining, over the next year, potential test procedures aimed at better measuring crash forces and protecting the chest during side-impact crashes. Over the next two years, the industry will examine the stiffness of large vehicles and the structural integrity of small

vehicles, with an eye to making the former less dangerous and the latter more protective.

Under pressure from the National Highway Traffic Safety Administration (NHTSA), which had threatened to impose mandatory regulations on light trucks, automakers agreed in February to discuss establishing voluntary guidelines to reduce deaths and injuries caused when heavy, high-riding SUVs and pickups strike cars. This is known in the industry as “compatibility.” The industry has undertaken some design changes in the past, including lowering the rail frames of some large sport utility vehicles. However, the agreement to adopt broad design and equipment changes represents a shift in the industry’s public stance on how light trucks, particularly sport utility vehicles and large pickup trucks, affect public safety. Light trucks account for more than half the sales of passenger vehicles in the United States—up from a fifth in the late 1970s—and sales continue to boom.

Many in the industry continue to dispute the notion that sport utilities pose a significant safety threat and have “chastised” regulators who have brought up the idea—most recently Dr. Jeffrey Runge, the Administrator of NHTSA—even though the industry’s own engineers have acknowledged such a threat. Dr. Ricardo Martinez, the top auto safety regulator in the Clinton Administration and a predecessor of Dr. Runge stated: “This is a departure from the past in that not only are they recognizing there is a problem but they are accepting some responsibility for it.” Runge believes the agreement is a “huge step” for automakers.

As previously reported, Dr. Runge had indicated in the past that he prefers a voluntary approach on compatibility because the industry could move more quickly to develop solutions than the government could. But the traffic safety agency is developing regulations for side-impact collisions that could incorporate some of the

industry’s agreement. Under the plan, automakers agreed to side-impact safety standards that would essentially require them to equip their vehicles with air bags that keep passengers’ heads from slamming into doors when a car is struck on the side. About a quarter of 2004 models offer side air bags as standard equipment, but some offer protection only to the chest.

The Insurance Institute has said that such equipment could save 45% of the drivers who are killed when their passenger cars are hit by other vehicles on the side. Accidents in which large pickups and SUVs strike cars in the side are particularly deadly for car occupants. Half of new vehicles will undergo the tests by 2007 (the 2008 model year) and all will do so by 2009 (the 2010 model year). Automakers also agreed to make the rail frames and the front-end-crash-absorbing structures of SUVs and pickups overlap with at least half of the similar area on passenger cars by 2009. The height of bumpers on cars is already set by the government. The design changes will apply to vehicles that weigh up to 10,000 pounds, which would include many vehicles currently outside the regulatory system such as the Hummer H2 and the Toyota Sequoia, though not the Hummer H1.

The U.S. Lags Behind Foreign Countries

In the last three decades, vehicle collision fatality rates in industrialized nations have been declining as technology and design have radically improved. It is quite sad that the United States, which had the lowest fatality rate in the world 30 years ago, has fallen behind eight other nations, including Australia, England and Canada. The answer is very simple—automakers in the U.S. have consistently put profits over safety, and marketing forces generally overrule engineering decisions. Federal regulators have been trying to get the auto industry to address vehicle safety

issues. Federal crash statistics have indicated that car occupants are far more likely to die in collisions with light trucks, a problem that has been increasing with the numbers of light trucks on the roads. Sport utility vehicles and pickup trucks, despite their bulk, are also no safer for their own occupants because they are far more likely to roll over than passenger cars. It is shocking—with all of the proof to the contrary—that some in the industry continue to maintain that the growing number of SUVs on the road has not significantly increased the danger for people in cars. GM, for example, challenged some of Dr. Runge’s comments on SUV safety, saying in a recent statement that “SUVs are among the safest vehicles on the road and have contributed to the substantial decline in the nation’s fatality rate.” Marc Ross, an auto safety researcher and a physicist at the University of Michigan, has been quoted as saying, “I find it very difficult to understand how they could make such a statement.” Ross said the growth in SUVs has “contributed to making the roads more dangerous than they would have been.” It is rather easy to understand why many safety experts doubt their true intentions. Many believe the voluntary program is nothing but a diversionary tactic to stave off meaningful federal regulation and standards that consumers can really rely on. The automobile industry has known for years that SUVs lead to needless deaths.

Public Citizen Is Wary Of The Industry – With Good Reason

Protocols to be written by the automobile industry on their own terms, is unacceptable to consumer groups such as Public Citizen. Not only would the protocols be unenforceable, any company could abandon them at any time it chose without telling the public. For the public, this simply is not good enough. What has happened over the past 20 years that would make anyone believe that the automobile industry

will voluntarily make their vehicles safer? The road of voluntary industry safety standards has proved to be one paved with broken promises. For example, General Motors pledged to install air bags in all vehicles by the mid-1970s; Ford, DaimlerChrysler and GM pledged in 2001 to improve fuel economy in their SUVs by 25% in 2005; and in 1999, the industry trade group promised to put side-impact air bags in their vehicles. How many of these promises were kept? Automakers backed off or fell short on each of those pledges. Why should we believe this latest promise will be any different?

A federal standard would allow for public participation in its development, with government analysis of the tests and conditions so that everyone with a stake could have a say. A federal standard would require conformance with specific published tests, and the public would be informed about a vehicle's safety performance. The automakers' protocol would work quite differently. The public would have no way of knowing whether a vehicle met the voluntary protocol or whether the protocol was protective enough.

A federal standard would require all vehicles sold in the United States to be certified for compliance by manufacturers. The automakers' voluntary protocol would allow them to renege on their own promises because they would not be accountable either to regulators or the public. However, at least in announcing this program, automakers are at long last recognizing the devastating harm caused to consumers by their poorly designed SUVs. I would ask this basic question: if their commitment to safety is so strong, and their dedication to this new program is so sure, why are the automobile companies fighting so hard against a federal standard that the public can help to develop and would merely hold them to their promises?

Bad Things Kept Secret Can Hurt People

A state appeals court in Florida has dealt a blow to the Goodyear Tire and Rubber Co. by ruling that Goodyear design secrets uncovered in a product liability lawsuit can be disseminated to the public to protect consumer safety. However, the tire company indicates it will fight to keep that information confidential. Its lawyer warned the victim's lawyer in the case not to release the information, despite the ruling of Florida's 3rd District Court of Appeal. Fortunately, Bruce Kaster, the plaintiff's attorney, says he plans to ignore the warning and will follow the Court's order. Corporate defendants have continuously fought to restrict dissemination of damaging design and manufacturing information in product liability lawsuits to the public. Companies realize that if the public learns the truth, many persons simply won't buy the involved vehicles. In my opinion, making such information public is absolutely essential. Many judges continue to struggle with the issue of whether to grant confidentiality orders to shield trade secrets of corporate defendants when the disclosure of such information would protect consumers. I suspect Goodyear will ask for a rehearing and appeal the lower court order if necessary. We will watch any developments with great interest.

Jury Awards \$45 Million In Child's Death

A jury in Texas awarded \$45 million to a South Texas family whose daughter died when a Ford pickup burst into flames. Jurors decided that Stoneridge Inc., a Warren, Ohio-based auto parts manufacturer, was at fault for providing a dysfunctional replacement valve used on a Ford F-150 pickup truck. The valve was used to switch gas lines between a set of double tanks. Two small children, Amor "Mory" Mata, 7, and Jessica Barrera, 8, died in the September 17,

2000, fire. The little girls were heading to a movie in Del Rio, Texas. Jessica's parents were severely burned. The Matas family filed the lawsuit.

Farm Auger Entanglement Injuries

We currently represent a young man who tragically lost his leg when he became entangled in a tractor-mounted posthole auger. We have handled entanglement injury cases before and know from experience that these type injuries are always serious and sometimes fatal. Although the potential for entanglement in rotating equipment has been discussed in industry literature for decades, manufacturers have failed to incorporate safer designs that would prevent such horrific and life-altering injuries. Recently, some of the manufacturers have come around and started to include guarding and warnings. However, there is a huge inventory of older unguarded equipment still in use on farms and construction sites across the country waiting to maim someone.

The typical tractor-mounted posthole auger is attached to a tractor using the three-point hitch. The "drive" for the auger is provided by attaching it to the power take off (PTO) by using a short drive shaft. All too often, the junction of the drive shaft to the auger gearbox is unguarded and presents exposed rotating bolts that can grab and injure or kill. Usually, the victim is an unsuspecting helper working to position the auger as it bores into the ground. In our case, a young man was caught and trapped in the rotating drive shaft and ultimately lost his leg above the knee. Patents that have been on the books for years, industry literature discussing the need to guard such hazards, and previous lawsuits all underscore the obvious fact that this young man's injury should never have happened.

IX. PREMISES LIABILITY UPDATE

Premises Liability / Consumer Customers

The law of premises liability governs the legal interactions between premises owners and those who come upon those premises. Because the majority of consumer transactions are conducted on the business owners' premises, consumers should be aware of these laws in the unfortunate event of an injury. Consumers are exposed to numerous hazards while shopping in retail stores. All consumers are exposed to falling objects and the risk of slip-and-fall injuries. Children and elderly consumers are particularly at risk from defective automatic doors and defective or improperly maintained escalators. Business owners and their insurers follow strict rules and guidelines following an injury on their premises designed to insulate them from liability. Consumers need to be aware of these hazards and their legal rights.

The law applicable to injuries sustained by visitors on storeowner premises flows from the status of the visitor. Consumers who are customers at retail stores or the like are designated as invitees. An invitee is one who enters and remains on premises of another at the express or implied invitation of the owner or occupant and for a purpose in which the owner or occupant has a beneficial interest. In laymen's terms, a Wal-Mart customer is an invitee. A storeowner has a duty to an invitee to exercise reasonable care to provide and maintain reasonably safe premises for the use of his customers.

Consider the classic slip-and-fall case in a grocery store. The analysis is the same whether there is a wet substance on the floor, an object on the floor or a hole in the floor. The customer must prove that her injury was caused by the

negligence of the storeowner or one of its employees. Furthermore, the customer must show that the storeowner or one of its employees had actual or constructive knowledge of the condition that caused the customer to fall. The most common defense utilized by storeowners is that it and its employees had no knowledge of the condition that caused the fall. Next, they fall back on the open and obvious hazard defense, arguing the customer should have noticed and avoided the dangerous condition. Unfortunately for customers, storeowners are often successful making one or both of these arguments.

Customers must be able to show that the dangerous condition was present for a sufficient length of time to impute constructive knowledge to the storeowner. Testimony from other customers or evidence suggesting the dangerous condition was present for a long period of time is vital to the customer's case. Most storeowners have some type of formal inspection procedure in place whereby the store is inspected on a regular basis. It is important to identify the inspection process. The customer may be able to prove the premise owner did not follow its own procedures. It may also be necessary to attack the inspection process itself as unreasonable. For example, is it reasonable for Wal-Mart or a busy grocery store to conduct store inspections only twice per day? The likely response is no. The goal is to show the storeowner either knew about the dangerous condition or was delinquent in not discovering and removing the hazard.

Premises liability laws currently favor the storeowner over the customer. Customers must be aware of their surroundings when shopping in retail stores to avoid hazards. In the unfortunate event of an incident, customers need to know what conditions to look for to be successful in the event it becomes necessary to file suit. Although not easy, these cases can be won with the proper information and with good trial preparation.

X. WORKPLACE HAZARDS

Lawsuit Is Settled In Sugar Mill Blast

A settlement has been reached in the case involving a worker who was seriously burned in a sugar plant explosion in Texas five years ago. The company responsible for installing an anti-explosion system at the facility will pay the \$5.5 million settlement. The worker, who was injured in the August 28, 1998, incident, settled the lawsuit with Kidde-Fenwal Inc. two days before the case was to go to trial. The worker, who was 42 year old when he was injured, was working at the Imperial Sugar Co. refinery in Sugar Land when an explosion occurred in one of the mills. The sugar mill the worker was operating involves a process that creates explosive sugar dust. To prevent an explosion, a suppression system was installed in the mill. That system failed when the dust ignited. Had it worked properly, the explosion would have been contained in the sugar mill. Sensors are supposed to detect an explosion and then inject a suppressant into the mill to prevent a blast. Instead, flames shot out from the machine and the worker sustained second- and third-degree burns to about 40% of his body. He is no longer able to work because of the burns. One has to wonder why the defendant didn't settle this case long before the case was scheduled for trial.

Officials At Foundry Face Health And Safety Charges

Over the past year, we have written on the massive safety problems involving McWane Inc., the nation's largest manufacturer of cast-iron pipe. McWane conspired for years to violate workplace safety and environmental

laws and then obstructed repeated government inquiries by lying, intimidating workers into silence and systematically altering accident scenes, according to a sweeping federal indictment. The motive, the indictment said, was to enrich the foundry, Atlantic States Cast Iron Pipe in Phillipsburg, N.J., and its managers by maximizing production “without concern to environmental pollution and worker safety risks.”

The indictment charges that the foundry’s managers routinely dumped thousands of gallons of contaminated wastewater into the Delaware River, repeatedly exposed workers to unsafe conditions and regularly deceived environmental and workplace safety regulators. When one worker was struck and killed by a forklift with a history of brake problems, the indictment stated, the McWane managers “took steps to conceal facts” and instructed another employee to “provide a misleading account” to hide the plant’s faulty forklifts from the federal Occupational Safety and Health Administration. Apparently, according to the indictment, the managers took other steps to evade regulators as well. They falsified injury logs, submitted false pollution monitoring reports, and burned incriminating evidence in the foundry’s cupola, a furnace that turns scrap metal into molten iron.

Newspaper articles and a PBS documentary have described McWane as one of the nation’s most persistent violators of workplace safety and environmental laws. Based in Birmingham, Alabama, the company employs thousands of workers in about a dozen plants in the United States and Canada. The U.S. Attorney in charge of the criminal cases was quoted in the *New York Times*: “What you will see as alleged in this indictment is a pattern of completely outrageous illegal conduct. The indictment is something, quite frankly, that is well long overdue.” Criminal inquiries are continuing at several other McWane plants around the country, including its largest plant, Tyler Pipe in Tyler, Texas.

XI. TRANSPORTATION

Let Your Voice Be Heard

Last month, Mothers Against Drunk Driving made its annual fundraising request. Significantly, this effort came during the holidays. I am told that MADD has experienced a serious decrease in contributions. I suspect this is due to the severe downturn in the economy. In any event, this is not welcome news. As a result, some of MADD’s life saving programs will suffer. The fight against America’s drunk driving problem is one that we cannot afford to ignore. An estimated 17,419 persons were killed in 2002, with some 500,000 others injured as a result of motor vehicle accidents involving drunk drivers. I understand that someone is killed every 30 minutes in this country and another person injured every minute of the day. In Alabama, at least 413 persons were killed in 2002 and many more injured by crashes involving drunk drivers. The following case reports from family members of innocent victims will make even the most callous tort reformer cry.

- *Our son, Marcus Johnzell Mitchell was killed by a drunk driver on October 30, 1993 in Jefferson County, Alabama. My most precious memory is watching him try out for the Tuskegee University basketball team his freshman year. He was one of the smaller guards trying out, but with the help of Almighty God, Marcus made the team. He later said it was one of the happiest days of his life. We will always remember his beautiful smiles and heart-warming hugs and are in gratitude to God for allowing Marcus to touch our soul and inspire our lives. We share this story in remembrance of Marcus and to honor the 430 people who lost their lives in alcohol-related crashes in Alabama in 1999.*

*(NHTSA, 1999). www.madd.org

- *I am writing this in very loving memory of my nephew, Joshua Ory. He had cystic fibrosis. He was on a four-wheeler with his biological father when a drunk driver hit them. My nephew was killed. The driver involved just doesn’t realize how much this has affected my family. The only thing giving my sister a sense of life is her remaining child, my niece. Anyone reading this, I beg you, please don’t drink and drive. When you hurt or kill someone it is not an accident, and you should be held accountable. To my sister, I love you very much and I do hope things get a little easier with time. It will take a lot of time. And to a lost nephew I feel like I’ve lost a part of me, and you will be missed. Home City: Grand Bay, AL. Age: 8. Crash Anniversary: June 17, 2002. www.madd.org*
- *Jeannine Hendon was a beautiful, young, Christian lady. She was so full of life that you could not help but be energized yourself just by being around her. Jeannine was known as a dancer. She loved to clog, Irish step dance and belly dance. She had so many dreams of things she wanted to do. She was a Junior at Auburn University, majoring in Zoology. She planned to travel and work in research in the rain forests of South America, her love since she was 9 years old. She believed everyone should follow his or her dream and she worked very hard to obtain hers. She was killed in Lawrence County, 30 minutes from our hometown, during her return trip to college, which was about 5 hours away. The driver of the car that hit her passed another vehicle and hit Jeannine head on. He was intoxicated over three times the legal intoxication limit in our state. Jeannine will be missed more than I can express in words. We were a very close family. I feel her spirit close to me and God will provide a*

way for us to survive this tragedy. Home City: Sheffield, Alabama. Age: 20. Crash Anniversary: October 20, 2002 www.madd.org

These tributes, compiled by Mothers Against Drunk Driving, exemplify the many tragedies that occur on Alabama's roadways because someone chose to drive while intoxicated. Sadly, the number of alcohol-related fatalities in Alabama continues to spiral upward, according to research published by NHTSA. The research shows that drunk driving fatalities increased 10% for a one-year period. Specifically, there were 413 fatalities in 2002, compared to 374 fatalities in 2001. Regrettably, that is the highest amount in our state in four years. In spite of Alabama's small population, the number of alcohol related deaths in Alabama ranked sixteenth in the nation in 2001. After our state's numbers increased in 2002, Alabama tied Florida for fifteenth place. This is especially disturbing because, according to the U.S. Census Bureau, Florida has approximately four times the population of Alabama!

One cause for these grim numbers is the lack of law enforcement in our state. Alabama employs roughly 300 state troopers. In comparison, our neighbor to the west, Mississippi, employs 600 troopers to help police a million fewer people. In fact, Alabama has fewer troopers per capita than any of its neighboring states. Adding to this dismal scenario are the budget cuts facing our state troopers, prompted by the lack of state revenue. In order to cut costs, the Riley Administration was forced to reduce the Department of Public Safety's budget by switching state troopers to a four-day workweek, curtailing their overtime, and limiting each trooper's driving to 150 miles per day. According to Alabama Public Safety Director Mike Coppage, that will mean less enforcement of speeding and drunken driving laws, leading to an increase in traffic fatalities. With no more than seven state troopers patrolling Alabama's highways from

midnight to 6 a.m., drunk drivers could go undetected, which will undoubtedly increase the number of fatalities on our roadways and cause more heartache to families who live in Alabama.

I encourage our readers to contribute financially to MADD and become an active member of this tremendous organization. There is always a rash of alcohol-related accidents during the holiday season and unfortunately this year has been no exception. You can contribute to MADD by sending a check to MADD at the National Processing Center, Post Office Box 10786, Des Moines, Iowa 50340-0786. The problems caused by drunk drivers are nationwide in scope. However, Alabama has its share of the hurt and misery caused when drunk drivers are involved in motor vehicle accidents.

Jury Awards \$5 Million To Injured Violinist

Many time in accident cases, damages are not restricted to the obvious items such as medical bills, loss of earnings, pain and suffering, and the like. A jury awarded \$5 million to a violinist whose dream of playing with the nation's great orchestras was crushed in an automobile accident. Xioa-Cao Sha, 41, injured her left shoulder in 2001 after another driver ran a red light. She said she now suffers pain, numb fingers and weakness in her arm. A jury awarded her lost wages, medical expenses and nearly \$3.5 million for pain and suffering. After the verdict, the plaintiff stated: "They did honor to my music. This wasn't about money. It was about my music." Sha, who has played the violin since she was a 6-year-old in China, was once considered a world-class violinist. She is the daughter of renowned Chinese conductor Cao Peng, and her mother was a member of the Beijing opera 20 years ago.

Liberty Mutual—which insured the other car's driver, 63-year-old Margit Showalter—will have to pay the award. The insurance company does not plan

an appeal. A spokesman reported after the trial that "Liberty Mutual is prepared to honor whatever contractual obligation" it has to its policyholder. Interestingly, a defense lawyer asked the jury to award Sha no more than \$189,000, arguing that "the world of music is highly competitive and Sha had no guarantee of success." He told the jury Sha could still earn the \$30,000 a year she made with the Florida Orchestra by teaching and periodically performing solos. Obviously, the jurors weren't impressed.

A conductor who once performed with the Philadelphia Orchestra, testified that he listened to Sha play after the accident. He stated that he was so sad, realizing that she tried to keep up but her playing is weakened. Sha still plays, performing solos three or four times a year. But she can practice only about 15 minutes a day, far from the six hours or more she once practiced daily. In February, she made her Carnegie Hall debut. "When I am performing," Sha said, "the pain goes away because I block it out. After, I die."

Faulty Tire Lawsuit Settled For \$3.2 Million

A tire maker has agreed to pay \$3.2 million to settle a lawsuit over faulty tires that reportedly caused a sport utility vehicle to roll over last year. Three people died and a child was seriously injured in the March 2002 crash in Ciudad, Juarez, Mexico. Bridgestone/Firestone, Inc. reached a settlement with relatives of the victims last month during a hearing in San Antonio, Texas. The lawsuit, filed about nine months ago in federal court in Del Rio, Texas, blamed the accident on separating tread on a Daytona Radial Stag tire on the vehicle. The separation caused the 1994 Chevrolet Blazer to roll over. The crash injured a small child and killed his parents. Another passenger in the vehicle—the child's uncle—was also killed. The family was headed from California to visit relatives in Fresno,

in the Mexican state of Zacatecas. A U.S. District Court judge approved the settlement, which will go to the injured child and three other children. The children will receive a payout of about \$7.5 million to be paid from annuities.

Bridgestone/Firestone will pay the \$3.2 million, which is the cost of the annuities. The settlement allows GM and a tire-testing facility to deny any liability. Bridgestone/Firestone in 2000 and 2001 recalled 6.5 million tires from the Firestone ATX, ATXII and Wilderness AT lines after several fatal crashes were linked to the tires. At present, Bridgestone/Firestone has said there are no plans to pull the Daytonas. Our experience with Bridgestone/Firestone in major cases hasn't shown us that the tire company is willing to accept its legal responsibilities fully and completely. While the settlement in this case for two deaths and an injury is extremely low, I don't have enough information to know whether or not it is adequate.

Plane Crash Settlement

A \$32.25 million settlement has been reached involving the crash of an Executive Airlines charter flight that ran out of fuel. Executive Airlines, which is out of business, paid 87.5% or \$28.25 million of the settlement, while BAE Systems, the company that built the British Aerospace J-3101 turboprop plane, paid 12.5% or \$4 million. This settlement involved 17 families. Pennsylvania law limits damages in such cases, and the families will receive differing amounts. Families of passengers who were elderly, were not working, or were retired had less of an economic loss than others who were younger or were employed, according to the formula for damages.

The National Transportation Safety Board ruled the plane ran out of fuel on May 21, 2000, on its way from Atlantic City, New Jersey, to the Wilkes-Barre/Scranton (Pennsylvania) International Airport. NTSB testimony showed

the fuel gauges were defective. Neither the pilot nor co-pilot used the alternate dipstick method to determine how much fuel was aboard, nor did they verify the amount of fuel taken on in a refueling. For some reason, independent warning lights that would have notified the pilot that less than 250 pounds of jet fuel remained in the wing tanks were ignored, if in fact they were operable. Expert testimony pieced together what happened in the 4? minutes between the first flameout of the right engine to the time the plane went into a final stall, flipped upside down and slammed into a pipeline clearing. The testimony was used to establish passengers experienced pain and suffering before the crash. An animated recreation of the accident was prepared to show that the passengers suffered injuries before the crash.

UAB To Study Commercial Trucking Accidents

The University of Alabama at Birmingham has been awarded a \$275,000 grant to study ways to prevent commercial trucking accidents. The grant from the U.S. Department of Transportation will allow UAB researchers to look at various factors, including operator decision-making, anti-crash technologies, design and construction materials and emergency response. The National Highway Traffic Safety Administration reports that commercial truck accidents killed more than 5,000 Americans in 2001. The Pacific Institute for Research estimates such accidents cost the U.S. economy about \$24 billion a year. The loss of life from such accidents, of course, is the real tragedy.

Study Links Higher Speed Limits To More Deaths

A report from the Insurance Institute for Highway Safety says increased interstate speed limits led to nearly 1,900 extra deaths in 22 states from 1996 to 1999. The report, released last year, says

people in those states are adjusting to driving above the new limits. The report pointed out that when speed limits are raised, people drive faster. In 1995, the federal government repealed its speed limits—55 mph, or 65 mph on rural interstates—and sent authority back to the states. Twenty-eight states almost immediately raised rural interstate speed limits to at least 70. For a time, Montana had no daytime speed limits on some highways, requiring one to drive in a “reasonable and prudent manner.” The state also found its “reasonable” approach open to legal challenge and has since imposed a 75 mph interstate limit.

The Insurance Institute's report has several components. It highlights a recent study by the Land Transport Safety Authority of New Zealand, which appears to have done a more thorough study of the increased speed limits in the United States than the Transportation Department. In its defense, the Department was essentially taken out of “the speed business” by Congress. The study focuses on 22 states that raised their interstate limits to 70 or 75 mph almost immediately after the repeal of the federal cap and attempts to isolate the effects. Those states are compared with trends in 12 states that kept their limits at 65.

The study found 1,880 more deaths on the interstates in those 22 states from 1996 to 1999, though the authors noted that geographical effects might have skewed the results because most of the states that went to 75 were in the West. The institute's researchers also looked at trends in six states and five cities. Some of these raised limits and some did not. The finding appears to show that drivers in states with higher speed limits drive faster. In Maryland, where the interstate speed limit is 65 mph, the mean speed was 66 mph. About 1% of drivers exceeded 80 mph. By contrast, in Colorado, where the interstate speed limit is 75 mph, the mean speed was 76 mph. About a quarter of drivers regularly went over 80 mph.

The insurance institute's report also criticizes the auto industry for continually ratcheting up horsepower and emphasizing the glory of speed in its advertising. As a practical matter, accident prevention involves balancing safety with convenience. The consensus of most traffic safety researchers is that raising speed limits is harmful and leads to more accidents. In Alabama, our interstates are getting more and more dangerous. Speeding is a real problem and seems to be getting worse. The lack of manpower in the Department of Public Safety is well known to the trucking industry, and that most likely contributes to the safety problems.

XII. MASS TORTS UPDATE

A Wrap-Up On The Mass Torts Section

The Mass Torts Section, under the leadership of Andy Birchfield, has had a busy year in 2003. From all accounts, the current year will be equally busy. The pharmaceutical companies, because of their tremendous political clout and influence, continue to operate as if they were above the law. Until the federal government does its job in regulation, there will always be a need for the court system and juries. Unfortunately, in the meanwhile, there will be victims of what we perceive to be a callous approach in the corporate boardrooms of the pharmaceutical industry.

Acne Medication Has Severe Risks

Accutane is a medication indicated for only the most severe types of acne. It is manufactured by Hoffmann-La Roche. Accutane has been on the market in the United States since 1985. Its active ingredient is the substance

isotretinoin. Accutane has been associated with severe organ injuries, psychiatric side effects (depression), psychosis and suicide, and severe birth defects. Problems with birth effects were so bad that La Roche was forced to adopt a program whereby women being considered for this drug had to be given a pregnancy test before the drug was prescribed. The patient was also required to sign an informed consent stating that they would be on birth control while taking the medication and they understood they should never become pregnant while on this medication. The FDA plans to convene an advisory committee this winter to assess the risk management program designed to prevent birth defects associated with Accutane. Accutane is also the medication linked to the teenager who committed suicide by flying his airplane into a building in Florida a couple of years ago. We have begun investigating Accutane cases involving severe injury to internal organs and deaths.

Oxycontin Addiction

Rush Limbaugh's addiction to OxyContin and other pain medications may help to educate the public that the "war on drugs" is not limited to illegal drugs. In fact, many believe that narcotic prescription cases are much more of a problem in today's society than the illegal form. *The Orlando Sentinel Newspaper* reported earlier this year on the marketing campaign used by Purdue Pharma for their powerful pain medication OxyContin. The *Sentinel* article quoted a former Purdue Pharma sales manager who stated sales representatives were told to tell doctors this drug was "virtually non-addictive." Just this month, the *Orlando Sentinel* has reported that 205 overdose deaths were linked to OxyContin in 2001 and 2002 in Florida alone. To obtain this number, the *Orlando Sentinel* conducted a nine-month investigation and found that 573 people in Florida in

2001 and 2002 died from oxycodone, the active ingredient in OxyContin and other painkillers.

Since no one knew which specific painkillers were involved in the overdoses, in order to find out, the newspaper obtained 500 autopsy reports in the Oxycodone deaths. The research showed that OxyContin was the drug identified in about 83% of the 247 cases linked to a specific medication. In the remaining 253 oxycodone deaths, the *Orlando Sentinel* could not determine a brand name drug. Thus, it is possible that OxyContin may have been linked to some of those deaths as well. Purdue Pharma makes a claim in its labeling that less than 1% of opiate patients become addicted to these types of medication. Purdue relies on three articles written years ago to substantiate this claim. Two of the three authors of these articles have given depositions in OxyContin lawsuits and were appalled that their research had been used to substantiate this type of claim. Purdue Pharma has been successful in removing the "stigma" associated with the strong narcotic medications. Their marketing of this drug has made it readily available to many persons who have become addicted to it by appropriate and/or inappropriate use. We believe that the FDA needs to look closely at how Purdue Pharma has turned OxyContin into a \$1.5 billion a year drug.

Ephedra Update

Similar in action and risk to PPA, ephedra is another over-the-counter product that we have reported on continuously throughout the year, and we will continue to update our friends and colleagues on over the coming months. Since the reporting of the tragic death of Baltimore Orioles' pitching prospect Steve Bechler, the number of ephedra-related cases being filed have risen dramatically. As a consequent result of the increased filings, we have seen two of the industry's major players—Twin

Labs and Nutraquest/Cytodyne Technologies—seek the protective harbors of the bankruptcy courts. It is evident from the proceedings thus far in the Bankruptcy Court that the bankruptcies are a clear attempt by these defendants to absolve themselves from liability for the damage their products have caused. Despite these bankruptcies, this litigation will continue to grow in the future.

Update On PPA Litigation

Each quarter we have updated you on the litigation surrounding the recalled active ingredient phenylpropanolamine (PPA) previously found in cold/cough remedies and appetite suppressants. In recent reports we updated on significant victories for plaintiffs in *Daubert*, *Frye* and similar hearings regarding the admissibility of expert testimony in various state courts around the country. The plaintiff's bar has been fortunate to have evenhanded and receptive judges find that the industry funded Hemorrhagic Stroke Project, also known as "The Yale Study," is valid epidemiological evidence of an established risk of hemorrhagic and ischemic strokes related to this drug. Thus far all courts have allowed experts to extrapolate the results to populations not specifically studied—men, women and men over 49, and children.

In the wake of successful court rulings on the admissibility of the empirical epidemiological evidence, numerous trials have been scheduled, although no cases have been litigated to a verdict yet. Cases have been resolved short of trial in Mississippi, Oregon, Texas, North Carolina and Pennsylvania. We recently settled a case set for trial in Pittsburgh, Pennsylvania. Additionally, cases are currently being tried in New Jersey and California. Further, a process has been established by which federal court cases in the MDL will begin to be remanded back to their local district courts for trials.

Given the volume of cases in the MDL, as well as the substantial state court dockets, it is inevitable that we will see numerous cases reach trial settings this year. Likewise, we should keep our eyes open for significant results coming out of the cases currently in trials in New Jersey and California. While each case has to be considered on its own merits, the industry's longstanding knowledge of the drug's risk, coupled with the industry's pitiful attempt at a "planned ignorance" approach towards the issue, gives these cases strong jury appeal. We believe jurors will be insulted by a company's approach that tries to claim "ignorance" as a defense. We will keep you updated.

XIII. BUSINESS LITIGATION

More On Enron

Employees at Bank of America Corp. helped certain Enron Corp. officers breach their financial duties in an improper natural gas transaction, a report by a bankruptcy examiner indicates. Charlotte-based Bank of America, then known as NationsBank Corp., was "aiding and abetting" Enron officers in the transaction, according to the report by a bankruptcy court examiner. The report cleared the bank of wrongdoing in nine other deals. Bank of America, which is owed about \$131 million from the Enron bankruptcy estate, will apparently be paid after other creditors because of its conduct. Thousands of Enron employees lost their jobs. Stock that once traded at \$90 per share became worthless when the company's finances unraveled two years ago. The document filed in New York bankruptcy court states that Royal Bank of Canada and accounting firms KPMG LLP and PricewaterhouseCoopers were aware of accounting fraud at Enron. It absolves UBS AG, another bank with

extensive dealings with Enron, of knowledge of wrongdoing.

The report reveals that Bank of America and Royal Bank of Canada helped certain Enron officers set up transactions, "designed to provide Enron with off-balance sheet funds and to permit Enron officers to manipulate Enron's publicly disclosed financial information in a materially misleading way." Apparently, both banks had actual knowledge of wrongful conduct constituting breaches of financial duty by Enron's officers in these transactions. The report indicates that the banks "substantially assisted Enron's officers by participating in these transactions." The examiner's report looks at 10 Special Purpose Entity (SPE) transactions involving Bank of America, but found evidence of wrongdoing only with a transaction called Bammel Trust.

SPEs are accounting mechanisms that were stashed off Enron's balance sheet as a way to hide billions of dollars of debt from its financial statements. In Bammel Trust, Enron sold natural gas owned by a subsidiary to an SPE, but continued to use the natural gas. The report reveals that Enron's accounting reflected the sale as generating \$232 million in revenue in 1997 and 1998, but did not reflect any debt involved. Bank of America "helped structure the Bammel Gas Transaction, participated in the transaction in many ways, knew that the off-balance-sheet accounting treatment was central to it and was aware of all of the elements of the transaction which made the accounting treatment improper," according to the report. An internal NationsBank memo says the company earned upfront fees of \$1.7 million from the transaction. "For NationsBank this was a very lucrative transaction especially considering the financial sophistication," according to an internal NationsBank memo quoted in the report. "The success of the structure indicates that NationsBank can earn substantial revenues even with financially sophisticated clients." The report names about a

half-dozen Bank of America employees who were involved in the transaction, including three in Texas who were dismissed in January 2002, a few months after Enron's accounting issues became public. An earlier examiner report found that other banks, including Citigroup Inc. and J.P. Morgan Chase & Co., also helped Enron hide its finances from investors and regulators.

Good Friends In High Places

One of the mysteries of the decade has been how Kenneth Lay has successfully avoided criminal indictment. If all of the media reports are even close to accurate, Lay should have been a primary target of any investigation. Could it be that friendships and connections in **very high places** have aided his cause?

Some Firms Have Not Paid Up

Based on a Reuters News Service report, it appears that hundreds of companies that owe money to a new U.S. board regulating corporate auditors have not yet paid up. The Public Company Accounting Oversight Board, created last year to police the industry after Enron's bankruptcy and a rash of other accounting scandals, was set up by the government. But the Board's funding is to come from audit firms and publicly held companies. The Board has reported the names of the companies that had not paid to the U.S. Securities and Exchange Commission. The Board sent the SEC a letter in November indicating that 512 companies had not paid their fees, which were due earlier that month. Dues from companies continue to come in late, a Board spokeswoman said.

As of December 3rd, the Board had not received payment from 421 companies. The Board sent out almost 8,500 invoices to public companies and investment firms in August asking for "their share of support." The companies that have paid their dues are listed on

the Board's website. The 2002 Sarbanes-Oxley Act requires funding for the Board to come from accounting support fees, based on average monthly capitalization of publicly traded companies, investment companies and other equity issuers. The Board's budget for 2003 was about \$68 million. The 2004 budget was approved at \$103 million. The largest 1,000 issuers pay about 87% of the total fees due, with the majority or 62% of issuers paying \$1,000 or less. A list of companies and others that have paid can be found online at: www.pcaobus.org.

More Companies Reporting Fraud

More companies are reporting fraud, from theft of office supplies to bid-rigging, as a result of new government regulations and investor demands, according to audit firm KPMG LLP. The survey of executives at more than 450 medium- and large-size organizations said 75% had reported at least one instance of fraud this year, up from 62% in 1998, the last time KPMG conducted the periodic study. The firm did its first fraud survey in 1994. The cost of fraud is currently higher. For example, 36% of companies reported losses of \$1 million or more because of fraud in 2003, compared with 21% in 1998. A rash of corporate wrongdoing in the past several years has created greater sensitivity to fraud in general. As a result, efforts to root out fraud have increased significantly. Hopefully, with corporate governance legislation like the Sarbanes-Oxley Act in place, instances of fraud will decrease. However, it appears that something new is uncovered almost every day or so involving corporate fraud that affects employees and stockholders.

Update On Thimerosal Vaccine Litigation

Our firm, along with co-counsel, is pursuing several claims for families of children whom we believe have been

affected by mercury poisoning through Thimerosal in certain vaccines. In many cases, we believe this has caused autism in the children. The case against the manufacturers of these vaccines is a strong one in our opinion. In 1986, Congress established the National Vaccine Injury Compensation Program and Vaccine Act. This Act was designed to provide a no-fault, non-adversarial system for compensating victims who suffered an adverse reaction to a vaccination. All childhood vaccines are currently covered by the Vaccine Act. The Vaccine Act has created, in many situations, an extremely unfair statute of limitations for many afflicted children.

The Vaccine Act is a non-binding administrative remedy, but it must be complied with before filing a lawsuit in state or federal court for injuries associated with childhood vaccines. Claimants who proceed to judgment under the Vaccine Act are not required to accept the award and can instead reject it, and can proceed to file a lawsuit in state or federal court. Last year, the Office of the Special Masters established the "omnibus autism proceeding" in order to handle Thimerosal claims made by claimants around the country. There is a great deal of debate on the application and fairness of the statute of limitations provisions under the Vaccine Act. For claims resulting from the vaccine administered on or after October 1, 1988, no claim may be filed under the Act for an injury after three years of the date of occurrence of the first symptoms or manifestation of onset or of the significant aggravation of such injury.

As you might imagine, this general three-year statute may result in many older children not having a remedy. In many cases, the limitations period may expire before any official diagnosis. This does not seem fair to many, and a House bill (HR1349) has been introduced to reform the Vaccine Act. HR1349 is very important to the parents with autistic children who may be affected by the Vaccine Act. The

current time limit does not take into account situations in which a child's parents did not know about the program or did not learn that vaccines caused their child's injuries until it is too late. Please ask your member of Congress to co-sponsor and support HR1349 to fight for change in the Vaccine Act. A sample letter is available at www.jzslaw.com on the "Legislation" page of that website. You may also obtain contact information for your state's representatives by going to www.house.gov/writerep/.

Financial Companies Agree To Pay \$90 Million Settlement

Several financial companies have agreed to pay \$90 million to settle a class-action suit that claimed they were involved in the looting of trust funds established to pay for the long-term medical care and living expenses of scores of injured people. The financial institutions involved are Bankers Trust Co. of New York, Wells Fargo & Co., U.S. Trust Corp., Bank of America Corp., and Bear, Stearns & Co. The settlement, which now has to be approved by a California court, would provide full recovery for the current value of the plaintiffs' financial losses. According to the agreement, Bankers Trust would pay \$53.6 million; U.S. Trust, \$17 million; Wells Fargo, \$7.3 million; Bank of America, \$7 million; Bear, Stearns & Co., \$4.8 million; and Settlement Services Inc., \$600,000. The lawsuit was filed in January 2001, two months after Stanwich Financial Services Inc. in Stamford, Conn., stopped paying disbursements of settlement proceeds to scores of people seriously injured in traffic crashes, botched medical procedures and industrial accidents. The firm filed for bankruptcy reorganization in June 2001. Merrill Lynch & Co., Morgan Stanley and NAB Asset Corp. have already reached settlements in the case ranging from \$40 million to \$45 million.

Settlement By El Paso Energy Approved

Terms of a settlement agreement requiring El Paso Electric Co. to pay nearly \$1.5 billion to California energy customers has been approved by a California state court judge. For all practical purposes, this closes the antitrust class-action case against the Texas-based company. A federal court must also sign off on the agreement before ratepayers will see any proceeds from the settlement. However, that approval is almost certain to occur. This will be the largest settlement of its kind in California history. Ratepayers, who bore the brunt of the financial hardship caused by the energy crisis, will be the beneficiaries. El Paso will pay about \$551 million in cash and equivalents up front, semi-annual payments of about \$875.6 million and a \$125 million reduction in the price of energy to Californians.

California's Public Utilities Commission has said ratepayers would receive the rate reductions over a 15- to 20-year period. The settlement, which was endorsed by the Attorneys General of Nevada, Washington and Oregon, and by the cities of Los Angeles and Long Beach, also requires El Paso to implement an antitrust compliance program. In February, El Paso agreed to pay \$15.5 million to settle charges by the state of California that it helped Enron Corp. manipulate the energy market to drive up prices.

XIV. NURSING HOME UPDATE

Nursing Home Year-End Update

The last year was a very busy one for the Nursing Home Section of our firm. It began with our efforts to fight proposed tort reform offered by the Alabama Nursing Home Association. Jerry Taylor led the fight for our clients

and others who would have been affected by another change in the law. He spoke before Senate committees considering the tort reform bills and spent a great deal of time working with organizations such as AARP and Alabama Watch to oppose the legislation. If you read this report during the past year, you know that the nursing home industry pushed for passage of legislation in the Alabama Senate that would have capped damages on all injury and wrongful death claims that could be brought against a nursing home in Alabama at \$250,000. This legislation would have stripped Alabama nursing home residents—some of the most vulnerable people in our society—of legal rights and made it practically impossible to sue a nursing home in Alabama regardless of what was done to the resident.

It is a fact that a convicted felon in an Alabama prison would have had greater rights to sue for negligent medical care than would an Alabama nursing home resident had the proposed legislation passed. After a "compromise" bill with much higher damage limits passed the Alabama Senate, the nursing homes went back on their agreement and tried to get their \$250,000 cap passed in the Alabama House. The House refused to pass the nursing home industry's legislation and it was stalled there when the session ended in June. We anticipate that the Alabama Nursing Home Association will once again pursue this terrible legislation in the 2004 session.

In addition to being deeply involved in political matters in 2003, our Nursing Home Section successfully resolved lawsuits on behalf of neglected and abused nursing home residents all across the Southeast. Most of these sad cases came about because of the widespread problem of understaffing in nursing homes. If there is not enough staff to provide the care the residents need, they will inevitably suffer from malnutrition, dehydration, preventable pressure sores and falls. We

believe our work in this area is necessary to protect our elderly who did so much to protect our freedom. Likewise, we believe that the corporations who have been entrusted with the care of this helpless population, and who have been given a monopoly on their government benefits, must realize that they will be held accountable if they care more about profits than they do about giving good care to their residents.

Our Nursing Home Section is also leading the fight against the practice of putting arbitration clauses in nursing home admission contracts. There is no way to justify requiring persons to sign away their legal rights in this manner. We have filed two class actions in Alabama against nursing homes that have done this, asking the court to rescind all such contracts. In the nursing home setting arbitration is rarely, if ever, something that the nursing home resident or their family would prefer as a way to resolve disputes that may arise. These arbitration clauses are hidden in lengthy admission contract documents and are presented on a "take it or leave it" basis. A person who has an immediate and critical need for nursing care and supervision should not be required to sign away his or her right to a jury trial in order to receive care and attention. Hopefully, our lawsuits will help abolish this heavy-handed and unfair practice now being utilized by many Alabama nursing homes.

We look forward in 2004 to another very busy year in the Nursing Home Section. In light of the government reports that have come out in the last several years about the pitiful conditions and poor care in nursing homes all across the United States, including Alabama, it is not surprising that the nursing home industry is doing everything in their power to prevent the residents and families they serve from having access to the jury system. If you would like to help in the fight to protect the rights of nursing home residents, please contact us.

Abuse And Neglect In Nursing Homes

Abuse and neglect in nursing homes seem to be commonplace these days. Abuse of the elderly can be physical or verbal. Studies show that most neglect and abuse patterns result from short-staffing. A recent survey of 80 residents in 23 nursing homes, 10 of which were "problem homes" in Atlanta, produced the following results: 44% of residents said they had been physically abused, and 38% said they had seen other residents being physically abused. In addition, 48% reported being treated roughly (e.g., thrown into bed, shoved, jerked), and 44% had seen other residents being treated that way. Furthermore, 95% said they had seen or experienced neglect. These statistics were found in residents with the lowest risk factors for being abused, and do not include residents with dementia.

In a survey of nursing home staff, 36% said they had seen other staff physically abuse residents, 10% said they had hit, slapped, shoved, or kicked a resident, 81% observed verbal abuse (e.g., threats, yelling in anger), and 40% said they had done so themselves. A certified nurse assistant (CNA) stated that one of the reasons for such staff behavior is short-staffing, which was known not to be a legitimate excuse; however, the CNA added that when staff become overworked and overwhelmed, their response to a resident who causes trouble is often an aggressive one.

A review of care practices in 14 nursing homes in 11 states found inadequate treatment (in nutritional support, pressure ulcer care, contracture prevention, pain management, personal assistance) in one-third of the facilities. Another study found that once terminal illness is excluded, the best predictor of unintended weight loss among nursing home residents and low body mass index is the need for help in eating. In addition, emergency room physicians have found that 19% of cases they reviewed had delays of more than 24

hours in seeking treatment for injury, including a case involving a resident with a broken hip who received no treatment for four days after suffering the injury.

Of the residents and families interviewed in these studies, 55% of those who had experienced abuse or neglect did not complain because they feared retaliation, and 38% felt that it would not help to complain. In addition, many people, particularly family members, are unaware of a problem until it has existed for an extended period of time. To add to this, many cases of abuse or neglect are closed due to insufficient evidence. If a facility cannot identify the perpetrator, an investigation may not be done. If the case pits the resident's word against a staff member's word, or if a patient with dementia has bruises but cannot say who caused them, the case may be closed.

Improvements can and should be made to limit abuse and neglect in long-term care. Better regulation is needed about providing means for residents to complain. Regulation and education of staff is needed, including training about what dementia is and how to interpret behaviors. Better staffing ratios are also needed. Currently, the State of Alabama imposes no minimum staffing ratios, which is part of the problem in our state. Family members also need to be educated about what they have a right to expect from a nursing home, when and how to complain, what response to expect, and what the limits and constraints of the complaint process are.

Numbers Of Registered Nurses Must Be Increased

One issue that seems to be reported on in the Nursing Home Section of this publication on nearly a monthly basis is the endemic, industry wide problem of understaffing of nursing personnel in our country's nursing homes. No matter which state our Section practices in, we experience the same trou-

bling problem. Indeed, the lawyers in our Nursing Home Section all believe that the single greatest threat to our nation's nursing home population is the failure of the homes to sufficiently staff their facilities with enough adequately trained nursing staff. Our experience indicates that there is a direct and undeniable correlation between the numbers of nursing staff at a particular home and the quality of care that the residents at that home receive. We believe that it is near axiomatic that the greater the number of nurses in a facility, the greater the level of resident care will be. Nevertheless, despite our best efforts over the past few years to reform the long-term care system, we continue to experience this universal problem. The long-term care industry has heard our cries and has responded, and continues to respond, in a predictable manner. The industry claims it really wants to hire greater numbers of nurses and greater numbers of better educated and more thoroughly trained nurses. However, it contends that hiring more nurses would constitute an economic hardship that the industry would not survive. Their sole concern, it seems, remains with profits.

The greatest tragedy is that both the industry—and those of us working to reform it—agree that the addition of more nurses would equate to better care. The sole obstacle to incorporating this policy to improve care is money. The industry does not want to part with any more of it and does not seem to care that the residents entrusted to their facilities by our citizens are being harmed because of their greed. The industry's allegiance is to its shareholders and not those whom it is designed to care for. Thus, for many years it seemed that an impasse had been reached. The industry did not want to spend any more money, and we were not going to abandon our commitment to help improve nursing home resident care. A recent healthcare industry study, however, may help resolve this seemingly intractable conflict.

This study indicates that nursing personnel comprise about 30 to 40% of overall hospital full-time equivalent personnel and about 30% of a hospital's budget. It is therefore not surprising that one approach used by financially strapped hospitals to improve financial performance is to reduce nursing staff levels. Yet this study found that increased staffing of registered nurses does not significantly decrease a hospital's profits, even though it boosts the hospital's operating costs. The study was supported by the Agency for Healthcare Research and Quality and was spearheaded by the University of North Carolina at Chapel Hill School of Nursing. For more information on the study please see, "Nursing Staffing, Quality, and Financial Performance," by Michael McCue, D.B.A., Dr. Mark, and David W. Harless, Ph.D., in the Summer 2003 *Journal of Health Care Finance* 29(4), pp. 54-76.

The nursing home industry should take note of this illuminating study. Industry leaders, who have long realized that increased nurse staffing results in better care, should also realize that increased nurse staffing is good for the bottom line. Perhaps this study will open their eyes when they see that providing the care that residents deserve will not necessarily cost them more money. If industry leaders are truly concerned about the level of care the residents entrusted to them receive, then they should change their mistaken ways and increase staffing levels at their facilities. No longer can they hide behind the argument that they cannot afford to give good care to their residents.

Long Nursing Hours Equate Poor Healthcare

Because of the understaffing problems, many nursing homes and hospitals are endangering patients by requiring or allowing nurses to work more than 12 hours per day. The National Academy of Sciences pro-

duced a report commissioned by the federal government that concluded, "Long hours cause fatigue, reducing productivity and increasing the risk that nurses will make mistakes that harm patients." A panel of 18 experts conducted a study showing that fatigue was a "major cause of mistakes and errors" in hospitals and nursing homes. Many nurses and nursing assistants work more than 12 consecutive hours, with some working double shifts of 16 hours. Some studies show that 27% of nurses at nursing homes and hospitals reported that they worked more than 13 consecutive hours at least once a week. Medical errors start climbing after twelve hours of work. Additionally, a similar report stated, "Long work hours pose one of the most serious threats to patient safety, because fatigue slows reaction time, decreases energy, diminishes attention to details, and otherwise contributes to errors."

According to some reports, in order to reduce "error-producing fatigue," state officials should prohibit nurses working more than 12 hours in any 24 hour period or more than 60 hours a week. Generally, healthcare facilities must conform to state regulations in order to satisfy licensing requirements. If states set maximum working hours for nursing staff at healthcare facilities, hospitals and nursing homes would clearly breach the standard of care in caring for patients if those facilities choose to schedule working hours above the state limits. Another way to reduce errors caused by fatigue is to have nurses be more involved in the day-to-day management of hospitals and nursing homes. By increasing nursing input in management decisions, problems of fatigue and long hours can be identified and corrected in a more expeditious manner.

Studies reveal that as levels of nursing staff rise, the quality of care improves, because nurses have more time to monitor patients and can more readily detect changes in their condition. These studies show that increased

infections, bleeding and cardiac and respiratory failure are associated with inadequate numbers of nurses. Consequently, intensive care units should have one licensed nurse on duty for every two patients. Nursing homes should have one licensed nurse for every 32 patients with one nursing assistant for every 8.5 patients.

Because nurses should deliver most of the care patients receive, it is extremely important that nurses are given the best opportunity and conditions to care properly for patients. The United States has approximately 2.8 million licensed nurses and 2.3 million nursing assistants, accounting for 54% of healthcare workers. Monitoring their fatigue levels while they care for patients seems to be common sense. However, virtually every other industry in the country pays more attention to errors caused by fatigue than does the healthcare industry.

New Study Finds People With Dementia Not Getting Adequate Care

New research, "Dementia Care in Assisted Living and Nursing Homes," indicates that many people with Alzheimer's disease and related dementias are not getting adequate care in nursing homes and assisted living facilities and may require more care than they are receiving. The study found problems in addressing care needs for behavioral symptoms, depression, pain, food and fluid intake, mobility and social inactivity for individuals with dementia. While similar findings have been reported previously for nursing homes, in this study few differences were noted between assisted living facilities and nursing homes. The study investigated a representative, stratified sample of 45 residential care/assisted living facilities and nursing homes totaling 423 residents in four states (Florida, Maryland, New Jersey, and North Carolina), and was funded by the Alzheimer's Association.

The AARP Reverses Its Stand In Florida

The Florida chapter of AARP, the powerful lobbying group for seniors, has declared its support of caps on pain and suffering damages in abuse and neglect lawsuits against Florida nursing homes. Last year, AARP bused hundreds of senior citizens wearing AARP T-shirts to state legislative hearings on the issue in Tallahassee. The group was instrumental in defeating efforts by the nursing home and insurance industries to impose pain and suffering damage caps. In 2001, the Florida Legislature granted major tort relief to nursing homes, including caps on punitive damages. But nursing home operators said it wasn't enough. I don't believe the Florida chapter speaks for the national AARP or other state units on the issue. If so, it will be a major reversal of position and seniors will suffer as a result.

XV. HEALTHCARE ISSUES

A Successful Flight To Vegas

A few weeks ago, President Bush found time to stop over in Las Vegas and Phoenix to collect at least \$2 million from donors at two private fundraisers. While there, the President gave speeches touting passage of the special interest-backed Medicare legislation and advocating for federal legislation that would restrict the rights of injured patients to sue in medical malpractice cases. This was another blatant bow to the special interests. These two bills provide a huge windfall for Bush's biggest donors, as outlined in a fact sheet released by Public Citizen. The Medicare bill provides a huge windfall for drug companies (the government will not be able to negotiate drug prices, and efforts to reimport drugs

from Canada have been stymied), doctors (who will receive \$2.4 billion in increased payments for services), hospitals (which will receive at least \$2.7 billion in increased payments), and the insurance and HMO industries (which will get subsidized to offer prescription drug coverage and receive \$14.2 billion in incentives to do so).

The medical malpractice bill, approved in the U.S. House of Representatives but blocked by the U.S. Senate in July, contains legal and financial protections that would benefit some of the president's most generous campaign contributors. Like the Medicare bill, this measure has been pushed by drug manufacturers, insurance companies, HMOs, nursing homes and medical device companies in addition to some doctors. It would limit to \$250,000 the amount of money that even the most severely injured patients could receive for lifelong "pain and suffering," and it would shield companies and health-care providers from some liability altogether. Those who stand to gain from these measures include 12 of Bush's Rangers and Pioneers. As reported in another section, they are the big donors who helped Bush get elected and are helping to build his campaign war chest to get re-elected.

Joan Claybrook, president of Public Citizen states: "The president's solution to the lack of drug coverage for seniors and the higher malpractice rates insurance companies are charging doctors is to protect well-heeled supporters while punishing patients and their families. The White House is happy to back these measures because they are what Bush's big campaign donors demand." A fact sheet detailing who these people are is available at www.WhiteHouseForSale.org. This site, created by Public Citizen, tracks the influence of special-interest money on presidential elections. It includes the activities of the President's "posse" of Rangers and Pioneers.

Consumer Groups Urge FDA Ban

Public Citizen and the Center for Food Safety have petitioned the U.S. Food and Drug Administration (FDA) to ban irradiated ground beef. Included in their petition were the results of recent lab tests conducted at the request of the two groups that detected chemicals linked to cancer promotion and genetic damage in irradiated ground beef sold at a restaurant and three grocery stores. The test findings are contained in a recently released report, "What's in the Beef?" This marks the first time since the FDA began regulating irradiated foods in 1958 that the agency has been petitioned to ban an irradiated food product. Legalized in 1997, irradiated ground beef is reportedly on sale at more than 5,000 grocery stores and restaurants in the United States.

Sickness From Produce On Rise

To consumers who took nutritionists' advice and began eating more fruits and vegetables, word that fresh green onions could carry the hepatitis virus came as a shock. Yet the recent outbreaks of hepatitis A linked to contaminated scallions imported from Mexico, which have killed three people and sickened at least 605 others, are only the latest examples in a sharp rise of food-borne illness from fruits and vegetables. In 2000, the last year for which information is complete, there were almost as many reported cases of food poisoning from produce as there were from beef, poultry, fish and eggs combined, according to an advocacy group's compilation of government data.

Produce is emerging as an important cause of food-borne illness in this country, according to a number of consumer groups. Scientists and some government officials say illnesses have risen sharply because people are eating more fresh produce and want it year-round, leading to an increase in imports from countries with less stringent sanitary standards. And until recent years,

produce was the last place investigators looked for food-borne illness. Less than 2% of the produce that crosses the border is inspected for disease-causing bacteria, according to the Food and Drug Administration, which is responsible for the safety of produce.

XVI. ENVIRONMENTAL CONCERNS

EPA Enforcement Said Shaky

The enforcement record of the Environmental Protection Agency is uneven—at best—and the agency lacks sufficient information on workload and results to allow meaningful evaluation of its needs. This assessment comes from a recently released Office of Inspector General report. Senator Jim Jeffords (I-VT) had requested the EPA Inspector General report in the wake of a critical survey of enforcement agents by Public Employees for Environmental Responsibility. A release of figures compiled by PEER showed a significant decline in new cases submitted for federal prosecutions. The federal report found that EPA:

- Diverted criminal, white-collar enforcement staff for security purposes.
- Lacks the ability to track agent workload information needed to present a coherent statement of its budgetary and personnel needs.
- Barely made a dent in significant corporate non-compliance with clean air, clean water, and toxic pollution rules.

The report underlined the fact that enforcement of pollution laws is not a priority of the Bush Administration, which comes as no surprise. The Inspector General report also details a dramatic falloff in Clean Water Act enforcement actions against corporate violators, which is consistent with the

attitude and policies of the Rove-led Bush Administration.

Studies Now Link Soot To Heart Disease

Research on the health effects of air pollution now shows that tiny airborne soot particles, like those produced by power plants and diesel engines, can be directly linked to certain types of heart disease. This is believed to be the first time that such particles have been linked directly to heart disease. Previous researchers believe that soot contributed more to lung disease, rather than heart disease. The study was performed by an epidemiologist from Brigham Young University, among others, and was financed by the National Institute of Environmental Health. The study indicates that low grade inflammation caused by soot embedded in the human lung triggers defense mechanisms that tend to clog arteries and lead to chest pain, irregular cardiac rhythms and heart attacks.

The findings raise doubts about Bush Administration regulatory changes to prolong the operation of older, coal-fired power plants. The Environmental Protection Agency says that coal-fired power plants and diesel engines are the major producers of soot particles less than 2.5 microns in diameter. Fine soot, similar in size to particles in cigarette smoke, can float on air currents for thousands of miles. Fine soot contains sulfates, carbon and nitrates and can include other contaminants, such as arsenic, cadmium, mercury and lead. Earlier scientific efforts had attributed these same health problems to high levels of cholesterol in the blood, but the new study indicates that inflammation from soot plays a bigger role than had previously been understood before. Representatives of the Clean Air Trust have stated that this study shows the clearest link yet between fine particle soot and the reason that tens of thousands of Americans are dying prematurely.

Jury Awards \$92 Million In Punitive Damages For Tank Car Explosion

A state district court jury a few weeks ago ordered Gaylord Chemical Corp. to pay \$92 million in punitive damages to about 16,000 residents in or near Bogalusa, Louisiana. The verdict was returned in a suit over a 1995 railroad tank car explosion that sent a noxious plume of nitrogen tetroxide floating over the city. Nitrogen tetroxide is a federally regulated and highly toxic substance used by Gaylord to make drugs. In a bifurcated, or two-phase, trial that began in early September, the jury determined on November 14th that Gaylord was liable to a class of area residents for punitive damages from the explosion at its Bogalusa chemical plant. After another week of testimony that began on December 3rd, the jury decided on the amount.

In the late afternoon of October 23, 1995, a tank car filled with nitrogen tetroxide exploded in the Bogalusa plant's rail yard, sending a massive cloud of the gas billowing over the city. About 4,000 people went to hospital emergency rooms, while about 3,000 people living within a mile of the plant were evacuated. Although most complained then of burning eyes, skin and lungs, their attorneys contend that some of those exposed to the gas now suffer from a higher rate of asthma and other respiratory problems that are permanent. Plaintiffs had asked for \$100 million in punitive damages, but the jury gave Gaylord \$8 million in credit for safety measures it implemented after the explosion.

Barring a settlement, compensatory damages for the injuries to health and property suffered by each of the 16,000 class members will be determined in a series of later, individual trials. As one of plaintiffs' counsel noted, "If every one of the 16,000 people gets his day in court, it could be 2015 before this case gets resolved" - a sentiment I can relate to, since we

faced the same situation with our 18,000+ clients in our case against Monsanto before we settled it on a "global" basis. The jury has sent a strong message that it won't condone corporate misconduct that endangers the lives and property of the community. I can only hope that the company now will do the right thing, resolve the case, and pay the residents for the harm the company caused.

There's one interesting sidelight. Following the explosion, the federal Occupational Safety and Health Administration determined Gaylord had committed seven violations of work safety rules during the leak, but fined Gaylord only \$15,000. This "slap on the wrist" by a so-called "enforcement agency" is further proof of the need for a strong civil jury system, as envisioned by the drafters of our state and federal Constitutions, to level the playing field for ordinary citizens and force Big Business to "straighten up and fly right"—or otherwise pay the price.

Groups May Sue Exxon Mobil Over Louisiana Refinery Emissions

According to a Reuters news source report, two environmental groups are planning to file a lawsuit against Exxon Mobil Corp. for alleged excess emissions of air pollution from a Louisiana refinery. The report, citing a leader of one of the groups, said the organizations—the St. Bernard Citizens for Environmental Quality and the Louisiana Bucket Brigade—sent a letter to the refinery in Chalmette, La., stating they would sue if the problems weren't fixed within 60 days. The two groups, which monitor emissions from chemical plant and refineries, allege that Exxon Mobil's Chalmette plant regularly violates the U.S. Clean Air Act. I understand from the report that the Tulane Environmental Law Clinic is preparing the lawsuit. Exxon Mobil claims its Louisiana refinery is being targeted as part of a larger campaign by activists against the refining industry.

The giant oil company issued a statement, the contents of which I have seen many times before. "We continue to invest in environmental enhancement projects which ensure the safety and health of our employees and community," Exxon-Mobil said in the statement.

XVII. INSURANCE AND FINANCE UPDATE

American Resource Trust Ordered To Cease Operations

An Alabama company that has reportedly marketed medical malpractice insurance to physicians and hospitals has been ordered to terminate all activities in our state. Commissioner Walter Bell filed a formal cease and desist order against American Resource Trust of Fultondale. Commissioner Bell stated: "If you want to do business in Alabama, you must have a license to do business in Alabama. It's the same way in the other 49 states. We've had an issue with medical malpractice insurance in this state, and it appears this company is trying to take advantage of a tough medical malpractice market and illegally sell its policies." Bell also sent notifications to the Alabama Hospital Association and the Medical Association of the State of Alabama regarding the order.

Georgia Commissioner Orders Nevada Company To Cease Business

The Georgia Insurance Commissioner has ordered Global Bonding, Millennium Bonding Enterprises, Robert Joe Hanson and Reve' M. Pete to stop transacting surety insurance business in Georgia. Neither the companies nor individuals involved were licensed in Georgia. The Nevada-based companies have reportedly sold, and have been advertising for sale, surety bonds to the

construction industry in Georgia and other states. It is believed that these companies target low-income, minority and women-owned businesses when selling unlicensed surety bonds. A product was being offered at an attractively low price. Unfortunately, the unlicensed status of these entities makes any product they offer illegal in the state of Georgia. Global Bonding, Millennium Bonding Enterprises and Robert Joe Hanson have reportedly been operating over the Internet and marketing themselves as a “federally approved alternative.” The companies also claim to be a “Treasury approved provider” and state that the bonds are written according to federal guidelines.

Farmers Insurance Must Pay For Fraud

An Oregon jury has ordered Farmers Insurance Co. to pay \$9.5 million to thousands of defrauded Oregon policyholders in a case sparked by a man who wondered why the company failed to pay all his medical bills following a motor vehicle accident. The jury found that Farmers defrauded customers from 1998 to 1999 by reducing the payments for their medical expenses after auto accidents. The \$9.5 million award will be paid to about 7,200 Oregonians who were represented in the class-action lawsuit. In addition, more than 1,500 Oregon doctors, chiropractors, therapists, hospitals and other providers may be entitled to share in the verdict. The original plaintiff began investigating after he saw his medical bills from injuries suffered in a car wreck and wondered why all the expenses weren't paid. The amounts that Farmers failed to pay were generally so small—most less than \$10—that it wasn't enough for a single policyholder to pursue.

Insurer Settling Suit On Cancer Benefits

A Nebraska company has agreed to

pay \$20 million to settle claims that it sold cancer insurance to people nationwide but paid only a fraction of the benefits when they got sick. Central States Health and Life Co. of Omaha will pay \$7.5 million to about 1,240 people who were denied coverage. A fund will also be set up to pay future medical expenses for the 1,400 people who filed claims or any of more than 18,000 other people nationwide who bought the policies but have not developed cancer. The settlement was approved by a U.S. District Judge in South Dakota where one of the original complaints was filed.

Central States sold policies guaranteed renewable for life that said the company would pay for chemotherapy, radiation treatments, immunotherapy surgery and some travel expenses needed to get treatment. However, policyholders who developed cancer found that Central States used such a narrow interpretation of the policy language that most of their bills were excluded. For example, the company refused to pay for services associated with radiation treatment, such as dose calculations and the use of lead blocks to protect non-cancerous tissue from radiation. The policies were sold as supplemental insurance.

Travelers Reaches Asbestos Settlement

Travelers Property Casualty Corp. has agreed to settle class action asbestos lawsuits against the company. Travelers said it will fund the settlement from its more than \$3 billion in asbestos reserves and does not expect the costs to reduce profits. However, terms of the settlement are confidential. The proposed settlement, which is subject to court approval and negotiation of a definitive agreement, involves all pending asbestos-related statutory direct action lawsuits. The claimants alleged Travelers violated state laws barring unfair claim and trade practices. The settlement would also bar all

future asbestos-related statutory direct actions against Travelers in West Virginia, Massachusetts and other states in which Travelers believes plaintiffs may try to bring such actions. The settlement also provides that actions filed in Hawaii against Travelers, based on similar allegations, would be dismissed with prejudice, meaning they can't be brought again. The settlement does not relate to so-called common-law asbestos-related direct actions against Travelers, which allege the company had a general duty to disclose to the public the hazards of asbestos.

A temporary restraining order issued in 2002 by the New York federal bankruptcy court staying these cases has been extended until March 2004. At that time, Travelers' motion for a permanent injunction will be considered. Travelers said in January it would take a \$1.3 billion after-tax charge to strengthen its reserves for asbestos claims. Travelers increased its reserves for asbestos claims to \$3.4 billion, up from \$950 million, after finishing a study of its reserves and exposure to losses. As we all know, asbestos is a heat-resistant mineral once used widely in insulation and fireproofing. It has been found to cause severe and sometimes deadly respiratory problems. As a matter of interest, Travelers agreed to merge with The St. Paul Cos. Inc. in a \$16.5 billion stock deal that will create the nation's second-largest business insurer.

Auto Insurers Plan \$100 Million Fraud Lawsuit

As we went to the printer, it had been reported that three large insurance companies were going to file a \$100 million lawsuit against 74 people connected to more than 3,000 no-fault auto insurance claims. The companies, Allstate Insurance Co., Encompass Insurance, and Nationwide Mutual Insurance Co., announced in a news release that the suit would be the largest no-fault insurance fraud suit in

state history. I really can find no fault in these corporate plaintiffs using the court system. In fact, if any persons are found to have committed wrongful acts designed to cheat these companies, those persons should be dealt with and punished severely.

Health Insurer Kickback Claims

The Justice Department has accused Medco Health Solutions, Inc. of paying an \$87.4 million kickback to Oxford Health Plans, Inc., a major health insurer, to obtain its business. The complaint was filed in federal court in Philadelphia, Pennsylvania. Medco Health Solutions is one of the nation's largest pharmacy benefit managers. Medco Health Solutions is said to provide pharmacy benefits for more than sixty million Americans and manages more than thirty billion dollars of drug spending.

The Justice Department's complaint alleges that Medco Health Solutions paid \$87.4 million dollars in cash to the plan in the last two quarters of 2001, which was intended to improperly influence the awarding of a pharmacy benefit manager contract. The kickback claims are made in addition to other claims against Medco by the Justice Department alleging fraud, falsification of records and making false statements to the government under Medco's Federal Employees Pharmacy-Benefits Program. The Justice Department has also accused Medco of destroying prescriptions rather than paying contractual penalties for tardiness in processing orders and for failing to notify physicians properly of potential safety problems with certain prescriptions.

XVIII. ARBITRATION UPDATE

Patient Rights At Risk

Medical arbitration has become a major issue and has become a growing concern among patients and physicians. The issue gained attention recently when Intermountain Health Care began sending letters to patients in Utah requiring they agree to binding arbitration rather than lawsuits to resolve disputes with IHC doctors or they'll have to find new doctors. Arbitration foes—representatives of the Amalgamated Transit Union, and the AFL-CIO, and a citizens group called Utah Citizens Alliance – accused IHC, the largest health-care system in Utah, of putting “itself first and injured patients and their families second.” They said the large-scale push for arbitration agreements forces IHC's doctors to do “what would be illegal for IHC's insurance division to do.” State insurance law in Utah “prohibits compulsory arbitration schemes.”

The arbitration agreements might be used to release IHC from lawsuits currently pending in court. The arbitration opponents have formed a nonprofit organization called Patients Against Mandatory Medical Arbitration, www.pamma.org, and say they are considering actions to counter the mandatory arbitration agreements, including launching a petition drive to put the issue on the ballot or filing a lawsuit to challenge “the IHC forced-arbitration scheme.”

Freddie Mac Says No To Arbitration

Freddie Mac announced last month that effective August 1, 2004, it would no longer invest in subprime mortgages originated on or after that date that contain mandatory arbitration

clauses. Freddie Mac is the first among secondary mortgage investors to adopt such a stance on subprime mortgages with mandatory arbitration clauses. This policy is aligned with the corporation's existing prohibition on the use of mandatory arbitration for prime market mortgage investments. Freddie Mac stated in a news release that all homeowners should be able to voluntarily choose the mortgage dispute resolution option they believe to be in their best interests.

While some lenders have improved consumer protections when employing mandatory arbitration clauses, practices in the subprime market are generally uneven. As a result, there exists the greater likelihood that borrowers may be unaware that they are agreeing to be bound by this dispute resolution mechanism. In addition, the Department of Housing and Urban Development, the Department of the Treasury and the Federal Trade Commission have recommended prohibiting mandatory arbitration agreements in the Home Ownership and Equity Protection Act (HOEPA) or for high-cost home loans.

In the past several years Freddie Mac has instituted the secondary mortgage market's most comprehensive set of policies designed to protect consumers from predatory lending practices. These policies include banning the purchase of mortgages originated with single-premium credit life insurance; requiring the monthly reporting of borrower credit information; banning the purchase of mortgages with terms that exceed either the Annual Percentage Rate (APR) or the points and fees thresholds under HOEPA; and banning the purchase of subprime mortgages with prepayment terms that exceed three years. Freddie Mac has several products and policies to fight predatory lending practices that are sometimes found in subprime mortgage lending. For example, Freddie Mac's Affordable Merit RateSM mortgage is a lower-cost alternative to subprime

mortgages, and enables borrowers to more easily lower their mortgage rate as their credit improves. The corporation's award-winning anti-predatory lending program Don't Borrow TroubleSM is active in states across the country. General information about the campaign is available on its website at www.dontborrowtrouble.com.

In an effort to help borrowers understand and better manage their credit so that they can qualify for a prime mortgage, Freddie Mac launched a website that is worthy of a look. The consumer education curriculum can be found at www.freddiemac.com. As you probably know, Freddie Mac is a stockholder-owned corporation established by Congress in support of homeownership and rental housing. Freddie Mac purchases single-family and multifamily residential mortgages and mortgage-related securities, which it finances primarily by issuing mortgage pass-through securities and debt instruments in the capital markets.

XIX. PREDATORY LENDING UPDATE

Shareholder Speaks To Group

Tom Methvin of our firm was invited to speak last month to the Louisiana Trial Lawyers Association at their "Winning with the Masters" year-end seminar. His presentation dealt with predatory lending and how victims of predatory lending are entrapped on a daily basis, and was very well-received. He received lots of questions from the audience. Predatory lenders strangle their victims in many different ways. Some of their most egregious acts include flipping (forced refinancing to generate excessive fees and charges), packing (adding useless insurance on the loan), stripping (stealing equity in homes), and ballooning (adding high cost balloon payments at the end of the

loan). All of these practices are well-documented and well-known in the industry. Unfortunately, this has become a hundred billion dollar a year industry.

This powerful industry has fought the regulators at every turn. Many regulators, including some Attorneys General, the Federal Trade Commission, FDIC, and Congress, are still trying to stop these predatory lenders. Since these lenders are extremely powerful, they are difficult to stop. For instance, one such lender paid a \$484 million fine to the Attorneys General. Another paid a \$215 million fine to the Federal Trade Commission. Both are small in comparison to the amounts they have taken from the working poor, the elderly and the illiterate. I expect they will keep on doing this until the regulators really get tough on them. Other efforts by regulators have led to the passage of legislation in 39 states, counties and cities to stop predatory lending. However, all of this legislation was overruled by the Office of Comptroller Currency in Washington after receiving repeated pleas for help from the predatory lenders.

You might recall that Tom recently spoke to a packed house at the Louisiana State Legislature in our firm's fight to stop predatory lending. Unfortunately, the proposed legislation was voted down in committee and never brought to the floor of the Legislature for passage. However, there is a major push to try to pass this bill in Louisiana, which is one of the worst places for predatory lending in the country. Our firm is handling a great number of lawsuits arising out of the predatory lending industry. Hopefully, our efforts will help cure this "growing cancer" on poor people, the elderly, and others who have to deal with this industry.

XX. THE CONSUMER CORNER

Massive Consumer Rip-Offs in Automobile Sales Industry

Public Citizen, the consumer advocacy group, has warned the public to be aware of a scam that has affected a great number of American citizens. Many consumers who buy automobiles are being cheated out of hundreds and sometimes thousands of dollars by fraudulent sales practices. According to a report by Public Citizen, this nationwide scam is one of the most pervasive scams in this country. The report, "Rip-Off Nation: Auto Dealers' Swindling of America," outlines the way auto dealerships rip off customers and is supported by documents obtained by auto sales industry whistleblower Duane Overholt, who worked in Florida auto sales for 20 years. Industry-wide practices range from inflating the cost of warranties and reporting one set of numbers to the customers and another set to the bank, to stuffing the contract with extras that the customer never agreed to pay for. The size of the purchase, the flurry of paperwork and the complicated financial deals make consumers particularly vulnerable to the schemes developed by dealerships to squeeze the highest possible profit from each sale.

According to Public Citizen, the fraud is rampant. Customers in California, Florida and at least 37 other states have been "robbed," according to a recent "Dateline" report. Further evidence is provided in a host of lawsuits documenting patterns similar to those explained in the report in at least nine states. Public Citizen President Joan Claybrook says:

The scams are not restricted to a few areas or dealerships. Customers are being cheated on both coasts and everywhere in between. The

tactics used are so sly that informed customers, customers who have done their homework and exhausted every measure to ensure they don't get ripped off, are taken just as easily as anyone else.

Overholt, who “came clean” in 1999, says that he ripped off consumers for about \$33 million during his sales career. In fact, he says that amount is really conservative. As outlined in the report, auto buyers are cheated in many ways:

- The dealer boosts the manufacturer’s suggested retail price with extras, some of which may already come with the vehicle.
- Sales managers run credit reports on potential buyers without their permission, using the driver’s license the customer provides before going for a test drive. With this information, the dealer can learn how much credit the customer has and even what the customer’s last car payments were, for use in price negotiations.
- Banks that have good relationships with dealers may insist on a higher interest rate in order to kick back to the dealer the dollar value of a few percentage points of the loan, without the buyer’s knowledge.
- Customers are manipulated during the sales process to pay more than the agreed-upon price. This is often done with the use of worksheets listing add-ons, although few of the items are associated with a specific price.
- If the sale is made after hours, customers are asked to sign blank bank forms that the dealer offers to fill in later, ostensibly after talking to a bank during business hours. The numbers reported to the bank may not reflect what the customer agreed to.
- The dealer may add products to the sales contract after the customer leaves. And because customers don’t know they paid for a warranty or service contract, for instance, they never make any claims using it.

In addition to calling for state Attorney General investigations by letter, Public Citizen has called on state and local law enforcement authorities to enforce consumer protection laws. The consumer group also requested state and federal lawmakers to require that financial and dealership documents be contained in a single file available to the consumer on request. Changes in the law were also requested to require disclosure of the interest rates that the lender agrees to provide and disclosure of any kickback to the dealer, to require dealer employees to tell consumers that they represent dealers and not the consumer, and to forbid mandatory arbitration clauses in sales contracts.

Public Citizen believes that the scam referred to above is much more serious than first believed. They describe the early findings as only “the tip of the iceberg.” Public Citizen has requested law enforcement authorities to take swift action to protect consumers and seek civil redress and criminal convictions before the evidence of wrongdoing is destroyed. Reputable dealers should cooperate fully. Recent media reports in Alabama indicate that the scam is not widespread in Alabama. Apparently, dealers in our state are not as involved as dealers in other states. Let’s keep it that way! Public Citizen’s report, background information and statements were released at a press conference last month and are available at: www.citizen.org/autosafety/dealerscam/. Public Citizen has set up a Web site, www.autodealerscam.org, to provide consumers with more information. I recommend that any person contemplating a motor vehicle purchase first take a look at this website.

FTC Program Targets Deceptive Diet Ads

I believe one of the biggest consumer rip-offs these days involves companies that sell “weight-loss” products. Last month, the Federal Trade Commission announced a voluntary program

that calls for newspapers, magazines, and TV and radio networks to help police deceptive ads by weight-loss marketers. The FTC issued the “Red Flag: Bogus Weight Loss Claims” report, which consists of 74 pages and includes a list of seven “red flag” types of claims that it says should cause media to question an ad. An FTC study last year found that despite its false-advertising enforcement efforts, an “unacceptably high” 55% of weight-loss ads contain false or unsupported claims. FTC Chairman Timothy Muris made this observation, “Unfortunately, there are way too many ads for scientifically impossible weight-loss products in the popular media. The media should institute screening programs to ‘red flag’ deceitful weight-loss ads and refuse to run them. To help media advertising staff identify bogus claims, we’re providing thousands of free copies of the red flag booklet.” The print and broadcast media were urged to avoid ads that promise weight loss without diet or exercise; weight loss regardless of how much is eaten; permanent weight loss; blocking the absorption of fat or calories; loss of three pounds or more for more than four weeks; weight loss for all users; and weight loss by wearing a product on the body or rubbing it into the skin.

When you consider that consumers spend about \$38 billion on weight-loss products, it is easy to figure out why the ads will keep coming. The FTC needs help to head off more ads before they reach consumers. The FTC announced two \$1 million settlements last month. One was with Universal Nutrition, which said its “ThermoSlim” could help users lose 95 pounds in 60 days while still eating french fries and milkshakes. The second involved Mark Nutritionals, which said its “Body Solutions Evening Weight Loss Formula” would cause users to lose weight without diet or exercise. Body Solutions was touted by radio personalities on 755 stations in 110 cities. Payments from the settlement will go to the

federal government and Texas, Pennsylvania, and Illinois to settle allegations that this product was fraudulent. The federal government will receive half of the settlement proceeds. Texas will receive \$450,000 and Pennsylvania and Illinois will each get \$25,000.

The Federal Trade Commission and Texas Attorney General announced the settlements. The companies use the concept of false hope, which is very much of a problem. It is significant that Body Solutions generated about \$155 million in sales before Mark Nutritionals went into bankruptcy in April. The FTC and the three states had launched investigations before the company filed for bankruptcy. Prompted by Body Solutions and other weight-loss cases, the FTC announced the "red flag" education campaign referred to above in an effort to assist the media in screening dubious weight-loss advertising.

The effort by the FTC comes at a time of rising obesity concerns. The Centers for Disease Control and Prevention estimates that more than 60% of Americans are overweight or obese. While media industry groups have various ad guidelines, individual outlets decide what runs. Trade groups say they will cooperate, but can't make promises for their members. For more information, you can go to this website, www.ftc.gov/redflag.

XXI. RECALLS UPDATE

A Good Number Of Recalls

There have been many recalls since our last report. The following are just a few.

Ford Focus Recalled

Ford has recalled its 2000 and 2001 Focus. Contamination of the filter in the fuel delivery module (FDM) can block fuel flow to the engine. Vehicles

may experience engine hesitation, loss of power, surging, and other similar drivability symptoms. Over time, the filter may become sufficiently blocked to cause the engine to stall. Ford will replace the FDM with a new design if the vehicle exhibits any of the noted drivability symptoms, free of charge, for a period of 10 years following the original warranty start date of the vehicle.

Ford Recall

Ford has recalled the 2001 Escape Sport Utility Vehicles. Approximately 132,243 vehicles are affected by this recall. On certain vehicles, a post within the safety belt buckle covers could fracture, which could affect latch function, resulting in either no latch or partial latch condition. In the partial latch condition, the buckle tongue can be inserted into the buckle and appear to be engaged, but will release from the buckle without the push button being depressed when a relatively low load is applied, such as when an occupant moves slightly in the seat. In the event of a crash, the seat occupant may not be properly restrained, increasing the risk of personal injury. Dealers will have the driver and front passenger safety belt buckle cover removed and replaced with a newly designed service buckle cover. Owner notification is expected to begin this month. Owners should contact Ford at 1-800-392-3673.

Dodge Ram Recalled

Some 2004 Dodge Ram 1500 and Ram 2500 pickup trucks have been recalled. On certain pickup trucks, the transfer case to transmission attaching fasteners may not be tightened correctly. This could cause the transmission adapter or transfer case housing to crack and leak fluid. Continued operation can result in propeller shaft separation and damage to the fuel system. Fluid and/or fuel leakage in the presence of an ignition source can cause an underbody fire. Dealers will retighten

the transfer case to transmission fasteners. Owner notification began December 22, 2003. Owners should contact DaimlerChrysler at 1-800-992-1997.

Another Dodge Ram Recall

The following Dodge Ram pickup trucks have been recalled: 2000 Ram 1500, 2001 Ram 1500, and 2002 Ram 1500. On certain 4x4 pickup trucks equipped with the snow plow preparation package, the tires supplied on some vehicles may have gross axle weight ratings that slightly exceed the maximum tire load capacity as defined in Federal Motor Vehicle Safety Standard No. 120, tire selection and rims for motor vehicles other than passenger cars. Dealers will provide replacement p245/75r16 tires to meet the load carrying capacity specified on the vehicle certification label and accommodate the addition of a commercially available snowplow and hardware. Owner notification is expected to begin this month. Owners should contact DaimlerChrysler at 1-800-992-1997.

Dodge Vehicles Recalled

Model year 2000 Caravans, 2000 Grand Caravans, 2001 and 2002 Dakotas have been recalled by Dodge. There are potentially 35,692 vehicles affected. On certain minivans and 4x2 pickup trucks, the vehicle certification label may have gross axle weight ratings (GAWR) that slightly exceed the maximum tire load capacity as defined in Federal Motor Vehicle Safety Standard No. 120, tire selection and rims for motor vehicles other than passenger cars. Owners will be provided with vehicle certification label overlays containing corrected information relative to vehicle GAWR and tire size. The manufacturer has not yet provided an owner notification schedule for this campaign. Owners should contact DaimlerChrysler at 1-800-992-1997.

Nissan Has Recalled Sentras

Approximately 70 Nissan Sentras, model years 2000, 2001, 2002, and 2003, have been recalled. On certain electric vehicles, the front suspension transverse links ball joint bracket may break from stress concentration at a notch created by surface roughness and the shape of the material cut-line. Dealers will replace the bracket on these vehicles. Owner notification is expected to begin this month. Owners should contact Nissan at 1-800-647-7261.

2004 New Beetle Recalled By Volkswagen

Approximately 15,115 new Volkswagen Beetles have been recalled. On certain passenger vehicles, the tire information label is incorrect, identifying the vehicle as a five-passenger vehicle, instead of a four-passenger vehicle. Owners will be sent a new label. Owner notification is expected to begin during February 2004. Owners should contact VWOA at 1-800-822-8987.

Jaguar Recalls

The Jaguar XK, model years 1997 through 2003, have been recalled because the headlamp adjustment mechanism may be operated without suitable instruction on either the mechanism or in the owners manual. This does not meet the requirements of Federal Motor Vehicle Safety Standard No. 108, lamps, reflective devices, and associated equipment. An improperly aimed headlamp could provide less effective roadway illumination or could cause increased glare to oncoming vehicles. Owners will be provided with an owner's manual addendum containing the necessary headlamp aiming instructions. Owner notification began during December 2003. Owners should contact Jaguar at 1-800-452-4827.

Grand Vitara And XL-7 Recalled By Suzuki

The 1999 through 2004 Suzuki Grand Vitara and the 2001 through 2004 Suzuki XL-7 vehicles have been recalled. On certain sport utility vehicles, the accelerator cable-casing cap that is attached to the vehicle firewall can crack because of extended exposure to forces from the accelerator cable and insufficient long-term durability of the plastic casing cap. If the casing cap becomes cracked, movement of the inner accelerator cable through the cap can cause the inner accelerator cable to become frayed. If the inner accelerator cable becomes frayed, it can stick during vehicle operation. In the case where an accelerator cable sticks, the driver could have difficulty controlling vehicle speed, which could result in a crash. Dealers will replace the accelerator cable, which includes the plastic casing cap. Owner notification is expected to begin during this month. Owners should contact Suzuki at 1-800-934-0934.

SAAB Has Recalled The 2004 9-3

The 2004 SAAB 9-3 has been recalled due to failure to comply with the requirements of Federal Motor Vehicle Safety Standard No. 207, seating systems. The backrest locking mechanism on some front seats may have been installed incorrectly. This could cause the seat back to fold forward in a frontal crash, resulting in injury to the driver and/or front seat passenger. Dealers will inspect the vehicle's front seats to determine if they may be equipped with the improperly installed component. If either or both of the seats have this component, they will be replaced. The dealer may need to order a complete new seat or seats (including matching upholstery) and the parts may take up to two to four weeks to arrive. Saab will provide a rental car for the owner until the new seat(s) is (are) available and installed by the dealer.

Owner notification began during December 2003. Owners should contact SAAB at 1-800-955-9007.

2001 Mazda Tribute Recalled

Approximately 49,000-model year 2001 Mazda Tributes have been recalled. On certain sport utility vehicles, a post within the safety belt buckle covers could fracture, which could affect latch function, resulting in either no latch or partial latch condition. In the partial latch condition, the buckle tongue can be inserted into the buckle and appear to be engaged, but will release from the buckle without the push button being depressed when a relatively low load is applied, such as when an occupant moves slightly in the seat. In the event of a crash, the seat occupant may not be properly restrained, increasing the risk of personal injury. Dealers will have the driver and front passenger safety belt buckle cover removed and replaced with a newly designed service buckle cover. Owner notification is expected to begin during this month. Owners should contact Mazda at 1-800-222-5500.

Sidewalk Chalk Recalled

Toys "R" Us, Inc. has announced the recall of solid-colored and multicolored sidewalk chalk. Consumers should stop using the product immediately unless otherwise instructed. Approximately 50,000 packages, manufactured by Agglo Corporation, Hong Kong (China), and imported by Toys "R" Us, Inc., Paramus, New Jersey, have been recalled. The multi-colored and solid-colored sidewalk chalk contains high levels of lead, posing a risk of poisoning to young children. The sidewalk chalk is packaged in a clear-plastic backpack-type carrying case with these words on the label: "Chalk To Go...Totally Me!...24 pieces, sidewalk chalk in different colors, fun chalk shapes." The label on the package also says "Conforms to

ASTM- D4236.” The sidewalk chalk comes in several shapes: butterfly, spider, ice cream cone, bottle, cylinder, and triangular stick. The chalk pieces are solid-colored or multi-colored, including red, blue, green, yellow, and purple. The sidewalk chalk was sold at Toys “R” Us stores nationwide from March 2003 to November 2003 for about \$4.99 per package. Consumers may call toll-free on (866) 274-6340 or visit the Toys “R” Us website: www.toysrusinc.com.

XXII. TECHNOLOGY UPDATE

Defending Yourself Against Today’s Viruses

The information for this month’s technology article was supplied largely by Jayme Yaroch, who heads up our Information Technologies Section, and who will be featured this month in our Firm Activities Section. As we go to the printer, the flu virus is causing a great scare around the country. That thought reminds me of the great necessity of ensuring that our computers and networks don’t “catch” the flu as well. Our computers are not going to catch the flu, but in this day of technology in which we live and work, computer viruses are as common as the variety of viruses found in the doctor’s office.

There are many types of computer viruses, and though it is not necessary to know the details about them to protect yourself, it can be helpful to understand how some of them work. One common type of virus is called a “worm.” It is has the ability to copy itself from one computer to another, and is usually spread over networks. Some of you may have been hit by the worms Slammer in early 2003 and Code Red, which emerged back in 2001. A second and even more common type of virus is called an “e-

mail virus.” This virus is usually found within an attachment of an e-mail. When an unsuspecting recipient opens the e-mail attachment, the virus goes to work. Some examples of this type of virus are “Melissa” and “ILOVEYOU” and the strains of “W32.Sobig.” These types of viruses have caused the most disruption in the workplace, as well as the home, in the past couple years.

With some simple prevention, however, avoiding viruses can be a fairly easy thing to do. Here are some tips that our in-house experts recommend to everyone who owns a computer, and certainly to everyone who uses a computer in their workplace. First and foremost... install anti-virus software. Second... install anti-virus software. Third... install anti-virus software. Seriously, our experts tell us they see so many computers without anti-virus software installed, and the owners are confused why their computers don’t run very well. If you don’t have anti-virus software running, you will have viruses on your computer. The best protection you can have against computer viruses is having an up-to-date virus protection program on your computer system. We recommend that you update your virus definitions daily if possible, as new viruses are coming out every hour.

Another good idea to prevent the spread of e-mail viruses is to be cautious about the e-mail attachments that you open. It is possible for viruses to be transported through HTML code (website language) or other programming languages, but most e-mail viruses are spread through attachments. The best rule of thumb is to never open an attachment that you are not expecting. Simply contact the sender and ask if they meant to send you the attachment. It is possible that a virus on their computer initiated the e-mail without the owner/operator of the computer even knowing. Finally, never open an e-mail attachment from an e-mail address that you do not recognize. Simply

delete the e-mail without opening it. By so doing, you will not cause any harm to your computer.

I understand from our experts that they are continuously asked, “What anti-virus software should I use?” Symantec’s Norton Anti-virus Software is run on all of our computers. With up-to-date virus definitions, we have never had a virus infection. We escaped the latest big threats that brought many businesses’ networks down for days. We leave you with these rules about viruses:

- Always run up-to-date anti-virus software
- Don’t think that your computer is 100% safe from getting a virus
- Don’t forward the e-mail about the “Teddy Bear Icon” virus to everyone in your address book, since it’s just a hoax.

If you ever have any questions, please feel free to send an e-mail to our Network Security Team at nst@beasleyallen.com. But, just as a reminder... please, no attachments.

XXIII. FIRM ACTIVITIES

Lawyer Of The Year

Greg Allen has been selected as our firm’s “Lawyer of the Year” for 2003. As all of us at the firm know, Greg has tremendous ability and a great work ethic. He has received national recognition for his excellent work in product liability cases. One of the best things about Greg’s work in our firm is that he truly cares about his clients and enjoys helping them. This award will be made annually and announced each January. Greg Allen is a worthy recipient of the first such award for our firm.

Rick Morrison

Rick Morrison works in the Personal Injury / Product Liability Section where

he handles product liability cases for the firm, including crashworthiness litigation. In this section Rick has been involved in cases against automobile manufacturers dealing with defective seat belts, seats and seat backs, fuel systems, structural integrity, safety glass and cargo restraints. Along with all of his automobile manufacturer cases, Rick has also represented clients with their cases relating to motorcycles, helmets, saws, tractors, presses and ATVs. Before joining the firm, Rick graduated from Huntington College in 1988. He then went on to graduate cum laude from the Cumberland School of Law in 1991, where he served on the Editorial Board of the Cumberland Law Review. Rick has become a regular speaker at many different state seminars. He is a member of the Attorneys Information Exchange Group, which is a national association of attorneys who handle crashworthiness cases against manufacturers. Rick does an excellent job for our firm and his clients.

David Byrne

After serving as a Deputy Attorney General for the State of Alabama and as a law clerk to U.S. District Judge Robert Varner and Alabama Court of Criminal Appeals Judge John M. Patterson, David entered the private practice of law as a member of the firm of Beck & Byrne, P.C. David's practice included consumer fraud litigation, business litigation, personal injury litigation, and state and federal criminal litigation. He came to our firm in 2001 and is now a shareholder. Today, David is focused primarily on commercial and environmental litigation. David is listed in the Best Lawyers Consumer Guide under the Personal Injury Law and Criminal Defense practice sections. David has assisted clients in obtaining multi-million dollar settlements or verdicts in the following types of cases: food-product franchise litigation; Federal Tort Claims Act cases (FTCA); accounting malpractice litigation; motor vehicle franchise disputes; consumer

fraud class actions; funeral services industry cases; premises liability claims; insurance agent contract disputes; and defective product litigation. David has been married to his wife Betty Bobbitt for ten years, and they have two children. He attends Young Meadows Presbyterian Church in Montgomery, Alabama, where he serves as a Deacon. David also serves on the Board of Directors for the Montgomery County Trial Lawyers Association, and the Board of Governors for the Alabama Trial Lawyers Association. David is an excellent lawyer and a very hard worker. We are fortunate to have him with the firm.

Roman Shaul – A Traveling Lawyer

Roman Shaul works in our Consumer Fraud Section. His areas of practice are consumer financial services, wage & hour and discrimination litigation. Roman is licensed to practice in Alabama, Arkansas, Mississippi and South Carolina. He grew up in Tuscaloosa, where he began his practice doing insurance defense work. Before attending the University of Alabama, Roman coached several area high school debate teams. As an undergraduate, he received a four-year debate team scholarship and then won All-American honors in his senior season. Roman helped his debate team at Alabama to win two National Forensic Team Championships. He is in the Young Lawyers Division of the Alabama State Bar. In 2003, he was elected Treasurer and he is Chairman of the Admissions Ceremony Committee. Roman is also serving on the Executive Committee of the Alabama State Bar. We are fortunate to have Roman, a very good lawyer, in our firm.

Jayne Yarroch – Information Technology Manager

Jayne Yarroch is our Information Technology Manager. Jayne manages

the operations side of the firm, which includes information technology, security, mailroom, runners, logistics, and technical maintenance issues. Jayme came to the firm in July of 2000 as a Staff Assistant in our Fraud Section. He later moved to Webmaster before becoming IT Manager. Jayme has degrees in Medical Technology and in Criminal Justice, along with completion of the Emergency Medical Technician - Paramedic program. He has been married to Raina for five years. They have two children. Kaycee is 3-years-old and Noah is 13-months-old. The family is actively involved with their church, Victory Baptist Church in Millbrook. Jayme regularly goes to the local juvenile detention centers to preach Christ to those in jail and prison. He also enjoys playing guitar and learning about new technologies that are emerging, as well as all types of photography. Our firm is on the leading edge of technology, allowing us to work cases and manage clients in the most efficient and expedient manner. I believe our firm's technology is unmatched by any other firm in the state, and probably in the country. We are extremely pleased to have Jayme in charge of our firm's computer operations.

Kathi Butler

Kathi Butler has been with the firm for over 4 years, working in the Consumer Fraud Section as Legal Assistant for Lance Gould. In this position, Kathi assists Lance in discovery preparation, research, and trial preparation. She also works on settlements and maintains several client databases. Kathi has been married to her husband Mark for 4 years. They have two children, a 3-year-old daughter, Christina, and an 8-month-old son, Bradley. Kathi loves trying new things. For example, she recently started bow hunting with her husband.

Autumn Lindsey

Autumn Lindsey has been with our

firm for five years. Autumn currently works as Legal Secretary for Clint Carter in our Consumer Fraud Section. She has had the opportunity to work in several of the firm's sections. Autumn started out as a clerical in personal injury and a fill-in receptionist. Since that time, she moved to manage the mailroom and then to fraud as a clerical before being moved up to legal secretary. Autumn has worked for several of our lawyers. She is currently enrolled in Fire College through the Alabama Fire-fighter's Association, and plans to graduate in the spring of 2004 with certification as a firefighter and a first responder. Autumn volunteers with her local volunteer fire department. She enjoys spending time with her 4-year-old son, Austin.

Lisa Bruner

Lisa Bruner works in our Nursing Home Section as Paul Sizemore's Legal Assistant. She primarily handles nursing home litigation, as well as some class action lawsuits. Lisa drafts complaints, answers discovery, prepares a discovery chart when discovery comes in from defense counsel, sets depositions, and coordinates with experts regarding medical records and other discovery. Lisa also prepares Trial Director/Power Point presentations for mediations and trial. She has a Bachelor of Science degree in Justice and Public Safety from Auburn University Montgomery. Lisa is a Certified Paralegal and attended one year of law school at the University of Alabama. She has been involved in legal work for approximately 7 years. Lisa and her husband Darrell have two beautiful girls. Grace is 3 and Hope will be 2 in January. They attend Eastmont Baptist Church in Montgomery.

Laurie Weldon

Laurie Weldon serves as a Legal Assistant to Ben Baker in our products liability section. She has worked in this position for two and a half years. Prior

to coming to the firm, Laurie worked for five years as a court reporter. Laurie and her husband Jack have been married for 16 years. They have two daughters - Hannah, who is 9-years-old, and Mady, who is 6-years-old. The children attend Edgewood Academy. The family attends church at Cold Springs Church of Christ, where Laurie teaches the Kindergarten Sunday-School Class. Laurie recently served as my Legal Assistant during the Exxon trial and did an excellent job preparing for the trial. Laurie is an asset to our firm and is a valuable member of the team.

Donna Puckett

Donna Puckett came to our firm in February 2001 as a Legal Assistant to David Byrne in the Toxic Torts Section. Since October of 2001, she has worked primarily on the Monsanto case (which just settled). Donna received a Paralegal Certificate from Auburn University in December of 1996. She and her husband John have 4 children: Justan, age 16, Dylan, age 12; and twin daughters Leslie and Preslie, age 11. They attend Santuck Baptist Church in Wetumpka. We are pleased to have Donna with us.

Stefanie Baker

Stefanie Baker came to the firm two years ago as Legal Secretary for Melissa Prickett. She works in the Mass Torts Section, primarily on the prescription drug Baycol cases. Stefanie has a Bachelor's degree in Justice and Public Safety from Auburn University Montgomery. She is married to her high school sweetheart, Greg. They have a 2 year old daughter, Sydney, and 2 wonderful dogs, Taz and Sadie. She enjoys sailing and swimming. Stefanie does an excellent job for our firm.

Katie Tucker

Katie Tucker has been with the firm for two years as staff assistant for Ted

Meadows in our Mass Torts Section. She is responsible for obtaining necessary documents and information for Lotronex™ and Meridia® clients. Katie has been married for four years, and enjoys scuba diving, shopping, hiking, baking, and spending time with her nieces and nephews. She is a valuable member of our litigation team.

Kelly Allen

Kelly Allen serves as Legal Assistant to David Miceli in our Mass Torts Section. She handles all of the filed Ephedra and PPA cases. Before coming to the firm, Kelly worked in plaintiff personal injury litigation—over 2 years with a civilian firm and 10 years with the Judge Advocate General's department (where she also worked with military justice). Kelly spent over 9 years on active duty with the Air Force. Her husband is currently on active duty and stationed at Maxwell AFB, where he is a military instructor. They have three children, Morgan (16), Clayton (13) and Logan (10). Kelly has a Bachelor of Science in Paralegal from Kaplan College and is currently working on a Bachelor of Science in Management with the University of Maryland. We are pleased to have Kelly with us. She does very good work.

XXIV. CLOSING REMARKS

I am completing this issue of the Report a few days after Christmas. This has always been a special time of year for families around the world. It is especially so this year with all of the turmoil, fear, and uncertainty that grips the world. We should all take stock of our blessings and be thankful for all that we have. This is a time of year when we should also want to help others who are less fortunate or in need. There are plenty of folks who need our help.

The following devotion was sent to me on a day just after we had settled a lawsuit involving the wrongful death of three innocent people. The case arose out of a tragic occurrence. It ultimately led to a lawsuit because the wrongdoers refused to accept responsibility for some unbelievably bad conduct. Families were left in sadness and grief over the loss of their loved one. I want all of our lawyer readers to pay special attention to this message.

I want to encourage you today to take about an hour, and sit down with your Bible, and look at all the scriptures concerning care for the poor and needy. One thing I have learned about God and the way that He has Divinely given us His Word, is when you see the same issue talked about over and over, especially throughout the Bible from the Old to New Testament, God is trying to emphasize a point. He could not be clearer as to our responsibility to help the poor. Now of course, this immediately brings to mind mental images of the homeless, those begging on corners for food, the ones who occupy the shelters at night. But I want you to focus today not only on those who are financially poor, but also those who are SPIRITUALLY POOR. Throughout Jesus' earthly ministry, He reached out to all segments of society. To those who had wealth and resources, He tried to focus them on their bankrupt spiritual life. Jesus said, "What shall it profit a man to gain the whole world, and lose his soul?" Today, I want you to be aware of the "poor" people you

may come in contact with everyday. Not just those who are financially poor, but those who are spiritually poor as well. We have a responsibility to share the Good News of Jesus Christ, the hope and love of Christ with these people just as we would share a meal with someone who was hungry. It is not an option, but an obligation that we have as followers of Christ to reach out to those who are hurting and need to know there are answers beyond the things of this world.

I have said on more than one occasion that I am proud to be a lawyer who represents real people who need help. I am a "trial lawyer" and have never apologized one bit for what I do. Every one of our clients has a special need of some kind because of some type of problem. Most of the time, the problem and resulting need are caused by corporate wrongdoing or malfeasance. I don't draft wills or contracts and I don't give legal advice to corporations. Lawyers who do are certainly needed, but I am not one of them. I am a lawyer who tries lawsuits and in the process helps people in that manner. I spend my working hours either in a civil court trial or getting ready for one. Hopefully, I have helped make the difference in the lives of my clients and have made a few corporate giants change their ways. The following is a prime example of a result caused by a successful lawsuit. Greg Allen went to buy a tractor a few years ago at a John Deere dealership. He saw the roll bars on their tractors and asked the salesperson what they were and why John Deere had them on their tractors. The

man replied: "We had to put them on our tractors because of what happened in a lawsuit involving a Kubota tractor. That company had to pay out millions because of not having roll bars on their tractors. Now we have to put them on ours." Of course, Greg knew all about roll bars and Kubota because he and I handled the Spivey case against Kubota a few years back.

As we enter the New Year, I hope none of our readers will mind if I wind up by mentioning something of a personal nature. Sometimes we all forget about how important our own families are to us. I have a wonderful wife who is my best asset and who has put up with me and my "hard head" for a long, long time. Sara and I have been blessed with a good marriage. We have 3 great children and 5 beautiful granddaughters. God has been good to us and sometimes I take that for granted. I do know that when I stumble and fall, He has always been there to pick me up. With all of my faults and shortcomings, I still stumble and sometimes almost fall, but I can always count on God to pick me up and provide my needs. We can all rest assured that He will always supply all of our real needs in His time. Even on a bad day, I must confess that God provides much more than I could ever deserve. I am thankful to have a great wife who loves and supports me and has done so for years. I am also thankful for all of the opportunities that God has given me so I could help folks who needed my help. That certainly makes life worth living! Truly, God has blessed all of us in so many ways. Finally, I wish for each of you and your families a happy, healthy, and pros-