THE
JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

EXXON

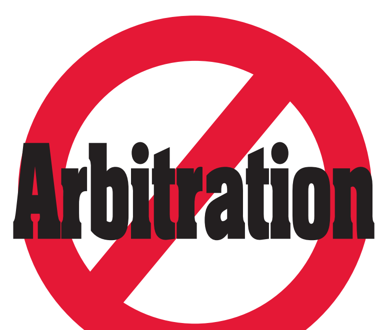
ExxonMobil has filed its post-verdict motions, asking for either a new trial or a reduction in the $11.9 billion jury verdict obtained by the State. The motions will be heard by Circuit Judge Tracy McCooey on March 11, 2004. The judge set aside 2 days to hear the motions. Nothing was raised in the motions of the defendant that gives us any real concern. The record is completely free from error, and that should result in a favorable ruling from the court. In that event, an appeal by Exxon to the Alabama Supreme Court is expected. It has been shocking to read the spin put on the outcome of this case by Exxon. Anybody who doubts that Exxon intentionally defrauded the State should take a look at the written documents obtained from Exxon's internal files. Those documents establish a plan by Exxon to cheat the State. In fact, the company did a risk analysis to determine what it would cost Exxon if they ever got caught. Since the fraud was carried out at the highest levels of the company, Exxon can't blame the wrongdoing on some lowly employee. This was corporate fraud at its very worst.

POLL REVEALS ECONOMY KEY ISSUE FOR ALABAMIANS

A recent poll indicates that Alabamians still care most about familiar "bread-and-butter" issues. According to a *Mobile Register*-University of South Alabama poll, the state of the economy is the main issue in our state. It is not surprising that health care problems run a close second. Either the economy or health care should be the federal government's top priority this year, according to almost 60% of those sampled. Slightly more than one-third said the same about the situation in Iraq or the war on terrorism. The results, similar to those of national surveys, continue to give good approval ratings to President Bush. Two-thirds said he is doing a good or excellent job overall. It is significant, however, that only half gave the President high grades for his oversight of the economy. As casualties continue to mount in Iraq, poll numbers may change drastically on the President's popularity. The number of American troops killed in combat, accidents and other causes is over 500, with the ranks of the wounded more than 2,800. Of course, this is according to a Website that compiles Pentagon figures.

ALL CRITICAL STUDIES MUST BE CONSIDERED

The fight over whether to allow ExxonMobil to build a terminal in Mobile to handle liquefied natural gas (LNG) imports has now has taken a strange turn. It now appears that ExxonMobil has put the project on a slower track. In fact, it may be "dead." If so, I believe that is good news for Alabama and specifically the Mobile area. There are studies indicating that a LNG tanker spill could evolve into a catastrophic loss of the ship and its cargo. However, the real risk would be to people living in the area. While the



federal government and officials from ExxonMobil have minimized the potential danger of a fire and explosion, a spill and ensuing fire could cause widespread damage and put people in grave danger. Public officials at the national, state, and local levels must take all actions necessary to protect life and ensure that the Mobile terminal—if approved—would be as safe as possible.

Governor Bob Riley, Senator Richard Shelby, and others have worked hard in efforts to make sure the terminal, if built in Mobile, will be safe. *The Mobile Register* has done a tremendous job of educating the public on the risks and hazards associated with the ExxonMobil project. Governor Riley, in particular, has taken a strong stand for safety. He should be commended for demanding that Alabama State Docks officials and federal regulators take all steps necessary to make sure the proposed LNG terminal is safe. The Governor let it be known that he would block the sale of the Mobile property unless the needed safety studies are completed. In a letter to Docks officials and the federal regulators, Governor Riley wrote that he would not allow the $38 million transaction to be finalized "until such time as an adequate independent, individualized, site-specific safety study has been conducted." The potential threats posed by both the LNG facility itself and by the transportation of LNG through Mobile Bay must be dealt with. The Governor stated that only after a safety study has been conducted and analyzed would he decide whether this is a project he could support. That came under the heading of "good news" for people living in the Mobile area. Subsequently, on January 23rd, the Department of Energy made an announcement that indicates that Governor Riley's stand paid off. The safety review will now be expanded and will go much further than originally planned. ExxonMobil's announcement on January 27th that it was "reducing its level of activity" in Mobile, however, was even better news.

A Recent Tragedy Is Cause For Concern

The accident that occurred in Algeria on January 19th—in which LNG complex was leveled by an explosion—has caused a great deal of concern in Mobile and at the state capitol. The death toll from this disaster will be at least 30 and perhaps many more. The explosion, resulting in a massive fire, occurred at the facility located in the port city of Skikda. Three of the facility's six LNG conversion plants were completely destroyed. I am not sure how similar the Algerian facility was to that proposed for Mobile. However, it clearly deals with some of the same issues as would be faced in Mobile if the LNG terminal were to be approved. In any event, this disaster gave both the federal government and the State of Alabama some real concern. It points out that everything possible must be done to make sure any facility built is safe. Personally, I believe that ExxonMobil will build its terminal in another Gulf Coast location, and that should be more good news for Alabama.

U.S. Supreme Court Lets WorldCom Suit Stay In Alabama

The suit that Alabama's pension system filed against securities firms over the WorldCom bankruptcy will be heard in Alabama. The Wall Street firms wanted the case moved to a federal court in New York. The U.S. Supreme Court rejected an appeal by the defendants. The federal court in New York is dealing with WorldCom's bankruptcy. A federal judge in Alabama and the U.S. Court of Appeals for the Eleventh Circuit in Atlanta had ruled in favor of the Retirement Systems of Alabama, saying its suit could be pursued in state court in Montgomery where the pension fund is based. The U.S. Supreme Court refused to consider overturning those rulings. This is a most significant victory for Dr. David Bronner and the Retirement Systems of Alabama.

New Political Group Formed

A new political group has been organized in Alabama. The group, the Foundation for Educational and Economic Development, backed by the main opponents to the failed tax plan put to the voters on September 9th. It shouldn't be too surprising that the new group appears to be well financed. Media reports indicate that the group is drafting legislation that will be designed to trim waste and otherwise change the way state government operates in Alabama. Capitol insiders say that the group's funding is being provided primarily by the Alabama Farmers Federation and SouthTrust Corp. I don't guess that's too surprising either. Since the state budget will be short hundreds of millions of dollars, it will be interesting to see if the newly formed group will support any type tax increase. Clearly, accountability in government and reform of the system have become hot topics around the state capitol. Whether or not the new group will have any success in passing legislation, however, remains to be seen. I suspect their lobbying efforts will be aimed more at killing tax bills. In my opinion, they will be successful in that effort. In any event, it will be interesting to watch this political organization operate over the next few months.

Riley Appoints Former Wallace Aide

Kenneth Wallis, a former legal adviser to Governor George Wallace, has joined Governor Riley's Cabinet as Legislative Affairs Director. Ken will replace Quentin Riggins, who left the Governor to work for the Business Council of Alabama. Ken served on Governor Wallace's staff from 1983-87. He also worked for Alfa Insurance, where he was executive vice president of operations and general counsel. At the time of his appointment, Ken was a partner with the Montgomery law firm of Capell and Howard. I have known Ken for years and can say without reservation that he is a good man. In my opinion, this was a good move by the

Governor. Ken knows how state government "works" and is very familiar with the legislative process. He will be an asset to the Administration.

State Loses Another Good Man

State Fire Marshal John Robison has retired and will be very difficult to replace. Fortunately, John will leave behind an office that has grown both in size and importance. He has worked in the fire marshal's office for more than 31 years, serving as State Fire Marshal for 15 years. During his term as Fire Marshal, John served under five governors. Resources for fire safety were significantly increased under this dedicated state employee's leadership and hard work. For example, there are now 24 deputy fire marshals throughout the state. John, a past president of the International Fire Marshals Association, is recognized as one of the premier fire safety experts in the country. He has been a good state employee and will be sorely missed. I suspect that John will be in great demand as a fire safety expert. The State's loss will be the private sector's gain.

Montgomery Buys Drugs From Canada

Somebody in Washington needs to explain to the American people why prescription drugs in this country are so excessively expensive. Without question, the pharmaceutical industry is extremely powerful and exercises tremendous influence in our nation's capitol. While some states have been arguing for the right to bring in cheaper prescription drugs from Canada, the City of Montgomery has been quietly doing so for more than a year. Since December of 2003, Montgomery has offered city employees and retirees a voluntary mail-order program to obtain Canadian drugs through a Texas-based company. The program began as a pilot program and was expanded this year. Apparently, this was unknown to the Food and Drug Administration.

Montgomery, just like most individuals, has had to combat spiraling health care costs. The program has saved the city over $500,000 during the last year. It has been particularly popular among retirees who face staggering and ever-increasing drug bills. However, the FDA says the drugs from Canada are illegal. I understand that FDA officials have talked to the City about its program and have threatened to take legal action. While importing drugs from Canada has long been illegal, senior citizens cross the Canadian border on a regular basis and have made big savings on their drug bills. Apparently, they have had no fear of prosecution. Montgomery interpreted the FDA's routine inaction as "a yellow light to proceed with caution." Presently, somewhere between 300 and 400 people participate in Montgomery's program. The City has some 3,000 employees and about 1,000 retirees.

It has been reported that Expedite-Rx, the USA-based vendor, has guaranteed that the drugs being purchased are safe. The City deals with a pharmacy, and I understand prescriptions are reviewed and filled by licensed pharmacists. The FDA contends that drugs from Canada could be counterfeit, tainted or old. There is one thing for certain, however, and that is that the drugs are much cheaper than what we have to pay for identical drugs in this country. The Bush Administration has threatened to sue cities and states that set up programs such as Montgomery's. The Alabama Pharmacy Board has shut down seven businesses in the state that were helping people obtain Canadian drugs. Why doesn't the FDA control the wholesale cost of prescription drugs in the United States? That question remains unanswered. Retail drug stores are not the problem since they operate on a very small retail mark-up. It doesn't take long to figure out that the real problem is the power and influence of the pharmaceutical industry in this country. With all of their campaign money and well financed front-groups set up to influence public opinion, there is little hope that drug prices in the U.S. will come down. The issue should be on the minds of voters this fall. If anybody doubts that the American public is upset over the high price of drugs, that person has been on another planet.

Alabama State Troopers Need Help

The Alabama State Troopers have a most serious problem and that adversely affects all Alabama citizens. The plight of the Alabama Department of Public Safety and the troopers who serve our state has been well documented in media reports over the past several months. Currently, the department has 320 state troopers assigned to patrol our interstates and rural highways. The minimum number of personnel assigned to those duties should be between 700 and 1,000 troopers. To say the Department is understaffed is a gross understatement.

Recently, I received some information from Captain Neal Tew, President of the Alabama State Trooper Association, which I will pass on for your edification. A contrast of the situation now with that in 1968, some 35 years ago, is most revealing. Since 1968, the miles of highway for troopers to patrol have increased 29%. The number of registered vehicles since that time has increased 251%, with the number of licensed drivers increasing by 93%. Our state population in the past 35 years has increased by a whopping 37%. However, the total number of arresting officers within the highway patrol division of the Department of Public Safety has actually decreased by 13%. There were 369 troopers assigned to the highway patrol division in 1968. There are only 320 today and that is shocking.

Not only are we putting persons who travel our highway system in Alabama at risk, we are also putting the men and women who patrol our highways in grave danger. The Department of Public Safety faces a financial crisis and that crisis affects every Alabamian. The politicians who talk tough on crime and say they back law enforcement should take immediate action. We don't pay law enforcement officers a decent wage and we put tremendous demands on them. They put their lives on the line every day. Now, it's time for us to put our "money" where our "mouths" have been. The Alabama State Troopers need immediate help and there can be no justification for delay.

II. LEGISLATIVE HAPPENINGS

THE UPCOMING SESSION

There is no doubt that the regular session of the Alabama Legislature, which began on February 3rd, will be the most difficult for lawmakers in many years. In fact, longtime observers of the Legislature say they can't remember a session with so many serious problems. The fiscal problems facing our state are much greater than people around the state could possibly imagine. These problems have built up over the years and no longer can be ignored. It will be easy to spot the problems, but as I have stated on numerous occasions, finding permanent solutions without additional revenues will be next to impossible. Clearly, additional revenues must be provided or state services must be drastically cut. No longer can these problems be deferred or ignored. This Governor and Legislature face a challenge that will put them to the test. Hopefully, there are enough men and women in the Legislature who will join with Governor Riley and do that which is necessary to put our state on a sound fiscal basis and in the process change state government and education for good!

DUELING POLLSTERS

Depending on which poll you consider valid, Alabamians either want and will accept new taxes or are strongly opposed to any tax increases. A survey commissioned by Alfa indicates that most Alabamians who voted in the September 9th referendum are hesitant about new taxes. In fact, those answering Alfa's survey pretty much reflected the exact outcome of the September 9th vote—two-thirds against new taxes and one-third for increasing revenues. An interesting question put to the persons surveyed in the Alfa poll was whether voting for taxes by Legislators would affect them in any way. In the telephone survey, 75% of those polled said that if their Legislators raised taxes without a vote of the people, they would be inclined to vote against them in the next election. If the Legislature were to put another tax referendum before Alabama voters and it failed, 46% of those polled said that would make them inclined to vote against their Legislators. When asked which is more important, 77% said government accountability and 16% said new tax revenue. 7% of the responders were undecided.

A poll commissioned by the Alabama Education Association came up with a totally different result. That poll indicated that people would accept new taxes. especially where education is concerned. In fact, this poll would lead us to believe that people throughout the state recognize the state's financial crisis and are willing to pay more taxes to solve the problem. While I support increases in taxes, I am convinced that my position isn't supported by many Alabama citizens. I hope I am wrong. I know Dr. Gerald Johnston who did the AEA polling and I know he is good at his craft. So, maybe that poll is more accurate. I hope so.

CONSUMER GROUP CALLS FOR SUBPOENA POWER FOR LAWMAKERS

Alabama Watch, a strong advocate for consumer rights, believes that Alabama Legislators need subpoena power. I totally agree. Giving subpoena power would help lawmakers sort truth from falsehood as they go about their jobs in Montgomery. At present, state Legislators have to wade through a "mass of information," much of it from lobbyists. Unfortunately, a great deal of this information simply is not true. Special interest groups, through their highly-paid lobbyists, can supply false or misleading information in a public hearing or a committee meeting with no fear of any reprisals. Alabama Watch suggests that speakers appearing before legislative committees need to realize that they may be placed "under oath" by the Committee Chairpersons and testify "under the threat of perjury." I hope some lawmaker will sponsor a bill to grant subpoena powers.

In its last newsletter, the consumer group stated, "It is not helpful to constantly criticize the Alabama Legislature without solutions to problems, and Alabama Watch believes that this is a good solution to a real problem." Alabama Watch works from offices in Montgomery. Alabama Watch speaks out for consumers all over the state of Alabama, pushing citizen involvement and government accountability. The fact that Alabama Watch is willing to take on the powerful special interests is in itself noteworthy. Alabama consumers should support the group by volunteering and with small donations. Alabama Watch can be contacted at: The Bailey Building, 400 S Union Street, Suite 245B, Montgomery, Alabama 36104 or by phone 334-263-3022 or 1-800-449-7515. The group has a Website at www.alabamawatch.org.

LOBBYING CHANGES NEEDED

The proposal by Governor Riley to tighten up the laws regulating lobbyists' spending makes sense. Anybody who doubts the power and influence of the lobbyists over what takes place in Montgomery hasn't kept up with recent happenings. It will be interesting to see who supports this legislation and what groups oppose it. I haven't read the bills to be introduced and hope they will be as tough as advertised. Apparently, the Democratic leadership in the Legislature will have its own package. Perhaps the Governor and those leaders should join forces and really do something "good" for ordinary folks who pay the bulk of the taxes in Alabama. A good place to start is controlling the powerful fourth branch of government made up of the lobbyists for special interest groups.

III. COURT WATCH

ExxonMobil Ordered To Pay Punitive Damages

On January 28th, a federal judge ordered ExxonMobil Corp. to pay $6.75 billion in punitive damages and interest to thousands of fishermen and others affected by the 1989 Exxon Valdez oil spill. ExxonMobil says it will appeal the order by U.S. District Judge Russel Holland. The Irving, Texas-based company will have to pay $4.5 billion in punitive damages and about $2.25 billion in interest if the lower court's order is upheld by the appellate court. The money is to go to 32,000 fishermen, Alaska Natives, landowners, small businessmen and municipalities affected by the 11-million gallon spill in Prince William Sound. The spill occurred March 23, 1989, less than 3 hours after the 987-foot ship Exxon Valdez left the Alyeska Pipeline Terminal in Valdez. The ship grounded at Bligh Reef, rupturing 8 of its 11 cargo tanks and spewing some 10.8 million gallons of crude oil into the sound. ExxonMobil was guilty of at least wanton conduct of a gross nature in the case. The disastrous effects on the environment and wildlife, as well as the economic losses suffered, have become quite well known.

The judge wrote that the 9.74-to-1 ratio between compensatory damages and even a $5 billion punitive award would be appropriate under the U.S. Supreme Court's recent rulings. However, the judge reduced the punitive damages to $4.5 billion. It is most significant that the judge stated in his decision that in the Valdez case, the conduct was by "reckless corporate officials." This case has been appealed twice before and sent back to the trial court each time. Observers are predicting that this will be the final appeal.

The Retrial Of Jernigan v. General Motors

We will have to try the Jernigan case against General Motors again. The Alabama Supreme Court reversed the judgment for us in a 68-page opinion. The case will most likely be tried on April 19th. The Supreme Court wrote an excellent opinion on GM's liability in this case. In fact, the court's opinion addressed each liability argument presented by GM's lawyers and ruled for the Jernigans on each issue. After reading the opinion, there can be no doubt that we proved a very strong case on the defect. The case was reversed on a jury selection issue that had nothing to do with the defect or with GM's liability. It was very clear that a majority of the Court would have affirmed on all liability issues. We will try this case again and do the best we can to obtain complete justice for Jeffrey Jernigan and his family. Right will eventually win out in this matter and I am convinced of that.

Alabama Court Upholds Punitive Damage Verdict

In December of last year, the Alabama Supreme Court upheld a $500,000 punitive damages award that a lady received in a lawsuit against an Alabama motel. The plaintiff was injured in the Ramada Inn of Anniston when a sharp metal object sticking out of the bed frame in her motel room injured her leg. A jury in Calhoun County, Alabama, awarded her $176,572 in compensatory damages and $500,000 in punitive damages. The motel owner appealed to the Alabama Supreme Court, claiming that the $500,000 for punitive damages was excessive. The owner also sought to get the court to reinstate the old cap on punitive damage awards of $250,000. This cap had been struck down by the Alabama Supreme Court in 1993 as being unconstitutional. Writing for the majority, Justice Bernard Harwood said the ratio between the punitive damages and compensatory damages of slightly less than 3-1 was not excessive because records of the motel showed there had been problems with other bed frames. The court further refused to resurrect the old $250,000 cap, which came as no surprise. Because the Supreme Court is currently one member short, retired circuit judge Bill Gordon was appointed to serve on this case. Judge Gordon, an experienced and highly respected jurist from Montgomery, voted with the majority.

Mental Health Records Kept Private

The Alabama Supreme Court has restricted access to the mental health records of persons who bring lawsuits. Defendants in two civil lawsuits in Jefferson County had subpoenaed mental health records of the plaintiffs in these cases. The mental health center, which had the records, asked the Supreme Court whether it had to turn over the requested records. The Supreme Court said state law grants privacy to communications between patients and their psychologists, psychiatrists and psychological technicians. The court said those records can be obtained only in limited instances. One example when the records would be subject to subpoena would be showing the mental state of a defendant in a criminal case. The Supreme Court refused to make the records available to the defendants in the two civil suits. The court said the defendants failed to show that their due process rights would be violated without access to the mental health records of the plaintiffs. This certainly appears to be a correct decision.

Georgia Bill Aims To Limit Settlement Secrets

Many lawsuits are settled with part of the agreement requiring total secrecy. Others have limitations and restrictions on what can be said about the underlying case or the settlement. I have always believed that when a settlement deals with the public welfare, it shouldn't be secret. A bill is pending in the Georgia Legislature entitled "Sunshine in Litigation Act." The bill would allow judges to seal discovery documents or settlements only after determining that secrecy wouldn't harm "public health, welfare or safety." The bill, if passed, also would give the news media standing to contest an order to seal information in civil cases. To seal the documents, the burden of proof would fall on the party moving for secrecy.

There is a dangerous trend toward secrecy in government and the courts. Two states, Florida and California, have adopted similar proposals. Also, a South Carolina judge recently issued an order incorporating some of what the Georgia bill is proposing. In 1994, a similar federal measure in the U.S. Senate lost by a vote of 51-49. I would hope that the Alabama Legislature would take some action on this issue. It would be good for Alabama consumers.

Large Jury Verdicts Are Rare

There have been relatively few large jury verdicts in Alabama over the past several years. In fact, the same can be said for the rest of the nation. When a deserving victim receives an adequate award in a case of clear liability with substantial damages, however, the "tort reformers" put their public relations campaign into high gear and go to work. Newspaper headlines announce that another victim has won the lottery, totally ignoring the defendant's conduct or the victim's plight. Things such as injuries and losses take a back seat. When the defendant's conduct is so bad that punitive damages are awarded, which is extremely rare, the cries of "frivolous lawsuits" and "jackpot justice" get much louder.

Even when substantial verdicts that are justified are awarded by a jury, the fight by victims is not over. The media oftentimes will report that these people have won a frivolous lawsuit, regardless of the fact that the case had merit, and that's what the public hears and reads. Few cases are followed by the media through the appeals process. However, while a case is on appeal, the corporate defendants keep their public relations people at work, putting out information that is often totally false or at least misleading. We have experienced this type thing on numerous occasions. Unfortunately, the victims don't have public relations departments. As a result, the public becomes totally misinformed, and that is a real problem for ordinary people.

In all civil cases, judges can reduce awards or throw them out all together. An appeals court can do the same. It has become difficult for victims to win valid lawsuits in Alabama. When they do, you can rest assured that the case was legitimate and worthy of the jury's verdict. However, recovering a deserved jury verdict is just the beginning of the fight. Corporate defendants have the financial ability to finance appeals and seem to enjoy their attempts to avoid paying verdicts that were justified by both the law and the evidence in cases.

IV. THE NATIONAL SCENE

The Race For President

As this report is being written, the results from the Iowa caucus and New Hampshire primary are receiving nationwide attention. Senator John Kerry is clearly the frontrunner at this point. While some may be surprised at the showing of Senator John Edwards, the results were predicted by the Edwards Campaign. Without a doubt, Senator John Edwards has become a serious contender for the Democratic nomination. In my opinion, the Senator from North Carolina is the only Democratic candidate who really has the Karl Rove forces worried about November. While Senator John Kerry would be a formidable candidate and would give Bush a run for his money, John Edwards appears to have become the Rove target. If John becomes the Democratic nominee and faces President Bush in the general election, I believe John would win. He has an excellent shot at becoming the next President. Having known John for years, I can say without reservation that he is a good man, totally honest and highly capable. He will make a great President if given the opportunity.

I believe the country truly needs a leader whose decisions aren't "designed" by Karl Rove and Dick Cheney. In that regard, the more I learn about our Vice President, the more concerned I become about the future of this country. The Rove-Cheney agenda doesn't include looking out for the welfare of the ordinary citizen. In any event, by the time this issue is received, the February 3rd primaries will have been decided. After those decisions are made, the path to the White House for the Democratic ticket will be much better defined. Many are predicting a ticket with **both** John's on it. The question remains: which John will be at the top?

Paul O'Neill Speaks Out

Paul O'Neill, who served as a key figure in the Bush Administration, has made some shocking comments concerning how the Bush White House is run. O'Neill, who had been a top official in the Nixon and Ford Administrations, and a confidant of Dick Cheney, made some extremely damaging remarks about the President and those around him. One thing O'Neill said was something many Americans have known for a long time, and that is Karl Rove really runs the show. However, O'Neill made several other most serious accusations. My comment in passing is—what if the accusations are true? For the good of our country, I hope not!

Conservative Groups Break With Republican Leadership

It is rather interesting that national leaders of six conservative organizations have broken ranks with the Republican majorities in the House and

Senate, accusing them of spending like "drunken sailors." Significantly, they had some strong words for President Bush as well. Paul M. Weyrich, national chairman of Coalitions for America, stated at a news briefing accompanied by the other five leaders: "The Republican Congress is spending at twice the rate as under Bill Clinton, and President Bush has yet to issue a single veto. I complained about profligate spending during the Clinton years but never thought I'd have to do so with a Republican in the White House and Republicans controlling the Congress." It appears that the President may be losing his base. After hearing the State of the Union Address and realizing that the "Bush deficit" was probably tripled during the talk, I am not surprised that fiscal conservatives are concerned.

THE NOOSE TIGHTENS

With the guilty plea of Andrew Fastow, one of the architects of the corrupt deals that brought down Enron, and that of his wife, Lea, I suspect that there are a number of nervous individuals who once were in the top echelons of the company. The fact that Fastow is now assisting prosecutors means the noose is definitely getting tighter. I hope the net will bring in some of the "big fish" who so far have appeared to be escaping prosecution. The Enron debacle will go down in history as the single event that brought to the nation's attention how corrupt and greedy some of the people who run large corporations really are. It also made clear that government regulation is very weak. It is shocking to look back and see how the government actually condoned much of what the "Enron Gang" was doing. Finally, things appear to have changed.

It will be interesting to see whether Andrew Fastow was in fact the mastermind behind the fraudulent accounting practices at Enron that cost investors billions of dollars and Enron employees their jobs and virtually all of their savings. I suspect he had some big time help. In addition to serving jail time and Andrew Fastow agreeing to testify for the prosecution, both Fastows must also forfeit approximately $29 million dollars to the government. I hope this money can be used in some way as restitution for the victims of Enron's greed. The Enron chapter—as bad as it has been so far—is not over by any stretch of the imagination. Every person who violated the law must be prosecuted, tried, and sent to prison.

EFFORTS TO DESTROY THE JUDICIAL SYSTEM

For years, the American Tort Reform Association (ATRA) has spearheaded efforts to destroy the judicial system in the name of "tort reform." ATRA's key tort reform efforts have been carefully planned, well-organized, and extremely well-financed. The reform of laws governing class actions, noneconomic damages, product liability, and punitive damages have been the main objectives. All right-thinking persons believe that the American legal system is worth saving. The foundation of that system is the jury box, and it is the civil jury that has been under constant attack. Tort reform is designed to completely destroy the system. A healthy civil justice system is essential for the well-being of American citizens. We have seen so much corporate wrongdoing over the past 10 years that it is real easy to understand why Corporate America pushes tort reform so hard. It is not too difficult to understand now why corporate bosses such as Ken Lay pushed and financed tort reform.

PUBLIC CITIZEN CALLS FOR INVESTIGATION

Recently, Public Citizen issued a letter of complaint to the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) concerning Secretary Tommy Thompson's waiver exempting former Center for Medicare and Medicaid Services (CMS) Administrator Thomas Scully from ethics laws. The waiver allowed Scully to represent the Bush Administration in negotiations with Congress over the recently-enacted Medicare prescription drug legislation while Scully simultaneously negotiated possible employment with three lobbying firms and two investment firms that had a major stakes in the legislation.

A Public Citizen investigation has revealed that these firms own or represent dozens of health care companies, trade associations, and physicians' organizations with billions of dollars at stake in the new law. "That ethics laws were brushed aside in the face of such conflicts of interest is highly questionable," said Frank Clemente, director of Public Citizen's Congress Watch. "That the public and Congress were kept in the dark about the conflicts of interest until the Medicare bill was passed is absolutely disgraceful." In the complaint Public Citizen urges the OIG to initiate an investigation into possible impropriety by Secretary Thompson and the HHS Associate General Counsel of Ethics in the granting of the waiver, which was signed by Thompson on May 12, 2003. The waiver allowed Scully to seek private employment with firms that represent or own parties with clear financial interests in Scully's official duties, an otherwise clear violation of federal ethics laws. The waiver gives the self-serving justification that it is "neither practicable, nor in the interest of the Department, for Mr. Scully to remain disqualified," ignoring clear guidelines set out in federal regulations and law that list specific criteria for such waivers.

Those criteria specify that a waiver from conflicts of interest laws are justified primarily on the grounds that the private benefit to the public employee and the employee's potential employers and their clients or subsidiaries are so insubstantial as not "to affect the integrity of the employee's services." [5 CFR 2640.301(c)] The three lobby firms with which Scully negotiated possible employment, lobby for at least 30 companies or associations that are affected by the new Medicare law. The two investment firms own substantial stakes in at least 11 companies that are affected by the Medicare changes.

Among those 41 entities are 12 pharmaceutical companies and the trade association for the pharmaceutical industry. Pharmaceutical companies were widely considered the biggest winners in the passage of the Medicare bill; the bill subsidizes private insurers to provide prescription drug coverage to seniors—thereby increasing demand for drugs—bans the Medicare administrator from bargaining for lower drug prices, and effectively prohibits the reimportation of lower-priced drugs from Canada. The entities with which Scully discussed employment also included many representatives from the health care provider industry that has estimated it will receive $3.5 billion in increased Medicare physician payments—including 10 health care provider companies, 4 of their trade associations, and 3 professional organizations representing their doctors. None of these interests were disclosed by HHS in its waiver, despite regulations that require the waiver to "describe the disqualifying financial interest, the particular matter or matters to which it applies, [and] the employee's role in the matter or matters." [5 CFR 2640.301(c)] Scully resigned from the Centers for Medicare and Medicaid Services on December 16th. Two days later—on December 18th—he announced that he would be joining two of the five firms he had been negotiating with while CMS administrator. Each of the firms has strong ties to the healthcare industry. Somehow, this sort of thing just doesn't meet the "smell test."

Federal Government Shouldn't Pay Legal Bills For Wrongdoers

Congressional investigators have reported that the Energy Department spent $330 million in taxpayer money to reimburse its private contractors for legal bills during a span of over 5 years, involving lawsuits they lost and settlements of sexual harassment and whistleblower allegations. The Department claims the reimbursements were legal. A key congressman has told the Associated Press, however, that the reimbursements amount to a "get-out-of-court free" card for contractors who engage in wrongdoing. It was reported that "when a contractor for the DOE gets sued, 95% of the time its legal fees and settlement costs get reimbursed by the federal government." This information comes from Representative Edward Markey (D-Mass.), a member of the House Energy and Commerce Committee. I must say that is a shocking revelation and one that cannot possibly be justified.

The Energy Department is somewhat unique among federal agencies because private contractors run so many of its facilities, including national defense labs and former sites where nuclear weapons production activity took place. The Department's reimbursements came in 1,895 cases from late 1997 through March of this year, according to a report released by the General Accounting Office, the investigatory arm of Congress. According to the GAO, there were 814 cases involving workers compensation, 268 involving denial of equal employment opportunity, 100 brought by whistleblowers, 99 stemming from personal injury, 50 alleging wrongful termination of employment, 40 arising from radiation and different types of toxicity, and 524 on other matters. It is difficult to understand how the federal government could legally pick up the costs of its contractors when wrongdoing by the contractors causes the expense.

Christmas Comes Early

The National Highway Traffic Safety Administration's proposed redrafting of fuel economy rules is not the gift of improved safety and efficiency of sport utility vehicles that the agency has indicated it is. A preliminary proposal from NHTSA is vague on the specific changes. It also relies on faulty studies and data regarding the impact of vehicle weight on safety and fuel economy. While the good news is that the agency is examining some of the loopholes in current rules, the close ties of the Bush White House to the auto industry suggest that industry will have disproportionate influence in this complex rulemaking, potentially just delaying meaningful increased standards. Current fuel economy rules actually foster weight increases in the heaviest trucks by dividing the fleet between cars and light trucks and SUVs, keeping mileage standards very low.

While advances in technology yield steady yearly improvements in engine efficiency and other capabilities, throughout the 1990s automakers used this capacity to increase the bulk and acceleration of already-heavy trucks, rather than improve fuel economy. The agency has indicated it may rewrite its standards based on vehicle weight or other attributes, but a weight-based system would encourage heavier SUVs and pick-up trucks. Weight-based systems are also founded on the fallacy that reductions in vehicle weight would occur across-the-board and thereby increase fatalities. In actuality, a weight-based standard would perpetuate and exacerbate the carnage from over-weighted SUVs and pick-up trucks, allowing automakers to continue ramping up sales of highly profitable behemoths at the expense of the environment and consumer safety.

Any rewrite of the rules should be measured against the benchmark of a substantial, rather than minimal, increase in the standard under the current program. This would accomplish two things: (1) save oil and (2) increase safety. A substantial hike in fuel economy standards would concentrate any reductions in vehicle weight in the heaviest vehicles, as that is the most cost-effective way to improve fuel economy for those vehicles, while using technology to achieve greater fuel economy in lighter vehicles. That is the historical pattern of fuel economy improvements through the 1970s and 1980s. Similar leadership today would greatly improve the safety of the occupants of those inside both SUVs and other vehicles. Regulators should decisively raise standards under the current system, as was originally intended by

Congress, rather than wrapping up a gift to the industry with false promises of consumer and environmental protection. I appreciate Public Citizen's furnishing this information to us for your edification.

Wal-Mart Adds To Legal Team

Wal-Mart has been sued in a variety of lawsuits. Now, the retail giant has apparently decided it needs some new faces in its legal ranks. John Peter Suarez, the Environmental Protection Agency's Assistant Administrator for Enforcement and Compliance, is leaving his position to join Wal-Mart. His resignation, which came about in December 2003, will be effective on June 30th. At that time, he will join Wal-Mart as its chief lawyer. It has been reported that Wal-Mart's annual revenue was approximately $244 billion dollars in 2002. This may have been one of the factors that caused a change in the company's legal staff.

Some capitol insiders say that Mr. Suarez has been one of the chief defenders of the Bush Administration's environmental record when it comes to penalizing polluters. The Bush Administration has come under attack from multiple environmental groups regarding its failure to protect the environment. It is interesting to note that EPA inspections during 2003 totaled 18,880. That is almost 2,000 less than the number of inspections that occurred during the final year of the Clinton Administration. If Mr. Suarez had anything to do with EPA's inaction and protection of corporate wrongdoers, he should fit in well at Wal-Mart. I hope he is leaving because of his dislike for the Bush environmental policies and his desire to make things better for consumers at Wal-Mart. We know that some of his co-workers have had enough of the Bush tactics and policy decisions and are looking for a place to go.

Wal-Mart Hires Legal Compliance Officer

A multitude of discrimination lawsuits have been filed against Wal-Mart Stores Inc. There is also a federal investigation into the alleged use of illegal workers. As a result, Wal-Mart is hiring a federal prosecutor to be its new legal compliance officer. Tom Gean, the U.S. attorney for the Western District of Arkansas, went to work for the retail giant in late January. Wal-Mart reported that the former prosecutor would work closely with Wal-Mart's new operations compliance groups. Gean had been named as U.S. Attorney in 2001. Prior to his appointment, he had been a local prosecutor for four years, starting in 1997. It appears Wal-Mart is adding a good deal of new talent to its legal ranks.

Labor Department Advising Employers On How To Avoid Overtime Pay

Recent reports indicate that the Labor Department is giving employers tips on how to avoid paying overtime to some of the 1.3 million low-income workers who would become eligible for overtime under rules expected to be finalized in March of this year. Among the tips being given: cut workers' hourly wages and add the overtime to equal the original salary; or raise salaries to the new $22,100 annual threshold, making the employee ineligible. This is troubling for millions of Americans struggling to make ends meet. Bureau of Labor Statistics show that more than 20 million Americans earn less than $9.00 per hour. Labor Department officials have stated that they are merely listing well-known choices available to employers, even under current law. A spokesman for the Labor Department has said, "We're not saying anybody should do any of this." That statement seems to contradict the Labor Department's previous announcement that approximately $895 million in increased wages could be earned by workers from the new overtime rules.

V. THE CORPORATE WORLD

The Top 100 False Claims Act Settlements

Corporations that contract with the government are defrauding taxpayers of billions of dollars a year and should be punished harshly, according to an end-of-the-year report by the Corporate Crime Reporter. The report ranks the top 100 False Claims Act settlements since the law was strengthened in 1986. Under the law, private citizens who provide information that leads to a federal prosecution of fraud for a government contractor are entitled to a reward of 15 to 25% of the settlement. This encourages citizens to come forward and expose fraud in government contracts. Since 1986, the False Claims Act has helped expose $12 billion in fraud. Topping the list was a $731 million settlement in 2000 with Tennessee-based healthcare giant HCA for unlawful billing practices. HCA, which was founded and is run by the family of U.S. Senate Majority Leader bill Frist (R-TN), also was second on the list with a $631 million settlement in 2003 for false claims submitted to Medicare and other programs, followed by a $559 million settlement payment by TAP Pharmaceuticals in 2001 for fraudulent drug pricing and marketing, a $400 million settlement payment by Abbott Labs in 2003 for obstructing a criminal prosecution of health care offenses, and a $385 million settlement payment by Fresenius Medical Care in 2000 to resolve a widespread investigation.

Of the top 100 settlements, 56 were with health care corporations and 23 were with defense contractors. In all the top 100 cases, whistleblowers earned at least $1 million. Corporate Crime Reporter editor Russell Mokhiber said that governments should consider dissolving companies that defraud the government. At the very least, these companies should be banned from further government contracts. Mokhiber stated: "The federal government has the authority to prohibit corporations convicted of serious crimes from doing business with the federal government. This debarment or exclusion authority is considered the equivalent of the death penalty, because for major health care corporations and defense corporations which rely on federal contracts, denying them federal contracts would effectively put them out of business."

What To Expect In 2004 For Corporate Scandals

The number and magnitude of corporate scandals have been at an all time high. Even the tort reformers would have to concede that to be true. Tyco, Enron, WorldCom, Parmalat, HealthSouth, and many others have all been under investigation. Now mutual funds are being added to the mix. The question many are asking now is: will we see fewer scandals in 2004? Many believe, for good reason, that we will not. Frankly, I don't believe there will be a decline in fraud cases this year. It is disturbing that so many major corporations have been under investigation over the past few years. It is even more disturbing that the federal government failed to detect the magnitude of the problem for a long time. Finally, investigations have become commonplace. At one time, some 25 major corporations were under some type criminal or quasi-criminal investigation. It has gotten so bad that major scandals are no longer front-page news.

I am convinced that a powerful deterrent to future corporate scandals will come from the tremendous number of lawsuits that have already been filed by investors. The criminal prosecution of several executives scheduled to come to trial during this year will also get the attention of those in Corporate America who have believed they were above the law. If cases against former executives who have violated the law and the trust of persons who depended on them lead to prison sentences, managers and executives will be less likely to cut corners to make their earnings look better. Pm the other hand, if these executives who have been charged are not punished, other executives will continue to believe that they can cheat without any fear of punishment. Investors will lose faith in the American system of criminal justice if CEOs can escape prosecution or conviction regardless of how bad their conduct has been. I hope investors will continue to pursue their civil court cases and the executives that have been charged will receive justice. Then – and only then—faith in both our system of justice and financial institutions will be restored.

Stealing The Public Blind

Many knowledgeable observers, again with good reason, have concluded that the entire financial industry of this country is riddled with fraud. When the Enron scandal broke, initially most of us believed that to have been an isolated case. As it turned out, however, it was just the tip of the iceberg. So many corporations have been charged with cheating and fraud that few people could name them all. A Washington lawyer and expert in money-laundering and other forms of tax evasion, wrote the following for an academic conference held last year at the University of Texas at Austin:

> *Corporate managers have spent the last century developing tools for avoiding regulation and taxation. They brag that acts of tax avoidance are part of corporate productivity. For them, each dollar of tax not paid because of their machinations is the added value they bring to a company. Tax avoidance is a profit center. Avoidance of regulation and supervision is an equally high priority. Corporate contributions and the personal contributions of senior corporate managers have funded anti-regulatory think tanks and anti-regulatory scholarship. Political contributions have turned theory into reality.*

The tools used to avoid taxes and regulation—shell subsidiaries, partnerships and joint ventures, foreign subsidiaries, special-purpose entities and sophisticated transfer pricing techniques—have long been in use. When they were first used, their purpose was to avoid state regulation and hide from state law enforcement. The difference now is that over the past few years, the techniques have been used to avoid what is left of federal taxation and regulation. Corporations have turned international borders into barriers that block national level taxation and regulation. Unfortunately, the international community has failed to produce effective machinery for cooperation in the areas of regulation and taxation. As a consequence, the social control of corporate behavior stops at the border. Even more unfortunate is that our government hasn't done its job.

I don't believe that any of us had any idea in the late 1990s that things in Corporate America were as bad as they turned out to be. Even though our firm had handled a number of consumer fraud cases against corporations, I certainly had no concept of the depth of the corporate corruption that actually existed. In this country, we have experienced a corporate culture gone haywire, with arrogance and greed being the rule rather than the exception. To protect its members, the bosses in Corporate America have literally bought the political system or at least rented it. As a result, the CEOs have been able to exploit the system with little fear of any bad consequences.

Let's look at a few recent examples of how effective the lobbyists for corporate interests have been. We have experienced Medicare "reform" resulting in a huge windfall for the drug companies and HMOs. The energy bill in Congress is loaded down with corporate subsidies. The pharmaceutical industry has pretty well "run" the Food and Drug Administration and is a prime example of the "tail wagging the dog." The automobile industry doesn't have to worry about any "real" regulation. CEOs such as Ken Lay and others have looted their corporations with no fear of being caught. We are now witnessing the looting of an entire country. Some say we are being stolen blind. The large corporations in this country are escaping taxation, with the burden of paying federal taxes being pushed more and more on the backs of ordinary folks. The Bush White House and the leadership in both Houses of Congress have allowed all of this to happen and actually seem to have encouraged the scandals. The American people are fed up, and I believe we will see how mad they are this fall when they go to the polls.

A Code For Corporate Responsibility

A proposal to make California companies more socially responsible is pending in that state's Senate Judiciary Committee. The Bill, called the Directors Duties bill or the Code for Corporate Responsibility, would broaden the duties of corporate directors to include protecting the public interest in five specific areas:

- environment
- human rights
- public health and safety
- dignity of employees
- the welfare of the communities in which the corporation operates

Under current California law, corporate directors, who control the behavior of the corporation, are only legally responsible to act in the best interests of the corporation and its shareholders. This generally requires them to maximize financial profits, whick usually is good. However, this narrow focus on financial profit can be the source of much of the harmful behaviors in which corporations engage. By making directors more responsible for other aspects of the public interests, corporations will become more socially responsible. I would add one more item to the list of duties, and that is a requirement that all who run major corporations be made to follow the "Golden Rule." If that is added and the folks running Corporate America follow it, the rest of the list would be unnecessary. It will be interesting to see how this legislation fares. It will also be interesting to see who all opposes the bill. As we went to the printer, the bill appeared to be "stalled" in a legislative committee.

A Scandal That May Be Biggest Fraud Ever

We have seen some awfully bad conduct in the ranks of Corporate America. A major scandal is being uncovered, however, that may be the worst ever. Reports indicate that the fraud at Parmalat, the Italian dairy giant, could be as much as $16.8 billion (far more than WorldCom) and may have been the result of more than a decade of fraudulent accounting. The scandal began when Bank of America revealed on December 19th that Bonlat, a Parmalat subsidiary in the Cayman Islands, was missing $4.9 billion in claimed assets (about 38% of all of Parmalat's assets). It now appears that bank statements had been forged. Parmalat has filed for bankruptcy and its CEO has been arrested. A total of 20 company officials, including board members and lawyers, are being investigated. It is not clear yet how deep the fraud will run. Parmalat had a complex web of more than 200 subsidiaries, many in offshore tax havens like the Cayman Islands and the Antilles. It appears that Parmalat was using an Enron-style accounting shell game to hide liabilities and move money around with these subsidiaries. Parmalat used a multi-layer ownership structure that is very common among Italian corporations. Many large U.S. banks, including Bank of America, Citigroup and JP Morgan Chase, had business dealings with Parmalat. It is unclear how much these banks really knew. Since Citigroup and JP Morgan both paid SEC fines in the Enron scandal, it appears that they may well have been involved to some extent. They helped Enron engage in misleading financial deals. One of the financial deals that Parmalat struck with Citigroup was called Bucerono, which means "black hole" in Italian.

Questions also surround US-based Grant Thornton, the company's accounting firm. Although Grant Thornton stopped auditing Parmalat's books in 1999, it continued to audit the books of Bonlat, the Cayman Islands subsidiary with the missing $4.9 billion. Grant Thornton has claimed that it was misled, had no role in illegal schemes, and was itself a "victim." The head of the Italian unit of Grant Thornton resigned recently and his partner was suspended after warrants were issued for their arrests. An Italian judge accused the auditors of suggesting "the fictitious operations necessary to achieve the fraudulent aims of the group." The company's founder has admitted that he secretly moved $625 million of Parmalat's money into a money-losing travel business owned by his family. The SEC has also charged Parmalat with fraudulently offering $100 million worth of unsecured notes to U.S. investors and inflating its assets by at least $5 billion. SEC regulators have referred to this as "one of the largest and most brazen corporate financial frauds in history."

A Massive Corporate Fraud

There was another very large settlement arising out of more corporate fraud that did not receive a great deal of attention because of the holidays. Credit Lyonnais S.A., CDR-Entreprises S.A. (a subsidiary of the French government entity that acquired the bank's non-performing assets in 1995), MAAF Assurances, S.A. (a major French mutual insurance company), and an individual (chairman of MAAF) will plead guilty to serious criminal charges. The charges arose out of false statements made to federal banking regulators in connection with the acquisition of junk bonds and the insurance business of the failed Executive Life Insurance Company of California. Executive Life, which was once the largest life insurance company in California, held a multibillion-dollar portfolio of "junk bonds." In 1991, Executive Life was declared insolvent and was seized by the California Department of Insurance. Apparently, through a complicated series of secret agreements, Credit Lyonnais and others concealed a web of illegal relationships and transactions. The investigation of this fraud took 5 years and was carried out under the supervision of the U.S. Attorney's office in California.

The plea agreements call for Credit Lyonnais and CDR-E to each plead guilty to 3 felony counts of making false statements to the Federal Reserve. Credit Lyonnais will pay a $100 million criminal fine and an additional $100 million civil penalty imposed by the Federal Reserve. An additional $375 million will be paid by CDR-E into a settlement fund available to the California Insurance Commissioner for distribution to former Executive Life policyholders to compensate them for lost benefits. As part of a broader settlement agreement, Credit Lyonnais, MAAF, and Artemis, S.A., a holding company controlled by a French businessman, will pay a cumulative total of $770.5 million. There appear to have been several other smaller criminal fines paid by a number of individuals and companies. Other individuals associated with the MAAF and Artemis have agreed to pay an additional $1.25 million, bringing the total settlement amount to $771.75 million. This is believed to be the largest settlement in a criminal case in U.S. history. It is rather interesting to note that a settlement of this magnitude could go relatively unnoticed. Could it be that corporate fraud—as mentioned before—is no longer first page news!

SEC Unveils Widespread Abuses In Fund Sales

The Securities and Exchange Commission (SEC) has announced that it found mutual fund share sale abuses at 13 of 15 Wall Street brokerages targeted in a probe. The agency said 13 unnamed firms took cash from mutual fund investment advisers. In return for these payments, the SEC says that 13 of the 15 firms appear to have favored the sale of the revenue sharing funds. The SEC investigation of "revenue sharing" between brokerages and mutual funds began in April 2003. The Commission said it found that revenue sharing is "a common practice." In November, investment bank and brokerage Morgan Stanley agreed to pay $50 million to settle charges that it failed to tell investors about compensation it received for selling certain mutual funds. Morgan Stanley agreed to provide more disclosure about its relationships with mutual fund groups. At that time, the SEC had said it was looking at possibly similar abuses involving as many as 15 brokerages. As a part of its settlement, Morgan Stanley pledged to no longer accept "soft dollar" payments—payments for brokerage services through commission revenues rather than direct fees—on retail sales of mutual funds. It is most distressing to see all of the corruption that exists in Corporate America. I hope we will eventually see an end to this sordid chapter in our country's history.

Waddell & Reed Charged With Violations

NASD has filed a complaint charging Waddell & Reed, Inc. of Overland Park, Kansas, with recommending 6,700 variable annuity exchanges to its customers without determining the suitability of the transactions. These exchanges, known as "switching," generated $37 million in commissions and cost Waddell's customers nearly $10 million in surrender fees. NASD also alleged that according to its quantitative analysis, at least 1,400 of the firm's customers were likely to lose money by making these switches. Charges were also brought against the firm's former President, Robert Hechler, and its National Sales Manager, Robert Williams. In addition to other sanctions, NASD is seeking an order requiring the firm to disgorge commissions and compensate customers.

NASD has charged the firm with suitability and supervisory violations, Hechler with causing the firm's suitability violations by encouraging the sales force to switch customers, and Williams with supervisory failures in connection with the variable annuity exchanges. Under NASD rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

Investors can obtain more information and the disciplinary record of any NASD-registered broker or brokerage firm by calling NASD's BrokerCheck. NASD makes available BrokerCheck at no charge to the public. In 2003, members of the public used this service to conduct more than 2.9 million searches for existing brokers or firms and requested almost 180,000 reports in cases where disclosable information existed on a broker or firm. Investors can link directly to the program by going online to www.nasdbrokercheck.com. Investors can also continue to access this service by calling 1-800-289-9999. For more information, you may visit the NASD Website at www.nasd.com.

Fortune 500 Corporations And Offshore Tax-Haven Subsidiaries

Many large corporations in this country have utilized offshore tax havens and have successfully avoided paying taxes in this country. Some interesting data was compiled by Citizen Works from corporate 10-K's and it is available on the Internet. If you are interested, you can go to the Corporate Tax Traitors Website at www.CitizenWorks.org/corp. There are a number of countries considered to be tax havens. Some of them include: Aguilla, Andorra, Antigua, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Canary Islands, Cayman Islands, Channel Islands, Commonwealth of Bahamas, Commonwealth of Dominica, Cook Island, Gibraltar, Grenada, Guernesey, Isle of Man, Jersey, Liberia, Liechtenstein, The Principality of Maldives, The Republic of Marshall Islands, The Republic of Mauritius Monaco, The Principality of Montserrat Nauru, The Republic of Netherlands, Antilles, Niue, Panama, Samoa, Seychelles, The Republic of St. Christopher and Nevis, St. Lucia, St. Vincent, Tonga, Turks and Caicos, US Virgin Islands, and Vanuatu.

With so many choices available, it appears that companies wanting to avoid paying taxes shouldn't have any problem finding an offshore home. Some of the worst corporate offenders are El Paso, Morgan Stanley, Citigroup, Marsh & McLennan, Mirant, Halliburton, Bank of America Corp., Marriott International, PepsiCo, Pfizer, Viacom, and Interpublic Group. It should be noted that Enron was a big-time offender in its prime. President Bush has done nothing to support legislation or regulatory efforts to close offshore tax haven loopholes. Meanwhile, an increasing number of corporations are either moving their headquarters offshore or establishing subsidiaries in offshore tax havens. The actual taxes paid by corporations are approaching historical lows. In a recent special investigation on corporate taxes, *Business Week* reported that in 1940, companies and individuals split the federal income tax bill equally. However, corporations now pay only 13.7% of the federal income tax bill while individuals pay a whopping 86.3%. It is estimated that offshore tax avoidance is costing $70 billion a year. This is something that shouldn't set well with working men and women, retirees, and the owners of small businesses.

ENRON BANKRUPTCY APPROVED

Enron convinced a federal judge and thousands of creditors that it had finally "come clean" on the real value of its assets and debts. After a lengthy hearing, the bankruptcy court judge in charge of the case decided that Enron's plan of reorganization should be approved. According to reports, the court approval most likely will guarantee that the plan will gain final approval later this year. While this does little to right all of the wrongs involving Enron's former bosses, it may allow some good and honest people to bring the company back to life.

CANADIAN BANK PAYS $80 MILLION TO SETTLE ENRON CHARGES

Adding to an already large list of banks that have paid to settle allegations that they had helped Enron engage in misleading transactions, Canadian Imperial Bank of Commerce (CIBC) has paid the SEC $80 million to settle Enron-related charges. CIBC, like Citigroup, JP Morgan Chase, and Merrill Lynch, was charged with helping execute loans that were structured to look like asset sales, which allowed Enron to claim the loan as revenue, thereby misleading investors. CIBC allegedly advanced $2.7 billion to Enron through off-the-books-partnerships. The $80 million fine includes $37.5 million of ill-gotten gains, a $37.5 million fine, and $5 million in interest. The SEC also sued three current or former CIBC executives.

INSURERS SUE TO STOP HALLIBURTON BANKRUPTCY

Halliburton Company's plan to send several of its subsidiaries into bankruptcy as part of a $4.17 billion settlement of all current and future asbestos claims won't happen if a lawsuit by more than 20 insurance companies is successful. Halliburton filed a pre-negotiated bankruptcy petition on December 16th in Pittsburgh for Kellogg, Brown & Root Inc., DII Industries LLC and six other subsidiaries, in an effort to settle about 400,000 asbestos and 21,000 silica claims. According to an Associated Press report, the insurers are asking a bankruptcy judge to reject the company's Chapter 11 filings. The insurers claim that the Houston-based oil services and construction conglomerate secured approval from more than 90% of the claimants for the bankruptcy filing by agreeing to pay much more per claim than past asbestos settlements. The insurers assert they will have to pay a large portion of the bill for the settlement, which they say equates to $7,000 per claim on average. They insist that, historically, per-claim settlements in asbestos cases run about $920. Halliburton itself will reportedly pay about $2.78 billion in cash to settle the claims. It appears that the insurance companies believe Halliburton is paying too much per claim.

INITIAL APPROVAL TO SETTLEMENT GIVEN IN TRAVEL CASE

An Arkansas judge has given preliminary approval to a $54.5 million settlement with PricewaterhouseCoopers LLP in a lawsuit that alleged the accounting house overcharged clients for expenses. Warmack-Muskogee LP, a Texarkana-based real estate manager and shopping mall operator, brought the case as a class action lawsuit in 2001 against PricewaterhouseCoopers and four other firms. Pricewaterhouse denied any acts of improper billing. Late last year, an Arkansas circuit judge approved the class action status for purposes of the agreement only. A hearing has been set for March 5th for the court to determine whether to give final approval to the settlement.

If the settlement is approved, the lawsuit will proceed against the remaining four defendants: Ernst & Young LLP, KPMG LLP, Bearingpoint Inc, and Cap Gemini. The companies allegedly billed clients for consulting services, airfare and other travel expenses but later drew rebates that weren't passed on to their customers. The suit was filed in October 2001. The preliminary settlement covers clients of the accounting houses between October 16, 1991 and December 31, 2001, which could mean "tens of thousands" of clients would be entitled to a share of the settlement money. PricewaterhouseCoopers has been in talks with the Justice Department and reportedly hopes for an "amicable settlement."

SEC ACTION POSSIBLE IN DOLLAR GENERAL CASE

It appears that federal regulators may take civil action against IBM for possible violation of securities laws related to a customer's accounting transaction. International Business Machines has been issued a "Wells Notice" by the U.S. Securities and Exchange Commission. This usually means it is likely that the SEC will file a civil suit. The Wells Notice follows the earlier disclosure that some 48 South Korean government officials and corporate executives, mainly from IBM ventures, had been charged with bribery in a case involving state contracts for computer parts and servers. The notice relates to the SEC's investigation of discount retailer Dollar General, which is a customer of an IBM unit that sells electronic cash registers. IBM told USA Today that the SEC is considering taking action against IBM for possible violation of U.S. securities laws, "by participating in and aiding and abetting Dollar General's misstatement of its 2000 results." IBM paid Dollar General $11 million for certain used equipment as part of a sale of IBM replacement equipment in Dollar General's fourth fiscal quarter in 2000, according to IBM. In April 2002, the SEC disclosed that it had opened and closed a preliminary inquiry into IBM, but did not specify the focus of that investigation. A number of IBM's retail customers are being scrutinized by U.S. regulators for accounting practices. IBM dominates the market for point-of-sale systems. Its customers include major retailers in the United States. IBM's own accounting has come under scrutiny over the years, with investors criticizing the company for its lack of disclosure.

VI. BUSINESS LITIGATION

MARKET TIMING EXPLAINED

In recent months, we have discussed the growing mutual fund scandal. At its heart are allegations of late trading and market timing. Late trading, which is illegal, is fairly self- explanatory. However, market timing is a more complicated concept to grasp and is generally unethical, if not illegal. Market timing is often referred to as "rapid trading." Rapid trading occurs when a trader buys a fund whose net asset value (NAV) per share is based on stale stock prices. This allows that trader to turn a quick profit at the expense of long-term investors.

To help explain better how market timing works, an example is appropriate. For example, overseas markets close down a significant percentage at 3 a.m. This causes the value of the fund's stocks to drop, lowering the NAV. Later that day U.S. stock prices rise, indicating that overseas stock prices will rally. At this point a large trader, Trader X, invests several million dollars at the lower NAV. The next day the overseas market recovers, but the fund manager cannot immediately invest Trader X's large investment. This causes the assets in the fund to be greater, i.e., a higher NAV. Trader X then redeems his shares that same day, taking a windfall. Trader X's removal of a substantial profit reduces the value of the remaining individual shares by several cents apiece.

SEARS, EMERSON SETTLE EQUIPMENT DISPUTE

Sears, Roebuck and Co., the largest U.S. chain of department stores, will get $10.8 million to settle claims that Emerson, based in Ferguson, Missouri, used Sears-owned machines to make power tools for rival Home Depot Inc. In a lawsuit filed in August 2002, Sears said that it spent $35 million to equip an Emerson facility in Paris, Tennessee, with machines to make parts for its Craftsman-brand line of tools. The suit, filed in U.S. District Court in Chicago, alleged that Emerson schemed to gain possession of Sears equipment and used it to make power tools for Home Depot. Sears is based in Hoffman Estates, Illinois, a suburb of Chicago. Competition from Atlanta-based Home Depot and other home-improvement chains has been cutting into sales of Sears' Craftsman tools, the top-selling U.S. brand.

A U.S. District Judge has approved the settlement. The Tennessee facility at the center of the dispute has been closed. The lawsuit accused Emerson, the world's biggest maker of electric motors, of keeping equipment that it was required to return when a 30-year supply contract with Sears expired in 1998. Sears claimed Emerson put some Sears equipment in an abandoned factory and claimed it was obsolete or of little value. The suit also claimed that Emerson had "devised a scheme" to regain possession and use of Sears tools that were supposed to be destroyed. Under the settlement agreement, Emerson will forgive a $1.3 million Sears debt. Emerson also will pay $4 million in cash and provide $5.5 million in rebates to Sears under supply contracts for hand tools and vacuums.

TEXAS INVESTIGATES HOME WARRANTY FIRM

The Texas attorney general's office is investigating American Home Shield Corp., a leading national home warranty company. This comes amid allegations of deceptive trade practices. The investigation comes after dozens of complaints were filed by Texas consumers during the past several months. Several consumers claimed that the Memphis, Tennessee-based company rejected repairs on items covered by their warranties. Other complaints claimed excessive out-of-pocket fees were charged for routine maintenance through their service representatives.

The attorney general's office said it has received 112 complaints against the company and its subsidiary, American Home Shield Corp. of Texas. Consumers for American Home Shield have taken to the Internet to post their complaints. Some date back as far as 2000. American Home Shield is a subsidiary of Downers Grove, Illinois-based The ServiceMaster Co., a publicly held conglomerate of residential and commercial services companies, which include Merry Maids, Terminix, TrueGreen ChemLawn and Rescue Rooter, according to Hoover's Inc. The company continues to sell policies throughout the country and apparently hasn't made any changes in its policies.

TWO GERMAN BUSINESSMEN WIN $255 MILLION

In a business case involving one of the world's largest media companies, two German entrepreneurs were awarded a minimum of 209.3 million Euros, which was worth $254.6 million on the date of the verdict. The two German businessmen claimed they were cheated out of their equity stake in a European joint venture between Bertelsmann AG and America Online. Jan Henric Buettner, 39, and Andreas von Blottnitz, 38, had helped Bertelsmann set up a 1995 joint venture to establish AOL Europe. They claimed that Bertelsmann and its former chief executive, Thomas Middelhoff, promised them partial ownership of the online venture company. Instead, when Bertelsmann sold its 50% share in the venture to AOL Time Warner in 2000 for $6.75 billion, Beuttner and von Blottnitz received nothing. The two men - who had both moved to California during the late 1990s—filed suit in that state, demanding their "fair share" of proceeds from the sale. The jury deliberated for nearly a week after a trial that lasted for 3 months before reaching a verdict.

It appears that in the early 1990s, Buettner and von Blottnitz were both rising young stars in the emergent European online media market. They founded a consulting firm in 1994, and were recruited by Middelhoff - then head of Bertelsmann's multimedia and corporate development - to help develop the company's new media/Internet strategy. According to their complaint, the plaintiffs had no interest in being employees of Bertelsmann, but agreed to work for Middelhoff in return for a "significant equity position" in the company's Internet operation. The plaintiffs claimed to have turned down job prospects with Microsoft and other companies because their agreement with Bertelsmann meant that they would get equity and manage the company's online venture business. German law was applied in the case. Jurors found in favor of the plaintiffs on 5 separate causes of action:

- Breach of written contract by Bertelsmann
- Breach of oral contract by Bertelsmann and Middelhoff
- Breach of partnership agreement by Bertelsmann
- Breach of fiduciary duty by Bertelsmann
- Culpa in contrahendo – a unique German cause of action, which stipulates certain protective rights during contract negotiations.

No punitive damages were requested. The plaintiffs had initially requested $5 billion, then lowered their request to the jury to $3.5 billion. The defendant offered $25 million to settle all claims, which was rejected. This case is noteworthy—not just because of the nature of the dispute, but because all of the activity appears to have occurred outside the United States.

Settlement Approved In Debit Card Litigation

The nation's retailers have received final approval of the $3 billion settlement with Visa USA and MasterCard International. It is said that this settlement will lead to substantial reductions in certain transaction fees. The settlement, which was approved by a U.S. District Court judge in Brooklyn, resolved a six-year-old class action lawsuit brought by the retailers that accused the two card networks of using their dominance in credit cards to force merchants to accept their debit cards as well, despite less-expensive debit processing offered by competitors. Under the terms of the settlement, a merchant will no longer be required to accept Visa or MasterCard's debit cards to accept the companies' credit cards, and vice versa, starting January 1st of this year. The approved settlement also awarded lawyers' fees of $220 million, plus expenses of $18 million, which are said to be the largest amounts awarded in an antitrust case.

Block Settles Franchisee Suits For $130 Million

H&R Block Inc. has settled a number of lawsuits filed by its former major franchisees. The agreement settles pending litigation from franchisees claiming that they weren't paid fair market value when Block initially spent about $107 million to buy out the franchisees. Block will pay $130 million under the settlement agreement. In October, a state court jury ordered Block to pay $3.2 million to one former franchisee, JBW Limited Partnership of Little Rock, Arkansas. Originally, Block had paid JBW $4.9 million in terminating the Little Rock company's franchise on July 1st. JBW sued Block and sought damages of $38.7 million. The franchisee claimed that it hadn't received fair and equitable value in Block's buyout. Other lawsuits were subsequently filed against Block by 11 terminated franchisees.

VII. CONGRESSIONAL UPDATE

Storm Warnings On The Horizon

If early warnings are any indication, American consumers will be in for a stormy year in Washington. Corporate America is pumping more money into political campaigns—especially the presidential race—than ever before. This does not bode well for consumer issues. Considering that 2004 is an election year, it looks like ordinary citizens and all consumers are in for some "rough sledding." I hope there will be enough men and women in Congress who will stand up for the rights of people to make a difference. When you consider where the President's campaign money is coming from and who has his "ear," ordinary citizens had better pay special attention to what happens in Congress this year.

More Tort Reform Being Pushed

President Bush indicated in his year-end press conference that tort reform will be a key part of his "pro-growth agenda." President Bush stated that tort reform will benefit the economy. Additionally, the President has indicated in the past that the proliferations of medical malpractice suits are "a national problem that needs a national solution." However, a recent study by the National Center for State Courts found that medical malpractice lawsuits per capita actually decreased in the most recent ten-year time period examined. This and other similar studies are not surprising considering that only approximately 10% of all medical malpractice lawsuits are successful.

While the President contends that U.S. citizens pay more for health care due to increased litigation, a recent study showed that medical malpractice insurers have raised rates on doctors well beyond the cost of payouts in recent years. This is particularly true for a number of states after medical malpractice tort reform was enacted. For example, after over a year of newly instituted medical malpractice tort reform in Mississippi, insurance companies have not lowered the rate premiums, and no signs of lowered rates expected in the immediate future. Additionally, premiums for medical malpractice claims account for less than 1% total health care costs. Even advocates of tort reform admit that tort reform does not reduce insurance rates. It is clear that President Bush's attempt to push tort reform legislation will have the practical effect of hurting injured victims, which includes anyone who goes to a nursing home. Without question, the President wants to help insurance companies and a few other special interests. That has become even clearer in recent weeks.

VIII. CAMPAIGN FINANCE REFORM

The Bush-Cheney Money Machine

Let's take another brief look at the raising of campaign funds. With a presidential election some 10 months away, one would think the campaign fund-raising efforts would just be getting started. However, the Bush-Cheney political operatives have been raising money for months at a record pace. Their goal was to raise at least $200 million during the primary season—even though the President won't be challenged in the primaries—and that is shocking. The final figures will exceed all previous money-raising efforts by a multiple that will be even more shocking. This gives credence to the belief that we now have put the White House up for sale to the highest bidders. I suspect all of this would make our "Founding Fathers" turn over in their graves.

Lawmakers Target Election Funding System

Campaign finance reformers are still at work in Washington. They are setting their sights on revamping the system that provides public money for presidential elections. Unfortunately, it is too late for this year's election. The lawmakers who wrote the new campaign restrictions in place for the 2004 elections recognize an urgent need to shore up the system for providing government money to campaigns. Senators John McCain (R-Ariz.) and Russ Feingold (D-Wis.) and Representatives Christopher Shays (R-Conn.) and Marty Meehan (D-Mass.), who have worked for years on campaign finance reform, have specific ideas on improving electioneering rules. None is more timely, however, than the presidential public financing issue. Options include increasing the pot of matching funds available for the primaries and giving candidates the money earlier.

Congress could take up several proposals seen by their sponsors as the next step after what is known as the McCain-Feingold campaign finance reforms. These proposals include rules for fund-raising by special interest groups, tax credits for smaller donations, and other measures to either lift or further tighten restrictions on political contributions. The McCain-Feingold-Shays-Meehan proposal would increase from 1-to-1 to 4-to-1 the public funds match for individual contributions to a primary candidate that are $250 or less. It would increase the overall primary spending limit for each candidate from $45 million to $75 million. More importantly, it would move up the date when candidates can start collecting public funds to help pay for their campaigns — from January 1st of the election year to July 1st of the previous year. It would also set the spending limit for a participating general election candidate at $75 million and double to $6 the individual check off on tax forms to fund the public financing system.

Appeals Court Upholds IRS Political Disclosure Law

Some real good news concerning campaign spending disclosures got lost in the hustle and bustle of the holiday season. Just before Christmas, a federal appeals court upheld a law requiring some nonprofit political groups to report contributions and expenditures to the IRS. The court said there is no constitutional guarantee to what amounts to a tax subsidy. The decision, released by the U.S. Court of Appeals for the Eleventh Circuit, reverses a federal district court judge's ruling that said requiring such groups to report income and expenses unconstitutionally restricted free speech. The Mobile Republican Assembly and other conservative activists had sued in federal court to block the law.

The law, which took effect July 1, 2001, requires all groups given tax-exempt status under Section 527 of the tax code to disclose their officers, address and other identifying information, along with donor names, size of donations and expenditures. The lower court struck down most parts of the law in August 2002. But the U.S. Court of Appeals for the Eleventh Circuit said the judge wrongly interpreted the loss of tax-exempt status for groups that do not report contributions and expenditures to be a penalty. The unanimous decision by a three-judge panel said groups must choose between the tax benefits of disclosing donors and expenses, and the desire to keep those financial matters private. It found no constitutional conflict in requiring them to do so. In the appellate court's decision, it was stated: "Congress has enacted no barrier to the exercise of the (political groups') constitutional rights. Rather, Congress has established certain requirements that must be followed in order to claim the benefit of a public tax subsidy." In my opinion, this was a most significant decision. Clearly, it is a correct application of the law.

IX. PRODUCT LIABILITY UPDATE

SAFER GAS WATER HEATERS

The U.S. Consumer Product Safety Commission recently announced new requirements to improve the safety of gas water heaters. Based on our litigation experience, our firm has known that gas water heaters have caused significant safety problems over the years. The latest available statistics reveal that gas water heater ignition of flammable vapors is involved in approximately 800 residential fires annually. This results in an average of 5 deaths and 130 injuries each year. The new safety standard became effective on July 1, 2003. All 30, 40, and 50-gallon natural draft storage-type water heaters manufactured after that date will be required to comply with the national safety standard. The final American National Standard Institute standard was approved in two parts: (1) the first requirement for flammable vapors ignition-resistance, was approved in February 2000; and (2) the requirement that the heater be resistant to lint, dust, and oil accumulation, was approved in November 2002.

Currently, there are between 50 and 60 million households in the country that use gas water heaters. Consumers purchase approximately 5 million units a year and replace units about every 10 years. I understand that it is less expensive to replace a water heater that is not elevated than it would be to change the piping and venting to raise the appliance to 18 inches. At present, building codes require water heaters located where flammable liquids would be present, to be installed so that their burners are 18 inches above the floor. To meet the new standard, conventional tank-type gas water heaters, manufactured after July 1, 2003, must be equipped with new safety technology to help prevent fires. All water heater manufacturers are currently producing appliances equipped to prevent these fires, according to the CPSC.

U-HAUL PUBLICITY STUNT

In early January of this year, U-Haul announced its intent to forbid its stores to rent trailers to customers who plan to tow with the Ford Explorer SUV. According to U-Haul, its decision was based on product liability lawsuits linked to the Explorer. However, it appears that U-Haul's announcement was actually based on deception and half-truths. The only true statement is U-Haul's contention that its decision is not related to safety. The statement is true because U-Haul in our experience does not care about the safety of its customers, but instead only cares about its profits. U-Haul failed to discuss the thousands of people who have been killed and injured when one of its trailers caused the vehicle to overturn. U-Haul likewise omitted that it is the only major moving company that will rent its trailers to drivers of four-wheeled vehicles like SUVs. Other major moving companies will only rent trailers to persons using larger six-wheeled vehicles. While U-Haul's competitors realized the hazards associated with pulling trailers with SUVs a long time ago, U-Haul continues the practice because the company has a monopoly on the profits generated by the business.

Days before U-Haul made its announcement, we settled a case with the company involving a U-Haul trailer and a Ford Explorer. While the Ford Explorer's stability problems have been well-documented, the U-Haul trailer and U-Haul's policies were the primary cause of the incident. Our client rented a U-Haul trailer to pull a Mazda RX-7 from Florida to New Jersey. U-Haul employees even sold and installed the tow package. While traveling through Alabama on I-65, the U-Haul trailer began to sway back and forth. As our client began to slow down, the sway worsened. Eventually, the trailer jackknifed, causing the Explorer to roll over. Our client's husband was killed in this accident. The U-Haul trailers are defective for their intended purposes because they expose innocent consumers to the likelihood of death and/or serious bodily injury. U-Haul is well aware of the risks because the company has been sued countless times for wrongful death and personal injury on this very issue. The major problem is a simple issue of weight. U-Haul used to require the towing vehicle weigh at least twice as much as the towed vehicles. The weight issue is the very reason U-Haul's competitors will only allow its trailers to be pulled behind heavier 6 wheel vehicles. In an effort to increase trailer rentals, U-Haul decreased the ratio to require that the towing vehicle weigh only 750 lbs (the weight of the trailer) more than the towed vehicle. Thus, U-Haul lowered its requirement from a 2:1 ratio to a 1:1 ratio, which naturally decreased stability.

U-Haul's conduct does not stop there. In addition to the weight ratio, U-Haul consciously chose to rent its trailers without a braking system. A braking system on the trailer will decrease swaying and increase stability. U-Haul has a fleet of over 19,000 trailers. Brakes were and are available from the manufacturer. U-Haul chose not to use brakes because of the maintenance issues involved. U-Haul chose exposing customers to the risks of death and personal injury over the cost of maintaining the brakes on the trailers. At one time, U-Haul used brakes but took them off. More importantly, U-Haul had all decals recommending brakes removed. U-Haul also removed a decal that specified, "for use behind six wheel vehicle only."

Deaths and injuries caused by U-Haul trailers can be significantly reduced and/or eliminated by 1) requiring customers use heavier 6-wheeled vehicles to tow their trailers or 2) outfitting all its trailers with an independent braking system. Taking one or both of these steps would increase safety but decrease U-Haul's profit margin. Instead of the most logical decision, customers are defrauded with U-Haul's publicity stunt of blaming the problem solely on the Ford Explorer. U-Haul's fraud is exposed by its decision not to apply its ban to the Mercury Mountaineer, a mechanical carbon copy of the Explorer. While our case was pending, we discovered countless similar incidents involving SUVs and 4-wheeled vehicles other than the Ford Explorer. A Ford representative took the opportunity to blame U-Haul's decision on trial lawyers forcing businesses to make decisions for fear of lawsuits. Although U-Haul has not taken all the necessary steps, our firm, as trial lawyers, doesn't mind being blamed for causing U-Haul to take baby steps to ensure the public's safety. In fact, that's our job!

More On 15-Passenger Van Hazards

We all see 15-passenger vans being used on our nation's highways by persons who have no idea how dangerous they are. These vans are routinely used by churches, daycare and eldercare centers, schools, and airport shuttle services. Statistics reveal that they are extremely hazardous vehicles. These vehicles were originally manufactured as cargo vans, and they were never redesigned by the automakers in order to safely transport people. When five or more passengers are riding in these vans, the likelihood of rollover increases dramatically. Because the rear of these vans extends some 4 to 5.5 feet beyond the rear wheels, any loading of five or more people or luggage or equipment causes instability during emergency maneuvers. A sudden turn, for example, to avoid a pedestrian, vehicle, or animal can result in a rollover. These maneuvers cause the vans to fishtail. Because they are top-heavy and overloaded in the rear, the vehicles are prone to roll over and result in extremely devastating crashes. At last count, there were more than 500,000 15-passenger vans on the highways of this country. We believe that the long-term solution has to be the redesign of the 15-passenger vans to protect passengers in rollover and side impact crashes. Another needed change is to require compliance with school bus and other federal safety standards from which they are currently exempt.

Tire Recall Settlement Before The Court

A Texas state court judge recently considered objections from critics who want changes made to a proposed $149 million settlement that would resolve 30 class action lawsuits against Bridgestone/Firestone North American Tire. The judge must give final approval to the agreement, which is related to the 2000 recall of 14.4 million Firestone tires amid safety concerns. Company officials have said the settlement could affect 15 million people. There have been 110 objections. The 45 plaintiffs in the cases could receive up to $2,500 each. People not named, but who owned one of 22 brands of Bridgestone/Firestone tires between 1991 and 2001, qualify to have their tires replaced. The lawsuits include people whose Firestone ATX, ATX II and Wilderness AT tires were among those investigated by the National Highway Traffic Safety Administration in 2000, but who did not suffer personal injury or property damage.

The settlement offers no new compensation to those involved in the lawsuits, and Firestone already has agreed to educational programs and a tire redesign. Bridgestone/Firestone agreed to the proposed settlement in July. Under the settlement, Firestone would pay about $70 million to replace tires that are still on vehicles and $41 million to manufacture certain tires with materials that provide better high-speed capacity. The deal also includes $15.5 million for a consumer education and awareness campaign and $19 million for attorneys' fees. Clearly, the Firestone tires should be taken off the road. Needed design changes and education programs are also important. Safety should be a critical part of any settlement.

Lack of Warnings Causes Hand Amputation

Recently, Mike Andrews and Cole Portis handled a case against Tecumseh Products Company, Electrolux Home Products Company and Sears, Roebuck and Company over claims that the three companies designed, manufactured and sold a dangerous and defective lawnmower that ultimately amputated our client's hand above the wrist. During the course of discovery, we have learned shocking information about how the owner's manual was developed and produced for this Sears lawnmower. Tecumseh Products Company is an engine manufacturer and designed, built and sold the engine for the mower. Electrolux Home Products is the largest producer of consumer products in the world and builds finished products for many different sellers under various brand names. In this case, Electrolux received the engine from Tecumseh and incorporated it into a finished mower, which was labeled with Sears information and sold at a Sears, Roebuck store to our client. Importantly, Electrolux also decided which information would be included in the owner's manual and printed the manual, which went to our client.

On a sunny day in July, our client was operating an edger while his wife operated the walk-behind lawnmower in their yard. While cutting the grass, his wife noticed that the lawnmower made a strange sound and then stopped. Upon investigation, our client realized that a wire had become tangled around the mower blade. Remembering instructions from his owner's manual about performing maintenance on the mower, he disconnected the sparkplug wire before he began untangling the wire from around the blade. While he was working underneath the mower to pull the wire loose, the mower restarted and cut his left hand off above the wrist. His hand could not be reattached and he is now living life as an amputation victim and learning to use his prosthetic hook.

We have learned that, although the sparkplug wire was disconnected, when the mower was tipped onto its side the wire moved back into close contact with the sparkplug. When our client pulled the wire from the blade, the engine spun and started and amputated his hand. Through discovery we have learned that Tecumseh provided a "sparkplug retaining post" on the side of the engine in order to prevent such an incident from occurring. Tecumseh also wrote a separate owner's manual for the engine that included diagrams and instructions alerting consumers to the necessity of attaching the wire to the post to prevent accidental restarting. In fact, the post is built in to the design of the engine and is designed to be the same size and shape as the end of the sparkplug. However, although Electrolux received the retaining post instructions and diagrams from Tecumseh, Electrolux chose to omit the diagrams and any mention of the retaining post from the Sears manual that was sold with the mower. As a result, our client received no warnings whatsoever about the presence, function or importance of the retaining post on the mower. Sadly, all experts in the case agree that if the wire had been attached to the retaining post, this tragic incident would never have occurred. When questioned about why the warning was left out of the Sears manual, the Electrolux representative said because they simply didn't look for it to put it in.

This case, which was settled after jury selection in federal district court in Montgomery, represents one of the tragic truths in our society today: companies with information that could prevent needless tragedy are failing to share it with the very people who are most at risk. A prime example is carmakers who are aware of crash test data revealing safety problems in their cars, yet refuse to provide that information to the public until they are forced to do so by a court order. Even then, the companies fight to keep the information private and "confidential." Clearly, Electrolux's decision to omit such a vital warning in our case is a reckless disregard for the safety of people who buy and use their products.

X. PREMISES LIABILITY UPDATE

Injured Electrician Wins His Case

An electrician who was struck in the forearm and wrist by a falling power pole was awarded $2.1 million by a Massachusetts jury. On April 27, 2000, the plaintiff, who was then 37, was finishing work on a trench where an underground electric line was being run to a local nursing home, when a pole that Boston Edison Co. had installed several days earlier fell and pinned him against a van. The plaintiff, who is left-handed, suffered permanent damage to his left hand and wrist. He now has 28% less range and strength and 20% less blood flow in his left hand. The plaintiff had four surgeries, including a bone graft, after a bone in his forearm healed improperly. In addition to $1.26 million for pain and suffering, the jury awarded $729,000 for lost income, based on the $20 an hour the plaintiff made as an industrial electrician. An additional $109,000 for medical bills and vocational counseling was also awarded.

During the trial, it was proved that Boston Edison did not follow industry and company standards when it raised the pole that fell on the plaintiff. The pole, which should have been planted in 6 feet of solid ground, was raised instead in 3 feet of solid ground and 3 feet of tamped-down backfill. The defendant argued that the pole was properly installed and that the plaintiff and a coworker caused the accident by digging the trench wider and deeper than they should have.

Paintball Injuries On Rise

Occasionally, there is media coverage on a "sport" referred to as "paintball." For the uninformed, paintball is a battle game in which players shoot at each other using compressed-gas guns filled with marble-size paint capsules. The game is played at organized paintball centers, which usually provide and require facemasks. But children often play without protective equipment in woods, back yards or even basements. In 1999, an estimated 8 million people played paintball at more than 2,500 sites. A recent study revealed that injuries to adults and children playing paintball have tripled in recent years, including eye damage causing lasting vision loss. From 1997 to 2000, paintball-related injuries nationwide climbed from 926 to 2,780, with up to a third occurring in children younger than 15, according to the study, which analyzed injury data from the U.S. Consumer Product Safety Commission. In 1999 alone, there were 519 eye injuries among 779 total paintball-related injuries to children under 15. Bleeding and retina detachment were among the most common eye injuries.

According to researcher Dr. David Listman of St. Barnabas Hospital in New York, many injuries occur because players are not wearing goggles or facemasks. Doctors must become aware of the dangers and lobby for restrictions in paintball equipment sales to minors. Dr. Listman's study appears in January's issue of *Pediatrics*. The Paintball Business Association, which provides insurance for paintball fields and services for about 400 accounts, told the Associated Press that the Greenville, South Carolina-based group's safety requirements include goggles or full-face masks.

XI. WORKPLACE HAZARDS

Reports On Deaths In The Workplace

In late December, there was a recent 3-part series in *The New York Times* on deaths in the workplace. These articles, written by David Barstow, are certainly worth reading. Mr. Barstow appears to have done a great deal of investigation and research. As a result, he came to the conclusion that there have been a significant number of deaths in the workplace resulting from employers "willfully violating" workplace safety laws. The Times gave examples of workers decapitated on assembly lines, shredded in machinery, burned beyond recognition, electrocuted, buried alive—all of them killed, according to investigators' conclusions, because of willful safety rule violations. The following is a quote from one of the Times' articles:

> *These deaths represent the very worst in the American workplace, acts of intentional wrongdoing or plain indifference that kill about 100 workers each year. They were not accidents. They happened because a boss removed a safety device to speed up production, or because a company ignored explicit safety warnings, or because a worker was denied proper protective gear.*
>
> *And for years, in news releases and Congressional testimony, senior officials at the federal Occupational Safety and Health Administration have described these cases as intolerable outrages, "horror stories" that demanded the agency's strongest response. They have repeatedly pledged to press wherever possible for criminal charges against those responsible.*

Since criminal prosecutions are very rare in workplace deaths, it makes the role of the civil jury system take on even more importance. We have seen instances in which employers had been cited on numerous occasions for the very same safety violation that resulted in an employee's death. Willful wrongdoing can never be justified by any standard. Our worker's compensation laws in Alabama do little to make the workplace safer. *The Times* examination, based on a computer analysis of 2 decades of OSHA inspection data, is the first systematic accounting of how this nation confronts employers who put workplace safety on a very low priority. *The Times* apparently conducted hundreds of interviews and viewed thousands of government records before presenting this excellent series. They identified a total of 2,197 deaths at companies ranging from international corporations to small family-owned companies.

We should make workplace safety in this country a top priority and should insist that OSHA do its job. Of course, OSHA will only do what the politicians allow them to do. It is up to workers and their families to join with consumer and safety groups to put pressure on the politicians. I am convinced that the number of deaths in the workplace can be reduced significantly. OSHA should be proactive in its role and do everything possible to make the workplace in America safe for working men and women.

Wal-Mart Labor Violations Reported

The New York Times has reported on more big time problems at Wal-Mart. According to the Times, an internal audit of about 25,000 workers at Wal-Mart Stores found thousands of labor violations, including minors working during school hours and workers not taking breaks or lunches. The audit found 1,371 violations of child-labor laws, including minors working too late, too many hours in a day or during school hours. On more than 60,000 occasions, workers missed breaks and on 16,000 they skipped meal times, in violation of most state labor regulations. The audit, conducted in July 2000 and distributed to top Wal-Mart executives, polled employee records at 128 stores across the country, the *Times* reported.

There have been more than 40 lawsuits that accused the company of forcing employees to skip breaks and lunches, according to the Times. It appears that the retail giant has a pattern and practice of making their employees work through their breaks and lunch on a regular basis. This audit shows conduct that is against their own company policy and against the law in almost every state in which they operate. Wal-Mart has successfully petitioned courts to keep the audit sealed. Wal-Mart employs 1.2 million people at 3,500 stores in the United States. We mentioned in other sections of this issue that Wal-Mart is adding new legal talent to its ranks. It appears the retail giant will need all the help it can get.

XII. TOBACCO UPDATE

Alabama Gets A Failing Grade On Tobacco Prevention

Most states, including Alabama, have failed to pay for tobacco-prevention programs and protect people from second-hand smoke despite receiving billions of dollars in settlement money to take such measures. In a recent report, the American Lung Association gave 38 states grades of "F" for failing to fund tobacco prevention and control programs. Thirty-five states received Fs for their smoke-free air laws. The annual report also found that 23 states received failing marks because of their inability to keep tobacco out of the hands of minors. Alabama received failing grades in the areas evaluated, which include:

- smoke-free air
- youth access
- tobacco prevention and control spending
- cigarette taxes

ALA chief executive John L. Kirkwood made this comment: "How many more preventable deaths must occur and how many more children must become addicted to cigarettes before we say enough?" The report said there were some bright spots. Fifteen states received grades of A in at least one of the four categories, and five states—California, Connecticut, Delaware, Maine and Rhode Island—got As in two categories. New York was the only state to receive As in as many as three areas. Based on data from the American Lung Association, 440,000 people die each year from tobacco-related illnesses. Smoking costs the United States about $75 billion in direct medical costs and $82 billion in lost productivity each year. Historically, Alabama has not been strong in tobacco prevention and control. The economic costs due to smoking in Alabama amounts to $2,947,000,000. About 25% of the adult population smokes. Tragically, the smoking rate for high school students is 24.37%. The State of Alabama should take all steps necessary to prevent smoking in our state.

Missouri Smokers' Suits May Proceed

Missourians who smoke certain brands of "light" cigarettes have been allowed to join in class action suits that accuse tobacco companies of misrepresenting the amount of tar and nicotine the brands contain. One of the companies, Philip Morris USA, is likely to appeal. At issue are rulings by a circuit judge in St. Louis, who said two civil cases may proceed as class actions. Many thousands of Missourians could qualify as plaintiffs. Brands listed in the suits are Philip Morris' Marlboro Lights, plus Salem Lights, Winston Lights, Camel Lights and Camel Special Lights, all produced by R.J. Reynolds Tobacco Co. The suits in St. Louis are similar to one from Madison County, Illinois. In that case, a judge awarded plaintiffs $10.1 billion. An appeal of that case is pending before the Illinois Supreme Court.

The St. Louis judge stated in his ruling: "It is well-recognized that consumer fraud cases are amenable to class action treatment." The judge noted that the cases are neither injury nor product liability cases, but instead are consumer fraud cases, which he called "a fundamentally different and simpler type of action." Those pursuing tobacco-related personal injury suits cannot be plaintiffs in the class action suits.

In the Madison County case, Philip Morris is claiming that the judge who awarded smokers $10.1 billion in damages should not have allowed the case to proceed as a class action. The verdict set a record for damages in Illinois when it was issued in March. The court ruled that Philip Morris misled 1.1 million smokers into believing that Marlboro Light and Cambridge Light cigarettes provided lower levels of tar and nicotine than regular cigarettes.

A Significant Victory In New York

A case that was tried recently in New York was certainly newsworthy. Harry Frankson died at the age of 57 from lung cancer. He had smoked Lucky Strikes almost continuously since he was 14 years of age. Wanting to make a statement, his widow sued the corporations that sold the cigarettes and, for years, as she described it, "made them seem harmless and fun." Mrs. Frankson won her case on December 18th, in what was called a watershed lawsuit against a tobacco company. A Brooklyn jury ordered the Brown & Williamson Tobacco Corporation to pay her $175,000 as compensation. This was the first defeat for a tobacco company in the New York state courts in a suit over an individual smoker's death.

The same jury considered the next phase of the case, and that was whether to force the company to pay punitive damages. On January 9th, the jury awarded punitive damages. As a result, Brown and Williamson must pay $8 million. The jury, in a 5-1 decision, said Brown & Williamson should pay $6 million based on its own fault and $2 million for the time when American Tobacco made the brand. The jury also said that the Council for Tobacco Research and the Tobacco Institute should each pay $6 million in punitive damages. This makes a total of $20 million in punitive damages.

So far, smokers or their families have won 13 cases nationwide, according to the Tobacco Products Liability Project at Northeastern University. Thus far, because of appeals by the tobacco companies, in only one instance has a company actually paid a smoker's family. That was the $1.09 million paid in a case in Florida. Such suits are not as complicated as they once were because so much information is available about the health effects of smoking, according to Richard A. Daynard, chairman of the Liability Project. Mr. Daynard believes that the Brooklyn case is extremely important because it shows that cases can now be brought and won everywhere. In the last three years, tobacco companies had defeated smokers' claims in three similar cases in Brooklyn and Queens. So, this victory was a big loss for the tobacco industry. It is significant that this victory occurred in a jurisdiction in which the tobacco industry had previously been so successful. Not only did the jury find for the plaintiff, they awarded punitive damages because of the defendant's conduct. Interestingly, the sole juror who abstained, a 51-year-old school safety officer, said he had wanted to award $400 million.

Low-Tar Cigarettes' Health Risk Examined

Low-tar cigarettes do not carry a lower risk of lung cancer, according to the first study comparing lung cancer deaths among smokers of ultra-light, mild and medium filtered cigarettes. The finding, published in the British Medical Journal, proves what experts have long suspected. Previous research has found that smokers of "lighter" cigarettes compensate by taking deeper drags, holding the smoke longer and smoking more cigarettes. Scientists suspected they would probably be just as vulnerable to lung cancer and other diseases as those who smoke harsher varieties.

It is rather interesting that tobacco industry representatives now say manufacturers never claimed light or mild cigarettes were safer. As a result, they don't dispute the study's findings. The study, conducted by scientists at the Massachusetts Institute of Technology and the American Cancer Society, examined the link between the tar rating of the cigarette smoked in 1982 and deaths from lung cancer in the subsequent six years among 940,774 Americans over the age of 30 who were smokers, former smokers or had never smoked. Those who smoked strong non-filtered cigarettes had a higher risk of lung cancer than those who smoked conventional filtered cigarettes. However, the study found no difference in the lung cancer death rate among those who smoked the medium filtered cigarettes and those who used mild or ultra-light varieties.

The findings from this study are most significant for lawsuits of U.S. plaintiffs who are suing tobacco companies on the grounds of consumer fraud. The cases allege that smokers were duped into believing that low-tar cigarettes were less hazardous. Lower-tar cigarette varieties were developed in the late 1960s and early 1970s. Tar levels were classified by using a smoking machine. The low tar cigarettes, with more porous paper and ventilation holes around the filter, scored lower on the machine. However, scientists later discovered the machine did not accurately reflect what happens when people smoke. In 2001 the European Union banned the use of language such as "mild," "light" and "low tar" on cigarette packs, and a global anti-smoking treaty passed last year by the World Health Organization also limits the use of such terms. Given the tobacco industry's history of deception in this country, it is not surprising that the industry misled the public concerning low tar cigarettes.

XIII. TRANSPORTATION

Truckers To Be Allowed To Drive More

New federal regulations, which recently took effect, allow truck drivers to stay on the road for up to 11 straight hours. The drivers will have to take at least 10 hours off before they can again get behind the wheel of their rigs. Apparently, the government believes that the new rules will make the roads safer because truckers will have to rest for two more hours between driving shifts. The Transportation Department claims the change will reduce deaths associated with truck driver fatigue from 440 to 335 a year. Transportation Secretary Norman Mineta said in a prepared statement: "The new safety rule gives us the means to save hundreds of lives, protect billions in commerce and safeguard our roads and highways for years to come."

Many safety groups, as well as the truckers' union, disagree, saying that allowing trucker an extra, 11th hour behind the wheel—compared with the 10 hours maximum now permitted—will result in more, not fewer, dangerously fatigued truckers on the road. A spokesman for the International Brotherhood of Teamsters told the Associated Press: "When these drivers are already behind the wheel of a heavy piece of machinery for 10 hours, it's only going to increase their fatigue if you increase the hours—even if they have an extra hour of rest."

Public Citizen had sued earlier this year to overturn the new regulations before they were put in effect. That case is pending in federal court. "It does nothing positive, it does a lot of negative, and it's a big waste of four years of effort," said Joan Claybrook, Public Citizen's president. The American Trucking Association supports the new rules. It appears that the government has succumbed to lobbying by the trucking industry. The Insurance Institute for Highway Safety, a highway safety group funded by auto insurers, said the new rules won't have much effect on highway safety. The group believes the rules could actually make the situation worse. A spokesman for the Institute says: "Research shows crashes increase markedly after 8 to 10 hours of driving, yet these rules raise the limit for driving at a stretch, from 10 to 11 hours."

One of the biggest problem with the regulations is that they don't require electronic on-board recorders — black boxes for trucks — that would automatically monitor the truck's movement. Hours-of-service regulations are difficult to enforce because many truckers falsify their logbooks. The Federal Motor Carrier Safety Administration said 3 million inspections revealed 18% of drivers violated the rules at least once. Hours-of-service regulations hadn't been changed since 1939. Only time will tell if the new regulations will help make our highways safer. Frankly, I have serious doubts and really believe the powerful trucking industry has done the driving public a disservice.

Lack Of Troopers Causing Problems

The shortage in state troopers on Alabama highways is causing some serious safety problems. Many drivers, especially those in the trucking industry, have learned that very few troopers are now available for patrol duty. This has resulted in a serious "speeding problem" on our state's highways—especially on the interstate system—and that has made driving much more dangerous. Consequently, we are seeing more tragic motor vehicle collisions. I hope the situation will be addressed during the current legislative session.

XIV. ARBITRATION UPDATE

Pending Federal Legislation to Amend the Federal Arbitration Act

Arbitration continues to be a most serious problem for consumers throughout the country. Consumer groups continue to do battle and occasionally get a win. It is much like the biblical accounts and David and Goliath, except that David prevailed. In the current warfare, the powerful forces pushing arbitration have ruled the day so far. However, we still have faith that right will eventually prevail. There has been a little more interest in helping consumers among the ranks of the politicians. There are several bills pending in Congress, which if passed would amend the Federal Arbitration Act. If nothing else, the flurry of activity points out that the politicians recognize that consumers are upset. A brief summary of each bill follows:

- **H.R.540** - To amend title 9, United States Code, to allow employees the right to accept or reject the use of arbitration to resolve an employment controversy. Referred to the Committee on the Judiciary.
- **H.R.1887** - To amend title 9, United States Code, to treat arbitration clauses which are unilaterally imposed on consumers as an unfair and deceptive trade practice and prohibit their use in consumer transactions, and for other purposes. Referred to the Committee on Financial Services.
- **H.R.3414** - To amend title 9, United States Code, to prohibit offering homebuilding purchase contracts that contain in a single document both a mandatory arbitration agreement and other contract provisions, and to prohibit requiring purchasers to consent to a mandatory arbitration agreement as a condition precedent to entering into a homebuilding purchase contract. Referred to the Committee on Financial Services.
- **S. 91** - To amend title 9, United States Code, to provide for greater fairness in the arbitration process relating to livestock and poultry contracts. Referred to the Committee on the Judiciary.

My information is that few, if any, of these bills have any real chance to pass and be signed into law. However, miracles still happen—so contact the members of the U.S. House of Representatives and Senate in your area. Ask them to support these bills. I have found that telephone calls and personal contacts are much more effective than letters. However, letters should still be sent.

A Significant Rule Change

While consumer arbitration is bad enough, arbitration can never be justified when used by nursing homes, hospitals, and doctors. There is tremendous opposition by people to the use of arbitration by health care providers. No health care provider should be allowed to force a person needing medical attention of any kind, including custodial care, to sign a predispute arbitration agreement. A most significant report was received from the American Health Lawyers Association concerning its Alternative Dispute Resolution Service. The contents of the report follow:

> *The American Health Lawyers Association's Alternative Dispute Resolution Service [the Service] has amended its rules for claims filed with the Service after January 1, 2004. The Service will only administer consumer health care liability claims if an agreement to arbitrate was entered into by the parties in writing* ***after*** *the alleged injury occurred. The term "consumer health care liability claim" means a claim in which a current or former patient or a current or former patient's representative (including his or her estate or family) alleges that an injury was caused by the provision of (or the failure to provide) health care services or medical products by a health care provider or the manufacturer, distributor, supplier, or seller of a medical product.*
>
> *Health Lawyers' ADR Service will continue to administer all other kinds of claims whether the agreement to arbitrate or mediate was entered into pre or post alleged injury. The ADR Service is an important service offered by the Association, and we encourage members to incorporate its use into their contracts. The Service can help to resolve conflicts that may arise in interpreting agreements entered into by healthcare providers, professionals, plans, vendors, and service providers in a speedy, cost-effective manner. The Service's rules contain sample arbitration and mediation provisions to use in agreements in case of a dispute. The Service distinguishes itself by having a diverse list of 205 resolvers.*

It is clear that American citizens don't like predispute arbitration being forced on them. This is especially true when the arbitration clauses are required in the healthcare setting.

Mandatory Arbitration Opposed In New Jersey

The New Jersey State Bar Association wants to eliminate mandatory arbitration. A report by the Bar Association's committee on arbitration has urged the adoption of a multiple option alternative dispute resolution program similar to the one used in some federal courts. The committee has recommended using mediation, which is not binding, with arbitration optional as one of a variety of choices for people looking to resolve disputes. The New Jersey report, which was made public late last year, reveals that the mandatory arbitration system is not fair to participants. It mentions built in problems, such as "unavoidable biases of arbitrators" and "conflicts that arise through some lawyers' relationships with insurance carriers." The Bar Association report refers to mandatory arbitration as a "bureaucratic waste."

The president of the New Jersey State Bar has explained that "this evaluation of the current system offers an opportunity for New Jersey to embrace national trends towards mediation, and other innovative dispute resolution reforms." The president also added "this multi-optional system, which has proven successful in federal courts, would substitute New Jersey's one-size-fits-all approach with a new dynamic allowing parties to tailor the appropriate complimentary dispute resolution device to their particular case." There should be no surprise that the Bar Association is taking this action. Mandatory, binding arbitration is not fair and doesn't work. It favors the "powerful" and destroys the "powerless."

Magnuson-Moss Warranty Claims And Arbitration

Paul Bland of Trial Lawyers for Public Justice, who has fought tirelessly for consumers in the arbitration battle, has a hard time understanding how readily a number of courts have flatly ignored the FTC's two rulemakings finding that the Magnuson-Moss Act was intended to prohibit pre-dispute binding arbitration of claims for breach of explicit warranties. I share his frustration. The first rulemaking by the FTC was undertaken soon after the Federal Arbitration Act was passed and the other was undertaken years later. The FTC has thought much more carefully about this issue than have many judges. Several of the best opinions on the issue stress the importance of deferring to the FTC. I really thought that it was required as a matter of law.

XV. MASS TORTS UPDATE

U.S. Finally Bans Ephedra

The Bush Administration has finally decided to ban ephedra from the marketplace because of growing concerns about its effects on health. Health and Human Services Secretary Tommy Thompson and Food and Drug Administration Chief Mark McClellan announced the ban at a late December news conference. The ban will most likely be met with litigation from manufacturers who dispute the agency's assertion that ephedra is a health risk. The government ban is one of the first involving a dietary supplement in this country. What took the FDA so long to recognize that ephedra was a dangerous substance? Ephedra has been linked to as many as 155 deaths. The FDA had proposed warning labels and dosage limits for dietary supplements with ephedra way back in 1997, but then withdrew the proposal after complaints from the industry and members of Congress. In 2001, the National Football League banned its players from using ephedra as a dietary supplement.

The announcement by the FDA to ban ephedra came more than two years after the nation's most effective consumer advocacy group, Public Citizen, petitioned the agency to do so. Unfortunately, it took reports of the deaths of ephedra users to prod the government to finally act. All the scientific evidence and legal authority to ban ephedra was in place at the time of Public Citizen's petition, which was filed in September 2001. There is no way to justify the FDA taking so long to ban the supplement.

One reason major manufacturers have stopped selling ephedra is that the companies have become uninsurable because of massive losses in product liability cases. Several weeks ago, the last major manufacturer of ephedra dietary supplements - Metabolife - announced that it would no longer sell ephedra. When Public Citizen filed its petition, there were reports of 81 ephedra-related deaths. Now, after that number has nearly doubled and very little ephedra is being manufactured, the FDA finally announces a ban. This is an inexcusable dereliction of responsibility by a federal agency that has the clear responsibility to protect public health. If the FDA had done its job, the consuming public would be better served today. Product safety should be the top priority for the agency, and the health and welfare of American citizens should be its main concern. I have yet to hear a believable explanation of why it took the federal government so long to ban a dangerous substance that has caused so many deaths.

Alternates To Ephedra

The FDA ban on ephedra fails to correct a regulatory system that assumes dietary supplements are safe until proved harmful. While ephedra has been banned, it is just the most "notorious" of the unproven supplements, which are readily available in stores, online, and by mail. Predictably, marketers are now pushing "ephedra-free" stimulants based on herbs such as bitter orange, green tea, grape-c extract, and guarana. Unfortunately, even less is known about the potential effects of most of the ephedra substitutes. The FDA publishes a list of commonly available supplements that are known to have serious adverse effects. Some of them are known to cause nausea, vomiting, liver and kidney disease, high and low blood pressure, paralysis, and even death. Unfortunately, no reliable scientific research on these alternate substances exists. Even more unfortunate is the fact that the industry's clout in Congress and in the White House has blocked the FDA from banning a substance unless the agency is prepared to prove in court that it poses "an unreasonable health risk." According to the FDA, the following are some potentially harmful supplements:

- Dieters teas
- Ginko biloba
- Genseng
- Kava
- St. John's wort
- Willow bark

Apparently The Powerful Were Able To Mess With Texas

When the Bush Administration finally announced it would ban ephedra, it caused some in Texas to go back to their memory banks. Those who checked media reports from the 1990s found that the recent FDA action wasn't the first time a "Bush Administration" had addressed the ephedra problem. Five years ago, the staff of the Texas Department of Health proposed requiring a doctor's prescription in order to obtain ephedra-based products. At that time, 8 Texans had apparently died from use of these products. Actually, the proposal in Texas wasn't as radical as it sounds. In 1983, the Food and Drug Administration had banned the sale of ephedra/caffeine cold medicines without a prescription. But a law passed in 1994 by Congress opened the door for dietary supplements to use natural herbs such as ephedra virtually without supervision.

According to the *Houston Chronicle*, Metabolife® hired a powerful Republican lobbying law firm to stop the Texas proposal. The end result was that the common-sense approach to handling the ephedra problem was put on the shelf. The Administration of then-Governor Bush required only a "warning label" and an "800" number on the bottle to use to report any negative effects to the FDA. It is interesting that even the diluted action was delayed. Before the regulation could go into effect, the Commissioner of the Texas Department of Health resigned in the midst of an unrelated controversy. According to news accounts, U.S. Secretary of Health and Human Services Tommy Thompson, acting through an aide, called the new Commissioner to express concern. As a result, implementation of the rule was delayed. The rule finally did go into effect in late 2002. However, as I understand it, the rule wasn't immediately enforced. In Texas, under a Bush Administration, consumer protection took a back seat and fell victim to political forces, which shouldn't be a real shock. Meanwhile, the Chronicle account included some telling footnotes that may help explain why the FDA has finally acted to ban ephedra:

- The national death count from ephedra products has risen as high as 155.
- The high-profile death last spring of Baltimore Orioles pitcher Steve Bechler.
- Three states and the Department of Defense banned ephedra.
- Metabolife's co-founder Michael Ellis is under two criminal probes. One is for allegedly lying to the FDA about how many reports of problems the company had received from consumers. He said it was zero. In fact, it was about 15,000. The other is for allegedly joining other company executives in hiding an estimated $94 million in income.
- Texas State Senator Jeff Wentworth, who works for Loeffler, Jonas & Tugey, a Texas/Washington, D.C. law firm that is Metabolife's chief Texas lobbyist, came under investigation by the Travis County (Texas) Attorney for state ethics violations in representing Metabolife. Wentworth announced he had done nothing wrong and would never do it again.

I will try to put the moral of this story "down where the goats can get it." Don't "mess with Texas" politics on consumer issues—that is, unless you work for a powerful industry with strong political ties. Unfortunately, nothing has changed since Karl Rove moved George W. Bush to Washington. The rich and powerful still get their way, regardless of the effect on real people. That must change one of these days—for the good of America.

Serzone® Should Be Withdrawn From The U.S. Market

Canadian officials, after increasing reports of liver-related injuries associated with Serzone® (Nefazodone), ordered that Serzone® be removed from the market effective November 27, 2003. In its public statement, Health Canada advised that "no risk factor to predict patients who will develop irreversible liver failure with nefazodone has been identified," and further that "no clinical strategy, such as routine liver function tests, could be identified to reduce the risk of liver failure." As we have notified you in previous Reports, Bristol-Myers Squibb advised Canadian physicians in January 2001 that very rare reports of severe liver injury temporally associated with Serzone® had been reported. It was not until January 2002, however, that physicians in the United States received the same warning. Serzone® was withdrawn from the European market in January 2003. It was taken from the Canadian market in November 2003. It probably shouldn't come as a big surprise that Bristol-Myers Squibb continues to market Serzone® in the United States.

On October 29, 2003, Public Citizen filed its second petition to remove Serzone® from the U.S. market. The FDA had failed to respond to the original petition filed by the Health Research Group of Public Citizen on March 6, 2003. According to Public Citizen, from April 1, 2002, through May 12, 2003, there were nine additional deaths related to the use of Serzone reported to the FDA, bringing the total to at least 20 deaths linked to the use of Serzone. However, because the reporting of adverse events is voluntary, and because the FDA estimates only one in ten serious adverse events are reported, those numbers likely represent only one-tenth of the injuries/deaths actually sustained. The FDA should ban the sale of Serzone® in the United States immediately.

XVI. ENVIRONMENTAL CONCERNS

Superfund Short On Funds

Most American citizens probably believed that the worst toxic dumpsites in the country were being cleaned up. Frankly, I certainly did. However, cleanup work at 11 of these toxic dumps hasn't started because the Superfund program doesn't have enough money. The Environmental Protection Agency's Inspector General issued a report revealing that information in December, and that is disturbing. The $3 billion program has a shortfall of nearly $175 million, according to the report. "When funding is not sufficient, construction cannot begin; cleanups are performed in less than an optimal manner; and/or activities are stretched over longer periods of time," the report revealed. In addition to the 11 sites, there are four places where "emergency removal" of contaminants such as asbestos and lead is on hold for lack of $9.4 million. According to the report, another $40.8 million is lacking for continuing cleanups at eight sites and $6.1 million is needed to investigate contaminants at six additional sites. The report, which was requested by several members of Congress, focused on cleanup sites where the government can't prove who actually caused the pollution.

In the past year, $292 million was budgeted for long-term cleanups and $142 million for short-term emergency removal of contaminants at 381 sites. Since the Superfund program began in 1980, the EPA has completed cleanups at nearly 890 sites and now has more than 1,200 on its to-do list. EPA officials told Congress in November they finished cleanups at 40 sites in the budget year that ended September 30th, compared with 42 in the previous 12 months and 47 in fiscal 2001. During the Clinton Administration, the EPA completed an average 76 cleanups a year. A special tax on industry to help pay for cleanups expired in 1995. When the Clinton Administration tried to reinstate it, Congress refused. So far, the Bush Administration has failed to ask Congress to revive it. Congress appropriated $1.3 billion for Superfund cleanups in the latest fiscal year. Another $1.7 billion came from companies found responsible for polluting the sites. The U.S. Public Interest Research Group, an advocacy organization, believes the Bush Administration should push Congress to reinstate the industry tax.

More Top-Level Enforcement Officials Leave EPA

For over a year now, the Environmental Protection Agency has steadily lost some of its top environmental enforcement experts. Nearly all of these resignations stem from the growing controversy over the Bush Administration's "relaxed" approach towards the enforcement of various federal environmental standards and programs. Bruce Buckheit, Director of the Air Enforcement Division compliance office, and Rich Biondi, Deputy Director of the Air Enforcement Division, were longtime career employees who recently left the EPA because of differences with the Bush Administration over enforcement of the "new source review" provisions of the Clean Air Act. Sylvia Lowrance, a 24-year EPA veteran, who served as acting Assistance Administrator for Enforcement and Compliance, resigned from EPA a little more than a year ago, citing the Bush Administration's efforts to weaken new source review and enforcement.

In January, John Peters Suarez, Assistant Administrator for Enforcement and Compliance Assurance, announced his resignation. Unlike Buckheit, Biondi and Lowrance, Suarez's resignation followed a firestorm of criticism from environmental groups and congressional Democrats over the sharp declines in the amount and number of civil and criminal penalties assessed against environmental violators. A great deal of the criticism that Suarez received stemmed from his November 2003 announcement that his office would reexamine pending investigations of new source review violations in the light of newer, less stringent rules promulgated by the Bush Administration. The new source review provisions are intended to require power plants and other industrial facilities to install modern pollution controls whenever they make plant modifications that increase emissions, although exemptions are allowed for routine maintenance, repair and replacement projects. Unfortunately, the Bush Administration enacted rules that greatly expand the exemptions available to industry.

In fact, the efforts by the Bush Administration to undermine new source review rules created such a controversy amongst longtime EPA staffers that some insiders feel it led Eric Schaeffer to resign as the head of Civil Enforcement at EPA. Prior to tendering his resignation, Schaeffer accused the White House of actively working to weaken new source review and cut enforcement personnel in an effort to garner favor with industrial leaders. For his good, I hope that Karl Rove doesn't go after Schaeffer. The talk around Washington is that Rove doesn't take kindly to government employees who cross the White House.

The deluge of resignations at EPA hasn't gone unnoticed on Capitol Hill. Senator James Jeffords (I-Vt.), the ranking member of the Senate Environment and Public Works Committee, noted that "these resignations are merely the latest in an ongoing exodus of top enforcement officials who are no longer comfortable with the direction of the Bush Administration in enforcing clean air laws." Senator Jeffords said that he hopes to work with EPA Administrator Mike Leavitt to find a new enforcement chief "who will restore a strong approach to environmental enforcement and mend the damaged morale" of the agency's enforcement staff. Without question, the departure of many longtime EPA enforcement experts is a clear indication that the White House is trying to give major industrial polluters a free pass in exchange for their continued political support. Unfortunately, most folks don't realize what is going on in Washington under the "Rove"—I mean Bush Administration.

Next Phase Of Anniston PCBs Cleanup

The Environmental Protection Agency must carry out its responsibilities to clean up the PCB contamination in the Anniston area that built up over many years. Because of the involvement of Chief Judge U.W. Clemon, this will be a "real cleanup," rather than the superficial effort that was proposed in a consent decree between EPA and Solutia. A decision on the plan for replacing dirt in yards contaminated with PCBs should have been announced by the time this issue is received. A sampling will take place in the next few months, with dirt from many properties collected for testing, according to Pam Scully, on-site coordinator for the EPA. It is not known how many yards will fall under the plan, which deals with contamination of more than 1 part per million of PCBs. So far, 29 properties have been found to have at least 10 parts per million of PCBs and contractors at Solutia claim to have cleaned up 27 of them. The fact that Judge Clemon, a tough federal jurist, will be in charge of the cleanup effort means it will be a real and good one. Had the lawsuits not been filed in Judge Clemon's court, in my opinion, no real cleanup of the PCB contamination would ever have happened. By making this a part of our total settlement, a cleanup that will benefit residents of Anniston will finally occur after years of delay.

Environmental Update - MTBE

A federal judge in New York cleared the way for New York's ban on MTBE to take effect as planned on January 1st of this year. MTBE is a controversial fuel additive that many believe leads to groundwater contamination. An industry trade organization sued the Governor of New York claiming that the New York law was preempted by the federal Clean Air Act. Because New York has a smog problem, the Clean Air Act requires distributors to provide oxygenated fuels (gasoline mixed with additives), designed to limit the emission of pollutants. Ethanol is an additive, but it is relatively expensive. Methyl Tertiary Butyl Ether, referred to as MTBE, is a viable alternative and is much cheaper. The problem, however, was that MTBE has been banned by New York State after authorities discovered it tends to contaminate groundwater.

The Oxygenated Fuels Association, the trade association trying to defeat the state statute, argued that the New York law was preempted by federal law. The federal judge found that the primary purpose of the federal law was clearly environmental, not economic. The court went on to note that ensuring an adequate supply of gasoline at reasonable costs is not—viewed in isolation—a goal of the federal statute. Instead, the federal statute's goal of enhancing air quality, according to the court, must be viewed in the larger context of market forces, health and environmental impacts, technological feasibility and other considerations. The court went on to find that in enacting the state MTBE law to protect its citizens from groundwater contamination, the State of New York was exercising a power traditionally reserved to the states. It is interesting to note that congressional attempts to immunize the oil industry from MTBE claims failed in the Senate in November, although proponents of such immunity are expected to revive their efforts early this year.

Hartford Settles Asbestos Litigation

The Hartford Financial Services Group, Inc. has agreed to a global settlement of all claims arising out of its historical insurance relationship with Mac Arthur Company and its subsidiary Western MacArthur Company. The agreement calls for The Hartford to pay \$1.15 billion during the first quarter of 2004 "in full and final satisfaction of all claims by Mac Arthur or asbestos claimants against Mac Arthur." The agreement is subject to several conditions, including bankruptcy court approval and the final confirmation of a bankruptcy plan of reorganization for Mac Arthur granting The Hartford a channeling injunction against any further direct or indirect liability for asbestos-related claims against Mac Arthur. The payments will be held in escrow until the conditions are met. They will then be paid into a bankruptcy trust for the benefit of present and future Mac Arthur asbestos claimants.

No Brain Tumor Link According To Chemical Company

After an 18-month review of an apparently high number of brain tumors among its employees, chemical giant Rohm and Haas announced that it found no significant links among the cases. However, 15 employees at the company's research campus have developed brain tumors since 1973. The tumors were malignant in 12 cases, and 11 of the employees have died. The company claims that based on the study findings and review of the current health and safety practices, the facility is a safe place to work. Scientists at the complex work on chemicals used in household and industrial products. Admittedly, clear links between brain tumors and environmental factors have been hard to prove. About 20,000 primary brain tumors are diagnosed in the United States each year. About 5,600 chemists, technicians, office workers and others have worked at the Rohm and Haas Spring House campus since it opened in 1963. That number includes about 1,000 who work there now.

Rohm and Haas is not the first company with troubling numbers of brain tumors among its employees. In suburban Chicago over a period of 14 years, seven laboratory employees at Amoco, the petroleum company later acquired by British Petroleum and now known as BP Amoco, developed aggressive tumors called glioblastomas. This is according to a review finished several years ago. The study, conducted by university scientists, noted the lab's brain-tumor rate was disproportionately high, but failed to pinpoint a cause. However, BP Amoco settled seven cases involving malignant tumors. Presently, the 10 involving benign tumors are still pending. To date, there have been no lawsuits involving the families of survivors of the Rohm and Haas facility.

Pesticide Lawsuit Involves EPA

Farm workers in Washington and other states have recently made claims against the Environmental Protection

Agency for failing to adequately protect workers and the environment from the use of toxic pesticides. The workers' suit was filed in federal court in Seattle, Washington. Farm worker groups, which include the United Farm Workers of America, are claiming that the EPA has continued to allow the use of two toxic pesticides, Azinphos-methyl and Phosmet, despite data showing the dangers of exposure to these chemicals. These organophosphate pesticides are derived from nerve agents used during World War II and are neurotoxins because they can attack the nervous system, according to the suit. In 2001, Washington had the highest use of Azinphos-methyl and was third nationwide in the use of Phosmet. The lawsuit alleges that EPA conducted a shortsighted cost-benefit analysis that ignored recent data and favored the economic interests of growers, many of whom use the chemicals to protect crops from pests such as insects and rodents. The farm workers and their advocates would like to see these substances banned.

Port Of Houston Accepts Pesticide Settlement

A $100 million dollar settlement has recently been announced over massive contamination of the Port of Houston allegedly caused by an adjacent pesticide manufacturing plant, G. B. BioSciences. The pesticide manufacturing plant, its parent company and other firms associated with the plant in east Houston were part of the settlement. Two pesticides, DDT and Lindane, were manufactured for many years at the G. B. BioSciences plant. As part of the settlement, the defendants have agreed to buy over 100 acres of affected property from the Port. Additionally, the settlement called for extensive cleanup that will cost a projected $45 million dollars and take from 5 to 7 years to complete. It has been reported that the contamination is so bad that some 500,000 cubic yards of sediment from a nearby bayou will have to be removed. The federal government banned the use of DDT in 1970, and Lindane production was stopped in 1966. This is a prime example of what happens when industry is allowed to operate without taking care of the environment.

XVII. INSURANCE AND FINANCE UPDATE

Insurance Industry Profits Skyrocket

According to a recent study by the Insurance Services Office (ISO) and the National Association of Independent Insurers, the insurance industry registered a 320% increase in net income for the first nine months of 2003 as compared to 2002. During the year, insurance companies have alleged that they cannot be profitable unless lawmakers around the country limit the rights of consumers to file insurance claims. This new profit data appears to indicate that the industry can be very profitable without further limits on the legal rights of injured consumers. Douglas Heller, senior consumer advocate with the nonprofit, nonpartisan Foundation for Taxpayer and Consumer Rights (FTRC) says: "The insurance industry has told every lawmaker in the country that it cannot be profitable without restrictions on the legal rights of consumers, but this data showing a 320% increase in profit proves that the industry has been lying. This information should put an end to all talk of so-called 'tort reform' and open up new discussion about regulating insurance rates."

According to FTCR, there are two primary reasons for the recent jump in profits nationwide: massive rate increases and an improved investment climate. The climb in insurance rates, which have been increasing at an unprecedented clip in recent years, far outpaced the increase in overall claim-related costs, according to the study. The real story the insurance industry has faced recently has nothing to do with claims and lawsuits, but with investment income. The past few years have been very tough on anybody with investments, including insurers. Unlike most Americans, who had to tighten their belts during the economic downturn, insurance companies were able to take another route—tighten the noose around consumers in the form of rate increases. This allowed the companies to squeeze huge profits out of policyholders.

Wal-Mart Settles "Dead Peasant" Insurance Lawsuit

Relatives of Wal-Mart employees whose lives were insured without their knowledge, have settled their lawsuit with the company over what has been labeled the "dead peasant policies." The agreement came just hours before the U.S. Court of Appeals for the Fifth Circuit in New Orleans released its ruling against the retailer on the matter. Family members sued Wal-Mart two years ago, claiming the proceeds from the policies should have gone to them and not the company. A U.S. District Judge in Houston agreed, ruling the company had "no insurable interest" in the lives of its workers and that it wasn't entitled to the life insurance benefits. Under Texas law, companies can benefit from life insurance policies on their workers only if they get their consent or the company has an "insurable interest" in the employee.

To have an insurable interest, the company would have to demonstrate that that person's death could financially harm the company in some way. In most cases, that would be a top or key executive. Wal-Mart refused to disclose the financial terms of the settlement. However, as many as 450 families could benefit from the settlement. The court must approve the settlement. Wal-Mart received between $65,000 and $80,000 when each of its hourly wage workers died and hundreds of thousands of dollars when each of its management employees died. It is shocking, but many Wal-Mart employees never even knew about the policies. Wal-Mart stopped the program in

2000 but was sued a year later when surviving family members discovered the existence of the policies.

According to one insurance company estimate, about one-fourth of the Fortune 500 companies have bought corporate-owned life insurance policies covering the lives of between 5 million and 6 million workers. Every quarter, these companies sweep Social Security numbers in so-called "death runs" to find who has died and then forward the death certificates to insurance companies. Companies borrow money from the insurers to pay the premiums, which they are then able to write off as business expenses on their federal taxes. Hartford Life Insurance Co., which sold the policies to Wal-Mart and has also been sued by the families of the deceased employees, was not involved in the settlement. That case is ongoing. Clearly, the insurance company had to have known that Wal-Mart had no insurable interest and could not qualify for the "dead peasant policies." Accordingly, the insurer should have legal exposure to the families.

JUDGE RULES IN FAVOR OF CLASS ACTION OPT-OUT

Lawyers in our firm often represent "class action opt-outs." A class action opt-out is an individual who received notice of his or her inclusion in a nationwide or other class action. The class action notice typically provides an option for the class member to "opt-out" of the national class settlement and pursue his or her own case. Often it is in the individual's best interest to retain his or her own lawyer in order to have more control over his or her own case. Recently, a class action defendant argued that class action opt-outs should not be able to pursue discovery in their individual cases. The court disagreed. In Drelles v. Metropolitan Life Insurance, the United States Court of Appeals for the Third Circuit ruled that because opt-out plaintiffs brought their own individual cases in state court, they cannot be barred by a federal court from pursuing discovery of their own claim. Lead counsel Leslie Brueckner of Trial Lawyers for Public Justice, who argued the appeal on behalf of the opt-out litigant, stated: "This is a major victory for consumer's rights. This ruling ensures the right of consumers to exclude themselves from a class action lawsuit and still have their own day in court."

A ruling in favor of the defendant insurance company would have been a tremendous blow to individual rights in opt-out cases. Typically, our firm is able to represent opt-outs and obtain for them a greater recovery than what they would have received through the class action relief. Part of our ability to do this rests in the right to conduct discovery against the defendants. As noted by another lawyer for the plaintiffs in the *Drelles* case, "Our clients opted all of their claims out of the nationwide settlement in order to pursue their own cases. If the court had accepted MetLife's arguments, the right to opt-out would have been rendered meaningless." However, because the court upheld the rights of opt-outs to pursue their own claims, opt-out litigation is alive and well in the United States. This is important information for those folks who receive class action notices. The following are the claims being made by the opt-out plaintiffs.

- A practice known as "churning," in which an agent sells a customer a new, larger policy using the cash value of an existing policy to purchase it. When the cash value of the old policy is exhausted, the customer must pay the larger premium or let the policy lapse.
- Sales of policies with so-called "vanishing premiums." Customers were told that after a certain number of years, they would not have to pay their premium anymore, but in some cases that never happened.
- Insurance policies were portrayed as investment products but didn't earn the kind of money that customers believed they would for retirement.
- Some annuities were sold with the representation that they had certain tax benefits, even if the customer didn't need that kind of product to qualify.
- Deferred Acquisition Cost Tax Relief was put into the cost of insurance charges but was not contractually permitted.

RACE-BASED INSURANCE UPDATE

As we reported previously, our law firm continues to represent thousands of African-American plaintiffs who during the early and mid part of last century were charged additional life insurance premiums by several companies, because of the color of their skin. Our firm has represented numerous clients against American General, Life Insurance Company of Georgia, Metropolitan Life Insurance, Unitrin Life Insurance, Liberty Life Insurance Company, Liberty National Life Insurance Company and National Security Life Insurance Company.

In 2002, we were able to reach a settlement on behalf of approximately 2500 clients against American General. Last year, we were also able to reach settlements with Metropolitan Life Insurance Company and Unitrin Life Insurance Company. Currently we are litigating lawsuits filed on behalf of over 2000 clients against Life Insurance Company of Georgia. Life Insurance Company of Georgia is a life insurance company based in Atlanta that sold these type policies throughout the Southeast. Additionally, we are currently handling cases against Liberty National Life Insurance, Liberty Life Insurance Company and National Security Life Insurance Company.

BONDING COMPANY ORDERED TO CEASE BUSINESS IN FLORIDA

Florida's Office of Insurance Regulation has ordered a Fort Worth, Texas company to immediately cease operations in Florida. Global Bonding was soliciting customers for the purchase of contractor surety bonds and was issuing construction performance bonds and bid bonds. Global is unlicensed and unauthorized to transact surety business in Florida. The order was also issued to Hexagon Consolidated Companies of America and Peeples Mining Company. These entities reportedly issued certificates claiming to back the bonds sold by Global. Global's activities were uncovered in an investigation that was prompted by a complaint from the Florida Department of Transportation. In one transaction, Global reportedly sold over $26 million worth of bonds to a Winter Haven construction company. The bonds were then presented to the FDOT to insure a Polk County construction project. In issuing the cease and desist order against Global, the director of the Office of Insurance Regulation urged all Florida businesses and consumers to make sure any company selling insurance products are authorized to operate in Florida. Persons doing business with a company for the first time should check with the State Insurance Department to make sure the company is qualified. The solvency standards required of authorized companies is important information to have. All of the entities named in the Florida order have been ordered to provide a complete accounting of all business conducted in Florida and to honor all contractual obligations in the state. The states of Nevada and Georgia have issued similar orders against Global.

Thousands Of Georgia Consumers Helped In 2003

Under federal law, the states—and only the states—have the sole authority to regulate insurance companies. Occasionally, we have been critical when Insurance Departments fail to protect consumers. It is refreshing to report that some Insurance Departments do their job. For example, in 2003, the Georgia Insurance Commissioner's Consumer Services Division has helped tens of thousands of Georgia consumers settle disputes with their insurance companies. This resulted in the recovery of $20.5 million in insurance claims to these consumers. John Oxendine, the Georgia Commissioner said: "Representatives in our Consumer Services Division helped consumers and businesses retrieve $20,514,224. Many of the citizens who called my office had claim disputes with insurance companies, and our investigators were able to secure a settlement favorable to the consumer. Our office takes calls Monday through Friday from 8 a.m. to 7 p.m., so we can offer the convenience of assisting consumers by phone after traditional working hours."

Specialists in Commissioner Oxendine's Consumer Services Division can help with problems in life, health, auto and homeowners insurance. Consumers can call even if they just want their insurance policy explained or reviewed. Consumers with insurance questions or problems can contact the Consumer Services Division at 404-656-2070, or toll-free at 1-800-656-2298. Consumers can also file a complaint via the Department's Web site at www.gainsurance.org. The mailing address is: Georgia Insurance Commissioner, Consumer Services Division, 716 West Tower, 2 Martin Luther King, Jr. Drive, Atlanta, GA 30334. The Commissioner also sends field representatives to every county outside the immediate metropolitan Atlanta area at least once a month. Consumers can meet with an investigator for face-to-face advice on any type of insurance problem. Georgians can call the number above to find out when an investigator will be in their area. It appears that in Georgia, consumers have a receptive Insurance Department that will help them when assistance is needed.

Maryland Residents Fight Insurance Companies

It continues to amaze me that some insurance companies make it so hard on their policyholders when it comes to paying claims. Sometimes folks have to have claims against insurance companies to find out that some of the companies are extremely hard to deal with. A case in point involves claims resulting from a major hurricane. Maryland residents watched their homes get flattened and their belongings tossed about in a sea of mud when Hurricane Isabel slammed into the Chesapeake Bay community. Now, more than three months later, some residents believe they have been victimized again—this time by their own insurance companies. The president of the Bowley's Quarters Improvement Association reports that residents are struggling with insurers who have offered payments amounting to tens of thousands of dollars less than it will take to rebuild. Some say they've been blindsided by obscure provisions in their policies that enabled companies to refuse any kind of payment. The residents are justifiably mad and frustrated. As a result, the Isabel Victims Citizens Group was formed. Members include folks living in the eastern Baltimore County communities of Bowley's Quarters, Dundalk, Miller's Island and Sparrows Point. A group spokesperson told the Associated Press that "People are tired, desperate, they've been through the mud, and now they're pretty much getting slammed."

Isabel reached Category 5 strength over open water, but had weakened to a Category 2 storm by the time it made landfall near Ocracoke Island, North Carolina, September 18th. It was the strongest storm to hit the country since Hurricane Floyd in 1999 and was blamed for 40 deaths and $2 billion in damage, much of it from flooding. There have been so many complaints against insurance companies in Baltimore that the county launched a probe headed by a former state Insurance Commissioner. A spokesperson for the county told the Associated Press that "the insurance industry performed miserably in the face of this crisis." There is no justification for the magnitude of uncovered loss that occurred in eastern Baltimore County or for the delays and procrastinations of insurance adjusters. Even though residents appear to have received little assistance from the Maryland Insurance Administration, the current Commissioner disagrees with that assessment.

Complaints by residents have

included difficulty penetrating the federal bureaucracy, particularly the National Flood Insurance Program, which falls under the Federal Emergency Management Agency. Congress established the NFIP in the late 1960s after a series of floods destroyed homes along the Mississippi River. Flood insurance policies are sold by local insurance agents, but underwritten by the federal government. This can be most confusing. Typically, flood insurance covers damage to a structure but not to its contents.

XVIII. PREDATORY LENDING UPDATE

Payday Lending Study

In December, the Center for Responsible Lending announced the release of its newest research study, entitled "Quantifying the Economic Cost of Predatory Payday Lending." The CRL is the first group to consider the true financial cost to the American consumer of abusive payday lending fees. The CRL study found that the payday lending debt trap costs American borrowers $3.4 billion dollars a year. The payday industry has experienced exponential growth over the past few years, with profits exploding from $10 billion in 2000 to $25 billion in 2003. A payday loan is a short-term loan of an amount usually less than $500, with annual percentage rates of 400% or larger. Payday lending is a wealth-stripping practice that targets America's most vulnerable families.

U.S. Rule Overides State Lending Laws

A United States bank regulator issued regulations that say that state lending laws, including statutes aimed at curbing abusive practices, do not apply to national banks. Consumer advocates and the New York Attorney General Eliot Spitzer criticized the rules, saying they strip consumers of state protections against unscrupulous lenders. Several states, including New York, have passed laws aimed at stopping lenders from making high-cost loans to unsophisticated borrowers who are unable to repay their loans and end up forfeiting their homes, a practice referred to as predatory lending.

The federal Office of the Comptroller of the Currency exempted national banks from state consumer lending laws like the ones putting restrictions on loan costs. The OCC contends that banks are already subject to numerous federal requirements, and having to follow many state laws imposes unnecessary costs and burdens. Critics said the regulations undercut state safeguards and enforcement muscle. Margot Saunders, managing attorney for the National Consumer Law Center, said exempting subsidiaries of national banks from state laws would open the door to wider abuses against consumers. She pointed out something that has largely flown under the radar screen: "The bad predatory lenders have for years been affiliates of banks." The OCC's actions will shield national banks from important state consumer protection laws in states that have such laws. The New York Attorney General said the new rules would not stop him from filing lawsuits against national banks in New York. Unfortunately, in Alabama we have few real consumer protection laws. So we may be better off under the federal law and that is not good, because this should be a state's responsibility.

XIX. NURSING HOME UPDATE

Lawmakers Consider Nursing Home Reform

Georgia lawmakers are considering a bill to require a coroner be called whenever a death occurs in a nursing home or a personal care center. Patient advocates say there is a serious gap in the current law. Georgia's nursing homes oppose the legislation. It appears reasonable that deaths in nursing homes should be reviewed routinely since there is so much evidence of wrongdoing. Trying to investigate a death months later is much more difficult. I believe that the level of care and attention of residents would improve dramatically if the owners and operators knew deaths would be routinely investigated. The health and welfare of residents is important enough to warrant passage of like legislation in all states—including Alabama.

Nursing Home Workers Arrested For Elder Abuse

A sting operation by the California attorney general's office, which for the first time used a hidden video camera to investigate skilled nursing care, has resulted in the arrest of 12 employees of a nursing home in San Diego on felony charges of elder abuse. The allegations involve the care of an elderly patient at SunBridge Care & Rehabilitation last year. The 12 employees "did, under circumstances and conditions likely to produce great bodily harm and death…willfully cause and permit her to be placed in a situation in which her health was endangered," according to allegations in documents filed in court. Ten of the defendants were also charged with a misdemeanor count of falsifying the patient's medical records. All of the charges were part of a grand jury indictment. The attorney general's office had received complaints from other sources about some of the care that was provided at this facility and launched an investigation as a result. Thus far, neither SunBridge nor its parent company, Sun Healthcare Group, has been charged as a result of the investigation. In a separate action, state licensing and certification officials with the Department of Health Services started an investigation of the SunBridge facility.

SunBridge Care & Rehabilitation for Escondido East, part of a national chain, is a skilled nursing facility authorized by Medicare. The arrests were the result of a secret surveillance the Attorney

General's Office conducted to make sure that SunBridge's parent company was complying with a 2001 court order. That order resulted from civil and criminal actions against Sun Healthcare Group after the Attorney General issued more than 100 citations against Sun Healthcare's San Mateo facility involving the treatment of its residents. An injunction was issued after SunBridge agreed to many operational changes to assure the health and well being of its residents. Apparently, there were problems complying with the order.

Tennessee Court Strikes Down Nursing Home's Arbitration Clause

In December of 2000, Charles Cox admitted his wife, Mary Cox, into the NHC Healthcare-Knoxville Nursing Home for physical therapy and vocational rehabilitation services. Mr. Cox was asked to sign the nursing home admission agreement for his wife and he did so. In April of 2001, Mr. Cox died, and a week later Mrs. Cox died as well in the nursing home. Afterwards, Mrs. Cox's daughter, Lynn Raitere, filed a lawsuit against NHC, saying that poor care was the cause of her mother's death. The admission agreement signed by Mr. Cox contained a binding arbitration clause and a waiver of the right to a jury trial.

The Tennessee Court of Appeals ruled that the admission agreement required by of the nursing home was a "contract of adhesion." In other words, it was offered to Mr. Cox on a "take it or leave it basis." In addition, the Court said that the arbitration provision was "buried" within the agreement that was eleven pages long, was undistinguishable from other provisions of the contract and was not pointed out to Mr. Cox. The Court gave serious consideration to the circumstances that surround most nursing home admissions: the very stressful and highly emotional time during which family members are in urgent need of immediate care for their loved ones. Under these difficult circumstances, as the Tennessee Court of Appeals recognized, people should not be deceived and forced into signing away valuable rights in order to receive necessary medical care. There can never be any justification for requiring a person to sign an arbitration agreement as a condition for admission to a nursing home. Obviously, this would be a predispute requirement and would take away any incentive to provide good care and attention to the residents.

AARP-Florida Still Against Caps On Damages

You may recall that in last month's report we indicated that the Florida chapter of AARP had reversed its stand and declared its support of caps on pain and suffering damages in nursing home lawsuits. Afterwards, Bentley Lipscomb of AARP-Florida contacted our office and spoke with Jerry Taylor, head of our Nursing Home Section. Mr. Lipscomb wanted to let us know that AARP- Florida has not, in fact, reversed its stand on caps on damages in nursing home lawsuits and continues to be opposed to them. However, AARP-Florida has authored potential nursing home legislation that does provide a one million dollar cap on pain and suffering damages in nursing home lawsuits. They believe that such a measure may be needed to ensure that adequate insurance policies are available to Florida nursing home residents with valid claims.

The situation that Florida faces—as well as numerous other states around the country, including Alabama—is that many nursing home owners, regardless of what they do to their residents, are doing everything they can to make themselves "litigation proof." Some of the things these owners have done include having no or very little insurance, creating "shell" corporations to operate the nursing home facilities that have no assets, and requiring residents to sign binding arbitration agreements that may provide very low damage caps. If I were searching for a nursing home for someone in my family I would be highly suspect of one that required binding arbitration or carried no or very little insurance coverage.

In any event, we are happy to set the record straight on the AARP's position in Florida. Their leadership must never forget that hundreds of thousands of seniors depend on the AARP to protect their interests.

XX. HEALTHCARE ISSUES

Cost Of Healthcare

Health care spending in this country reached $1.3 trillion during 2002. This staggering figure outpaced growth in the rest of the economy for the fourth consecutive year. It is not too surprising to learn that hospital spending and prescription drug costs were the main reason for a 9.3% increase over 2001 spending. While the numbers are not available for 2003, the federal government believes the growth slowed some during the past year. If so, it most likely occurred because folks don't have the money to spend because of the downturn in the U.S. economy. The next President should force Congress to take prompt action to control the unreasonably high cost of health care in this country. The current occupant of the White House is too tied to the industry to be a positive factor for good on this issue.

Another Botched Prescription Case

Two men from Southington, Connecticut, who sued CVS Pharmacy Inc. after their mother received a botched prescription and died two years ago, have settled the case for $1.8 million. Donna Marie Altieri, 51, died of a morphine overdose on June 15, 2001, when she medicated herself for chronic diarrhea with a more potent medicine mistakenly dispensed by a CVS pharmacist. Mrs. Altieri's doctor had prescribed camphorated tincture of opium, or paregoric, for her. Instead CVS filled the prescription with tincture of opium, a far more powerful diarrhea medicine with 25 times the morphine. Altieri died the next day soon after taking a teaspoon of the medication. Her sons, Daren and Derek Altieri, sued CVS in February, alleging the pharmacy was negligent and reckless in giving their mother the wrong prescription. Both sons successfully campaigned last March to change state regulations, requiring pharmacies to maintain records on errors, report any errors to the prescribing doctor, the patient or, in the case of a death, the patient's family.

The pharmacist who made the error was reprimanded by the State of Connecticut and was required to participate in several intensive programs for two years. The requirements included taking intensive courses and teaching classes concerning the prevention of prescription errors, the proper procedures for prescriptions and the need for constant vigilance. Local police also investigated the incident and concluded that the death was an accident, and no criminal charges were brought against the pharmacist or the pharmacy. I am firmly convinced that people are better served by dealing with their neighborhood pharmacist whom they know and trust. The large chains operate on volume and often have pharmacists who work long hours. In addition, prescriptions are filled by non-professionals, who are supposed to be supervised by a trained pharmacist. The incidents of misfilled prescriptions are much greater than most people realize.

Online Pharmacies Can Be a Rip-Off

Prevention magazine has investigated online pharmacies, and the magazine's senior editor, Laura Petrecca, found a disturbing mass of rip-offs, fake drugs, mislabeled prescriptions and very dangerous practices. Ms. Petrecca, who led the investigation, was quoted recently on CBS's *The Early Show*: "People can get any drug they want at any time they want as long as they have a computer, credit card and cash. They simply fill out an online form and it's delivered to the home. It's shocking." The investigation found that no prescription is necessary. Apparently, it is very easy for any person, including children, to set up an online account. Some of the sites even take cash and will send the drugs to P.O. Box addresses.

It appears that people can get any drug from these sources. According to the investigation, the drugs can be counterfeit, knocked off or mislabeled. Obviously, there is great danger in buying online. Most of the people buying from "e-pharmacies" are ordinary consumers who are looking for drugs that may not be available to them at the local level. Some may be persons who may not want to go to the doctor for fear of being denied the prescription. Others simply can't afford to go to a doctor. They simply provide a credit card number and in two weeks they have a controlled drug delivered to them. According to the Prevention team members who went undercover and ordered drugs, a number of folks are getting sick. Others are getting the wrong drugs. In any event, the risks involved are most significant. I still believe strongly that folks needing medicine should have a face-to-face doctor visit and get their prescriptions that way. Then it just makes good sense to get their prescriptions filled at a local drug store. To gamble with your health by deciding what drugs you need and then going online without a doctor's involvement makes no sense. Not only that—it is very dangerous. There are many reports of tragic consequences resulting from the use of online operations. I suspect there are many more that go undetected.

An Example Of Dangers In Dealing With Online Pharmacies

The Federal Drug Administration estimates that there are at least 2,000 web pharmacies in operation at present. While some are legitimate, many approve prescriptions without any doctor ever seeing a patient. In December, a Texas doctor who prescribed hydocodone over the Internet to an 18-year-old California boy lost his medical license, as well as a $2 million wrongful death case brought by the boy's parents. Any person who obtains prescription drugs by way of the Internet is running a big risk in my opinion. No prescription medication should be purchased except when a person's own medical doctor, who knows the person's medical history and what drugs are being taken, prescribes the drug. Then, the prescription should be taken to a local pharmacist. My advice is to establish a relationship with a pharmacist you trust and can see when the need arises.

Chemicals Common In Cosmetics Found In Breast Tumors

The most common group of chemicals used as preservatives in cosmetics and deodorants has been detected for the first time in human breast cancer tissue. Although the discovery by a British oncology expert points to a link between breast tumors and the chemical group called parabens, it is not clear exactly what the relationship is, and many important questions still need to be answered. The U.S. Food and Drug Administration has called parabens the most widely used preservatives in the United States, common in shampoos, foundations, facial masks, hair-grooming aids, nail creams, and permanent wave products. Animal and laboratory studies have previously shown that parabens can mimic the actions of the hormone estrogen. That has raised red flags because estrogen is known to fuel breast cancer. The latest, apparently groundbreaking research takes those findings one step further. The study, which appears in the January/February issue of the *Journal of Applied Toxicology*, will be widely read because of its content. A 1984 study estimated parabens were used in 13,200 different cosmetic formulations. Of particular concern are underarm products, such as deodorants and antiperspirants, which are applied topically and absorbed through the skin. The lead researcher, Dr. Philippa Darbre, a senior lecturer in oncology at the University of Reading in England, has been studying breast cancer for 20 years and has long been interested in parabens but could not get funding for this study. I am sure this study will prompt more studies and that's good.

FDA Did Right Thing On Silicone Gel Breast Implants

The U.S. Food and Drug Administration has refused to allow silicone gel breast implants to be utilized in the United States. The FDA should be commended for the non-approval letter it released, concerning Inamed silicone gel breast implants. Responding to a review of the data, the strong urging of the chairman of its advisory committee chairman, Dr. Thomas Whelan, against approval and other outside pressures against approval, the FDA wisely asked for additional data upon which to judge the safety of the implants. The agency is thereby rejecting its own flawed "guidance," which encouraged companies such as Inamed to think that dangerously inadequate amounts of data could be used as a basis for approval. According to Dr. Sidney Wolfe, of Public Citizen, the FDA decision to not approve Inamed's silicone gel breast implants is "a rejection of what would have been the most dangerous, defective medical device ever approved by the FDA despite advanced knowledge of its dangers." Although saline implants are also defective in their frequent ruptures, Dr. Wolfe points out that "there is an extraordinary difference between rupture and leakage of salt water - which is immediately and safely absorbed by the body - and the spread of highly reactive silicone gel, causing local and regional scar tissue formation as well as gel migration to other parts of the body." While we have been critical of the FDA on many other occasions, I must say that this time they did "the right thing" for a change.

Humana To Pay Doctors More

Judges in Kentucky and Ohio have agreed to allow a settlement between one of greater Cincinnati's largest insurers and local doctors - a settlement that would increase reimbursement to doctors by $100 million over three years and create an oversight committee. Humana Health Plans of Ohio, which estimates it paid doctors more than $270 million in 2003 for providing care, agreed to increase that amount by $20 million in 2004, $15 million on top of that ($35 million increase) in 2005 and $10 million more ($45 million increase) in 2006. Then, from 2007 to 2010, a three-person oversight committee will monitor Humana's reimbursement by looking at random cases to make sure reimbursement rates are fair.

The case was brought by several doctor groups who accused four insurers - including Humana - of colluding for years to keep doctor payment rates unusually low in greater Cincinnati. The case is still pending against the other three insurers: Aetna Health Inc., United Healthcare of Ohio Inc. and Anthem Blue Cross & Blue Shield. More than 2,000 doctors made the claim they were being underpaid by insurers. The Academy of Medicine of Cincinnati and several other doctor groups filed lawsuits in 2002 in Hamilton County and Boone County courts alleging the collusion. About 4,000 doctors—more than 90% of all the region's doctors—do business with Humana. More than 400,000 greater Cincinnati residents will be covered in 2004 by a Humana health plan.

XXI. THE CONSUMER CORNER

Investor Alert—Top 10 Investment Frauds

Joseph P. Borg, Director of the Alabama Securities Commission (ASC), has released an updated list of the NASAA "Top 10" scams, risky investments or sales practice abuses regulators in North America are fighting. Director Borg said that factors like record-low interest rates, a rash of white collar crime on Wall Street and a weak economy last year have tempted many people to seek investment initiatives that fall outside the realm of solid investment practices. As a result, things like long-term growth and the principle of diversification were neglected. Each of the Top 10 scams has occurred in Alabama and other states. However, two investment frauds that warrant special attention in our state are senior fraud and affinity fraud. To combat senior fraud this year ASC has partnered with the Alabama Department of Senior Services, AARP and other government and commercial agencies to develop and implement state wide training events to reach and protect seniors. This initiative is a new approach to target seniors in the age group from 55 to 65, in addition to the programs reaching seniors 65 and over.

Affinity fraud, a scam where a member of an organization cheats fellow members, is a common scheme. Affinity fraud may be community, social, religious or ethnic. In Alabama, the primary targets are religious communities, and that is sad. Fraudsters often come into the religious community and establish credibility by participating in church activities and leadership opportunities. After becoming "accepted," they then prey upon trusting members. The Top 10 List of Scams, Schemes and Scandals, based on a survey of state securities enforcement officers and regulators, for 2004 are:

- **PONZI SCHEMES.** Named for swindler Charles Ponzi, who in the early 1900s took investors for $10 million by promising 40% returns, these schemes are a perennial favorite among con artists. The premise is simple: promise high returns to investors and use money from previous investors to pay new investors. Inevitably, the schemes collapse and the only people who consistently make money are the promoters who set the Ponzi in motion. The Securities Commission issued over 30,000 checks in the past 3 years to victims of Ponzi schemes in Alabama, but losses are still in the millions of dollars.

- **SENIOR FRAUD.** Volatile stock markets, low interest rates, rising health care costs, and increasing life expectancy, combined to create a perfect storm for investment fraud against senior investors. State securities regulators said older investors are being targeted with increasingly complex investment scams involving unregistered securities, promissory notes, charitable gift annuities, viatical settlements, and Ponzi schemes, all promising inflated returns. To learn more, visit NASAA's Senior Investor Resource Center at www.nasaa.org/nasaa/sirc/sirc.asp.
- **PROMISSORY NOTES.** A long-time member of the Top 10 list, these short-term debt instruments often are sold by independent insurance agents and issued by little-known or non-existent companies promising high returns—upwards of 15% monthly—with little or no risk. When interest rates are low, investors often are lured by the higher, fixed returns that promissory notes offer. These notes, however, can become vehicles for fraud when the issuer of the note has no intention or capability of ever delivering the returns promised by the sales person.
- **UNSCRUPULOUS BROKERS.** Despite the stock market's rebound in 2003, state securities regulators say they are still receiving a high level of complaints from investors of brokers cutting corners or resorting to outright fraud to fatten their wallets.
- **AFFINITY FRAUD.** Con artists know that its only human nature to trust people who are like yourself. That's why scammers often use their victim's religious or ethnic identity to gain their trust and then steal their life savings. No group seems to be immune from fraud. In November 2003, authorities arrested five people accused of defrauding evangelical Christians of $160 million in three years and using the money to live extravagantly. Federal and state investigators charged that a California family promoted an affinity fraud scheme through evangelical leaders and groups, targeting people who shared religious beliefs and common ethnicities. A joint effort involving the FBI, the SEC, the IRS, and the Texas State Securities Board brought criminal and civil charges to halt the scheme, which promised returns of 25% within three months. In a multistate action, led by ASC, a faith-based scam which had taken in over $500 million dollars was shut down, placed in receivership and the principal perpetrators convicted.
- **INSURANCE AGENTS AND OTHER UNLICENSED SECURITIES SELLERS.** While most independent insurance agents are honest professionals, too many are lured by high commissions into selling fraudulent or high-risk investments, such as promissory notes, ATM and payphone investment contracts and viatical settlements. "Scam artists continue to entice independent insurance agents into selling investments they may know little about," Lambiase said. The person running the scam instructs the independent sales force—usually insurance agents but sometimes investment advisers and accountants—to promise high returns with little or no risk.
- **PRIME BANK SCHEMES.** A perennial favorite of con artists who promise investors triple-digit returns through access to the investment portfolios of the world's elite banks. The negative publicity attached to these schemes has caused promoters in recent cases to avoid explicitly referring to Prime Banks. Now it is common to avoid the term altogether and underplay the role of banks by referring to these schemes as "risk free guaranteed high yield instruments" or something equally deceptive.
- **INTERNET FRAUD.** With the Internet becoming a common part of daily life for increasing numbers of people, it should be no surprise that con artists have made cyberspace a prime hunting ground for victims. Internet fraud has become a booming business. The most recent figures show cyberfraudsters took in $122 million in 2002, according to the Federal Trade Commission. The Internet has turned from an information superhighway to a road of ruin for victims of cyber fraud. The Internet has made it simple for a con artist to reach millions of potential victims at minimal cost. Many of the online scams regulators see today are merely new versions of schemes that have been fleecing offline investors for years. In November 2003 various federal, state, local, and foreign law-enforcement agencies targeted cyber-fraudsters and netted 125 arrests and more than 70 indictments. Operation Cyber Sweep identified more than 125,000 victims with losses estimated to exceed $100 million. Investors should ignore e-mail offers from individuals representing themselves as Nigerian or West African government or business officials in need of help to deposit large sums of money in overseas bank accounts. If you get an e-mail pitching a deal that can't be beat, hit delete.
- **MUTUAL FUND BUSINESS PRACTICES.** Although mutual funds play a tremendous role in the wealth and savings of our nation, ongoing scandals throughout the industry clearly demonstrate that some in the mutual fund industry are putting their own interests ahead of America's 95 million mutual fund shareholders. State securities regulators, the SEC, NASD, and mutual fund firms themselves have launched a series of inquiries into mutual fund trading practices. To date, more than a dozen mutual funds are under investigation, and several mutual funds and mutual fund employees have either pleaded guilty, been charged or settled with state regulators.
- **VARIABLE ANNUITIES.** Sales of variable annuities have increased dramatically over the past decade. As sales have risen, so too have complaints from investors. Regulators are concerned that investors aren't being

told about high surrender charges and the steep sales commissions agents often earn when they move investors into variable annuities. Some investors also are misled with claims of guaranteed returns when variable annuity returns actually are vulnerable to the volatility of the stock market. The benefits of variable annuities—tax-deferral, death benefits among others—come with strings attached and additional costs. High commissions often are the driving force for sales of variable annuities. Variable annuities are considered to be securities under federal law and the laws of 17 jurisdictions. Most states consider variable annuities to be insurance products. NASAA is encouraging changes in state laws that would allow state insurance regulators to continue to oversee the insurance companies that sell variable annuities while authorizing state securities regulators to investigate complaints about variable annuities and to take action against the companies and individuals who sell them.

Before investing, persons should call the offices of state securities regulators and ask if the individual selling the investment is licensed to do so. Regulators say investors can also save themselves a lot of grief by asking a second question—whether the investment itself is registered. To check out an investment or salesperson in Alabama, you should contact the Alabama Securities Commission: 770 Washington Avenue, Suite 570 – Montgomery, AL 36130-4700 – Telephone: (334) 242-2984 or 1-800-222-1253 – Website: **www.asc.state.al.us**. We appreciate ASC for furnishing us the above information so it could be passed on to our readers. Joe Borg and his staff do an outstanding job for Alabama citizens.

Tainted Blood: The Silent Killer

Our firm has participated in an annual blood drive for the past several years. The donation of blood by concerned individuals has saved millions of lives throughout this country. However, receiving or donating blood could have fatal consequences unless trained medical professionals are involved. In 2002, there were a number of incidents reported in this country in which individuals received blood contaminated with the HIV virus, Hepatitis C (HCV), and other infectious diseases.

One very disturbing incident involved the federal government. A large number of patients receiving blood transfusions at Veterans Administration medical centers received HCV contaminated blood. HCV is a communicable disease, spread by contact with contaminated blood. Needles and household items, such as razors and toothbrushes, may spread the virus. Most disturbing about this incident is that some of the veterans apparently received the contaminated blood around 1990. Yet, they were not informed of the potential contamination until July 17, 2002. As a result, at least one veteran has died from an avoidable and treatable condition.

It is my understanding that the V.A. has sent out letters to all veterans who potentially received blood during the time frame referenced above. However, I recommend that any person who received a blood transfusion at a V.A. hospital during this time frame take steps immediately to ensure they have not contracted HCV. Any person who has contracted HCV should get medical treatment/counseling immediately. Because of the large number of potential victims, the federal government has created a Website to answer any questions or concerns. The Website address is www.webmd.com.

Drawstrings On Children's Clothing

Thelma Sibley of Milan, Michigan, suffered the worst nightmare of any parent –the death of her child. Five-year-old Nancy Sibley was strangled in the early 1990s by a hidden hazard when the drawstring of her winter coat was caught on a playground slide. Unfortunately, Nancy's death in the early 1990s was not the only incident of this sort. Since 1985, there had been 17 deaths and 42 nonfatal incidents caused by drawstring entanglement. Playground slides were involved in over one-half of the incidents. Also implicated were school buses, cribs, and other products such as an escalator, a fence, farm grinder, turn signal lever, ski chair lift and tricycle. Manufacturers at that time had done little to address the problem. The consuming public was totally unaware of the dangers to children because of the hazard. Few parents would have considered the drawstring on a child's clothing to be a hazard. Today they do, and that is good for children.

The CPSC serves consumers by preventing deaths and injuries through swift and effective voluntary coordination with children's clothing manufacturers and retailers. Because of the number of drawstring-related incidents, the CPSC first worked with manufacturers to remove catchpoints on playground slides and other products. Upon further analysis, CPSC decided that removing strings from the garments was the best approach. CPSC Chairman Ann Brown and Thelma Sibley, the mother mentioned above who had lost her own child, formed a partnership and set out to solve the problem by bringing together representatives from leading manufacturers of children's clothing. In April 1994, CPSC presented the industry with the evidence that drawstrings on jackets, coats and sweatshirts (mostly located in the hoods of these garments) could kill children. In just 4 months, the manufacturers voluntarily agreed to remove neck and hood drawstrings from most of the 20 million children's garments manufactured annually in this country, and promised that garments without these drawstrings would be available to consumers beginning with the Spring or Fall 1995 clothing lines.

It is significant that no regulation was required because the industry did the right thing to solve a problem. CPSC took the additional step of issuing voluntary guidelines that: (1) advise manufacturers to eliminate drawstrings and to replace them with safer alternatives, such as snaps and velcro, and (2) advise parents to remove drawstrings from the hoods and necks of jackets and sweatshirts and to shorten drawstrings around the bottom of the garments. These guidelines have been distributed by CPSC to manufacturers and consumers. CPSC worked with companies to make their redesigned product safer and took decisive action to protect our children from future drawstring deaths. This is a prime example of how the federal government can do its job concerning safety when it doesn't yield to the power of the industry being regulated. It is also an example of an industry that recognized a hazard and took action to make their product safe.

Safety Concerns Over Treated Lumber

As we now know all too well, the arsenic-laced preservatives found in treated wood are considered a cancer risk. At present, there are 50 million homeowners who have pressure-treated wood structures. Porches, decks, fences, swing sets, and other structures using treated wood are commonplace. A sealant that will protect people from the wood's chemicals hasn't been found so far. Meanwhile, producers of pressure-treated lumber are having to make some difficult choices. There is a $4 billion-a-year demand for wood that resists rot and pests. The need for a safe method of treating the wood is obvious. An alternative treatment favored by some manufacturers is raising safety concerns and has yet to get federal approval despite heavy lobbying.

Federal regulators finally decided that one of America's favorite building products had to come off the market. It's been almost two years since the Environmental Protection Agency reached an agreement with the wood-treatment industry to phase out production of lumber permeated with chromated copper arsenate, or CCA. About 90% of all pressure-treated wood contains the arsenic-based compound. Industry experts estimate that 75 billion feet of CCA-treated boards are in use nationwide. The 22-month phaseout ended in December. However, stores can sell remaining stocks after production ends. The EPA said the phaseout was a way to "ensure that future exposures to arsenic are minimized," while giving producers time to move to alternative products. CCA-treated lumber still dominates the market. According to reports, manufacturers have produced enough to keep it in stores for months.

The arsenic in CCA-treated wood is linked to bladder, liver and lung cancer. A draft EPA study issued in November of 2003 found that the lifetime risk of an arsenic-related cancer for children who play frequently on CCA-treated structures could be as high as one in 100,000—10 times the one-in-a-million threshold the agency usually considers to be a significant public health threat. Many consumer groups believe the phaseout left CCA-treated wood on the market too long. Obviously, the EPA was balancing the economic impact to manufacturers on the one hand against safety of the public on the other. As a result, the public health and environment were put at risk. Manufacturers of CCA-treated wood claim their product contains too little arsenic to cause illness. They pushed for a phaseout as the only way to shift to a replacement product without destroying the industry. However, one would think that the safety of children should be the EPA's prime concern.

At this point, the EPA has not suggested that people replace or cover CCA-treated structures. The agency will stick with its advice that people — especially children — wash up after touching CCA-treated wood. However, the EPA's new CCA risk study has resulted in calls for stronger statements on the wood's safety. That study found that cancer risks are marginal for children who play occasionally on structures made of CCA-treated wood. However, risks can be significant for those who use them frequently throughout the year. Children will put their hands in their mouths and that compounds the risks.

The EPA advises people who are concerned about CCA-treated decks and play sets to seal them regularly. Unfortunately, little is known about which sealants work best or whether any work at all. Several big producers of pressure-treated lumber have decided to switch from CCA to a compound called alkaline copper quat, or ACQ. But some players in the treated-wood world want to use ACC, or acid copper chromate. ACC is legal, but it's not in production. To date, the EPA has not granted manufacturers a "registration" to make it. The EPA is concerned about the safety of ACC-treated wood because it comes off production lines containing a form of chromium that also can cause cancer. The chromium subsequently converts to a non-hazardous state, but there's debate over whether that takes a few weeks or a few months. The EPA staff has recommended that no new registrations be granted for ACC production because of the potential risks. That decision was held up after the Deputy Administrator for the EPA met at the White House with former Senate majority leader Bob Dole, who is lobbying for Forest Products Research Laboratory, a company seeking an ACC registration. Interestingly, the EPA is now reassessing the use of ACC. I guess all the former Senator had to do was say, "Bob Dole says this stuff is really safe!" In any event—so much for safety.

Motorized Scooters And Safety

Many parents bought motorized scooters for their children this past Christmas. These scooters can't legally be driven on Alabama roads and can be very dangerous. Most parents don't know that the scooters are illegal on the road, and apparently many weren't told that when they purchased the scooter. Complaints from automobile drivers who say they've almost run over scooters darting across driveways and down the streets are being reported around the state. Enforcing the law may be the only way to prevent serious injuries among the young riders. Unfortunately, there may be few laws to enforce. Riders on these scooters don't have to be licensed. Neither do they have to wear helmets. The scooters don't fall into the motorcycle category because their gas-or-battery-powered engines aren't powerful enough. As a result, there doesn't appear to be any safety rules.

The scooters—like go-carts or four-wheelers—shouldn't be driven on streets or highways. According to the Department of Public Safety, violators could be charged with being on the road with an off-road vehicle. I don't believe that helmet laws are applicable and that is too bad. I hope parents will restrict the use of the scooters by their children. However, legislation is needed to protect children who are allowed to operate these scooters. The Alabama Legislature and city councils around the state should act as soon as possible to regulate the use of these scooters and their operators.

XXII. RECALLS UPDATE

GM Recalls More Than 800,000 Cars

General Motors Corp. is recalling more than 800,000 cars because of a power steering defect that has led to at least 8 injuries. About 750,000 cars in the United States and about 55,000 in Canada are involved. All were made between January 1, 1996 and October 31, 1997. The models are the 1996 Buick Regal, 1997 Oldsmobile Cutlass Supreme, 1997-98 Oldsmobile Cutlass and Chevrolet Lumina, Monte Carlo, and Malibu and 1998 Oldsmobile Intrigue cars. Also, some 1996 Pontiac Grand Prix and Oldsmobile Cutlass Supreme, and 1997-98 Buick Regal cars are being recalled. Drivers have experienced intermittent losses of power steering when making left turns, especially at low speeds. The drivers experienced higher resistance when turning left, followed by unintended power assist to the right that could pull the car in that direction. Eight injuries have been reported that may be related to the defect. However, no deaths were reported. General Motors will begin instructing car owners to bring the affected vehicles to dealers for repairs.

Sales Of 2004 Durango Halted

Chrysler Group has ordered its dealers to stop selling its redesigned 2004 Dodge Durango sport-utility vehicle because of a defect that could cause the vehicle to crash. In a separate move, the automaker recalled 2.7 million 1993-1999 passenger cars because of a problem with a floor-mounted shifter. Chrysler must replace the throttle control cable in the Durango because of a water leak that can freeze the cable in cold temperatures, leaving the throttle open and possibly causing a "crash without warning," according to a directive sent to dealers. The fix must be made to 21,000 vehicles with 3.7-liter V-6 and 4.7-liter V-8 engines that either were delivered to customers or are sitting on dealer lots. It's not unusual for an automaker to halt sale of a vehicle when a safety-related defect is discovered.

Chrysler Recalls 2.7 Million Cars

A problem with floor-mounted gearshifts has led Chrysler, a division of DaimlerChrysler, to recall 2.7 million cars to fix a potential problem with their floor-mounted gearshifts. Vehicles affected by the recall include the 1995-1999 Chrysler Cirrus, Dodge Stratus and Plymouth Breeze; 1996-1999 Sebring convertibles; and 1993-1999 Chrysler 300M, Chrysler Concorde, Chrysler LHS, Dodge Intrepid and Eagle Vision cars, the automaker said. The problem is that if the gear shifter is pulled too hard, it could allow people to remove their keys without shifting into park. Earlier this week, General Motors announced that a problem with a power steering system caused the recall of more than 800,000 cars. For more information, contact your local dealer or service provider.

Ford Crown Victoria

Ford has recalled approximately 4,218 Crown Victorias, model years 1996 through 2003. On certain natural gas vehicles, if a flame from a vehicle interior fire becomes locally directed at the natural gas fuel tank located immediately behind the rear seat, the flame could damage the fiberglass wrap on the tank, weakening the tank. If the strength of the tank is significantly compromised, it could rupture. Dealers will install an insulator behind the current seat back. Owner notification is expected to begin this month. Owners may contact Ford at 1-800-392-3673.

Ford Freestar And Mercury Monterey

Approximately 23,996 model year 2004 Ford Freestars and Mercury Montereys have been recalled by Ford Motor Company. These vehicles were manufactured from March through October 2003. On certain minivans, the power steering low-pressure line may not be fully seated at the rack-and-pinion steering gear. If this line becomes disconnected, it may create the potential for fluid to come into contact with the exhaust system, which could result in smoke or fire. Dealers will inspect the power steering low-pressure line to ensure that it is seated properly at the rack-and-pinion steering gear. Owner notification began November 10, 2003. Owners may contact Ford at 1-800-392-3673.

Dodge Dakota

DaimlerChrysler Corporation has recalled the 2001 through 2003 Dodge Dakota pickup trucks manufactured from July 2000 through July 2003. Approximately 50,082 vehicles are involved in this recall. On certain pickup trucks equipped with manual transmissions, the headlamp and dash wiring harness may be chafed by the actuation of the clutch pedal. This could result in abnormal operation of the wipers, turn signals, horn, or lighting systems. This could affect driver visibility, could prevent a driver from sounding a warning by using the horn, and, when the turn signals are inoperative, will prevent a driver from using them to signal intent to turn, increasing the risk of a crash. Dealers will reroute the wire harness and repair the harness if necessary. Owner notification began on November 3, 2003. Owners may contact DaimlerChrysler at 1-800-992-1997.

DODGE VIPER

DaimlerChrysler Corporation has recalled the 2003 Dodge Viper. The dates of manufacture were August 2002 through August 2003. On certain passenger vehicles, the multifunction switch park lamp contacts may corrode. The multifunction switch parking light contacts could cause the head lights, parking lights, and/or instrument panel lamps to flicker or become inoperative. This could affect driver visibility, increasing the risk of a crash. Dealers will reflash the software in the Body Control Module. Owner notification began during December 2003. Owners may contact Daimler-Chrysler at 1-800-992-1997.

CHRYSLER PACIFICA

The 2004 Chrysler Pacificas, manufactured prior to April 16, 2003, have been recalled by DaimlerChrysler Corporation. On certain sport utility vehicles, the chassis fuel supply tube may have been incorrectly manufactured. Under certain engine and vehicle dynamic conditions, the fuel line may separate, resulting in a fuel leak and an increased risk of a vehicle fire. Dealers will install a secondary retention clip to the fuel line quick connect. Owner notification began during December 2003. Owners may contact Daimler-Chrysler at 1-800-992-1997.

JEEP LIBERTY

DaimlerChrysler Corporation has recalled its 2002 and 2003 Jeep Liberty. Approximately 336,000 vehicles, manufactured from January 2001 through March 2003, are involved in this recall. On certain sport utility vehicles, the lower control arm ball joints can experience a loss of lubrication that can lead to corrosion, accelerated wear, and possible separation from the steering knuckle. A ball joint that has separated from the knuckle could result in loss of vehicle directional control and could result in a crash. Dealers will replace the front lower control arm ball joints with modified assemblies and heat shields on vehicles built between January 2, 2001 and October 4, 2002. On vehicles built between October 5, 2002 and March 26, 2003, dealers will inspect the ball joint assemblies, replace them as necessary, and install heat shields. The manufacturer had not yet provided an owner notification schedule for this campaign when this issue went to the printer. Owners may contact DaimlerChrysler at 1-800-992-1997.

BUICK PARK AVENUE

General Motors Corporation has recalled the 1998 and 1999 Buick Park Avenue. Approximately 95,690 vehicles are involved. These vehicles were manufactured from October 2001 through June 2002. Certain passenger vehicles equipped with 3800 V6 (L36) engines and certain Delphi fuel pressure regulators have a much higher than usual rate of fuel pressure regulator diaphragm leaks. A leak can allow fuel to enter the intake manifold through a vacuum line. If the engine does not start when cranked, the fuel from the leaking regulator and a mistimed spark can cause a backfire. The backfire can rupture the intake manifold. The rupture of the intake manifold can displace a fuel line, pulling an injector out of place, and causing a fuel leak and possible fire. Dealers will install new fuel pressure regulators with improved diaphragms. Owner notification began this month. Owners may contact Buick at 1-866-608-8080.

BUICK RENDEZVOUS AND PONTIAC AZTEK

General Motors Corporation has recalled the 2004 Buick Rendezvous and the 2004 Pontiac Aztek, manufactured during September 2003. On certain sport utility vehicles, a weld between the fuel tank inlet check valve and the fuel tank can fail. If these parts separate, the driver may notice an odor of fuel, the "Service Engine Soon" or "Check Engine" light may illuminate, or fuel may leak onto the ground. Fuel leakage in the presence of an ignition source could result in a fire. Dealers will inspect the serial number of the fuel tank to see whether it is on the list of affected tanks. If the serial number matches, the fuel tank will be replaced. Owner notification began November 11, 2003. Owners may contact Buick at 1-866-608-8080, or Pontiac at 1-800-620-7668.

COROLLA

Toyota Motor North America Inc. has recalled the 2004 Toyota Corolla. On certain passenger vehicles equipped with factory aluminum alloy wheels, the lug nut(s) may not secure the wheel properly to the hub assembly because of over-drilling of one or more of the five lug nut holes on the alloy wheel. If the vehicle is driven for an extended period in this condition, one or more lug nuts could potentially loosen. The stud bolts could fracture, which may result in the separation of the wheel from the hub assembly, leading to a loss of vehicle control. Dealers will inspect all four factory aluminum alloy wheels and, if necessary, replace any found to be out of specifications. Owner notification began on October 27, 2003. Owners may contact Toyota at 1-800-331-4331.

NISSAN SENTRA

Nissan North America, Inc. has recalled its 2000 through 2003 Nissan Sentra. Approximately 276,000 vehicles manufactured from January 2000 through March 2003 are involved. On certain MY 2000-2002 passenger vehicles equipped with the QG18DE engine and MY 2002-2003 passenger vehicles equipped with QR25DE engines, the foam material used for the interior lining of the Electronic Control

Module (ECM) box emits sulfur as it cures. If one of the resistors inside the ECM has a crack on the surface coating, the gas may cause corrosion of the resistor. This could cause the "Malfunction Indictor Light" to come on. Poor drivability, idle instability or poor accelerator could occur, or the engine could stop running during vehicle operation, which could result in a crash. Dealers will remove the inside lining material from the ECM box. Owner notification began during December 2003. Owners may contact Nissan at 1-800-647-7261.

INFINITI FX35

Nissan North America, Inc. has recalled the 2003 Infiniti FX35 and 2003 Infiniti FX45. Approximately 24,300 vehicles are involved. The dates of manufacture are November 2002 through July 2003. On certain sport utility vehicles, the front brake caliper mounting bolts may not be adequately tightened. This could result in one or both of the caliper mounting bolts loosening. If this occurs, it would allow the caliper to rotate or separate from its mounting bracket. This could cause the brake to fail, reducing the vehicle's ability to stop. It could also damage the wheel, causing the tire to go flat. Either one of these conditions could result in a crash. Dealers will tighten the front brake caliper mounting bolts to ensure that they are secure. Owner notification began in January. Owners may contact Infiniti at 1-800-662-6200.

VOLVO RECALLS

Volvo Cars of N.A., LLC has recalled the 2003 and 2004 Volvo S40 and V40. On certain passenger vehicles, there may be a fuel leak from the fuel rail due to inadequate welding. Fuel leakage in the presence of an ignition source could result in a fire. Dealers will install a V-clamp to the fuel rail. When this issue went to the printer, the manufacturer had not provided an owner notification schedule for this campaign.

Volvo Cars of N. A., LLC has also recalled the 2003 and 2004 Volvo XC90, involving approximately 18,692 vehicles. On certain sport utility vehicles, the seat belt attachment(s) for the second and third row seat(s) may not have been fitted properly. In the event of a crash, the seat occupant may not be properly restrained, increasing the risk of injury. Dealers will inspect and repair, if necessary, the second and third row seat belt attachments.

Volvo Cars of N. A., LLC has also recalled its 2000 Volvo S40 and V40. Approximately 36,000 vehicles are involved. These vehicles were manufactured from May 1999 through May 2000. On certain passenger vehicles, water can enter the electrical brake vacuum pump, causing the pump to fail, resulting in loss of power assist and an increase in needed brake pedal force, which could result in a crash. Dealers will replace the pump with a new and improved version and move the pump to a new location.

The manufacturer had not provided an owner notification schedule for these recall campaigns when this issue went to the printer. Owners may contact Volvo at 1-800-458-1552. for each recall.

BMW

Bayerische Motoren Werke has recalled approximately 23,000 of its 2001 BMW 5 Series, which were manufactured from January through August 2001. On certain passenger cars, a microprocessor in the air bag control module, which activates the front air bags, the side air bags, the front seat safety belt pretensioners, and the battery safety terminal, may have a malfunction that could lead to an unintended activation of one or more of these components. Unexpected deployment of the air bag(s) could cause serious injury if an occupant is too close to the deploying air bag(s). In addition, the battery safety terminal may also be activated. If that happens, the starter cable would become disconnected from the battery, and the engine could not be restarted. Dealers will replace the air bag control module. Owner notification began during November 2003.

BMW has also issued a recall involving the 2004 BMW X5. On certain passenger cars, the bolts that hold the front differential, the right output shaft housing flange at the engine, and the right-hand engine support may be insufficiently tightened. With prolonged driving, these bolts could become loose and cause damage to the engine and transmission housings. The right output shaft could become disconnected, affecting the ability to control the vehicle, which could result in a crash. Dealers will inspect and retighten the drive-train fasteners. Owner notification for this recall began during December 2003. Owners may contact BMW at 1-800-831-1117 for information on each of these recalls.

MAZDA HAS RECALLED THE 2001 TRIBUTE

The 2001 Mazda Tribute has been recalled because of a seat belt assembly problem. This recall affects approximately 49,000 vehicles. 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 began in November 2003. Owners should contact Mazda at 1-800-222-5500.

DEERE & COMPANY RECALL

A product safety recall involving the John Deere 4000 Ten Series Compact Utility Tractors was conducted in cooperation with the CPSC. Consumers should stop using the product immediately unless otherwise instructed. There were 1,700 units manufactured by Deere & Company of Moline, Illinois. An internal failure may occur within the Hydrostatic Transmission preventing the transmission from returning to neutral after the pedals are released. This can allow unexpected movement or cause the tractor to continue moving, creating a possible risk of injury to the operator or a bystander. Check the model and serial numbers, which can be found on the serial number plate on the tractor frame, to determine whether a tractor is included in the recall.

John Deere is aware of several failures of the transmission, with no reported injuries. Authorized John Deere dealers nationwide and in Canada sold the tractors from April 2001 to August 2003 for between $18,000 and $27,000. All of the units were manufactured in the United States. Consumers should stop using their tractors immediately and contact a John Deere dealer for a free repair. For more information, contact John Deere's Customer Communications Center on (800) 537-8233, Monday through Friday, 8:00 am until 6:00 pm (Eastern Time), Saturday, 9:00 am until 3:00 pm, or at the John Deere Website at www.johndeere.com

XXIII. FIRM ACTIVITIES

The Organizational Structure

Since I have been asked by a number of our readers to explain why our firm is divided into sections, I will give a brief overview of how it works. We have learned by experience that dividing our firm's personnel into separate entities allows us to operate more efficiently and do a better job of representing our clients. The bottom line is that it works very well. Each section of the firm handles certain types of cases. In addition to the Litigation Sections (Personal Injury, Mass Torts, Nursing Home, Toxic Torts, and Fraud), the firm has these Support Sections: Administrative, Information Technologies, Investigation, Graphics, Public Relations, and Law Clerks. The support sections do what the term indicates—they "support" the litigation sections.

In the Litigation Sections, lawyers and assigned support personnel are able to develop skills and expertise in their specialty area. Because of the complex nature of litigation in today's world, we believe that we are better able to serve our clients using this organizational set-up. Lawyers in the Nursing Home Section, for example, can develop expertise in an area that requires a great deal of specialized knowledge. The same is true for all of the other sections.

Scarlette Tuley Named Shareholder

Scarlette Tuley has been named a shareholder with the firm. The Jackson County native graduated from the University of Alabama School of Law in 1998. While at Alabama, Scarlette was an editor of the Law and Psychology Review as well as the Honor Court Defense Counsel. Upon graduation, she began her practice with our firm, focusing on personal injury cases. Currently, Scarlette does business litigation and environmental / toxic tort litigation. In her business practice, Scarlette has represented individuals, hospitals, manufacturers, food packagers, lumber companies and contractors.

Scarlette is very involved with the Women's Bar in Alabama. She is the founder and current President of the Montgomery County Women's Bar Section. Scarlette has presented continuing education programs on environmental litigation and the use of technology in case preparation and the courtroom. She is married to Jay S. Tuley, a shareholder with the law firm of Nix, Holtsford, Gilliland, Higgins & Hitson, P.C. The Tuleys have one son, Beck, and are members of Memorial Presbyterian Church. We are proud to have Scarlette Tuley in our firm. She is an extremely hard worker, has excellent people skills, and is totally dedicated to our mission.

Employee Spotlights

Dana Taunton

Dana Taunton came to work at Beasley Allen in 1998. She currently practices in the Personal Injury/ Product Liability Section. Dana received her law degree in 1993 from the University of Alabama. She has spoken at several legal seminars on various topics related to personal injury law and has given yearly updates on tort law on behalf of the Montgomery Bar Association. Dana is married to Derrick Taunton. They have one daughter, Betsie, and another on the way. Dana and her family attend Frazier Memorial Methodist Church in Montgomery. Dana, who became a shareholder in the firm last year, is an excellent lawyer and a credit to Beasley Allen.

Frank Woodson

Frank Woodson joined Beasley Allen in 2001 and works in the Mass Torts Section. Prior to that time, he practiced in Mobile. Frank was responsible for preparing the firm's first Rezulin pharmaceutical product liability case for trial that helped generate the first group settlement of Rezulin cases in the country in the spring of 2002. He was also involved in the additional group settlements of the firm's Rezulin cases in the fall of 2002 and the spring of 2003. Frank is also a part of our Baycol litigation team. He is the former President of the Mobile County Young Lawyers, a member of Mobile County Bar Association Executive Committee and a member of the State of Alabama Young Lawyers Committee. Frank and his wife, Marti, have four children, Walker, Win, Reid, and Shaw.

Kimberly Ward

Kimberly Ward works as an attorney in the firm's Toxic Torts Section. Before working at Beasley Allen, she completed a judicial clerkship for Alabama Supreme Court Justice Champ Lyons, Jr.

Kimberly graduated from Auburn University with a B.A. Degree in Political Science. While attending Auburn, she was a member of Pi Sigma Alpha, a national political science honor society. Kimberly graduated from the University of Alabama School of Law in 2001. She is a member of the Alabama State Bar, the American Bar Association, the Capital City Bar Association, and the Hugh Maddox Inns of Court. We are most fortunate to have Kimberly in our firm.

Victor Coyle

Victor Coyle has been with the firm for five years. Victor serves as our Network Administrator. In this position, Victor handles tech support and networking issues, as well as researching new products and software. Victor started with us as a mail clerk, and worked as a runner for the firm before moving to our Information Technologies Section. He has a bachelor's degree in marketing and a master's degree in general business. Victor also has computer certifications in CCNA and MCSE. Victor's family lives in Thailand.

Leslie Ellis

Leslie Ellis has been with our firm for three years. Leslie started as a law clerk with us after finishing law school. She currently works in our Graphic Department creating presentations for trial. The Graphics Section plays an important role in our firm. They do everything from photo editing to video editing, to case management preparation for trial, to setting up equipment and actually going to trial to help present evidence. Leslie has also taught others to use litigation technology at CLE seminars and other functions. She graduated magna cum laude from Troy State University with a degree in Social Science/ Anthropology in 1998 and then attended Jones School of Law, graduating with a JD in 2002. Leslie passed the Alabama Bar that same year.

Juliana Teixeira Dean

Juliana Dean is a law clerk in the Personal Injury/Products Liability Section. In this position, she does legal research, drafts pleadings, and updates our lawyers on legal issues. Juliana was born in Belo Horizonte, Brazil. When she was eight years old, her family moved to Pittsburgh, Pennsylvania, where they lived for seven years. Juliana later returned to Brazil, where she graduated from law school and passed the Brazilian Bar. In Brazil, she practiced tax law and later clerked for a judge. While visiting her brother in Birmingham, Juliana became interested in the Master of Laws program at the University of Alabama School of Law. She graduated in 2002 and began her clerkship at the firm in September of that year. In March of 2003, Juliana married one of her former classmates, Michael Dean. Michael is a third-year law student at the University of Alabama. They plan to take the Alabama Bar examination in July 2004.

Kelly Castleberry

Kelly Castleberry has been with the firm since July of 2001 as a Legal Assistant in the Toxic Torts Section. She currently works with Mark Englehart. Kelly's duties include drafting pleadings, discovery, and correspondence, reviewing and maintaining case related documents, trial preparation, and trial presentation. Kelly spent a great deal of time working on the Monsanto case reviewing and maintaining medical records, reviewing document production, scheduling client, expert witness, and fact witness depositions, and handling client calls regarding settlement of case. Kelly received a bachelor's degree in Justice and Public Safety from Auburn University at Montgomery. She also received a Legal Assistant's certificate in 1999. Kelly is originally from Greenville. She has one son, Sam, who is 3 years old.

Laura London

Laura London has been with the firm for two years and currently works as a Medical Advisor in our Nursing Home Section. Laura is in charge of organizing medical records, which includes tracking the patients from the time they leave home up until the litigation process begins. Laura has two children—a son, Ian, who is 2, and a daughter, London, who is 13. They attend New Jericho Baptist Church in Prattville. Laura, who attended Wallace College in Hanceville on a softball scholarship, received her Paralegal Degree. She then went on to attend nursing school at Trenholm College.

Employees Come Out Winners In Arthritis Jingle Bell Run

This past December several of our employees participated in the Arthritis Foundation's Annual Jingle Bell Run. Proceeds from the run benefit the Arthritis Foundation. Les Pittman, one of our lawyers in the Nursing Home Section, won 3rd place in his age group. Staff Assistant Jeremy Hawsey won 2nd place in his age group. We encourage our employees to be active in many community and charitable organizations. We believe it is important to do so.

Father Walter's Golf Tournament

Every year, the Montgomery County Trial Lawyers Association sponsors the Father Walter's Memorial Golf Tournament. This year marked the 14th year for the event. As a result of the monetary contributions received for this event, a substantial check was presented to the Father Walter Center for Handicapped Children. A special thank you goes to all who made this event a huge success. Our firm is happy to have helped support such a worthy organization.

XXIV. CLOSING REMARKS

The year 2004 will present a real challenge for our firm and the clients we represent. The relentless attacks on the judicial system over the past decade have made it extremely difficult to obtain justice for victims of corporate abuse and mistreatment. Nevertheless, our firm is totally dedicated to continuing the fight to preserve the jury system. We will never give up in this battle because of its importance to ordinary folks. The Seventh Amendment to the U.S. Constitution guarantees every citizen the right to a jury trial in civil cases. This important part of the Constitution has been largely ignored by Congress and in many courts. Corporate America has spent millions of dollars in an effort to take away an elected judiciary and a jury system that has worked well for decades and replace it with a private court system made up of arbitrators. Ironically, corporations are the first to file a lawsuit and ask for a jury when they are themselves victimized. Yet, these same corporations would take away the rights of individuals to file their claims in a court and have a jury decide their case. Individual citizens should never be forced to give up their constitutional rights when they have the need for redress. All American citizens who love their freedom, including those who have fought to save our freedoms, should be willing to fight to save the jury system.

Sometimes we all get caught up in the trials and tribulations of our daily lives and forget what is really important to us and to those around us. The holy Bible tells us that God wants all people to be saved and come to a knowledge of His truth. In the final analysis, that's what it's all about. Every day I pray for the salvation of all those I work with. In my opinion, that is as important as anything that a man can do for his family, his friends, and his co-workers. We should all be active in sharing our faith, so that we and others can have a full understanding of what it means to have a personal relationship with our Heavenly Father. If you would like to learn more, I suggest you read I Timothy and specifically 2:1-7. I still have lots to learn, but the Good Book gives great instructions. I sincerely hope and pray that all of our readers agree that it is a good place to "look for help" when we need it.

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