

THE JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

TENNESSEE FILES SUIT ON BEHALF OF POLICYHOLDERS

Our firm has been retained to represent Tennessee Insurance Commissioner Paula Flowers in a most interesting case. The Tennessee Commissioner, acting as liquidator for three failed malpractice insurance firms, authorized us to file suit in the U.S. District Court in Memphis, Tennessee. We are seeking to recover damages on behalf of the companies' more than 50,000 former policyholders. The lawsuit, filed in the Western District of Tennessee, alleges that executives of Richmond-based Reciprocal of America and its network of commonly managed companies, together with two reinsurance companies, engaged in a massive conspiracy to defraud the policyholders of The Reciprocal Alliance, American National Lawyers Insurance Reciprocal and Doctors Insurance Reciprocal. The three Tennessee-domiciled risk-retention groups collapsed in January, 2003, leaving thousands of doctors, hospitals, and lawyers without malpractice coverage and with unpaid claims totaling at least \$200 million. Many of those left without insurance and unpaid claims are doctors, lawyers, and hospitals located in Alabama. This complex litigation will be discussed in detail in the Insurance portion of this report.

A NEW JUDGE FROM ALABAMA

In a move that caught all Alabamians by surprise, Attorney General Bill Pryor was sworn in as a judge on the U.S. Court of Appeals for the Eleventh Cir-

cuit on February 20th. While many of my Democratic friends may disagree, I believe Bill has the ability to become an excellent judge. I had urged the U.S. Senate to confirm his nomination and had hoped his move to the federal bench would have taken that route. Nevertheless, the President had the legal right to make the nomination in the manner he chose. Until the law is changed, that will be an option available to any President. In any event, I predict that Bill Pryor will be an outstanding judge. I wish him the very best in his new endeavor.

NEW ETHICS RULES FOR CABINET AGENCIES

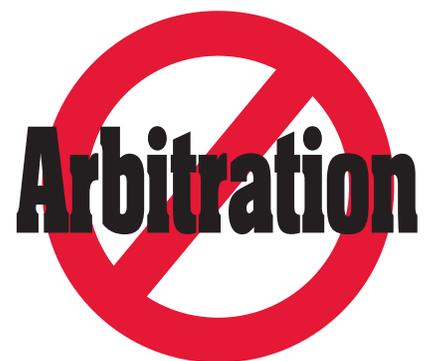
Governor Riley is demanding stricter ethical standards for his staff and his Cabinet departments. This is part of his plan to increase accountability in state government. The Governor is trying hard to build the public's trust in state government. All gifts to officials and employees within the Governor's staff and his Cabinet agencies will have to be reported. The maximum cost of a gift will be lowered from \$100 to \$25. All department heads will be required to have additional training about Alabama's ethics, public records and open meetings laws. Each agency will have to designate an existing employee as an ethics officer and another employee as a public records and open government officer.

LIEUTENANT GOVERNOR BAXLEY – A BREATH OF FRESH AIR

Lucy Baxley is holding an office that has one foot in the executive branch and one foot in the legislative branch. While the office is in the executive branch under the Constitution, it is actually more of a legislative position. Lucy, an astute politician, is extremely popu-

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lar around the state. She has done an excellent job of functioning in an office that, in the opinion of most political observers, has been greatly weakened. Nevertheless, our first female Lieutenant Governor has made quite an impression on folks who follow the legislative process. In fact, the Senate may have done Lucy a favor. Nobody can really blame her now for legislative failures. I supported Lucy and don't regret it one bit. She has been a breath of fresh air in Alabama politics. While I don't know what the future holds for her, I do know that Lucy Baxley has a bright political future if that's what she wants.

COMMISSIONER SPARKS GETS A VERY GOOD GRADE

Ron Sparks is doing an excellent job as Commissioner of the Department of Agriculture and Industries. Ron, a native of DeKalb County, is proving to be an extremely hard worker and a person who is knowledgeable about the needs of persons and businesses served by his Department. Not only is he able to spot problems, Ron has answers, and that is good for the State of Alabama. The mission of the Department of Agriculture and Industries is to provide timely, fair, and expert regulatory control over a broad range of activities. The Department and its employees strive to protect and provide needed services to Alabama consumers. Department personnel actively work to initiate and support economic development activities and promote domestic and international consumption of Alabama products. It is good that the Department's goal is to be "recognized for its employees' integrity and professional performance." The leadership of Commissioner Sparks is quite evident in the performance of the Department's employees. He is to be commended for doing an excellent job for the people of Alabama. If you are interested in more information on the Department, you can go to www.AGI.state.al.us.

FEDERAL COURT DECISION HURTS ALABAMA

A federal judge ruled against Alabama and Florida and actually against much

of the State of Georgia last month in a battle that pitted metro Atlanta's bid to draw more water from Lake Lanier against others downstream on the Chattahoochee River. The judge approved an agreement between metro Atlanta governments and the U.S. Army Corps of Engineers, which owns and operates the Lake Lanier dam that controls the upper Chattahoochee. The City of Columbus, in the heart of the region, and others in west Georgia had sided with Alabama and Florida — and against the State of Georgia's position — in the fight over rights to the river water. Although this ruling could give metro Atlanta a decade's worth of water to grow on, it is just a step in a long legal battle over the Chattahoochee. The fight among Alabama, Georgia, and Florida is likely to wind up in the U.S. Supreme Court.

The agreement approved by the judge outlines how much lake water will be reserved for drinking and other city needs, and requires metro Atlanta governments to pay the Corps \$2.5 million a year for the dam's upkeep. For the Atlanta area actually to get the water, the Corps will have to go back to federal district court in Birmingham, Alabama, where the tri-state water war began in 1990. The environmental consequences of taking more water out of the river, including what it could mean to oysters in Florida's Apalachicola Bay, will have to be studied by federal experts. The bay on the Gulf of Mexico is fed by waters from the Chattahoochee River and the Flint River in Georgia, which form Lake Seminole and then flow into the Apalachicola River. If metro Atlanta takes more water, it will harm the economic and environmental interests of both Alabama and Florida and others in Georgia downstream of Atlanta. The three states also are fighting over water sharing in another federal court in Gainesville, Georgia.

WHAT DOES CHANNEL ONE HAVE TO DO WITH EDUCATING CHILDREN?

I must admit that until a few weeks ago, I had never heard of the in-school TV program called *Channel One News*.

Now I am convinced it is something that all parents and interested persons should take a close look at. Channel One, owned by a New York company, is in a number of public schools systems in Alabama. In order to get television equipment, the school system has to agree to show a certain number of "commercials" each day, as I understand it. I did know that the concept of classroom commercials had been very controversial. What I didn't know is that Channel One is marketing some pretty "filthy" stuff to our young children. Interestingly, the commercials put out by Channel One are barred in the schools in the State of New York.

Numerous resolutions and policy statements opposing classroom commercials have been issued by groups such as the National PTA, the National Association of State Boards of Education, the Alabama Chapter of the American Academy of Pediatrics, and even the Southern Baptist Convention. These range over a period of time from 1997 through 2000. I had the opportunity to view some of the commercials last month and quite frankly was shocked. It is bad enough that Channel One is taking up time that should be spent on education, but the content of the commercials I viewed was something that children should not be exposed to in any setting, and especially not at school.

I plan on learning more about Channel One and must admit that I was totally uninformed as to what the company was putting into our schools. I had heard of Channel One, but had no idea that it was as bad as it now appears to be. We have an obligation to protect our children. To learn that the public schools in our state are promoting the garbage put out by Channel One is disturbing. Hopefully, the Governor and members of the Legislature will look into Channel One's partnership with our schools. Children as young as 11 years old are being required to watch the commercials on a daily basis. You can find more information about Channel One by going to: www.obligation.org.

II. LEGISLATIVE HAPPENINGS

A SLOW START AT THE STATE HOUSE

The regular session got off to a rather slow start with a great deal of apparent apprehension on the part of many legislators. From early appearances, the predictions of a very rough session will become a reality. With all state operations in dire need of additional funding, I would have expected somebody to step forward, bite the bullet, and push for limited tax increases. It will be impossible to continue providing even the minimum level of services to the people of Alabama without increasing taxes and thus providing the needed revenues. I am for accountability and cutbacks where they are justified, and I believe most Alabama citizens feel the same way. We must realize, however, that the only way out of the fiscal crisis is by finding additional sources of revenues or simply increasing existing taxes. Thus far, a great deal of posturing has taken place - but little more - and that's not good. In my opinion, it will take drastic cutbacks in the providing of necessary services to Alabama citizens before people will finally demand that state government be properly funded. At present, it appears that those who are saying "cut - but don't tax" will control the outcome of this session. As a result, we will see another "patching" of the "old tire."

SPECIAL INTERESTS HARD AT WORK

While the Governor and most legislators are concerned about how to solve the State's severe money problems, the lobbyists for the powerful special interests are hard at work trying to feather the nests of their powerful clients. It is sort of like Caesar fiddling while Rome burned, except that Caesar was out in the open with his activities. No person, group or entity should do anything during this session except to help get the

State's "fiscal ox" out of the very deep ditch it's in and put it on solid ground. To do otherwise is not in the best interest of the people of Alabama. Unfortunately, the special interests have never worried too much about the big picture. Instead, they have consistently worked for their own interests, regardless of who it hurts.

LEGISLATURE SHOULD DO MORE ON CAMPAIGN FINANCE REFORM

The Legislature is considering several bills that deal with PAC-to-PAC transfers of money in state elections. There is a so-called Democrat-endorsed version and a version that was dubbed the "Riley bill." It is perfectly legal under existing Alabama law to "launder money" between PACs so that folks can't follow the money trail. It has been my belief for years that PAC-to-PAC transfers should be abolished with no exceptions. Full disclosure on campaign contributions is the best route to go. The public has the right to know the source of every dollar given in political campaigns. At press time, the House of Representatives had passed a bill and sent it to the Senate.

I haven't read the final version of the bill that came out of the House. I hope it does in fact abolish PAC-to-PAC transfers. In order to get a complete job done, however, I would like to see the House bill taken a step further. Obviously, PAC-to-PAC transfers should be abolished with absolutely no exceptions or loopholes. I would also like to see PAC money totally eliminated from all judicial races in the future and require donors to be identified well in advance of election day. This would be a major step in the right direction. There is no way to justify using PACs to help elect or defeat judges. Please encourage senators in your area to support a bill that will help clean up Alabama politics. To get that done, the House bill should be amended so as to get the job done once and for all. There may not be another chance any time soon. I understand the special interest lobbyists are hard at work in the Senate.

III. COURT WATCH

FORD SHOULD BE PUNISHED FOR DISCOVERY ABUSE

We represent a couple who lost their daughter in a motor vehicle collision in 1998. She was operating a 1992 Ford Escort and was killed as a result of the vehicle's defective seatbelt system. The defective seatbelt caused our clients' daughter to suffer a fatal liver laceration from a relatively minor collision from which she should have walked away. In fact, the driver of the other vehicle in the collision received no injuries. We filed this wrongful death action in 1999 and are still waiting for our clients' day in court. Throughout the course of the case, Ford has once again exhibited its corporate arrogance and has consistently disobeyed the trial judge's discovery orders.

When the complaint was filed back in 1999, we requested that Ford produce all crash tests relating to the Escort, along with all supporting documentation. Initially, Ford did not produce any of the requested information, which is its standard operating procedure. After we filed a motion to compel, Ford produced a small group of crash tests with very few supporting documents. However, it was apparent from the production we did receive that there had to be additional crash tests and supporting data and videos that Ford failed to produce. The trial judge held a hearing on our motion to compel, at which time he ordered Ford to certify to the court that it had produced all crash test documentation within its possession or under its control. Ford filed its certification, but it did not comply with the court's order nor with our discovery requests. We once again requested that Ford supplement its document production to comply with the court's order and our requests. A month later, Ford indicated that it had found two

additional advanced research tests that had been performed and proceeded to produce these additional limited crash tests. After reviewing the supplemental production, it was again quite obvious that Ford had not produced all of the accompanying crash test documentation. Further, the documents produced referenced additional crash tests performed on the Escort, the reports of which had not been produced by Ford. We filed another motion to compel and this time asked for the trial judge to impose sanctions against Ford for its continuing and willful failure to comply with his previous orders. After the motion for sanctions was filed, Ford's lawyers provided another certification to the court stating that Ford had produced all the materials relating to the crash tests that had been performed on the subject vehicle.

Nearly a year later, and just 2 weeks prior to a trial of the case, we received additional crash test documents that Ford had produced in another Ford Escort case. These documents came from a lawyer representing a family against Ford in an Escort case. You will be shocked to hear that those documents and information are the very same supporting crash test data for the subject vehicle in our case that Ford had failed to produce. Ford and its lawyers had represented to the court on several occasions that these documents did not exist. Ford lied to the court and to us about the existence of this vital crash test documentation for over three years. Now we have caught them red-handed!

Even more remarkable than Ford's blatant discovery abuse and their willful disregard for the court's orders, was its excuse for not producing the information to us in our case. Ford claimed that these crash tests and supporting documentation had not been in the company's possession. These documents had been passed around amongst Ford's "outside counsel" in 3 separate cases, all very similar to ours, dating back to the mid-1990s. Ford further claimed that their "outside counsel," and not Ford, had produced this information in these other cases with-

out its knowledge. Of course, these lawyers were Ford "regulars" and were representing Ford in those cases.

We did a little checking and found out how bad Ford's conduct had actually been. One of the cases in which Ford produced these crash tests and the supporting documentation was not resolved until our case had been pending in court for nearly 2 years. In fact, Howard Slater, one of Ford's "litigation engineers" (a part of the defense litigation team) had done an analysis of the "non-existent" crash tests in 2000, after Ford had received our specific requests for this information. That very same litigation engineer testified under oath in our case as Ford's corporate representative and also as an expert witness on 2 occasions (2002 and 2003) that he had no knowledge of these crash test documents and that they did not exist. This Ford employee gave this testimony under oath within a few years of not only reviewing the crash tests, but also doing a specific analysis of the tests and documents for Ford's lawyers during the 2000 calendar year in another case. He had possession of the documents during 2000 - one year after our case was filed - and yet denied their existence.

Since the discovery of this crash test data, we have also learned through Ford's "outside counsel" in depositions that even more crash test videos and supporting documents had existed and Ford had not produced them to us. For over 3 years, and even just 2 days prior to our trial setting in January of this year, Ford had consistently lied to the court and to us. It is obvious from a review of these crash test videos that there is still accompanying crash test information available that has not been produced to this day.

Unfortunately, because of Ford's blatant discovery abuse, the case was continued by the trial judge. Our motion for sanctions, including a motion for default judgment against Ford, is pending in the trial court. Ford's conduct clearly warrants the most severe sanctions available to the court. Ford has perpetuated a massive fraud on the court in our case, as well as in numerous other cases around the country over the past decade. We have spoken

with lawyers from around the country who have represented victims who lost their lives in Ford Escorts and who were never provided the crash tests or the documentation that Ford successfully hidden from us for over 3 years. Had we not obtained them from another source, Ford would have gotten away with this fraud on the court. Ford's conduct is intolerable and that is very clear. What is not clear is, what else is Ford hiding?

ABOLISHING THE JUDICIAL INQUIRY COMMISSION

Prior to the start-up of the regular session, there were rumors floating around the State Capitol that an effort will be made by a group of legislators to abolish the Judicial Inquiry Commission. Apparently, these were more than idle rumors. A proposal to abolish the panel will be introduced in the regular session. Abolishing the Judicial Inquiry Commission and restricting the authority of the judicial branch to remove judges appears to be part of the agenda for this session offered by House Republican leaders. I recognize that the Judicial Inquiry Commission has come under fire over the past few years. If the Commission is abolished, however, it would leave the removal of judges by impeachment to the Alabama Legislature.

In my opinion, the power to discipline judges should be left to the Judicial Inquiry Commission and to the Court of the Judiciary. A pre-session survey of legislators indicated little support in either the House or Senate for the proposal. I don't believe those numbers have changed. The commission was created in 1973 when the Legislature approved, and voters ratified, what has been referred to as the Judicial Article. Personally, I don't believe that the Legislature should take over the process of disciplining judges. I believe that the process of disciplining judges has worked well since the creation of the Judicial Inquiry Commission. I believe that shifting the process entirely to the Legislature would make it much too political. The judicial branch of government must be totally independent of both the executive and legislative branches for obvious reasons. Requiring

the judicial branch to be funded by the Legislature at the request of the executive branch hasn't always worked well and potentially at least violates the spirit of the Constitution. Realistically, the power to withhold funding could result in the courts being held hostage by a few legislators. That would not be good and shouldn't be tolerated. Neither should the Legislature control the process of policing the judiciary. The people of Alabama and the judicial system will be better served to leave things as they presently are.

A BAD RESULT THAT AFFECTS ALL VICTIMS

Nursing homes in Alabama serve a frail and infirm population that often suffers neglect and abuse. The problems that we have experienced from handling actual cases range from inadequate staffing, malnutrition and excessive use of physical and chemical restraints, to just plain old neglect. There are two segments of our population that must be protected, and those are children and seniors. The nursing home problems in Alabama affect the senior population and those Alabama citizens whose physical or mental conditions require them to become residents of nursing homes. It is a sad state of affairs when the courts are shut down to residents of nursing homes who have been victims of abuse, neglect or bad treatment. The courts should always be open to those persons who have been made victims by nursing home owners and operators. If any segment of our population should be entitled to their constitutional right to a jury trial, it is our seniors.

The Alabama Supreme Court issued a decision last month that is extremely difficult to understand from a legal or moral perspective. The Court ruled in two separate wrongful death cases handled by our firm, consolidated on appeal, that a nursing home could legally require the personal representative of a deceased resident to submit a wrongful death claim to binding arbitration. This is a marked departure from anything that the Court had ever done on the arbitration front. In fact, a few years ago, a respected member of the Court said publicly that arbitration

could never be applied to a wrongful death action in Alabama. Those comments were published widely in Alabama newspapers, and most folks felt that arbitration would never be allowed by the Supreme Court in a personal injury case and certainly never in a death case. We are requesting a rehearing in each of these cases. Can anyone imagine allowing a nursing home operator to require the signing of an arbitration agreement before they or a family member can be admitted to the facility? Can you imagine what would happen to the level of care and attention for residents if arbitration replaces the court system in nursing home cases? Hopefully, the entire Supreme Court will hear the cases on rehearing, grant oral argument and then rescind the earlier ruling.

IT IS TIME FOR EXXON TO PAY

ExxonMobil has been in the news lately - both in Alabama and around the country - and most of this news has been bad for the giant oil company. For example, the Exxon Valdez lawsuit was back in the limelight last month. On January 30th, the *New York Times* penned an excellent editorial concerning that case. I am passing it on to our readers since it is right on point.

It has been 15 years since the Exxon Valdez fetched up on a reef in Prince William Sound in Alaska, spilling 11 million gallons of crude oil and dealing biological and economic shocks to the sound and its adjacent communities, none of which have fully recovered. In 1991, the ship's owner — now Exxon Mobil — reached a \$900 million civil settlement with the federal government and Alaska. Its obligations to the thousands of fishermen and others who suffered from the spill remain unresolved. It is past time for the company to pay up and put the entire sorry episode behind it.

On Wednesday, Russel Holland, a federal district judge in Anchorage, imposed puni-

tive damages of \$4.5 billion, arguing among other things that the company had knowingly allowed "a relapsed alcoholic" to command the ship. It was the judge's third attempt to find a figure that the Ninth Circuit Court of Appeals would accept. That court vacated a jury award of \$5 billion in 1995. It also asked the judge to reconsider the \$4 billion he imposed in 2002 in light of a Supreme Court ruling saying that punitive damages should not dwarf economic damages.

ExxonMobil, of course, will appeal, and the likelihood now is that the Ninth Circuit, tiring of this game of legal Ping-Pong, will attempt to set a final award. From where we sit, Judge Holland's \$4.5 billion figure does not seem excessive. We say this mindful of the fact that Exxon has already paid out more than \$3 billion in cleanup and other costs (a manageable figure for a company that yesterday reported a record \$21 billion in profits for 2003). We are further mindful of the fact that some eye-popping jury awards are ridiculously high. The problems with the tort system should not, however, confuse us as to its basic purposes. These, as stated by Judge Holland, are to achieve retribution and deterrence.

ExxonMobil is not only very large, it is also very powerful, wielding tremendous influence in the halls of Congress and in the Bush White House. Eventually, this corporate giant will realize that it can't continue to run roughshod over people who get in its way. Ultimately, it will take the courts to make that come to fruition. We have seen first hand in Alabama how this corporate giant operates, and what we have seen by-and-large isn't good. This crowd is not only powerful and influential, they are pretty arrogant.

FSLA CLASS CERTIFICATION

Our firm is handling a most significant national class action lawsuit in federal court against Dollar General Corporation. Earlier this year, United States District Judge U. W. Clemon certified an "opt-in class" consisting of all persons who worked for Dollar General and Dolgencorp, Inc. who have, at any time since March 14, 1999, worked as a store manager. The case involves an overtime pay issue for employees of Dollar General. In effect, the court tentatively found by certifying the opt-in class that the Dollar General Corporation had a nationwide unwritten policy of requiring many of its store managers to work between 50 and 80 hours per week performing mostly non-managerial duties. These managers would have qualified for an exemption under the Fair Labor Standards Act, 29 USC § 200 et seq., an exemption that would have relieved Dollar General Corporation of having to pay any overtime to these managers. However, the Court found that these managers were not in fact performing managerial duties, but instead were simply employees who carried out the same duties as other employees. As a result, they did not qualify for the exemption and were not being properly paid by Dollar General Corporation.

This is one of a number of similar class actions that have been certified by various courts around the country. Corporations continue to classify employees improperly in an effort to avoid having to pay overtime, compensation that employees are due under the law in the event they work beyond a 40-hour workweek. The court has required Dollar General to produce a list of all names of the employees working for the company from March 14, 1999 until January 12, 2004, who fall within the definition outlined by the Order. Once we get the list, our law firm will be required to send out notices to all those persons named by Dollar General, notifying them that a class action is pending and that they have an opportunity to come into the class action no later than May 31, 2004. Our goal is to obtain compensation owed to these employees as a result of the defendant's misconduct. We also

plan to identify other corporations who have engaged in the same type of misconduct. A good number of people have already joined into the collective class action, and we are confident that this case will ultimately be successful for a number of employees.

JURY AWARDS \$6 MILLION IN ASBESTOS CASE

A couple was awarded \$6 million recently in an asbestos lawsuit against a Minnesota company. A jury found that William Lisac, 62, was exposed to asbestos when he worked with valves produced by DeZurik Inc. Lisac was a steamfitter for more than 40 years and worked with the valves, which are used by power plants, chemical plants and steel mills. He was diagnosed with lung cancer last year. Other companies that were defendants in the lawsuit entered into confidential settlements. The case went to trial against DeZurik as the only defendant. DeZurik maintained Lisac's illness "had nothing to do with any exposure to a DeZurik product." A jury deliberated about four hours before deciding Lisac and his wife deserved \$3 million each. After the verdict, Mr. Lisac said he'd gladly trade the money he won to be cured. The companies sued were manufacturers of products Lisac had worked with in the 1960s, 1970s and 1980s, when he was a steamfitter hired to repair pipes and valves.

IV. THE NATIONAL SCENE

A TERRIBLE POLICY

Gregory Mankiw, chairman of the President's Council of Economic Advisers, issued a statement recently on the nation's economy that is unbelievably bad for this country. Mankiw stated that "outsourcing" of American jobs to overseas markets is "just a new way of doing international trade." Anybody who believes that shipping American jobs abroad is good for people in this country has to have been living on

another planet and totally out of touch with the state of our economy. There are American citizens looking for work today because their jobs are being sent overseas. A President who believes outsourcing is good for working men and women in this country needs to join the ranks of the unemployed. We need to do everything possible to make sure that we keep jobs here and work to see that more jobs are created in this country. It is no wonder that the Bush record on jobs is so bad with folks like Mankiw advising him.

A MASS DECEPTION

As has been widely reported, President Bush named seven people to sit as an Independent Study Commission to look into "intelligence failures" on Iraqi weapons. I don't know what the President knew beforehand, but I do know we invaded Iraq and virtually destroyed the country. The more the American public learns about the reasons for the invasion of Iraq, the more it appears that we went to war for the wrong reasons. The Commission will report by March 2005, which conveniently will be well past the November elections. In any event, the pre-war statements appear to have been totally false or at the least extremely misleading. During the actual war, we lost a good number of American lives, with thousands more wounded. The body counts continue to mount during the occupation phase. Even more Iraq citizens have been killed or wounded. Our theme of "weapons of mass destruction" may now become one of "mass deception," and that's not good for the country or for the morale of our fighting forces.

I talked last month with an Army National Guard major from Alabama who fought in the Bush war and has now returned to his home. This man, who is as patriotic and gung-ho as they come, told me that the thing he really resented was being misled - saying he would have gone and fought even if he had been told the real reasons for the war. He said most of the troops in Iraq felt the same way. I will relay more of what the returning major told me next month. For example, he was offered a very large salary by Halliburton to stay in Iraq and work for them in a civilian

capacity. The amount offered sure does beat military pay! Incidentally, Kellogg Brown & Root was paid \$1 million per week to run the major's camp.

IRAQ NEVER WAS AN IMMINENT THREAT

CIA Director George Tenet spoke out last month in an effort to defend the CIA's role in going to war. Tenet told the country that U.S. analysts had never claimed Iraq was an imminent threat. Of course, this revelation was very damaging to the main argument used by President Bush for going to war. The head man at the CIA said analysts had varying opinions on the state of Iraq's chemical, biological and nuclear weapons programs and those differences were spelled out in the October 2002 National Intelligence Estimate given to the White House. That report summarized intelligence on Iraq's weapons programs. According to Tenet, analysts "painted an objective assessment" for the Bush policy makers of a brutal dictator who was continuing his efforts to deceive. Apparently, the CIA believed that Iraq might "surprise" us and threaten our interests. In the months before the war, President Bush was telling the American people that Iraq was a real and immediate threat to the U.S. Apparently, that was false and certainly misleading.

The former chief adviser on Iraq's weapons, David Kay, had stated earlier that Saddam's purported weapons didn't exist at the time of the U.S. invasion. This sparked an intense debate over the prewar intelligence the Bush Administration used to justify the war. The failure to find weapons of mass destruction is turning into a major political issue and will certainly carry over into the presidential election. It calls into question the justification for the war as U.S. casualties continue to mount. The White House showcased intelligence that bolstered the case for war, while ignoring dissenting opinions. The strong statements by Tenet and Kay, two widely respected experts, are extremely damaging to the President, who has had to backtrack in recent weeks. The President's credibility has taken a nosedive. Whether that will help the Democrats remains to be seen.

WAR PROFITEERS SHOULD BE ASHAMED

Regardless of how a person feels about the war, the reasons for going and the continuing occupation of Iraq, there is a great deal of concern among the public over what appears to be outright cheating of American taxpayers by corporations with close ties to the Bush Administration. I support the American military, always have, and always will. However, I had serious doubts at the outset about why we were invading Iraq. I knew Iraq was led by a brutal dictator - clearly a very bad man - but I also knew that the country's military force was relatively weak. We won the war with relative ease and virtually destroyed an entire country in the process. We now find ourselves in the occupation stage and the "rebuilding" of Iraq well underway. That phase is not only costing American lives on almost a daily basis, but it is costing us about \$1 billion per week.

We have read and heard of the no-bid contracts that were awarded to certain politically active corporations that will make hundreds of millions "rebuilding" Iraq. Interestingly, one of the worst corporate profiteers appears to be none other than Halliburton. We don't have to be reminded of this company's very close ties to the White House. In fact, I have read where the first no-bid contract to Halliburton came just 11 months after its former boss, Mr. Cheney, was sworn in as Vice President. Halliburton, the U.S. military's largest contractor in Iraq, has been under numerous investigations for its work there, and that is most disturbing. Because of its highly placed political contacts and its high profile, Halliburton should go the extra mile to avoid even a hint of impropriety. Some believe that the Vice President was one of the persons who actively pushed the President into the war. There have been reports that the war's planning was being put in place long before the horrors of 9-11. If that proves to be true, it will change the minds of American citizens who have backed the war.

Let's take a look at some of the "deals" involving Halliburton. In January, Pentagon auditors raised serious questions about the cost of feeding the troops in Iraq and Kuwait. The *Wall*

Street Journal reported that Kellogg Brown & Root (KBR), a subsidiary of Halliburton, may have overcharged the military by more than \$16 million for meals to U.S. troops at one U.S. military base near Kuwait City. According to the *Journal*, a Saudi company hired by KBR as a subcontractor billed for 42,042 meals a day, but served only 14,053 meals a day. The difference for one month was more than \$3.5 million. Apparently, according to the *Journal*, the Pentagon has extended its audit of KBR food services to include more than 50 other dining facilities in Kuwait and Iraq. Unfortunately, this is just the latest controversy surrounding Halliburton. The American people support our troops without a doubt. But there can be nothing but contempt for a corporate mentality that would foster profiteering over a war that appears to have been fought for reasons known only to a few insiders with close ties to the Bush White House. Certainly, there can never be any justification for profiteering during a war or an occupation of a foreign country. In this instance, with a war that may go down in history as being one fought for political and economic reasons, such activity smells to high heaven.

HALLIBURTON WORKERS TOOK KICKBACKS

We now have learned that two Halliburton employees took kickbacks valued at up to \$6 million in return for rewarding a Kuwaiti-based company with lucrative work supplying U.S. troops in Iraq. According to a report in the *Wall Street Journal*, Halliburton made this shocking revelation to the Pentagon. The disclosure by Halliburton officials is the first firm indication of outright corruption involving U.S.-funded projects in Iraq. Obviously, this raises new questions about Halliburton's dealings there. The company's work already was being scrutinized because of accusations that the U.S. government was overcharged for gasoline under another controversial contract. Interestingly, the latest disclosures came just days after the top Defense Department auditor asked for an investigation of Halliburton subsidiary Kellogg Brown & Root. This company overcharged for fuel deliver-

ies by more than \$61 million. A discovery of kickbacks could expose the company to hefty fines and other punishments such as potential fraud charges. The fact that Halliburton is reimbursing its ill-gotten gain isn't enough. If that's all the company has to do, people around the country will be pretty upset. It's like Jesse James robbing the train, getting caught, paying back his loot - and then going free. There has to be more to "punishment" than that.

MORE PROBLEMS FOR HALLIBURTON ABROAD

In addition to its Iraq problems, Halliburton is also facing a separate investigation in Nigeria and the United States after disclosing that some of its employees in Nigeria paid \$2.4 million in bribes to a Nigerian tax official. Halliburton appears to believe that it enjoys some sort of privilege - if not immunity - because of its political muscle. Corporations that have employers bribing public officials must be dealt with in a most severe manner. We simply can't allow that sort of thing to go on any longer.

According to the *Corporate Crime Reporter*, French authorities have cranked up an investigation into allegations that corporations building a liquefied natural gas project in Nigeria bribed government officials. A judge in Paris is looking at \$180 million from a joint venture headed by none other than Halliburton. The *Crime Reporter* indicates that this money may have been funneled to public officials in Nigeria to "grease the deal." The *Dallas Morning News*, in a related article, reported that Vice President Cheney could be charged with "misuse of corporate assets." As I understand it, this would not be a criminal charge. A preliminary investigation has found that LNG Servicios, a company indirectly owned by the 4 partners in the Nigerian joint venture, which included Halliburton, made 4 payments totaling at least \$166 million at times that roughly coincide with the award of contracts. The payments reportedly went to a Gibraltar company owned by a London lawyer and to a Swiss bank account

that was later closed at the request of the bank. The investigation was confirmed by French authorities and proceeds as we send this issue to the printer.

HALLIBURTON'S RESPONSE WAS PREDICTABLE

You would think that, after all of the problems mentioned above, Halliburton would be laying low like "Br'er Rabbit." Considering all of its self-inflicted problems, one has to wonder where it all will stop. When things began to get hot for Halliburton, the company's public relations arm went to work. As news of the scope of the Justice Department's inquiries began to be discussed by the media around the country, Halliburton launched a massive TV ad campaign to address what it claimed were "misrepresentations." Frankly, I don't believe that Halliburton could stand the scrutiny of a real investigation of its no-bid contracts and what appears to be profiteering at the expense of the American taxpayers. So, I don't believe that multi-million dollar ad campaign will change public opinion in this country. There has to be a limit to what the average American citizen will accept, and I believe Halliburton has clearly crossed that line.

AN INDEPENDENT PROSECUTOR MAY BE NEEDED

Since it is obvious that Halliburton has benefited from political favoritism in securing lucrative work in Iraq, the matter must be fully investigated. The reconstruction work in Iraq appears to be largely benefiting a few well-connected U.S. companies and their employees. The post-war death toll is rising daily. That, combined with all of the revelations about how badly the Bush White House misled the public and Congress over the reasons for going to war, makes it most difficult to comprehend the corporate mentality that would allow companies to cheat the government over war-related contracts. Things could get very hot for the President on this front. In any event, it appears that this might be the time to reinstate the concept of a special prosecutor to conduct a full-fledged investi-

gation into the Halliburton scandals. Halliburton should not be allowed to perform work for the government if they can't be trusted to do right by U.S. taxpayers. That should be one of the sanctions imposed by the government.

PORTS AND SHIPPERS SHOULD FACE STIFF SECURITY FINES

The Coast Guard recently began imposing \$10,000 fines against shippers and ports that missed a year-end deadline to submit terrorism protection plans. Congress last year ordered the shipping industry to tighten security amid such fears as a hijacked oil tanker rigged with explosives or a radioactive "dirty bomb" smuggled ashore in a shipping container. An attack on a port could kill thousands, cause massive property damage, and cost the U.S. economy tens of billions of dollars. Port facilities and ship owners had until December 31, 2003, to turn in vulnerability assessment reports and security plans. I was shocked to learn that only about 42% had complied by year's end. The Coast Guard said that number has now risen to 90%. However, since we face obvious security threats due to the likelihood of terrorist attacks, any failure to comply is most serious.

The ports in this country must be protected. The Director of Port Security for the Coast Guard has set a deadline of July 1st. By that date, ships, ports, ferry terminals and fuel-chemical tank farms must have implemented tighter security measures. The Coast Guard said it has started to impose fines of \$10,000. Those that don't comply face more fines of up to \$25,000 and could be shut down if approved security plans aren't in place by the July deadline. Since we have a major port facility in Mobile, Alabama citizens should be greatly concerned over security issues relating to port security.

SECURITY COMPANY FACES CHARGES

Airport security has been in the news for the past several months. Many people are concerned - and rightfully so - that the security at our nation's airports is still not adequate. We have seen and read of examples

where security efforts were substantially less than even adequate. Another prime example came to light recently. A security company with contracts to protect airports, bridges and tunnels paid bribes to get work and failed to submit fingerprints of its workers, some of whom were found to have criminal convictions, according to state prosecutors in New Jersey. Haynes Security Inc. and its president were charged with misconduct over the last five years in a seven-count theft, bribery and conspiracy indictment handed up recently by a state grand jury in Trenton, New Jersey.

It is alleged that Haynes and its president paid more than \$1,000 in August 2001 for repairs at the home of a manager of Continental Airlines in return for favorable consideration of Haynes work for the airline at what is now called Newark Liberty International Airport. Passenger screening at the airport, operated by the Port Authority of New York and New Jersey, is now handled by a new federal agency, the Transportation Security Administration, created after the 9-11 terrorist attacks. However, unarmed Haynes guards still provide security in other areas, as well as at Kennedy and LaGuardia airports in New York. Haynes has a total of about 400 guards at the two airports and the AirTrain station in Queens, New York, where they patrol parking lots and check identification of people and vehicles entering the runway. A former manager at Public Service Electric & Gas (PSEG), who was accused of accepting a \$7,500 bribe in March 2002 from Haynes for favorable reports and approval of its contract with the state's largest utility, was also indicted.

The largest customer for Haynes was the Port Authority, which had \$12 million annually in contracts from 1999 to the present for security work at the Newark airport, as well as at the Holland and Lincoln tunnels and the George Washington Bridge. Its PSE&G contracts totaled \$9 million to \$10 million a year. Investigators found that Haynes had 27 convicted felons, who are barred from security posts, who worked at Newark airport, for PSE&G, and elsewhere, according to reports. It appears that Haynes fired them during the investigation. Haynes is still pro-

viding service to Continental at Newark Liberty, and does work for the Port Authority at John F. Kennedy and LaGuardia airports. Haynes did not bid to renew its bridge and tunnel contract with Port Authority. Clearly, any company that contracts to provide any type security to airports, utility companies, waterworks, and similar facilities must be held to a high standard, which must be enforced with an "iron fist." Certainly, conduct such as that described above can't be tolerated.

THE HOLE CBS DUG IS GETTING DEEPER

CBS refused to run an ad criticizing the Bush Administration's soaring budget deficit during the Super Bowl. The network agreed, however, to air a partisan Medicare ad promoted by the White House and paid for by U.S. taxpayers. The commercial promoting the Bush Administration's Medicare prescription-drug law is part of a \$12.6 million, tax-financed TV campaign to take the heat off the White House for a plan that benefits drug and insurance companies much more than it does Medicare enrollees. The ad refused by CBS charged that the Bush Medicare law subsidizes drug and insurance companies and deliberately keeps drug prices high. The ad did appear on CNN and other outlets in January. CBS declined to run the "Child's Pay" deficit ad during the Super Bowl. The Medicare ad that CBS is airing is blatant issue advocacy — in this instance, paid for by taxpayers. The ad sponsored by the White House is a gross distortion of the truth. All Americans who watched the Super Bowl halftime show and as a result saw performances that came close to being x-rated, might ask why CBS would promote the sort of "filth" shown to the Super Bowl TV audience and refuse to run a "decent" ad that criticized the President's rapidly rising deficit. In any event, CBS finally pulled the Bush ad after the General Accounting Office started an official investigation. The ad had run for over 2 weeks by that time.

FCC CHIEF CALLS SUPER BOWL SHOW NEW LOW

Michael Powell, the chairman of the Federal Communications Commission,

told lawmakers in Washington last month that the Super Bowl halftime show was "a new low for prime-time television." Testifying with the other four commissioners before the Senate Commerce Committee, Powell said the FCC was investigating whether the show, which was viewed by 90 million TV viewers, violated indecency laws. While the show may have been the worst yet, there are many other shows that run a close second. In any event, the Super Bowl show was just the latest example in a growing list of deplorable incidents put out over the nation's airwaves. There was little — if anything — about the halftime show that small children should be exposed to.

I understand the FCC has received more than 300,000 complaints relating to the halftime show. I suspect that number would be much larger if people knew how and where to complain. Fining violators may not be enough. Perhaps the answer is to revoke licenses of some serial violators. That would get the attention of those who have no concept of what the stations are doing to corrupt the young people in this country or simply don't care. The broadcasters and cable operators should take steps to curb indecent and other inappropriate programming. The entire television and radio industry should listen to the public's outcry and take affirmative steps to curb the race to the bottom of the "filth pit." If they don't, the federal government should put a stop to what is going on. Interestingly, the Super Bowl incident occurred at a time when lawmakers were pressing the FCC to crack down on indecent programming. Legislation to increase the fines for indecency from \$27,500 to \$275,000 has been introduced in both Houses of Congress. More will be mentioned on that below.

TAX ABUSE CAN'T BE TOLERATED

On February 9th, the Internal Revenue Service announced it had collected \$170 million in taxes and penalties on money hidden offshore. The IRS has shared with state tax agencies information about 20,000 taxpayers using scams and shelters to avoid taxes. Both efforts stem from the agency's move to

curb the growth of tax shelters among ultra-rich taxpayers. IRS Commissioner Mark Everson says this is an agency priority.

The IRS uncovered the money hidden offshore by offering a three-month amnesty last year to taxpayers who came forward. More than 1,300 taxpayers took the offer to avoid criminal prosecution. Those taxpayers were required to reveal the person or company who sold them the offshore scheme. In all, 479 promoters were identified, more than half of whom were previously unknown to the IRS. The IRS has started pursuing the promoters, using their customer lists to identify those taxpayers who did not come forward and are hiding money offshore to avoid paying U.S. taxes. The IRS has also turned over information about 20,000 taxpayers involved in potentially abusive shelters to 45 states. The shared information includes lists and details about taxpayers who bought into tax avoidance schemes, information about the promoters who sold the schemes, and the design of structures intended to hide income from taxation.

The initial leads handed over to states include information about offshore transactions discovered in last year's amnesty, as well as abusive trusts, home-based business abuses and employment tax evasion. The agency also passed along information about offshore employee leasing arrangements that individuals and businesses use to evade individual income, corporate income and employment taxes. With our nation's economy in the tank and ordinary citizens "hurting," the federal government can't let the ultra-rich abuse the system and avoid paying taxes. Working men and women work hard, pay their taxes, and try to support their families with what is left. The Bush White House may have to make their friends mad, but they can't ignore this problem any longer.

THE WHITE HOUSE SHELVED THE MTBE BAN

Last month we mentioned New York's fight over MTBE, the clean air gasoline additive. Now, the Bush Administration has quietly shelved a

proposal to ban the gasoline additive that contaminates drinking water in many communities. Interestingly, this helps an industry that has donated more than \$1 million to Republicans. The Environmental Protection Agency's decision had its origin in the early days of President Bush's tenure, when his Administration decided not to move ahead with a Clinton-era regulatory effort to ban MTBE. The proposed regulation said the environmental harm of the additive leaching into ground water overshadowed its beneficial effects to the air.

The Bush Administration has "punted" the issue to Congress, where it has bogged down over a proposal to shield the industry from some lawsuits. That initiative is being led by House Majority Leader Tom DeLay, who is a Bush lieutenant in Congress. The proposed regulation that the EPA sent to the Clinton White House in January 2001, said, "The use of MTBE as an additive in gasoline presents an unreasonable risk to the environment." The EPA document went on to say that "low levels of MTBE can render drinking water supplies unpotable due to its offensive taste and odor." It recommended that the additive should be phased out over four years. Unlike other components of gasoline, according to the EPA, "MTBE dissolves and spreads readily in the ground water. It resists biodegradation and is more difficult and costly to remove."

MTBE Producers Texas-based Lyondell Chemical and Valero Energy and the Huntsman companies of Salt Lake City contributed \$338,000 to George W. Bush's presidential campaign, the Republican Party, and Republican congressional candidates in 1999 and 2000, according to the Center for Responsive Politics. Since then, the three producers have given just over \$1 million to Republicans. "This is a classic case of the Bush Administration helping its campaign contributor friends at the expense of public health," according to Frank O'Donnell, executive director of the Clean Air Trust, a Washington-based environmental group.

The EPA withdrew agency rules, including the one dealing with MTBE, in mid-February 2001. In subsequent

months, agencies rewrote many Clinton-era regulatory proposals and went public with them. The proposed MTBE regulation, however, never surfaced, and that's most interesting. While the EPA says it favors a phase out of MTBE through congressional action, legislation has stalled in Congress. For example, it no longer calls for a ban in four years. To regulate MTBE, the EPA would have to use the Toxic Substances Control Act, an avenue the agency considers cumbersome and unwieldy. So, it appears that nothing will be done and the producers will have their way - as usual.

V. CAMPAIGN FINANCE REFORM

BUSH - CHENEY MONEY MACHINE MOVING ALONG

The Bush-Cheney re-election campaign's unprecedented fundraising has already brought in close to \$200 million and there appears to be no end in sight. The campaign is relying on an elite group of 416 "bundlers," including 26 newly disclosed by the campaign, according to WhiteHouseForSale.org. This Website, created by Public Citizen in conjunction with Texans for Public Justice, is tracking contributors to Bush's 2004 re-election campaign. The searchable database has been updated with the names of the new "Rangers" and "Pioneers," along with their home states, employers and occupations. The Bush campaign now has 165 Rangers, those fundraisers who bundle at least \$200,000 in individual contributions, and 251 Pioneers, each of whom bringing in at least \$100,000.

At this writing, New Mexico had become the 46th state with at least one Ranger or Pioneer. Florida added 10 new Pioneers in January - more than any other state - and trails only Texas among states with the most big-money Bush bundlers. President Bush already has headlined seven fundraisers in Florida during his re-election campaign. An updated chart showing the state-by-state breakdown of Bush's big backers and a comprehensive list of Bush campaign events is available at www.WhiteHouseForSale.org.

HYPOCRISY IN THE WHITE HOUSE

The Bush campaign has been strongly criticizing Senator John Kerry for being “beholden to special interests.” It shouldn’t be too shocking to learn that the President accepted more in direct contributions from lobbyists in one year than Kerry did in the past 15 years. In addition, as mentioned above, Bush collected at least \$6.5 million “bundled” by Washington influence peddlers last year. Twelve registered federal lobbyists have been named Bush Rangers. Another 41 lobbyists have become Pioneers by raising at least the required amount. When lobbyists last year collected at least \$6.5 million in bundled donations for Bush – or 10 times what Kerry raised in direct contributions from lobbyists over 15 years – it is fairly easy to see who is the “darling” of the special interests’ lobbyists. No president or presidential candidate in modern times has come close to being as indebted to special interests as the current occupant of the White House, and that’s bad news for working men and women and retired Americans.

THE U.S. CHAMBER OF COMMERCE IS UP TO ITS EARS IN POLITICS

The Chamber of Commerce’s Institute for Legal Reform has disputed charges that the Chamber engages in unethical electioneering in state Supreme Court races. In a *Congress-Daily* column last month, representatives from the Institute for Money in State Politics and the Brennan Center for Justice at the New York University School of Law asserted that the Chamber exploits lax state campaign finance laws to influence state judicial campaigns without disclosing the group’s involvement. An ATLA spokesperson accused the Chamber of setting up “phony front groups” to help elect business-friendly judges who agree with the Chamber’s calls for legal reform. The Chamber says it partners with local businesses, business groups, or local Chamber affiliates, providing resources or grants to the local group to fund “voter education campaigns.” Anybody who believes this is a candidate to buy beachfront lots in Arizona.

The Chamber spent at least \$40 million in 2002 to influence state judicial races. The Chamber refuses to disclose amounts spent claiming its policy against discussing voter education initiatives won’t allow it. According to the Brennan Center, the Chamber has taken credit for winning 15 out of 17 races in 2000, and 21 out of 24 races in 2002. The Chamber does not endorse judicial candidates, but it is up to its “neck” in judicial politics. In 34 of 42 races since 2000, the judicial candidate it supported won. Nobody is accusing the Chamber of any illegal activity, but I have great difficulty in the Chamber’s taking money from groups such as the pharmaceutical, insurance, and automobile industry and using the funds in judicial races. The Chamber should be much more concerned with corporate corruption, the Bush deficit, and the loss of jobs in this country, and leave politics to the politicians.

WAL-MART WIDENS POLITICAL REACH

Wal-Mart, the USA’s biggest company, is rapidly moving up the “spending ladder” in the political arena. The retail giant now holds second place among top campaign givers in the 2004 federal elections. According to the Center for Responsive Politics, a non-partisan watchdog group, Wal-Mart didn’t rank in the top 100 four years ago. Republican candidates are the big Wal-Mart winners in this year’s election, receiving about 85% of the company’s contributions. The Wal-Mart political action committee, its employees and the children of founder Sam Walton are included in the tabulation. Wal-Mart’s rise is significant because of the impact it might have on congressional debates about health care, labor and other hot-button regulatory issues, says Larry Noble, the center’s executive director. The company has more than \$250 billion in annual revenue. Wal-Mart is also the USA’s biggest private employer, with 1.2 million workers. Based on a recent report in *USA Today*, Wal-Mart’s political action committee and employees have given about \$1 million in the 2004 elections so far almost entirely to congressional candidates.

VI. CONGRESSIONAL UPDATE

REPRESENTATIVE TAUZIN SHOULD RESIGN

Public Citizen has called for an investigation into whether U.S. Representative Billy Tauzin (R-La.), who had a key role in writing the Medicare prescription drug law, broke House ethics rules when negotiating a lucrative job with the drug industry’s top lobbying group. Representative Tauzin has received an offer to represent the Pharmaceutical Research and Manufacturers of America (PhRMA), the drug industry’s main lobbying group, which was heavily involved in the crafting of recently passed legislation to create a prescription drug benefit under Medicare. As we have all learned, this legislation contains key provisions beneficial to the drug industry: it subsidizes private insurers to provide prescription drug coverage to seniors – thereby increasing demand for drugs – bars the Medicare administrator from bargaining for lower drug prices, and effectively prohibits the reimportation of lower-priced drugs from Canada.

In a letter to the House Committee on Standards of Official Conduct, Public Citizen asked officials to investigate whether Tauzin began negotiating for a job with PhRMA while crafting the legislation. I don’t know whether Representative Tauzin violated House conflict of interest rules or not. However, his conduct certainly places him in a very bad light. The job offer is worth \$2.5 million, according to capitol insiders. If this number is accurate, it will be the largest compensation package on record for anyone at a trade association. Joan Claybrook, Public Citizen’s president, stated, “The record size of the PhRMA contract and the fact that the offer became public less than two months after the drug industry scored a major victory with this legislation raises serious questions about whether Representative Tauzin’s actions were tainted. While Representative Tauzin was writing the bill, he put out the word that he was retiring from

Congress and looking for new work. This doesn't pass the smell test."

In my opinion, Representative Tauzin had no business negotiating private employment with a business interest that was so actively engaged in lobbying for the Medicare legislation. Clearly, it now appears that the prescription drug bill was a windfall for the pharmaceutical industry. If public officials involved in negotiating the measure in Congress gained financially, that is very wrong. If nothing more, Tauzin's job negotiations are proof of the need to tighten the House's notoriously lax ethics rules. Under the rules, members are merely discouraged from negotiating employment with business interests involved in legislation but are not prohibited from doing so. Accordingly, it may be determined that Tauzin broke no rules even if he did negotiate his new job while crafting the Medicare bill. However, the fact that the Louisiana Republican resigned his chairman's position with the powerful Energy and Commerce Committee and announced that he would not seek reelection makes me believe he didn't do the taxpayers right. Certainly, all of this warrants a full-blown investigation. If Representative Tauzin wants to do the right thing, he should simply resign from Congress.

ENERGY BILL SHOULD BE DERAILED

The ill-conceived energy bill should be allowed to die a well-deserved death. Unfortunately, U.S. Senate leaders are now considering resurrecting this bill from its grave. Their intentions are to tack the pork-laden bill onto a transportation bill that will pass in an election year. Politicians in the Senate don't want to be accused of failing to bring jobs and money to their states. The relentless force and influence of special interests are breathing life into a very bad piece of legislation. The energy industry has contributed more than \$70 million to the campaigns of federal politicians since 2001, with nearly three-quarters of that amount going to Republicans, who control Congress. This process began when Vice President Dick Cheney's Energy Task Force met in secret with corporate lobbyists.

The original bill was rewritten and dollar giveaways were enlarged in a special interest-controlled conference committee. Worse still, members of Congress had little time to read all of the special interest provisions in the bill as it was rushed to votes in both chambers.

Congress should focus on creating an energy plan that reflects the needs of our country and our environment: clean, safe and affordable energy for every person. If the energy and transportation bills go hand-in-hand for a vote, the special interests win, as each Senator will have an interest in supporting some piece of the bill. Such maneuvering is a reckless act that threatens to derail the trust the public has in the lawmaking process. All Americans who believe in the Democratic process should be outraged and demand that members of Congress look out for the interests of U.S. citizens, rather than allowing the special interests of a few powerful groups to call the shots in Washington.

VII. THE CORPORATE WORLD

THOSE WHO DO THE CRIME MUST SERVE THEIR TIME

The bosses at some of the major corporation in this country should have to pay for their corrupt acts by serving criminal terms. They should be made to take responsibility for their actions. If an average citizen steals from the grocery store, he goes to jail. If that same person double-parks, he pays his ticket. Why doesn't this simple principle apply to these corporations and their corrupt executives? As of this writing, the corporate financial crimes committed in this country have cost hundreds of billions of dollars over the past few years. However, only two top-level corporate executives are now in prison. If working class men and women committed crimes that cost hundreds of billions of dollars - inconceivable as it is, how many of them would have been put under the jail? So, how is it that corporations and their highly paid

executives get away with criminal activity? I suppose it's the nature of the beast. We in America grew up believing that the major corporations were very powerful, but honest. While we had respect for the bosses who ran these corporations and actually looked up to them, some saying we actually put them on pedestals, things have really changed.

Let's say that a healthcare corporation is caught fixing its books, committing in effect a multi-billion dollar fraud - and we wouldn't have to look far for that type case, what would happen? Under U.S. law, if a healthcare corporation is convicted of a felony, that company can no longer do business with the United States government, in this hypothetical case the Medicare and Medicaid program. That would mean life and death to that company. Unlike the common thief, the large corporations hire the best corporate crime lawyers available and say to them, "Pay a fine, but save us from the corporate death penalty." How many corporations have received the death penalty? They will pay their fines and penalties, but the corporations continue to do business directly or indirectly with the very same government that brought criminal charges against the company. Corporate thieves should have to pay for their crimes. The guilty individuals should go to prison and the corporations given the death penalty. Corporate corruption in this country must be stopped without further delay.

HEALTHSOUTH ACCOUNTING PROBLEMS PASS \$4 BILLION MARK

It now appears that HealthSouth Corp. manufactured \$2.5 billion in bogus profits to prop up its reputation on Wall Street. HealthSouth executives are now saying even that figure is not high enough to account for past irregularities at the company. Management installed in the wake of the accounting scandal have identified as much as \$2 billion in questionable money on HealthSouth's books that is not part of the government's fraud case. It now appears that the scope of the improper conduct at HealthSouth will approach \$4.6 billion.

MORE ON THE HEALTHSOUTH INQUIRY

A Justice Department inquiry into HealthSouth Corp. is now looking at possible violations of federal anti-bribery laws, according to the *Wall Street Journal*. The *Journal* reported that federal investigators are seeking to determine whether HealthSouth provided kickbacks in its effort to win access to the Saudi Arabian healthcare market. It appears the federal prosecutors are now looking into events surrounding a contract HealthSouth struck in 2000 to help develop and manage a 400-bed rehabilitative hospital near Riyadh, Saudi Arabia. When one considers how state and federal prosecutors work hard to send individuals who are not well connected to jail, it is refreshing to see corporate criminals investigated and prosecuted with equal zeal.

SPECIALIST TRADERS SETTLE

The New York Stock Exchange's top five "specialist" trading firms and securities regulators have reached a \$240 million preliminary settlement. If this settlement is approved, it will cap a yearlong probe into allegations of improper floor trading on the big board. The agreement, which still needs formal Securities and Exchange Commission approval, includes \$155 million in restitution for earnings the firms allegedly made by trading ahead of investors, as well as \$85 million in fines. The top three firms — Fleet-Boston Financial's Fleet Specialist unit, LaBranche and Van der Moolen — will pay more than \$50 million. Goldman Sachs' Spear Leeds & Kellogg and Bear Stearns' Wagner Specialists will pay about \$40 million each.

The NYSE has lost — to a large extent — the trust and support of the large pension funds, which are the exchange's biggest users. These funds involve hundreds of billions of dollars. After months of scandal, triggered by the huge pay of former chairman Richard Grasso, the NYSE needs to clean up its act and regroup. The agreement, reached with the SEC and the NYSE's enforcement arm, involves the biggest fine imposed against Big Board specialists, who oversee the buying and

selling of shares on the exchange floor. Investors are fed up with all of the scandals that have been uncovered over the past year. When you get down to it, "greed," "arrogance," "poor oversight," and "stiff competition" are at the core of much of the wrongdoing.

ANOTHER MAJOR CORPORATE SCANDAL

Parmalat, which began as an Italian salami factory that grew to become the 8th largest company in Italy, is now facing numerous charges. Calisto Tanzi, the founder of Parmalat, has been in jail since December 27th. This man admitted to prosecutors that he took money from Parmalat to help the family's travel business that was losing money. Tanzi acknowledges that he knew the company's records were being falsified. Sources indicate that approximately \$10 billion is missing in an accounting fraud that some are calling an "Italian Enron." Early investigations suggest that the alleged fraud can be traced back some fifteen years, after Tanzi took his company public and began to expand rapidly around the world. The business currently employs 36,000 people and stretches across thirty countries and five continents.

In the United States, Parmalat sells the long-lasting milk on which it first made its name, as well as food products such as tomato paste. The U.S. Securities and Exchange Commission has also announced that it will begin investigating to determine what role American banks played in selling U. S. investors on Parmalat. It is alleged that Parmalat set up a complex web of offshore companies and tax havens to hide its growing debt. It has been reported that Parmalat executives took hammers to company computers to destroy evidence. Another disturbing allegation is that fake letterhead stationary from the Bank of America in New York was created to suggest the company had billions of dollars that it did not actually have.

CFTC FINES ENERGY TRADING FIRMS

The U.S. Commodity Futures Trading Commission (CFTC) has fined 6 energy trading firms \$150 million for false reporting and attempted manipulation

of natural gas prices. The companies involved were: Aquila Merchant Services, a subsidiary of Aquila, Inc.; e prime, Inc., a subsidiary of Xcel Energy, Inc.; Entergy Koch Trading, L.P.; ONEOK Inc.; ONEOK Energy Marketing and Trading Company, L.P.; and Calpine Energy Services, L.P. The Enforcement Division of CFTC is bringing to a close a number of the energy company investigations it started in mid-2002. If memory serves me correctly, it was the CFTC that played a role in the Enron scandal.

JUDGE IN TYCO TRIAL WON'T DISMISS CHARGES

The judge hearing the trial of two former Tyco International executives accused of stealing \$600 million from the company will let the jury consider most of the counts against them. The judge rejected defense motions to declare a mistrial or dismiss all the charges against L. Dennis Kozlowski, Tyco's former chief executive officer, and Mark Swartz, the company's former chief financial officer. The trial has been going on for 4 months. It involves charges of grand larceny, enterprise corruption, state business law violations and falsifying business records. Prosecutors say the two defendants stole \$170 million by hiding unauthorized pay and secretly forgiven loans in major Tyco transactions and made another \$430 million on their Tyco shares by lying about the company's financial condition from 1995 into 2002. Kozlowski and Swartz claimed they earned all the benefits they got from Tyco and that all the appropriate overseers knew about their compensation and loans. The judge said prosecutors had presented enough evidence that the defendants intentionally looted Tyco and tried to cover up their crimes to let the jury deliberate on the charges. It is interesting to note that Kozlowski is accused, among other more "serious" matters, of stealing three pieces of art worth a total of \$14.7 million.

The judge had ruled that prosecutors will be allowed to question the defendants about the use of Tyco assets to offset personal losses. One item prosecutors can talk about — and the jury

can examine — is the \$30 million-plus separation agreement between Kozlowski and his ex-wife, Angie Kozlowski. The judge said the jury may consider whether a need for money might have caused Kozlowski to steal. Tyco, which has about 270,000 employees and \$36 billion in annual revenue, makes electronics and medical supplies and owns the ADT home security business. It is nominally based in Bermuda but recently moved its operations headquarters to West Windsor, New Jersey.

\$403 MILLION SET ASIDE FOR POSSIBLE SETTLEMENT

As this issue went to the printer, it appeared that Pfizer Inc. was closer to settling allegations of drug fraud charges. The corporation has set aside \$403 million for federal and state prosecutors over its promotion of what has become the country's top-selling epilepsy drug, Neurontin. Pfizer took a charge of \$403 million in the fourth quarter of 2003, an amount the company believes "will be sufficient to resolve all outstanding federal and state governmental investigations related to Neurontin" as well as a civil whistle-blower lawsuit brought by a former Massachusetts employee. If Pfizer settles the criminal and civil cases for that amount, it would be one of the largest settlements for drug fraud in U.S. history.

In June, drug maker AstraZeneca Pharmaceuticals agreed to pay \$355 million to resolve criminal and civil allegations that the company inflated the price of its prostate cancer drug and bribed doctors to prescribe it. At the time, that settlement was second in size only to the \$885 million TAP Pharmaceutical Products Inc. paid in 2001 to settle similar allegations in a Boston case. The soaring costs of prescription drugs to the state and federal Medicaid program has gotten a great deal of attention. These settlements recoup money spent by the government. In the Neurontin investigation, federal and state prosecutors accused the company of illegally promoting the drug to doctors through a variety of methods, including kickbacks. Pfizer bought Warner-Lambert in 2000 and assumed any liability from Warner-Lambert's sales practices.

Last May, federal prosecutors made a filing in the whistle-blower case in U.S. District Court in Boston that for the first time outlined their belief that Warner-Lambert engaged in an illegal marketing scheme to increase sales of its epilepsy drug. Former Warner-Lambert employee David Franklin and his attorney Thomas Greene filed the whistle-blower lawsuit more than six years ago, saying the company gave doctors illegal financial incentives to prescribe Neurontin and illegally promoted the drug for uses that were not approved by federal regulators. Prosecutors also said Warner-Lambert and its subsidiaries misled doctors into believing that programs discussing uses for Neurontin were independent educational programs when they actually were marketing efforts led by the company. Pfizer executives have repeatedly refused to comment on the charges, only saying the allegations concern company activities during the mid-1990s, years before Pfizer purchased Warner-Lambert. Sales of Neurontin have soared. The company reported worldwide sales of Neurontin in 2003 grew 19% to \$2.7 billion.

NEW YORK ATTORNEY GENERAL OPPOSES EFFORT TO LIMIT BANK OVERSIGHT

New York Attorney General Eliot Spitzer has filed a lawsuit on behalf of an aggrieved bank customer in a direct challenge to the Bush Administration's position that federally chartered banks cannot be touched under state consumer protection laws. Mr. Spitzer said he hoped the lawsuit would test recent banking regulations, rules that have been criticized by many of the Attorneys General in the country as well as many Democratic members of Congress and consumer groups. The Attorney General sees the new banking regulations as part of a larger pattern intended to relieve pressure on business. Mr. Spitzer made this statement when filing his suit: "This is a continuation on the part of the Bush Administration to pre-empt state enforcement in areas that are critical to ensuring civil rights and consumer rights.

Things from predatory lending to spam to the quality of the air are implicated."

The new regulations were issued on January 7th by the Office of the Comptroller of the Currency in the Treasury Department. This arm of the federal government oversees national banks. Under these regulations, only the federal government has the authority to regulate national banks, and federal banking laws override state statutes. That means states cannot enforce their consumer protection laws against national banks or their subsidiaries. This would include Bank of America Corporation, Wells Fargo & Company, Wachovia, Bank One and Citicorp, among others.

There has been a great deal of criticism against the federal comptroller, John D. Hawke, Jr., for pushing the regulations through. Mr. Hawke has shielded every nationally chartered bank from any obligations to follow state lending laws. In some states, those state laws are pretty good. For example, the issue has come to the fore in recent years as more states have adopted laws to stop so-called predatory lending practices, like hidden fees, excessive interest rates and high-cost credit insurance. However, Alabama unfortunately doesn't fall into the category of states that have good laws on the issue.

Mr. Spitzer and many other State Attorneys General believe that the Bush Administration wants to protect the large banks from state efforts to rein in unfair banking practices. The effort to shield nationally chartered banks from the capacity of State Attorneys General to enforce predatory lending and other consumer protection statutes against them will leave consumers in states such as New York powerless to stop the abuses. That is why our firm continues to file individual lawsuits against predatory lenders. I hope Governor Riley and the Alabama Legislature will make Alabama's consumer protection laws much stronger. Unfortunately, because of the power of the special interests, that most likely is wishful thinking.

VIII. BUSINESS LITIGATION

THE NATION'S CATTLEMEN WIN THEIR CASE

On February 17th a federal court jury awarded \$1.28 billion dollars to a group of cattlemen who had sued Tyson Fresh Meats Inc. The jurors found that Tyson, the nation's largest meat packer, had unfairly manipulated cattle prices. Tyson announced immediately that it would appeal. In 1996, cattlemen from across the country sued Tyson, known then as IBP Inc., claiming the company used a contract with a select few beef producers to create a captive supply of cattle. Tyson allegedly relied on this captive supply when cattle prices were high and entered the market for cattle only when prices were low, thereby depressing cattle prices. The trial lasted for several weeks and the jury deliberated for four days. This case is good evidence that even businesses need the courts when a wrong is committed requiring redress. An Auburn University agricultural economist placed the damages suffered as a result of Tyson's driving down cattle prices by 5.1% at \$2.1 billion. This is a classic example of how business owners who have been injured or damaged in their business operations use the court system rather than binding arbitration. There is nothing wrong with that. In fact, it is the right thing to do.

SUIT ALLEGES WAL-MART LOCKED JANITORS INTO STORES

We reported recently on a civil rights suit that was filed against Wal-Mart Stores Inc. Now the suit by Mexican immigrants has been expanded to include plaintiffs from Poland, Slovakia and the Czech Republic. Wal-Mart is accused of locking its janitors inside stores during their shifts. Wal-Mart has denied the allegations. The recent amendment to the suit filed in U.S. District Court in Newark comes as a federal grand jury in Pennsylvania weighs evidence to determine whether America's biggest retailer will face criminal

charges in the use of illegal immigrants to clean its stores. According to a report in the *Star Telegram*, INS agents raided Wal-Mart stores across the country in a sweep that resulted in the arrest of hundreds of janitors on immigration charges. Among those arrested at that time were the 17 named plaintiffs in the civil suit. Included were 11 Mexican immigrants and the 6 Eastern Europeans who have now joined the list of plaintiffs. One of the janitors is in Alabama.

The suit seeks class action status to hold Wal-Mart liable for damages to a number of other janitors, allegedly treated the same way. The final numbers could be in the thousands. The suit alleges that employees were locked in stores with warnings from managers not to use emergency fire exits for anything but a fire, or they'd be fired. *The New York Times* has reported that janitors were being locked in. The original suit claimed some workers were forced to work seven-day, 70-hour weeks, for \$1,500 a month. Now it appears there are other serious allegations concerning the foreign workers. The suit is being brought under the federal Racketeer Influenced Corrupt Organizations Act. It charges that Wal-Mart tried to shield itself from liability under labor or immigration laws by using independent contractors to employ the immigrants. Wal-Mart has 3,500 stores nationwide with 1.2 million employees. Wal-Mart acknowledged that doors were kept locked, but insisted that a manager with a key was always present.

IX. PRODUCT LIABILITY UPDATE

A TRAGIC RESULT THAT COULD HAVE BEEN AVOIDED

When we drive in our pick-up trucks and cars on our roads and highways, we expect the brakes on large commercial trucks, like dump trucks, garbage trucks and 18-wheelers, to work. Our pick-ups and small cars are no match for a runaway truck. A large commercial truck will destroy a pas-

senger vehicle when a violent impact between the two occurs on our highways. Our product liability lawyers recently handled a case where the driver of a dump truck discovered that he was without brakes as he entered an intersection. Sadly, he rammed into the side of another vehicle with great force and killed a precious 9-year-old girl.

The investigators for the Montgomery Police Department and the Alabama State Troopers meticulously investigated the cause of the crash. They determined that the brakes on this truck had frozen, rendering the brakes inoperable. Moisture naturally accumulates in the brake systems of commercial trucks and it must be removed. If the moisture is not removed, then the brake system will freeze when the temperature drops below 32° F. Theoretically, a truck driver is supposed to open the valve to the air brake system daily to drain the accumulated moisture. However, truck drivers do not regularly drain their air tanks. For over twenty years, manufacturers have been fully aware that truck drivers fail to proactively drain the air tanks of moisture.

In order to address the truck drivers' inaction, the trucking industry developed two devices to ensure that the air brake system was free of moisture. Both devices are offered as optional, rather than standard, equipment by truck manufacturers. The first safety device that was developed in the trucking industry was the automatic bleeder valve. The automatic bleeder valve does not need the assistance of a truck driver to drain the tanks daily. Instead, the valve automatically releases moisture from the system to ensure the brakes will not freeze. Over the years, the automatic bleeder valve has proven to be very effective at removing moisture for those companies who choose to make their trucks safe.

The second product that was developed by the trucking industry was an air dryer. An air dryer senses moisture in the air brake system and immediately removes the moisture from the system. Again, the truck driver is not required to drain his tanks daily because the air dryer is an effective safety device that removes moisture

from the air brake system. Unfortunately for people who are killed because of frozen brake systems, air dryers are not standard equipment.

Safety must not be an option! We discovered that the trucking industry is fully aware that truck drivers do not drain their brake air tanks daily. Further, they are aware that if the tanks are not drained daily, then moisture will accumulate and the brakes will freeze when the temperature drops below 32° F. If the brakes freeze, then they will likely become inoperable, resulting in a tragic wreck. As we well know, the chances of survival when a large dump truck collides into a passenger car are remote. Thus, truck drivers should not be choosing whether a safety device belongs on a vehicle. Manufacturers must make automatic bleeder valves and air dryers mandatory equipment.

In 1994, a medical examiner in New Jersey wrote the National Highway Transportation Safety Administration (NHTSA) to let them know that someone would be killed on our highways if NHTSA did not require automatic bleeder valves to become standard equipment. The industry responded to the NHTSA inquiry by confirming that automatic bleeder valves and air dryers were effective equipment. However, the industry also advocated that truck drivers should be able to choose whether such safety equipment should be placed on large commercial trucks roaming our highways. If the trucking industry is cognizant of two safety devices that will stop needless deaths, then automatic bleeder valves and air dryers must be standard equipment when a truck is manufactured. Instead, the trucking manufacturers have decided to make a greater profit by selling these devices as optional equipment than they would if they were included as standard equipment.

Cole Portis and Mike Andrews handled the case for our firm, along with Ron Wise of Montgomery, and did an excellent job. We are contacting NHTSA again to encourage NHTSA to pass a regulation requiring truck manufacturers to make automatic bleeder valves and air dryers standard equipment on trucks. If NHTSA fails to act, then the truck manufacturers will not

act on their own to ensure that occupants in passenger vehicles are safe from large commercial trucks. We must stop the senseless deaths that are occurring because truck manufacturers failed to include necessary safety equipment on their trucks.

TIME FOR SOME ACTION IN CONGRESS

It is extremely important for the public to be well-informed concerning motor vehicle safety and especially to be made aware of vehicle design defects known to the auto industry. Consumers have a difficult time getting good information in a timely manner from the federal government concerning vehicle safety. However, there are ways to bolster NHTSA's consumer information program. The first is contained in NHTSA reauthorization legislation that is pending in the Senate. The bipartisan measure, sponsored by U.S. Senators John McCain (R-Ariz.) and Ernest Hollings (D-S.C.), if passed, would require the government to establish a minimum rollover prevention standard. This would ensure that dangerously rollover-prone vehicles would not be allowed on the road in the future. Even when vehicles roll over, there are ways that occupants can be protected. The McCain-Hollings bill will require a new standard for vehicles that do roll over to protect occupants from death and injury. Critical improvements, such as stronger roofs, side head airbags, safety belts that tighten during a rollover and improved side window glazing will be required.

A second bill, sponsored by Sen. Mike DeWine (R-Ohio), would require the star rating information to be placed on new vehicle window stickers, so the information is readily available to potential buyers at the dealership. More will be said on the DeWine bill below. Congress should pass each of these bills without change or delay. While we are waiting for Congress to act, however, automakers should focus on improving the design of vehicles to ensure they do not roll over and that people will survive if they do. Those dual design purposes should be their goal and it is certainly within their capacity to achieve such a goal. However, based on past performance, we

have no reason to expect a voluntary effort from the auto industry. Therefore, it is critically important for Congress to act and promptly.

AMERICA'S ROADS MUST BE MADE SAFER

Members of the U.S. Senate have an historic opportunity to take action that will save lives. The Highway Safety Reauthorization bill - if passed - will save thousands of American lives by mandating new standards for automobile and truck safety. In 2002, a total of 42,850 American motorists were killed in crashes - the greatest death toll since 1990. This bill addresses the deadly problems of vehicle rollover, aggressiveness and ejection, and offers necessary improvements for trucks, 15-passenger vans and child safety. The measure must be passed and signed into law without further delay. It will take a non-partisan effort to get the job done. If the bill hasn't passed by the time you receive this issue, contact your Senators and ask them to support the measure.

AUTO SAFETY LEGISLATION IS A MAJOR STEP FORWARD

The bill introduced by Senator Mike DeWine (R-Ohio), mentioned above, is worthy of more space this month. His bill includes some safety measures that on the surface appear to be very good. If they are as good as I believe them to be, the measures will be badly needed additions to the substantial provisions that are already in the National Highway Traffic Safety Administration's Reauthorization Act. Senator DeWine's proposals would take significant strides in making our highways safer and would:

Provide important crash test information to the public when they go to buy a vehicle, thereby ensuring that consumers have the best possible safety information when they need it the most. Currently, only those who check the DOT Web site before heading to the dealership obtain information about safety ratings from taxpayer-funded government crash tests, greatly limiting the effectiveness of this information program.

Ensure that information about child injuries in crashes is collected and analyzed, and that a new child-sized dummy is created for increased testing of how rollover crashes injure children. This will help answer the critical questions raised in a recent Public Citizen report about the high death rates of children in rollover crashes. These measures are important because cars have never been designed and built for children. Nevertheless, millions of children ride in cars daily.

Contain important measures to reduce the many tragic child deaths and injuries caused by power windows and backover accidents.

Improve teen driver education by providing strong support for graduated licensing programs in states and create a new office to disseminate information about the best practices in driver education.

Require a study of how tires age and require that the consumers buying tires be told when they were manufactured. NHTSA disregarded this issue when writing a new tire safety standard last year.

All these measures are substantial steps toward improving safety. All of us should be deeply grateful to this Senator for his profound concern for the safety of those traveling on our nation's highways. I hope there will be tremendous bi-partisan support for this bill.

VARIETY OF GROUPS BACK SEAT BELT MEASURE

If you felt a tremor under your feet recently, it wasn't caused by an earthquake. Something is happening in Washington that has given off shockwaves and these - for a change - weren't of the bad variety. It's not often that so many disparate groups join together to stand behind a piece of legislation. This is what's causing the earth to tremble. On most highway safety proposals, auto manufacturers don't support consumer group proposals for safety improvements. The coalition put together more than 130 national, state and local groups representing everything from consumer, health and child safety to state legislators and the insurance and auto indus-

tries. All stand behind the National Highway Safety Act of 2003, S. 1933, sponsored by Senators John Warner (R-Va.) and Hillary Clinton (D-N.Y.), which would push states to enact primary seat belt laws and thereby save thousands of lives annually.

Everyone in our firm recognizes that a seat belt is one of the most basic life-saving devices. We all know that increasing belt use will dramatically improve highway safety, cut insurance costs, reduce medical bills and protect families from the trauma and heart-break of losing a loved one. The states must do better, and the Warner-Clinton bill is needed to advance belt use. In all but 20 states and the District of Columbia, law enforcement officers are not permitted to stop vehicles when they see unbelted occupants. That makes no sense. Without enforcement, there is no respect for the law. As a result, belt use is much lower than it should be. This bill, which would prompt states to give police law enforcement officers that power, is a no-nonsense, cost-effective way to save lives. Congress is urged to pass the bill without further delay.

FORD EXPLORER SPORT TRAC WORST IN FEDERAL ROLLOVER TESTS

Fourteen vehicles were subjected to a new government safety test designed by the National Highway Traffic Safety Administration to predict the likelihood of a rollover during a sharp turn. The Ford Explorer Sport Trac got the worst rating among 14 vehicles rated. Two SUVs, two station wagons and a compact earned the best ratings. The federal auto safety agency, which announced the ratings, uses a rating system in which five stars is the best score and means the likelihood of rollover is less than 10%. The Sport Trac 4x2, a sport utility vehicle with rear-wheel drive, earned two stars, meaning the rollover risk in a one-vehicle crash is 30% to 40%. Predictably, Ford claims the Sport Trac is very safe. It is significant, however, that Ford is considering adopting the test conducted by NHTSA. In years past, the government would predict the rollover risk by using a mathematical formula based on a vehicle's height and the

width between its rear wheels. A driving test added last fall by NHTSA measures a vehicle's performance when it swerves sharply to the left and then to the right. The agency uses both tests to determine a vehicle's rating.

Earning four stars were two SUVs, the Volvo XC90 and the Chevrolet Trailblazer 4X4; two station wagons, the Ford Focus and the Subaru Outback; the Chevrolet Silverado 4X4 and 4X2 pickups; and the compact Toyota Echo. Four stars means the likelihood of rolling over in a one-vehicle crash is 10% to 20%. Vehicles earning three stars were the Chevrolet Trailblazer 4x2, the Jeep Liberty and Toyota 4Runner sport utility vehicles and the Toyota Tacoma 4x4 pickup. The rating means the likelihood of rollover is 20% to 30%. The government tested 14 vehicles but posted 22 ratings because some vehicles have "twin" models. For example, the GMC Envoy, Oldsmobile Bravada and Buick Rainier are essentially the same as the Chevrolet Trailblazer. The new NHTSA test mimics a real emergency maneuver. The government should set a minimum standard for rollover propensity. Vehicles that get one or two stars shouldn't be sold and allowed on the highways of this country.

U.S. TO RETEST FORD EXPLORER SUVs FOR ROLLOVERS

Safety regulators delayed the release of new rollover risk data for three popular selling 2004 Ford Explorer sport utility models, while a fourth received low marks. NHTSA said it had problems analyzing data for the Explorers, as well as information on the Ford Mercury Mountaineer SUV. The vehicles were included in the government's first-ever road test for measuring rollover propensity, referred to above. While the agency planned to retest the Ford SUVs, no date had been set at press time. The previous tests were completed over the past six months and combined with other factors, such as design characteristics.

NHTSA has questions and things will have to be studied further. Ford says its vehicles are safe and criticized the government's rollover test as unreflective of real world conditions. Ratings on

the Explorer are being closely watched because of the vehicle's popularity and the troubled history over SUVs and rollover crashes. As previously reported, sport utilities represent about a quarter of all vehicles sold in the United States. Studies have shown them to be far more likely than passenger cars to be involved in fatal rollovers. Rollovers represent about 3% of traffic crashes, but about a third of all deaths in passenger vehicles. As noted above, other SUVs in NHTSA's rollover tests posted average marks.

MORE ON THE NHTSA ROLLOVER PROGRAM

The new rollover ratings, while a step forward, are nothing more than just a start in the right direction. Unfortunately, they fall far short of a complete package. Nevertheless, the ratings are a definite improvement over the past. Let's take a look at some of the shortcomings.

The National Highway Traffic Safety Administration has never set a minimum stability standard. As a result, vehicles can be perilously tippy - earning just two or three of five possible NHTSA stars. However, they can still be sold.

The existing roof crush standard is wholly inadequate and must be upgraded.

This information about how likely select vehicles are to roll over is now available only on the Department of Transportation Website. Instead, it should be displayed on the window sticker.

It is a positive step, however, that the new ratings for these 22 vehicles are now based on road tests that simulate emergency maneuvers. In addition, calculations about how rollover-prone vehicles are is something that was badly needed. A dynamic test is an improvement because it will allow future tests to reflect safety enhancements from vehicle stability technologies. However, the star ratings are grossly misleading. Two stars may be interpreted as a good or safe rating. The truth is that a vehicle that receives two stars has a 30 to 40% chance of rolling over in an emergency maneuver. A vehicle that earns just one star has a greater

than 40% chance of rolling over in that maneuver. Clearly, a vehicle that earns one or two stars is not safe and should not be on the highways of this country. The automobile manufacturers will take the star ratings and use them to their advantage from a marketing perspective. All of the companies should put safety at the top of their list of priorities. If they did this, we wouldn't have to force the companies to make the needed design changes. Joan Claybrook, President of Public Citizen, called the NHTSA rollover tests a good first step, but criticized the agency for not having a minimum rollover standard that manufacturers must meet. I agree with her that vehicles earning just two or three of five possible NHTSA stars can still be sold, but that doesn't mean they are safe.

INADEQUATE GOVERNMENT STANDARDS

As we now all know, over 10,000 people are fatally injured each year in rollover crashes. That's the reason NHTSA is finally addressing the rollover problem. As part of a vehicle structural support system, a roof creates a non-encroachment zone or survival space that should protect occupants in a crash. If a roof crushes substantially in an accident, occupants may suffer disabling head or neck injuries. Most vehicles do not have enough headroom to allow for more than 3 to 4 inches of crush without significantly increasing the risk of serious injury. Rollovers are the most common cause of roof crush. The automobile industry was well aware of the causal relationship between rollovers and harm to occupants from roof crush as early as the 1930s. Nevertheless, even to the present date, the automobile industry denies the relationship between roof crush and occupant injuries and death.

The National Highway Traffic Safety Administration has the responsibility of establishing minimum safety standards in the automobile industry. NHTSA's FMVSS 216 sets the minimum strength requirements for a vehicle's roof crush resistance. However, 216 does not require manufacturers to conduct dynamic rollover tests on roofs. The federal standard also fails to consider

what material the roof is made of and how it is constructed. The inadequate standard has led to:

roofs that can shatter, crush, or separate from the vehicle

poor welding that can cause a steel roof to collapse

structural support that may be defective in design and manufacture

Many victims are severely injured or die in motor vehicle crashes as a result of roof crush. In a significant percentage of these crashes, the occupant should have avoided even a serious injury. NHTSA must take action to make sure that manufacturers design the roofs of their vehicles as to make the roof a viable part of the vehicle's structural support system.

Ford Finally Agrees To Pay For 1993 Rollover Crash

Ford Motor Co. has finally elected to pay \$23.7 million in punitive damages to the survivors of three people killed in a Ford Bronco rollover accident that occurred back in 1993. In 1999, a jury returned a \$290 million verdict against Ford. This amount was reduced to \$23.7 million by a California appeals court. The case involved the crash of a 1978 Ford Bronco. The Bronco's roof was made partially of steel and fiberglass. As the vehicle rolled, the steel collapsed, killing Ramon Romo, the front-seat passenger. The fiberglass also broke loose, striking and killing his wife, Salustia Romo, and their 16-year-old son Ramiro Romo. All 3 of the victims were wearing seat belts and did nothing wrong. The couple's three other children also were injured. The survivors sued Ford. The jury verdict included the \$290 million in punitive damages and an additional \$5 million in compensatory damages. Ford finally has agreed to do what it should have done long ago, and that is to pay what was owed to the surviving victims of a crash that was survivable - but for a defectively designed roof on the vehicle. The total payment by Ford, with accrued interest, will be about \$34.5 million.

I have to wonder why Ford, the nation's second-biggest automaker, took so long to comply with the appellate court's decision when it reduced the verdict. Frankly, this is a small price

for Ford to pay for making 3 children orphans. Our recent experiences with Ford Motor Co. makes me realize that this company could not care less about the hurt and misery it causes to victims whose lives are changed forever because Ford clearly put profits over the safety of persons who ride in Ford vehicles. The public expects car manufacturers to design safe vehicles for sale and generally believe that cars they buy are safe.

MORE ON THE DEFECT IN FORD POLICE CRUISERS

The City of Philadelphia has joined a list of cities that have filed lawsuits claiming that the Ford Motor Co.'s top-selling police cruiser has a defect that can cause it to explode if hit from behind. The suit says Ford has not done enough to fix a problem with the fuel system in the popular Crown Victoria Police Interceptor. In Philadelphia, 16 police officers have burned to death in fires ignited in rear-end collisions. The National Association of Police Organizations, which represents police unions around the country, filed a similar suit last year in New York. Police departments also have sued Ford in Alabama, Louisiana, Florida, Ohio, Texas, Mississippi, Illinois, and New Jersey. Despite the lawsuits and deaths of police officers, Ford refuses to independently test their proposed fixes, or to pay for the best fix available, and the fires continue. As expected, Ford has said the cars are safe and the lawsuits are meritless.

Ford has offered to pay for the installation of shields around the gas tanks on police Crown Victorias. It also announced in August that it would offer fire-suppression technology as an option on patrol cars in 2005 but could not retrofit existing models. About 80% of U.S. police departments use the Crown Victoria, and there are an estimated 350,000 on the road. A National Highway Traffic Safety Administration investigation concluded that vehicles with the Crown Victoria's fuel system caught fire 8% of the time in rear-end collisions, compared with 6.3% in the comparable Chevrolet Caprice.

TIRE SAFETY: CAN INFLATION GASES MAKE A DIFFERENCE?

Our firm has continued to be involved in products liability cases involving defective tires manufactured by a number of different manufacturers. Failure analysis in most of these cases involves determining why a tread separation has occurred, causing a particular accident sequence. Tire design and material composition are usually at the heart of the failure. Manufacturers often defend these cases in part by asserting consumer misuse and failure to properly maintain the tires while in service. This includes contentions by the manufacturers that consumers fail to keep proper inflation pressures, alleging that such conditions cause the tires when run under-inflated to degrade prematurely, run hot and detread.

In tubeless, steel belted radial tires, the inner liner component is supposed to be designed to retain air, thereby maintaining inflation pressures. Sometimes a cheapened inner liner lacking in the proper chemical composition of the rubber contributes to excessive loss of air permeating through the internal components. Even the best inner liners will not totally prevent air loss, as particles of oxygen used for tire inflation will diffuse through the inner liner. This results in loss of inflation pressures over time and results in oxidative degradation in the internal components that hold the steel belts together. Antioxidants are incorporated into the rubber of the internal components to safeguard tires from deterioration. Insufficient amounts and poor quality of antioxidants can contribute to the defectiveness of the tire product. Thus, an important safety goal for manufacturers is to create a design and performance criteria to prevent loss of inflation and maximize reduction of oxidative degradation. The choice of inflation gases may improve service and performance of the tire. Investigations are showing that use of nitrogen (N₂) inflation of tires is a possible solution to the loss of inflation pressures and oxidative degradation problems.

The use of nitrogen inflation for tire

applications has been utilized in aircraft and off-road applications for more than twenty years. There has been a growing use of nitrogen in heavy trucks, passenger car and light truck applications. The increased use began in the mid-1990s, as N₂ generators using a membrane technology were introduced into the market. Nitrogen has always been cost-effective using compressed gas cylinders. However, now, N₂ generators have made it possible for tire dealers to have a ready source for inflation. Vehicle manufacturers have the ability to inflate tires from the factory with N₂, which could eliminate spare tire aging issues from the internal oxidative process found in oxygen inflation.

The technical literature on nitrogen inflation is limited, but some of the available documentation found clear benefits. Much work needs to be done to determine whether manufacturer liability can be based on the absence of recommended nitrogen inflation to consumers. However, in theory, it makes sense that nitrogen inflation could prevent internal oxidation and reduce loss of inflation pressures while tires are in service. N₂ molecules are larger than molecules of air so the diffusion of N₂ through the inner liner is at a rate 30 to 40% slower than regular air. Thus, the levels of tire inflation will remain proper for a longer period of time, reducing the risk of running tires under-inflated. The tire's reaction internally to oxygen exposure is totally removed. Thus, internal oxidative degradation (aging) would no longer contribute to tread separation events. Inflation with air also adds moisture to the inside of tires, contributing to corrosive effects and causing tires to run at a higher temperature. High temperature is known to be a contributing factor in tire degradation and detread events.

Some of the beneficial effects of inflating tires with nitrogen seem clear in better maintenance of proper inflation levels during service and inhibiting oxidative degradation. So, good luck on finding a tire dealer, or service station, that offers compressed nitrogen as a tire inflation service. While

tire manufacturers exaggerate consumer misuse in defending their tires, it is important to frequently check inflation pressure, and if nitrogen is not available, use compressed air and drive safely!

GM's NEW AVEO IS INVOLVED IN FIVE CRASHES

In February, five crashes involving the new Chevrolet Aveo caused General Motors Corp. to tell dealers not to sell the cars for a week. GM issued what is referred to as a "stop delivery" notice to dealers late last month, but quickly lifted the selling ban following an "internal investigation" by the company. Five crashes involving a new product certainly have to get the attention of the company. GM issued a news release saying that it had examined the circumstances of the crashes and found no "vehicle condition" to be a contributing factor. Since no other information is available at press time, I suppose we have to accept that as factual for now. However, our experience with the car industry leads me to believe that the Aveo should be watched closely.

The Aveo has been on sale in North America for only a few months. In January, GM reported 1,559 Aveo sales in the United States. With a starting price of \$10,000, Aveo is designed to give GM a player in a highly competitive segment of the market that includes the Hyundai Accent, Kia Rio and Toyota Echo. The Aveo, a low-priced offering, is available as a four-door or five-door sedan. The vehicle is built overseas by a joint venture called GM Daewoo Automotive & Technology Co., whose investors include Japan's Suzuki Motor Corp. GM has had recalls in February involving more than 2.5 million vehicles. However, at this point, there has been no indication that a recall of the Aveo is needed. There has been no indication that NHTSA has looked into the five crashes involving the Aveo. There were injuries, but not deaths reported.

X. PREMISES LIABILITY UPDATE

LIABILITY UPDATE ON FALLING MERCHANDISE

Retail stores that stack heavy products on high shelves cause numerous injuries to customers every year. In 2000, 3 people sustained fatal injuries in Home Depot from falling merchandise. There has not been much regulation to protect customers from merchandise that falls off the shelf, although some states are beginning to address this problem. At present, the Occupational Safety and Health Administration (OSHA) will only inspect a store if an employee is injured. Many consumers groups have been fighting to introduce safety nets and/or rail systems to prevent such injuries to customers at large retail stores.

Wal-Mart's Claims Management Department reported that merchandise fell on more than 25,000 people over a recent 4-year period. Experts in falling merchandise cases estimated that an average of 150 customers are injured daily when merchandise fell on them or when store employees dropped merchandise on them while pushing carts down the aisle. A case in Texas revealed that 80% of falling merchandise cases recorded by Toys "R" Us occurred during October, November, and December, when the store stocked their shelves for the holidays.

A 6-year-old boy died in May of 2003 when a 100-pound patio door fell on him at Home Depot. According to a police report, a Home Depot worker had removed the wrapped packaging from the doors, which were standing upright on a pallet for the employee to show another customer. The employee did not secure the remaining doors on the pallet and left them unattended. The police in Pharr, Texas, spent several weeks investigating the death and considered filing criminal charges for negligent homicide. Clearly, the store was guilty of gross misconduct that resulted in the loss of a young child's life.

In California, a new law has been

enacted to help prevent this type of injuries at retail stores. The new state law is designed to help protect customers and workers from the hazard of falling merchandise. It requires warehouse retail stores to be secured by netting, cables or other methods such as wrapping an entire pallet of goods. When a forklift is being used to move merchandise during store hours, the adjacent aisles must be closed to customers. This law became effective January 1, 2002. Stores are also required to file a report for each serious injury that occurs as a result of falling merchandise. The reports are to be filed with the state's department of industrial relations. Across the nation, several warehouse store customers and workers have been killed and injured by falling merchandise, and in several cases forklifts were involved in the incidents. I hope laws such as this one in California will become enacted in other states. With many corporations opening new warehouse-type retail stores, some tough legislation is badly needed. In the meanwhile, there will be lawsuits, because folks will go to the stores and a good number will be injured. Julia Beasley, who practices in our firm's Personal Injury Section, has handled a good number of these cases and believes that the big stores will not voluntarily police themselves. It will take legislation or the courts to make the large retailers improve their safety record.

XI. WORKPLACE HAZARDS

AGENCY CRITICIZES OSHA ON CHEMICAL RULES

More than 100 workers have died in industrial chemical accidents over the past two decades. Predictably, the Bush Administration has thus far failed to seek expanded safety requirements. An independent government agency, the Chemical Safety and Hazard Investigation Board, has reported that the Occupational Safety and Health Administration's response to its recommendations was

“unacceptable.” OSHA claims it is working to better educate employers about the hazards. OSHA, which you probably know is an agency in the Labor Department, has a strong obligation to see that workers in this country are safe and healthy.

In October 2002, the Chemical Safety Board recommended that OSHA broaden its regulation of reactive chemicals in the workplace and compile data on accidents at work sites. Reactive hazards exist when chemicals are improperly processed or combined, causing explosions, fires or a release of toxic emissions. The Board’s recommendations followed its two-year study of 167 accidents in the past 20 years that caused 108 deaths and hundreds of millions of dollars in property damage. It concluded that reactive chemical accidents were a significant safety problem. OSHA refused to go along with the Board and told the Board in November of last year it has not decided whether it will make regulatory changes. OSHA claimed “there is no consensus on the part of experts on the best approach that should be taken.” The agency also has declined to compile information on the reactive chemical accidents that it investigates. OSHA says the oversight Board has the authority to collect the data itself. The Board cannot issue citations or fines, and only can make safety recommendations. It would appear that Congress should look into this problem since it seems there is an impasse at present.

TRAGIC RESULTS FROM ELECTRICAL HAZARDS

We have handled a number of cases where workers were either killed or seriously injured by electrical hazards in the workplace. Power line contacts still account for serious injuries and fatalities at jobsites in this country. The National Institute for Occupational Safety and Health estimates an average of 411 deaths per year occur on job sites as a result of electrical contact. Tragically, all of these accidents could have been prevented had proper hazard recognition and prevention procedures been used. Many products that are regularly involved in power line

contacts are not designed to protect operators and ground personnel should a power line contact occur. There are a number of products that are regularly involved in power line contacts. Some of them are cranes, bucket trucks, drill rigs, forklifts, man lifts and other aerial lifts. There have been insulating devices and various types of warning devices available to manufacturers and distributors of these products for many years. Sadly, most product manufacturers have made a decision not to equip their products with these important safety devices. The result has been a significant number of deaths and serious injuries that could have been easily prevented.

XII. MASS TORTS UPDATE

DEFECTIVE INSULIN PUMPS

Currently our firm is investigating potential claims on behalf of those injured or killed by defective insulin pumps. Disetronic Insulin Pump products are currently not available for sale either in the United States or Canada because of problems with the manufacturer. In 1997, Disetronic Medical Systems, Inc., the manufacturer of insulin pumps for treatment of diabetes received a FDA “warning letter” regarding “a serious regulatory problem involving the insulin infusion pumps and accessories that are manufactured in the Burgdorf, Switzerland facility and imported into the United States by your firm in St. Paul, Minnesota.” In 1999 Disetronic received another FDA warning letter citing deviations in the manufacturing process. Disetronic recalled one of its insulin pumps in March of 2001 because it would malfunction when exposed to water. Other models of Disetronic Insulin Pumps were recalled in June 2002 because of what “the FDA considers the probability of life threatening consequences is possible by the use of this model pump.”

In early 2003, the FDA performed an

onsite investigation of Disetronic Medical Systems, Inc. in Switzerland. The FDA inspectors found the external insulin infusion pumps to be “adulterated.” In the fall of 2003, Disetronic Medical Systems, Inc. announced in its newsletter that the company “has decided not to ship insulin pumps to new customers until we have resolved the issues raised in the FDA’s warning letter dated June 11, 2003.” This was the third warning letter Disetronic received from the FDA in less than six years regarding problems associated with the pumps. There were 57 adverse events recorded by the FDA for 2002-2003 regarding the D-TRONplus insulin pump. Most adverse events recorded elevated blood sugars and/or diabetic ketoacidosis or low blood sugars with hypoglycemia. There were also two motor vehicle accidents reported where extreme changes in blood sugar occurred while driving. The H-TRONplus reported 467 adverse events for 2002-2003.

WELDING ROD CASES

We are currently investigating a number of potential claims against the manufacturers of welding products. Those products include welding rods, wires and electrodes. The claims are for damages caused by exposure to manganese fumes. This potentially harmful exposure usually occurs during the process of steel-alloy welding and other steel melting activities. A study conducted by researchers at Washington University at St. Louis suggests that industrial exposure to welding fumes may be associated with the early onset of Parkinson’s disease. Welding rods, electrodes and wire contain numerous substances including manganese, copper, lead, and cadmium, which release toxic fumes when used during welding. New evidence suggests that chronic exposure to welding fumes may cause a host of symptoms linked to or similar to Parkinson’s disease. Symptoms of such a condition include tremors, rigidity, abnormal or shuffling gait, lack of arm swing and loss of balance. If the conclusions drawn by these studies can be substantiated, claims will be available against the manufacturers of welding

rods, electrodes, and wire.

The process of heating or cutting steel can cause the release of manganese fumes. When inhaled, these fumes can cause severe neurological injury and damage. Prolonged exposure to these fumes can cause a condition called manganism, a disorder very similar to Parkinson's disease. In fact, exposure to manganese fumes from welding has been associated with the early onset of Parkinson's disease. The symptoms of manganism and Parkinson's disease include: fatigue, headache, muscle cramps, loss of appetite, apathy, insomnia, feelings of weakness and lethargy, speech disturbances, a mask-like face, tremors, disorientation, loss of memory, impairment of judgment, anxiety, hallucinations, illusions, delusions, abnormal gait, and loss of the ability to control muscular movement. The following activities can cause exposure to manganese fumes: gas metal arc or metal inert gas (MIG) welding, gas tungsten arc or tungsten inert gas (TIG) welding, flux cored arc welding, shielded metal arc welding, brazing, thermal cutting, metal pouring or gauging. Workers who have performed welding-related activities, or worked for extended periods of time in areas where such activities were conducted, may have been exposed to manganese fumes.

Workers who were involved in any of these welding or welding-related activities or worked for extended periods of time in areas where such activities were conducted, and now either are suffering from Manganism, manganese induced Parkinsonism or Parkinson's disease, or are suffering from any of the symptoms listed above, may have valid legal claims. Any person who believes they have a valid claim should contact their doctor and lawyer. All claims are subject to a statute of limitations. Lawsuits that are not timely filed are barred.

AMERICANS PAY MORE FOR PHARMACEUTICALS

In the United States we pay an estimated 40% more for name-brand prescription drugs than do folks in Canada. Here, a 6-month supply of Lipitor, the biggest selling drug in the

world, is about \$1,900 while the same drug costs only \$500 in Canada. The wide price discrepancy in prescription medicines has led many people, and even a couple of cities, including Montgomery, to cross the border in search of tremendous savings. However, the FDA is taking action to crack down on this activity. As reported in a recent Time magazine article, the FDA contends that it is doing so in order to protect consumers. On a closer look, it is painfully clear that it is actually the pharmaceutical company's profits that are being protected. The FDA's argument is that the safety of drugs sold in other countries is unknown. Interestingly, most drugs sold in the United States are actually manufactured overseas. According to the Time article, pharmaceutical imports for 2002 totaled \$40.7 billion, up from \$8.7 billion in 1995. Of the 20 largest drug companies worldwide, 17 now manufacture drugs in Ireland to take advantage of generous tax incentives. Both Lipitor and Viagra are made in Ireland. Under the law, a pharmaceutical company can import these drugs, but an individual resident cannot. Neither can U.S. pharmacies.

Another hole in the FDA's safety issue argument is the fact that drug safety regulations are often more stringent in foreign countries than in the United States. It has become a common occurrence for drugs to be pulled off the market for safety reasons in foreign countries months or even years before they are pulled from the market in the United States. The regulatory bodies in foreign countries have become much more vigilant in guarding patient safety than the FDA. Perhaps the starkest example of how high drug prices in the United States are being protected at the expense of the American consumer is found in the passage of the recent Medicare bill. During the legislative process, a provision that would have allowed consumers and American pharmacies to purchase drugs from Canada was deleted in the secret joint House-Senate conference. That provision, had it remained in the legislation, would have reduced prices. On the other hand, a provision that would serve to protect higher prices for drugs by prohibiting Medicare from negotiating

with drug companies to get better prices remained in the legislation and became law.

Why is our government going so far to help the large pharmaceutical companies at the expense of American consumers? The answer in large part is found within a paragraph of the Time article: "One reason the industry does so well in the capital is its potent lobby. It maintains more than 600 lobbyists - more than one for every member of Congress. It has spent \$435 million to influence Washington from 1996 to 2003 and handed out \$57.9 million in contributions from 1991 to 2002." This information came from Common Cause. To add insult to injury, the Bush Administration is using taxpayer dollars for an ad campaign to try and convince the American people that this new Medicare law is in our best interest.

MEDICAL MALPRACTICE BILL

It appears that Senate majority leader, Dr. Bill Frist (R-Tn.) is going to push for legislation limiting jury awards in medical malpractice cases. By the time you read this issue, proponents of medical malpractice legislation will have begun running print and television advertisements in an effort to convince consumers that fatal mistakes and gross negligence on the part of doctors increase healthcare costs in America. This same "scare tactic" is used frequently by President Bush, who continues to weigh in on the subject urging Congress to cap liability lawsuits. Tragically, the message is a false one. In truth, the increase in medical malpractice rates results from investment losses and poor financial planning by the insurance industry rather than large jury awards. According to *Public Citizen*, "Medical malpractice claims have remained constant in recent years and increases in malpractice awards have been far below the pace of medical inflation." This type of legislation pushed by Dr. Frist would only serve to protect HMO's, big pharmaceutical companies and medical device manufacturers at the expense of consumer rights. Doctors - who are rarely sued in this country - are being used as a stalking horse by the special interest groups really affected.

Politicians, such as our current President, obviously fail to consider the effects that medical negligence can have on consumers such as Linda McDougal, who suffered a double mastectomy after a pathologist mixed up her x-rays. If left in the hands of President Bush and Dr. Frist, victims of medical malpractice like Ms. McDougal would be left with little or no legal recourse. A very few doctors commit medical malpractice, but when they do, people can be badly hurt or even die in some cases. Studies have shown that as many as 98,000 Americans die each year as a result of medical negligence. We need to take steps to save lives - not strip away rights. The proposed bill pushed by Frist is not about protecting good doctors. It is about giving immunity to drug companies that sell bad drugs, manufacturers that sell defective medical devices, and nursing homes that hurt folks. We shouldn't be fooled by the title of the bill or spin about the need to protect doctors. This bill is sweeping in coverage and deadly in its effect. It would be a dagger in the heart of victims' rights in America and doctors would still be paying too much for their insurance.

FDA PLANS TO EXPAND INQUIRY

As previously reported, the FDA has finally banned the diet supplement ephedra. It now appears that the Food and Drug Administration plans to become much more aggressive in gathering safety evidence about other dietary supplements it views as potentially harmful. Three ingredients in weight-loss products are being tracked: bitter orange, aristolochic acid and a lichen derivative called usnic acid. The FDA announced in December of last year that it plans to prohibit sales of ephedra, which has been promoted for weight loss, enhanced sports performance and increased energy. The stimulant has been linked to about 16,000 adverse reactions, including strokes, heart attacks and irregular heartbeats. At least 155 deaths have been linked to ephedra. The ban on ephedra should go into effect this spring if it stands up to expected court challenges. It will provide a model for similar bans on other unsafe products. Bitter orange has

been used as a replacement for ephedra in weight-loss products. Aristolochic acid, from the plant aristolochia, also has been included in weight-loss preparations. It is a potential carcinogen and has been associated with permanent kidney damage. Usnic acid is a component of Lipokinetix, a dietary supplement that has been associated with serious liver toxicity.

The ephedra announcement was the first time FDA has moved against a supplement since a 1994 law was passed that holds supplements to a different standard than new drugs, which must go through large-scale safety and effectiveness studies. The law says the FDA can move to block sales of a supplement only if it can prove they "present an unreasonable risk to health." I hope the public will no longer be put at risk for injury and death if the FDA will keep its word. The agency plans to issue a rule that will lay out a framework for determining whether a dietary supplement presents such a risk. The FDA is calling for more partnerships with universities and researchers to create the science that will allow the federal regulatory agency "to take more effective steps to make sure that dietary supplements that people take are safe and have benefits that outweigh their risks."

FDA: SIMPLIFY DRUG ADS AGENCY PROPOSES NEW GUIDELINES

Most folks who take prescription or over-the-counter drugs realize that much of the information supplied with the drugs is very difficult to read and understand. In addition, the ads we see for the drugs are also difficult to read when it gets past the "buy" portions. The government is now seeking a treatment for what ails drug industry advertisements, and that's their cumbersome fine print. In order to better educate consumers, the Food and Drug Administration has introduced proposed guidelines for alternatives to the minuscule text the government requires in print pharmaceutical ads that name a drug and what it treats. In 2002, 73% of people who had seen print ads for prescription drugs said they read the "brief summary" text "not at all" or "a little," up from 56% who had the same response

in 1999, according to FDA research. While I have no reason to doubt these numbers, I simply don't believe the public reads or understands the technical parts of ads or product information sheets.

The FDA held a news conference to announce the new proposals. The agency is trying to encourage drug makers to present information on risks and side effects in language easy for average consumers to understand. Currently, such information is included at the bottom of ads or on a separate page, and some summaries comprise as many words as an average magazine article. If that information can be shortened, it could create savings for drug companies, which spend about \$2.6 billion a year in advertising. Of course, the cost of marketing ads is an entirely different issue.

The proposed guidelines do not affect television ads, whose disclaimers the FDA considers sufficiently simplified. At issue, however, is how much information can be excised. The FDA reviews advertisements before they're printed or aired, to ensure they're balanced and accurately portray drugs' benefits and risks. The FDA hasn't done a good job policing companies on current regulations. The FDA hasn't enforced the existing regulations adequately. If the FDA isn't enforcing them, then it's somewhat meaningless to provide new guidelines because companies don't have to pay any attention to them. Dr. Sidney Wolfe, director of the Public Citizen/ Health Research Group in Washington has been extremely critical of the FDA's work in this area of its responsibility. Personally, I believe ads by drug companies should be eliminated, leaving decisions on what drugs will be taken by consumers to doctors and pharmacists.

MISLEADING INDUSTRY CLAIMS ON OXYCONTIN

The maker of OxyContin sent doctors promotional videos that made unsubstantiated claims minimizing the dangers associated with the pain relief drug, according to a congressional investigation. The General Accounting Office (GAO) also found that in 1998, Stamford, Connecticut-based Purdue

Pharma failed to submit one of the videos to the Food and Drug Administration for review, as required. The company had started circulating the video to thousands of doctors. The company did submit a 2001 video for FDA approval, but the FDA did not review it "because of limited resources," the report said.

On the 1998 video, a doctor says that less than 1% of people who take pain relief medication like OxyContin become addicted. That's a figure the FDA says has not been substantiated, according to the report. The FDA looked at the later video at the request of GAO investigators and found it "appeared to make unsubstantiated claims regarding OxyContin's effect on patients' quality of life and ability to perform daily activities and minimized the risks associated with the drug." As you know, OxyContin was hailed as a breakthrough in the treatment of severe chronic pain when it was introduced in 1996. The drug has become a problem in recent years, however, after users discovered that crushing the time-release tablets and snorting or injecting the powder yields an immediate, heroin-like high.

Lawmakers asked the GAO, the investigative arm of Congress, to study Purdue Pharma's marketing of OxyContin because of widespread abuse, especially in Appalachian states. There are currently over 300 lawsuits pending against Purdue PhARMA for its marketing of OxyContin, according to the report. Our firm has filed a number of lawsuits involving the drug. The company used improper sales tactics to promote the drug and failed to take steps to prevent people from becoming addicted. The report said the company didn't analyze physician prescribing reports, which it routinely uses for marketing purposes, to identify possible abuse until six years after the drug hit the market.

MAKERS OF ANTIDEPRESSANTS HID RISK OF USE BY CHILDREN

A number of lawsuits have been filed against several drug makers that sell antidepressants. Also known as SSRIs (selective serotonin reuptake

inhibitors), these pills include Pfizer's Zoloft, Eli Lilly's Prozac and Wyeth's Effexor. Last year, the retail market for the drugs was \$11.3 billion, according to Verispan, a market research firm. Concerns have lingered ever since a 1990 study in the American Journal of Psychiatry reported that some patients became suicidal after taking Prozac. The companies have consistently denied a link exists between their drugs and a risk of suicidal thoughts among youngsters. The controversy erupted again recently when United Kingdom regulators warned doctors not to prescribe the pills, except Prozac, to children under 18. They also pointed to newly disclosed data about Paxil that showed the drug wasn't effective, but could increase the risk of suicide. The issue came under further scrutiny when the U.S. Food and Drug Administration held a meeting to review years of data about antidepressants and any link to suicide. A second meeting is scheduled for the summer. There's little debate that antidepressants are prescribed regularly for children. Between 1987 and 1996, such usage tripled, according to a recent study in the Archives of Pediatric and Adolescent Medicine.

This occurred though the FDA has approved only Prozac for anyone younger than 18. That occurred some two years ago. Currently, doctors are free to prescribe medicines if they believe patients will benefit. This is a practice known as off-label usage. It is significant that Glaxo and other companies have never published all of the available clinical trial data involving depressed children, including studies showing negative results. This means doctors who prescribed the pills to children did so with incomplete knowledge. Glaxo has acknowledged that not every study was published in a medical journal, because the results might be inconclusive. The company claims that results of the studies were not suppressed because summary findings were circulated at scientific conferences. In any event, the prescribing of anti-depressant medications to children can have serious consequences.

SERZONE® TO BE WITHDRAWN FROM AUSTRALIAN MARKET

Last month we mentioned that Serzone® (Nefazodone) was taken off the market in Canada. Now, Bristol-Myers Squibb has announced that the drug will be removed from the Australian market. BMS attributes the removal of Serzone® in Australia to "current low and declining rate[s] of use." Interestingly, BMS issued a similar statement when Serzone® was removed from the European market. However, as we reported last month, Canadian health officials recently banned the use of Serzone because of growing reports of liver-related injuries and deaths associated with its use. That is most significant. Bristol-Myers Squibb advised Canadian doctors 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 doctors in the United States received the same warning. 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 failed to respond to the original Petition filed 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 1/10th of the injuries/deaths actually sustained. The FDA should order Serzone® removed from the U.S. market immediately.

JUDGE ORDERS REFUNDS FOR BODY SOLUTIONS CLIENTS

Last month, a federal bankruptcy judge approved a settlement that requires the maker of the Body Solutions weight-loss products to pay up to

\$1.2 million in refunds to defrauded customers. Mark Nutritionals Inc., which has filed for Chapter 7 liquidation in U.S. Bankruptcy Court in San Antonio, Texas, may also be liable for \$13 million in fines and penalties sought by the state. The refunds apply to more than 11,000 consumers who bought Body Solutions products after the San Antonio-based company filed for bankruptcy protection in September 2002. The State of Texas sued Mark Nutritionals in December 2002 after the company filed for Chapter 11 bankruptcy protection while it reorganized. That filing was later amended to Chapter 7. Texas Attorney General Greg Abbott charged the company with falsely advertising that its products allowed consumers to lose weight during sleep, without diet or exercise. Mark Nutritionals' annual sales of its Evening Weight Loss Formula increased from \$10 million in 1999 to \$100 million in 2001. Last December, co-owner Harry Siskind and his wife Patti, a company employee, agreed to pay Texas \$450,000 in civil penalties, attorney's fees and investigative costs.

XIII. MONSANTO UPDATE

MONSANTO SETTLEMENT UPDATE

Under the watchful eye of U.S. District Judge U.W. Clemon, the process of administering the settlement reached late last summer in our massive case against Monsanto, Solutia and Pharmacia - including determining how the settlement funds will be divided fairly among the thousands of eligible claimants - is now moving quickly. In December, Judge Clemon determined that each adult "Tolbert plaintiff" who satisfied some minimal requirements would be entitled to receive a \$500 advance payment. Many claimants received their advance payments before Christmas, and as of the time we

went to press, nearly 13,000 of the approximately 14,000 eligible adult claimants had been issued advance checks.

The judge also required that each of the over 18,000 *Tolbert* plaintiffs, both adults and children, would have their blood drawn and analyzed for the presence of polychlorinated biphenyls (PCBs), the toxic chemicals that Monsanto discharged into the environment in Anniston, Alabama for decades. Within just a few short weeks, the court-appointed claims administrator, attorney Edgar Gentle of Birmingham, and his staff (with substantial input from our firm and other plaintiffs' counsel) had devised a blood testing plan, and acquired, furnished, staffed, and otherwise set up a blood collection facility in downtown Anniston, to service the approximately 13,000 *Tolbert* plaintiffs who are Alabama residents. After making the necessary arrangements with collection and analytical laboratories and other professionals, the claims administrator's office kicked off blood testing of Alabama *Tolbert* plaintiffs in mid-January, and dispatched a team of registered nurses simultaneously to administer a health questionnaire and conduct a detailed medical history interview of every claimant who showed up for blood testing.

We have toured the blood collection facility. We can attest that the claims administrator and his staff did a top-notch job in putting together a clean, inviting, consumer-friendly, professionally run testing site - as is fitting for possibly the largest blood collection effort in any human environmental health assessment in U.S. history - and remarkably did so operating under severe time constraints. When this issue of the Report went to the printer, blood had been collected from more than 6,000 Alabama resident plaintiffs. Blood testing of the approximately 5,000 out-of-state residents was scheduled to begin during the first week of March, and finish within a few weeks. In addition, meetings have been held to develop and start implementing a plan

to create a community medical clinic in west Anniston, to use the funds earmarked for that purpose under the settlement. The claims administrator has sent all claimants monthly letters to update them on the status of the settlement, and held or scheduled a series of "town hall" meetings in Anniston to explain the process, answer questions and receive input from claimants in the community.

One thing has been obvious throughout the settlement process: Judge Clemon feels strongly about the health and welfare of the Anniston-area citizens who were harmed when Monsanto, through its corporate misconduct, created possibly the largest residential environmental disaster in the U.S. The judge also is committed to ensuring that *Tolbert* claimants with PCB-related injuries are compensated fairly and promptly. Through his vision, and with the hard work of the claims administrator (and plaintiffs' counsel), progress toward that goal has been swift.

XIV. ENVIRONMENTAL CONCERNS

SUPREME COURT DECISION REGARDING AIR POLLUTION

The United States Supreme Court has ruled that the Environmental Protection Agency has authority under the Clean Air Act to overturn a state air quality permit for construction of a power plant. The power plant in question is located at the world's largest zinc mine, the Red Dog Mine, in north-west Alaska. The Alaska Department of Environmental Conservation (ADEC) had claimed that the EPA lacked authority to block construction after the EPA found that the state agency's Best Available Control Technology (BACT) determination was unreasonable in light of the Clean Air Act's statutory requirements.

This decision upholds a ruling issued by the U. S. Court of Appeals. The appellate court also had held that EPA did have the authority to determine

that the ADEC improperly issued a permit allowing the company to install a power generator that reduces nitrogen oxide emissions by 30%, as opposed to another generator that would reduce emissions by 90%. The Court of Appeals found that Cominco, the company in question, had failed to demonstrate that the generator that reduces emissions by 90% was not economically feasible, and that the ADEC had failed to set out a reasoned justification for eliminating the better generator as a control option.

The Supreme Court made it clear that the EPA is not being given authority to designate the correct control technology on the generator, but was being given only the authority to guard against unreasonable designations. The Court found that only when a state agency's control technology determination is not based on a reasoned analysis, may the EPA step in to ensure that the statutory requirements are upheld. In this case, it is interesting to note that Alaska originally concluded that the 90% emission reduction technology was both technically and economically feasible. Despite this finding, ADEC endorsed the alternative 30% reduction technology proposed by Cominco. I suspect that the company favored the 30% reduction technology because it would cost less.

WAL-MART VIOLATES AIR POLLUTION STANDARDS

Wal-Mart stores have agreed to pay \$400,000 to settle claims filed by the federal government. The claims by the government were that Sam's Club stores violated federal air pollution regulations in eleven states, including Alabama. U.S. attorneys filed the suit against the retail giant in a Kansas City federal court, charging Wal-Mart with at least twenty violations of the Clean Air Act. The complaint alleged that Sam's Club locations sold air conditioner refrigerant to customers without checking to see whether these customers had certification to work with chlorofluorocarbon. That substance has been found in reports to damage the ozone. The U.S. Attorney had announced at the time of the settlement that retailers, such as Wal-Mart

and Sam's Club, have an obligation to responsibly monitor the sale of these products. In addition to the fine, Wal-Mart promised to stop selling ozone-depleting substances through its Sam's Club stores. The other sales took place in Alabama, Georgia, Illinois, Iowa, Minnesota, Missouri, New York, Pennsylvania, North Carolina, and West Virginia.

THE SALMON INDUSTRY ON THE HOT SEAT

The Environmental Working Group and the Center for Environmental Health filed notice in mid-January of their intent to bring claims against 50 salmon farms, fish processors and grocery chains under a California anti-toxics law. The claim is that the groups listed above have failed to warn consumers that the salmon contain potentially dangerous levels of cancer-causing chemicals. Representatives of the Center have stated that their goal is to challenge the salmon farms, fish processors and grocery chains to change their practices so that their fish is safe to eat.

The claims come after a major study published earlier this month in the journal *Science*. That study found that farm-raised salmon contained significantly more contaminants than salmon caught in the wild, because of PCBs, polychlorinated biphenyls, in the farm-raised salmon's feed. The environmental groups recommend farmers change fish feed and urge consumers to buy wild salmon. The farm salmon industry is expected to argue that the benefits of eating farm salmon outweigh the risks. Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, requires companies to notify consumers if their products contain hazardous levels of chemicals known to cause cancer or reproductive harm. Defendants named in the filing are: Safeway, Inc.; Kroger Company; Albertson's Inc.; Cosco Wholesale Corp; as well as farmed salmon producers in Canada and Europe.

VIETNAMESE VICTIMS OF AGENT ORANGE FILE LAWSUIT

In what has been described as the first lawsuit of its kind, Vietnamese victims of Agent Orange, the herbicide

used to defoliate the forests of Vietnam during the Vietnam War, have filed suit against U.S. chemical companies in the United States District Court for the Eastern District of New York. The lawsuit was filed against Dow Chemical Company, Monsanto Company, Hercules Incorporated, Diamond Shamrock Corporation, and several other companies that manufactured Agent Orange during the Vietnam War. The Vietnam Association for Victims of Agent Orange filed the lawsuit on behalf of Phan Thi Phi Phi, Nguyen Van Quy and Duong Quynh Hoa. Phan Thi Phi Phi was a medical doctor and director of a Vietnamese hospital treating civilian patients and soldiers during the Vietnam War. Dr. Phi Phi and her staff relied upon food cultivated or found in the nearby valleys for daily sustenance. They also drank water from streams near the hospital units. Dr. Phi Phi alleges that she was exposed to Agent Orange because the food and drinking water was contaminated with Agent Orange. As a result of her exposure to Agent Orange, she suffered 4 miscarriages.

During the Vietnam War, Nguyen Van Quy served as a soldier in the army of the Democratic Republic of Vietnam. During the war he and his unit regularly ate wild grass and other plants from the Vietnam forests, and regularly drank water from streams in areas that had been sprayed with Agent Orange. Quy's first child was stillborn and deformed and his next 2 children were born with severe birth defects. In 2003, Quy was diagnosed with stomach, liver, and lung cancer. Quy believes all of this was caused by Agent Orange exposure.

Duong Quynh Hoa, a Vietnamese national, was a doctor residing in the city of Saigon during the Vietnam War. During the war she was told several times to cover her head with a plastic bag because U.S. aircraft were spraying chemicals. Dr. Hoa gave birth to a son who was born developmentally disabled and suffered from epileptic convulsions. He died at the age of eight months. She later suffered two miscarriages, and was diagnosed with diabetes and breast cancer.

The lawsuit filed on behalf of Phan Thi Phi Phi, Nguyen Van Quy and Duong Quynh Hoa came one week

after the United States Air Force Surgeon General Office released the findings of an ongoing study of 2,000 U.S. Air Force veterans who were exposed to the chemical defoliant Agent Orange during the Vietnam War. The study revealed that the veterans had an increased risk of prostate and skin cancer as a result of their exposure. Earlier studies had already revealed increased risks of prostate cancer, chronic lymphocytic leukemia and diabetes. The study will be reviewed by the National Academy of Sciences, which will report its results to the Veterans Affairs Department.

Between 1962 and 1971, U.S. planes sprayed an estimated 20 million gallons of herbicides, mostly Agent Orange, over Vietnamese forests to defoliate the forests in order to make bombing easier. Veterans exposed to the pesticides have complained for years about a variety of health problems. In 1984, several manufacturers of Agent Orange entered into a class action settlement, whereby the companies agreed to pay \$180 million to U.S. war veterans who died or became ill after exposure to Agent Orange or other defoliants. Last year the United States Supreme Court ruled that plaintiffs whose injuries had not manifested until after the settlement fund had been exhausted were not bound by the 1984 class settlement and could pursue their claims in court.

The Vietnamese government has said that about 1 million Vietnamese are victims of Agent Orange and that the defoliant continues to have devastating consequences. A study released in August 2003 by scientists from the United States, Germany and Vietnam, found that Agent Orange was still contaminating Vietnamese people through their food consumption.

ADEM ACCUSED OF BIAS IN AIR POLLUTION PERMIT

The NAACP has accused the Alabama Department of Environmental Management of racial bias for allowing a Phenix City company to continue releasing tons of air pollutants near predominantly black neighborhoods in the area. The complaint filed by the

civil rights group focuses on a renewal permit ADEM approved for the Continental Carbon Company in Phenix City in December, allowing the Carbon Black manufacturer to continue releasing more than 13,000 tons of air pollution each year. The pollution includes Carbon Black dust that coats homes and businesses in Phenix City and Columbus, Georgia, according to the complaint, which was filed last month. Carbon Black is a substance that is produced by subjecting low-grade crude oil to extreme heat, which converts it into a black, sticky, powder that is then pelletized for shipment. According to the company's own material safety data sheet (MSDS), Carbon Black has been classified by the International Agency for Research on Cancer as a "Group 2B" carcinogen, which signifies that it is regarded as "possibly carcinogenic to humans."

NAACP officials said ADEM ignored residents' concerns about property damage and health problems, and issued the permit without properly gathering public input. ADEM announces permit proposals on its Website. The agency also relies on a newspaper mailing list to get notices published. An environmental consultant who represents a Continental Carbon employee union told the Association President that ADEM "failed miserably" in its effort to publicize the proposal. A representative of the NAACP told the Associated Press it would withdraw the complaint if ADEM agrees to resend notices for public comment and hold a public hearing. ADEM says it has done nothing wrong and did not discriminate.

Our firm filed a separate lawsuit against Continental Carbon in 2001 on behalf of the City of Columbus, the president of a south Columbus environmental group and a private business. The case was denied class action status in November by a federal judge. We plan to file individual suits for persons whose business or residential property has been damaged by the company's emissions.

XV. INSURANCE AND FINANCE UPDATE

A MOST IMPORTANT CASE

As mentioned under the Capitol Observations portion of this report, we are now involved in a complex lawsuit in Tennessee. We are honored to have been hired to handle a most significant case. Three malpractice insurance carriers domiciled in Nashville, Tennessee failed due to mismanagement, negligence, fraud, and a conspiracy contrived by the executive level management of the companies. The three malpractice carriers, Doctor's Insurance Reciprocal (DIR - insuring doctors), American National Lawyer's Insurance Reciprocal (ANLIR - insuring lawyers), and The Reciprocal Alliance (TRA - insuring hospitals) were taken over by the Tennessee Department of Commerce and Insurance (TDCI) in January 2003. The companies were initially placed into receivership by the TDCI. In the summer of 2003, the companies were then placed into liquidation by the TDCI. Paula Flowers, the Commissioner for the TDCI, is the acting liquidator for the three failed malpractice carriers. The three malpractice carriers insured more than 50,000 policyholders combined, across the United States. The failure of these three malpractice carriers left thousands of doctors, hospitals, and lawyers without malpractice coverage.

Our firm, Farmer & Luna, and Cross, Poole, Goldsich & Fischer, will handle the lawsuit on behalf of Commissioner Flowers. The defendants are General Reinsurance Corporation, John William Crews, Milliman USA, Inc., Pricewaterhousecoopers, LLP, Wachovia Bank, NA, Crews & Hancock, PLC, Atlantic Security, Ltd., Kenneth Patterson, Carolyn B. Hudgins, Judith A. Kelley, Thomas A. Reindel, Victoria J. Seeger, Christopher Migel, Thomas N. Kellogg, Robert L. Sanders, Gary Stephani, Richard W. E. Bland, Gordon McLean, and Richard Witkowski. General Reinsurance (Gen Re) is one of the largest reinsurance companies in the world. As you already

may know, reinsurance involves one insurance company insuring another insurance company.

The executives of Reciprocal of America (ROA) conducted a massive conspiracy with executives at Gen Re to defraud the policyholders of DIR, ANLIR, and TRA. The intentional actions of the defendants towards DIR, ANLIR, and TRA have left thousands of doctors, hospitals, and lawyers with unpaid claims totaling at least \$200 million. Through the lawsuit we have filed on behalf of Commissioner Flowers, we are seeking to recover the \$200 million in unpaid claims plus punitive damages for the intentional conduct of the defendants. Our suit alleges that "secret side agreements" were reached between ROA and Gen Re that greatly limited the reinsurance exposure for Gen Re. The result of these secret side agreements was that policyholders and government regulators were unaware that the policyholders were not fully reinsured. Two of the main culprits who managed ROA were William Crews and Kenneth Patterson. These individuals oversaw the management of ROA, DIR, ANLIR, and TRA. They, along with the executives at Gen Re, orchestrated the secret side agreements, illegal loans between the various companies, and money transfers between accounts in the United States and offshore in order to hide the conspiracy from policyholders and government regulators. The executives at these companies, who are named as individual defendants in the lawsuit, took numerous elaborate trips to exotic destinations using company money. While the executives lavishly spent money generated from the premiums being paid by the policyholders, DIR, ANLIR, TRA, and ROA slid deeply into insolvency. Unfortunately, none of the policyholders saw the insolvency coming until it was too late, and they have lost their coverage. Many of the policyholders of these companies have been left with no alternative coverage or with alternative coverage that is much more expensive.

Through investigations, it has been discovered there were communications between the parties at fault by telephone, e-mail, and wire transfers.

Because of the nature of the conspiracy and the fact it occurred across many state lines, we have brought claims against the defendants for violations of the federal Racketeer Influenced Corrupt Organization statutes (RICO). Violations of the civil RICO statutes provide for stiff penalties against the perpetrators. Furthermore, we have alleged in the lawsuit that PricewaterhouseCoopers, the accounting firm responsible for auditing ROA, DIR, ANLIR, and TRA, knew about the secret side agreements and failed to address them properly or at least turned a blind eye to the agreements. Also, another key defendant in the case is Milliman USA, who was responsible for performing actuarial functions for these companies. Milliman is also responsible for not addressing the secret side agreements properly.

A majority of the legal work for ROA, DIR, ANLIR, and TRA was performed by the law firm of Crews & Hancock of Richmond, Virginia. Bill Crews was one of the founding partners in that law firm. Subsequent to the collapse of these companies, the Crews & Hancock firm has dissolved. Our lawsuit alleges acts of malpractice against Crews & Hancock and its attorneys for the work performed for these companies and for the inherent conflicts of interest that existed in representing these companies simultaneously. The lawsuit we filed is pending in federal court in the Western District of Tennessee before the Honorable Judge J. Daniel Breen. The Western District of Tennessee is the site for a Multi-District Litigation (MDL) forum for all related cases that involve similar allegations as we have brought in this lawsuit. The MDL will be used to coordinate discovery and other pretrial matters in the cases. The potential recovery in this case is in the billions of dollars. All of the policyholders were hurt badly as the result of this massive wrongdoing and, fortunately for them, Tennessee's Insurance Commissioner is doing something about it.

ALLEGED LIFE AGENTS E&O FRAUD

Even insurance agents can have problems when persons they deal with

mistreat them. There is an ongoing investigation into Torrance, Calif.-based Manning Riddell Insurance Services Inc. in connection with the issuance of more than 1,000 phony Errors & Omissions policies for life insurance agents in some 30 states. Manning Riddell issued several hundred certificates allegedly through Dakota Specialty Insurance Company, now Aspen Specialty Insurance Company, a subsidiary of Aspen Insurance Holdings Limited. It appears that Dakota never authorized issuance and did not collect any premium dollars from Manning Riddell. The California Department of Insurance is currently investigating the case. It appears that even insurance agents can be victims of fraud and deceit.

XVI. NURSING HOME UPDATE

MEDICARE UPDATES NURSING HOME WEBSITE

The Centers for Medicare and Medicaid Services (CMS) has updated its popular "Nursing Home Compare" Website. The update is part of CMS's efforts to provide more public information to consumers about the quality of care in nursing homes. The update includes additional quality measures and nurse staffing information. The Website (www.medicare.gov) is an excellent source for consumers to evaluate nursing homes based upon quality measures, survey deficiencies and staffing information. The Website database contains information on 17,000 Medicare and Medicaid certified nursing homes throughout the country.

The Website is a collaboration of information compiled by CMS, the states, nursing homes and consumer advocates. This program was initially started in November of 2002. The Website has proved to be a very useful tool for consumers. The Website received 9.3 million "hits" in 2003 and was the most popular tool on the Medicare Website. Some of the enhanced care measures now available on the Website are:

percent of residents who have moderate to severe pain

percent of residents who were physically restrained

percent of residents who spent most of their time in bed or in a chair

percent of high-risk residents who have pressure sores

percent of low-risk residents who have pressure sores

The information contained on the Website is very useful in comparing the quality of care in various nursing homes. I would strongly encourage anyone who is considering placing a resident in a nursing home to visit this Website. Although the Website provides a good source of information, there is no substitute for actually visiting a nursing home and observing the care that is being provided to residents.

**TREATMENT RECEIVED BY GEORGIA
NURSING HOME RESIDENT CLEAR
NEGLECT**

Those of you who follow the nursing home section of this report have read frequently about cases that this firm is handling involving issues such as decubitus ulcers (bedsores), dehydration and malnutrition. In my opinion, and I believe in the opinion of the average juror, bedsores are not something that should be allowed to occur in a normal nursing home resident. Indeed, when a juror sees a picture of a resident with a large, pus-draining hole in his or her body, the first thought that comes to mind is that somebody has done something wrong. You do not have to be a medical doctor or some other type of medical professional to realize that a nursing home resident should not be allowed to develop a large infected hole in their body.

Unfortunately, in pursuing nursing home cases on behalf of residents and their families, we are required to obtain the services of both expert nurses and expert doctors to prove our cases. In the cases that our firm pursues, we usually have no problem in obtaining the services of both types of qualified experts. However, we are forced to expend large sums of money to reimburse these experts for their time and effort. Our job would be made much easier, and the expenses incurred by the resident and family would be much

less, if the medical professionals treating the nursing home residents who were subjected to such neglect would speak out against the horrific conditions experienced by these residents in our nation's nursing homes. Sadly, doctors and nurses are reluctant to testify against healthcare givers. If they would simply make note of the poor or inadequate treatment given by another medical professional, it would really help. Quite often, residents and family members are kept from properly pursuing claims of neglect. An overall decline in the rights of our nation's nursing home residents and the care they receive results when doctors and nurses "look the other way" instead of speaking up.

I don't mean to "paint with too broad a brush" when I say that the "conspiracy of silence" is ubiquitous. Indeed, there are examples of brave souls who would speak out against those who would injure or neglect our nation's elderly. The shining example set by these dedicated and caring medical professionals are both notable and praiseworthy. For example, we have a case pending in Atlanta, Georgia wherein a 78-year-old nursing home resident was allowed to develop numerous large infected bedsores over his body. He was also allowed to develop contractures (i.e., his muscles seized up such that his body was pulled into a fetal position). This resident was also admitted to the hospital after his nursing home stay with dehydration, decreased blood levels as a result of the dehydration and a urinary tract infection that resulted from the dehydration. Unfortunately, this is a pattern that we see all too often. The normal response by the caregivers at the hospital is to make very little notation of the bedsores on the resident's body. Certainly, almost never is there any commentary about the quality of care given to the resident at the nursing home.

However, in our case two brave doctors were caring and outspoken enough to attempt to do something about the neglect of our deceased client. The bedsores on our deceased client's body were so severe that a plastic surgeon was called in to do a consultation. After examining our deceased client, this doctor stated in

his notes, "apparently, his care was somewhat less than adequate, resulting in admitting problems with dehydration, anemia and multiple decubiti." While this notation may seem somewhat innocuous, it is quite rare for a doctor to have the fortitude to put such a statement in writing. The conspiracy of silence amongst medical professionals generally prohibits such statements. Thus, I applaud this doctor for attempting to stand up for the rights of both our deceased client and those who remained at the nursing home where the "care was somewhat less than adequate."

The care given to our deceased client was so atrocious that the doctor mentioned above was not the only doctor to comment upon it. Indeed, another physician who saw our deceased client at the hospital after his nursing home stay noted in his physician's orders, "please find new ECF [extended care facility] for patient." The doctor also ordered, "Please contact ombudsman for questionable extended care facility neglect." These are brave words for a doctor who could run the risk of being ostracized by medical care professionals from the local nursing home. This doctor will no doubt see these medical professionals numerous times in the future, and he evidenced extreme bravery and a caring attitude in both pointing out and reporting the "neglect" of the local nursing home.

I want to salute the courage and outspoken nature of the two doctors. It is obvious that they truly care about the patients whom they are seeing and about the residents who remain at the local nursing home. If more medical care professionals would speak out when they see patients or residents whom they feel have been abused or neglected, the number of such incidences would be greatly reduced. I call upon all members of the medical profession, the vast majority of whom care greatly about all of the patients in their care, to seize upon the example set by the two doctors mentioned in this report. When it comes to your patients, "be caring, be patient, and be outspoken." Nursing homes in this country have to be made to do right,

and that's bad. We all have an obligation to clean things up for the good of people who deserve better.

NURSING HOME CHAIN INCREASES ITS PRESENCE IN WASHINGTON

Medical malpractice "tort reform," which is generally initiated by insurance companies and other big corporations, such as nursing home chains, is a constant effort to leave victims of medical negligence without recourse. The proponents of tort reform spend a lot of time and money on the local and national levels influencing lawmakers to institute laws (tort reform) that favor/insulate entities and individuals from the consequences of their medical negligence. One way proponents of tort reform influence lawmakers is by sending lobbyists, or hired spokespersons, to state capitols and to the Nation's capitol in order to maximize their presence in legislative bodies and in Congress. This practice is no different for Beverly Enterprises, Inc., the nation's largest nursing home chain.

Recently, Beverly announced that it will be increasing its influence in the Nation's capitol. Beverly has hired additional lobbyists to lead its federal and state lobby efforts out of Beverly's Washington office. Beverly's main goal is to maximize their presence on Capitol Hill and make sure that Beverly's agenda is articulated in Washington. William Floyd, Beverly's chief executive officer, was most candid when he stated his belief that "the importance of influencing government relations is critical to our (Beverly's) success." Floyd admits that "the influence of government relations is significant for a better return on Beverly's investment." Beverly's future lobbying efforts will be focused on the ability to influence key legislators on virtually every key committee in Congress. Tort reform will be the centerpiece of their attempt to influence lawmakers.

With Beverly's new lobbying efforts, the company could spend as much as \$500,000 in order to utilize its resources in Washington to influence public policy. This is true even though

the nursing home owners have the American Health Care Association to speak for the industry in Washington. Spending that kind of money to influence lawmakers, as opposed to putting those resources into the nursing home residents' care, seems to be a misguided way to protect Beverly's facilities against negligent care claims. Their goal is complete immunity with no regard for the plight of residents housed in their facilities.

NEW MEXICO FILES CRIMINAL CHARGES

The New Mexico Attorney General has filed criminal charges against a Florida nursing home company in connection with the death of a resident who died of skin ulcers. The HQM of West Mesa, LLC, which managed West Mesa Care & Rehabilitation Center, and 4 of its employees or contractors were charged with failure to properly care for 6 individuals, including the woman who died. The Attorney General's office said the company provided a level of care below acceptable standards of nursing home practice, which led to the death of the woman and to the deterioration of residents' nutritional status, hydration, immune function, mental status, and overall health status from the development of skin ulcers. When filing the charges, the Attorney General stated that, "those parties responsible for the criminal neglect of our elderly must be held accountable. When loved ones are placed under the care of a nursing home, both the nursing home and the individual employees share responsibility for that care."

A TRAGIC HAPPENING AT A NEW YORK NURSING HOME

When you think all of the bad nursing home stories have been reported, another one pops up that is shocking. A nursing home in New York where a patient with Alzheimer's disease was found dead on a roof had "significant, widespread lapses" in policies to prevent residents from wandering, according to New York's State Department of Health. The state is denying Medicare and Medicaid payments for new

patients at the Bishop Charles Waldo MacLean Episcopal Nursing Home until the violations are corrected. A female resident, age 79, was discovered lying in a puddle of water on the top of the nursing home building late in the day. She was later pronounced dead at a hospital. The state cited numerous violations, including failure to conduct a search of the home when door alarms first sounded and a failure to train staff to supervise patients with dementia, confusion and a history of wandering. It is most difficult to explain how an elderly lady with known problems could "escape" and then go undetected after an alarm sounded to signal an exit had been violated in some manner. There can be no excuse for a tragedy like this happening.

XVII. TRANSPORTATION

AVIATION DISASTER LAW

Aviation disasters fall under a highly specialized area of law that involves many federal acts, regulations, treaties, and a variety of state and federal laws. Our law firm has had considerable experience in aviation litigation, which involves much of the same type thing as products liability litigation. Aviation disasters require a specialized knowledge of structural design and mechanical information specifically related to the aviation industry. Although the United States is probably the safest country in which to fly, it also has the highest number of accidents in the world. Aviation law relates to accidents and incidents that occur on almost a daily basis in this country. Aviation incidents involve commercial airliners, military aircraft and smaller civilian aircraft. This area of law is a specialized category of products liability law that requires an expertise in the design of aircraft. Many aviation disasters occur as a result of air traffic controller negligence, maintenance or repair negligence, pilot error, and defectively designed aircraft.

Aviation litigation is governed, in part, by the Federal Aviation Act and regulations, which set minimum stan-

dards for aircraft manufacture, pilot conduct, and flight operations. Another federal law, the Federal Tort Claims Act, applies to claims brought against certain federal employees or branches of the federal government. Aviation law can include the Foreign Sovereign Immunities Act, which governs suits against foreign airline carriers and manufacturers, as well as foreign governments. There are a number of state and federal choice of law rules that will apply to any aviation disaster that occurs in this country or that involves U.S.-based carriers. Aviation litigation routinely involves questions of state and federal damage standards, which may apply to death cases, as well as to personal injury cases. This will depend on the forum in which a case is brought. Certain federal and state laws apply to military contractors that manufacture military aircraft for the United States government. There may also be numerous international treaties that govern the liability of airlines for certain type flights, particularly international flights. So, one can readily see that aviation law is quite complex. It is important to know what potential claims are available when a crash occurs.

In many cases, airlines and/or manufacturers of aircraft will contact the survivors or their families of an aviation disaster. An insurance company representing an airline or a manufacturer may offer to settle your family's claim very quickly. An insurance company may also attempt to offer some type of "advance" to help with many of the costs and expenses faced by families as the result of a death or severe injury. Folks should not accept any of these offers or sign anything without speaking to a lawyer. In many instances, an insurance company will offer to settle a person's claim for an amount substantially less than they are entitled to. Therefore, it is important to be advised of all of your legal rights and the range of damages you may recover in an aviation disaster.

JET'S DESIGN AT ISSUE IN CRASH

We are currently handling cases arising out of the crash of an Airbus jet. A scientist hired by the National Trans-

portation Safety Board (NTSB) has concluded that the design of an Airbus jet may have contributed to the wild side-to-side motions that tore its tail loose and sent it plunging into a New York City neighborhood in 2001. The scientist's report, recently made public with other findings from the investigation, signals that the NTSB is considering whether the jet itself could be partly to blame for the accident that killed 265 people. The federal investigators haven't concluded what caused American Flight 587 to crash into Queens shortly after takeoff November 12, 2001. It was the second-worst airline crash in U.S. history. Airbus still claims its data will show that the jet in the accident, the A300-600, was not at fault.

If the NTSB cites the jet's design in its findings, that could prompt a call for changes in the way the government certifies the design of rudders on all aircraft. It also could affect the legal battle between American and Airbus over which company should pay damages in lawsuits filed by victims' families. Investigators have long since concluded that the co-pilot of Flight 587 triggered the accident by repeatedly punching the jet's rudder back and forth, according to NTSB documents. The rudder is a movable panel at the rear of the jet's 27-foot-tall tail fin. It swings the nose of the aircraft right or left, but is so powerful that it can damage the tail fin if misused.

An intense debate is underway over the underlying reasons for a pilot to make such severe rudder movements on a routine flight. The NTSB is expected to release its findings this spring. American's training program, which taught pilots to use the rudder in an emergency, is being investigated. The rudder system on the A300-600 — which moves with less pressure from the pilot than any other large jet — has to share part of the blame. The scientist hired by the NTSB, Ronald Hess, an aeronautical engineering professor at the University of California-Davis, writes in his report that the Airbus accident is "consistent" with a rare phenomenon where a pilot essentially loses control of a plane as a result of being tricked by the controls. Flying an A300-600, a pilot could apply more rudder than intended because its ped-

als are so sensitive, particularly at higher speeds, according to the report. This could cause the pilot to slam the jet from side even while he intends to straighten it.

American taught its pilots to use rudder to help stabilize a jet if they felt it was going out of control. Federal regulators had warned that the training was dangerous, NTSB records show. The records also show that American's flight simulators also distorted the way a rudder works on a real jet. No airline pilots knew before the accident that they could damage a jet by moving the rudder from side to side at such a speed. On all commercial jets, a pilot must push with about 20 pounds before the rudder will move. Pedals are designed this way so that pilots won't move the rudder accidentally. But after the A300-600's rudder begins to move, it requires far less pressure to swing the rudder an equal distance than on other types of jets. At 290 mph, a pilot who had begun to move the rudder need only add 10 pounds to the pedal to swing the rudder all the way to one side. By comparison, the similar-sized Boeing 767 requires 63 pounds of additional pressure to move the rudder as far as possible.

FAA TAKES NEEDED ACTION

The Federal Aviation Administration will now require airlines to install safety devices that will prevent fuel tank explosions in flight. You will recall the TWA flight 800 in 1996 that blew up off Long Island. The center tank in many commercial jets is heated by nearby equipment. This makes the fuel vapors explosive. The FAA believes the new device will prevent explosions on all jets vulnerable to explosions in their center fuel tanks. The devices, which flush oxygen from the tank, will greatly reduce the risk of explosions. I understand that the airlines will have seven years during which to install the devices on existing fleets. The devices will be installed on about 3,500 jets owned by domestic airlines. The agency also will order changes in the design of fuel tanks on new jets to further reduce the risk of explosion. If you would like additional information on what the FAA will require, you can

go to the National Transportation Safety Board Website. It is believed that carriers will object to these new requirements.

DEATHS AND INJURIES ON ATVs

Young folks know that ATVs – the 4-wheel - motorcycle-like vehicles – can reach speeds as high as 70 miles per hour. That's part of the excitement of operating one of these "unregulated" vehicles. The vehicles are marketed to folks who like to navigate rough terrain and sometimes at high speeds. It is most significant that sales of ATVs climbed 89% between 1997 and 2002. There were 825,000 ATVs sold in the United States during 2002, the latest year for which figures are available. This number exceeded the sales of small pickup trucks. ATV sales have expanded to more than \$3 billion per year. Should you need a driver's license to operate a vehicle that can go 70 miles per hour?

According to the federal Consumer Product Safety Commission, 357 people died in ATV crashes in 2002. This was up 67% from 1997. Serious injuries more than doubled during the same time frame. There were 113,900 persons injured in 2002. Predictably, since 1992, a third of the injured have been under 16 years of age. Children under 12 years of age have accounted for 14% of the deaths. The National Safe Kids Campaign, a nonprofit that tracks childhood deaths, says that ATV injuries are 12 times as likely to be fatal to children as bicycle accidents. Should there be some type restriction on the use of ATVs? I believe so.

XVIII. TOBACCO UPDATE

A BIG WIN FOR THE GOVERNMENT

The U.S. government won a major round recently in its landmark \$289 billion racketeering suit against the tobacco industry. A federal judge rejected an effort by the tobacco companies to get a part of the case dismissed. U.S. District Judge Gladys Kessler refused to

dismiss racketeering charges against the tobacco companies. The U.S. government seeks to prove racketeering claims against the Philip Morris unit of Altria Group Inc., R.J. Reynolds Tobacco Holdings Inc., the Loews Corp., Lorillard Tobacco, British American Tobacco Plc, Brown & Williamson Tobacco Co. and the Vector Group Ltd.'s Liggett Group. The suit seeks \$289 billion in damages and tougher rules on marketing, advertising and warning claims on tobacco products. The government has accused the companies of intentionally and willfully misleading the American public. It alleges that the companies denied that smoking caused disease for decades and made grossly misleading statements about the addictiveness of nicotine. In fact, the fraud committed by the tobacco industry is as bad as could be imagined, considering the knowledge the companies had about the effects of smoking.

The tobacco companies argued that the government should not be able to challenge them because the government itself knew of the relationship between smoking and disease. They also argued that the government never said nicotine was "addictive" until the Surgeon General changed the definition of addiction. However, Judge Kessler rejected those arguments. One reason, she said, was that the tobacco companies did not provide enough evidence to show any misrepresentation by the government. The ruling comes in the long-running suit filed by the U.S. government under the Clinton Administration. The trial is slated to begin in September. It will be interesting to see how far Karl Rove lets this lawsuit go. I suspect the closer we get to the fall elections, the clearer his intentions will become. Frankly, I just can't see Rove "hurting" his "old buddies" from the tobacco companies. You may recall that Rove was on the payroll of tobacco companies at the same time he was grooming the then-Governor of Texas for a higher calling.

SUPREME COURT SIDES WITH SMOKER'S WIDOW

R.J. Reynolds Tobacco Co. has lost a Supreme Court appeal that challenged

a judgment awarded to the widow of a Florida teacher who died of cancer. The Supreme Court did not comment in turning down Reynolds' request to hear the case. The nation's second-largest cigarette maker already had paid the \$195,000 judgment while the appeal was pending. Lawyers said it was the first time the company paid damages in an individual product liability lawsuit. Floyd J. Kenyon Sr. died of cancer in 2002, 60 years after he first started smoking as a teenager. He was diagnosed with lung cancer in 2000. Before his death, he and his family sued, claiming that RJR made a defective and dangerous product. The tobacco company had asked the Supreme Court to consider blocking a Florida law that allows lawsuits against cigarette makers over their products, based on federal regulations for the making and sale of cigarettes. R.J. Reynolds makes Winston, Camel, Salem and Doral cigarette brands. Kenyon had smoked Camel and Salem cigarettes.

XIX. PREDATORY LENDING UPDATE

A DISTURBING TREND IN PREDATORY LENDING

For years the predatory lending banks and finance companies have been taking advantage of the most vulnerable sections of our populations, especially the elderly, poor and those who historically have had little access to mainstream financial services and products. However, these modern day "moneychangers" have recently sunk to a new low. Our firm is presently involved in a number of cases where various predatory lenders have issued unconscionable loans to consumers who are either mentally retarded or mentally impaired. In almost every case, the client was born mentally handicapped.

The various predatory practices we have seen include not only the issuing of loans at usurious interest rates, but also requiring the purchase of overpriced credit insurance. In many cases,

clients were forced to purchase disability insurance as a prerequisite to getting some of these loans. This is exceptionally troublesome since these clients are by definition already “disabled.” Most of the clients live on fixed incomes, the majority of which is used to payback these loans. Perhaps, even more disturbing, or at least equally disturbing, is that one federal appeals court has ruled that the mentally handicapped must first plead their case to an arbitrator when they have been forced to sign an arbitration agreement. In *Primerica Life Insurance Co. v. Brown*, 304 F.3d 469 (5th Cir. 2002), a three judge panel unanimously held that because the defense of mental incapacity went to the entire contract, instead of just the arbitration clause, the arbitrator must decide whether the arbitration agreement is valid. This holding was in spite of the fact that the federal district court found that the plaintiff “has been profoundly retarded since birth.”

ILLEGAL “PAYDAY LOANS” TARGETED IN GEORGIA

It is most unfortunate that payday lenders are still taking advantage of people. A good number of people have to deal with payday loans for a variety of reasons. In many cases, a temporary lifeline quickly becomes an anchor that drags people deeper into debt. The concept of payday loans is good and if properly regulated could be a good thing for people. However, payday lenders have as a rule taken advantage of people who have to borrow money to get by payday. As this issue went to the printer, there was a legislative fight in Georgia over the payday loan issue. The General Assembly is considering pending legislation. Those who favor the payday loans want them to be regulated and allowed to continue legally. Opponents want them regulated properly and effectively. Last year, a bill that would enforce the law against payday lenders in Georgia was introduced. It passed the Senate in 2003 and will be discussed in the House Banks and Banking Committee during the current session of the General Assembly. The current version of the Senate bill calls for 10 years in

prison for a third conviction involving illegal loans of up to \$3,000. It also would allow for a fine of \$1,000, plus civil penalties equal to three times the interest and fees charged illegally. Faced with a tougher criminal law, the industry claims it wants government oversight to keep unscrupulous lenders in check.

The state usury law in Georgia caps interest rates on loans at 60%. Violators can be charged with a misdemeanor that carries penalties of no more than one year in jail and a \$1,000 fine. My friends in Georgia tell me this weak law has offered authorities little incentive to prosecute. As a result, little has been done to stop the proliferation of businesses that offer cash in exchange for a post-dated check, over-priced telephone calling cards or coupons for catalog items at inflated prices. With payday loans, borrowers do not have the option of paying part of their loans to reduce the principal. Their only options are to pay the entire amount on the due date or to “roll” the loan by paying more fees that can translate into interest rates of 600%, 700%, and even 1,000%. As a result, it can take years to pay off what started as a small loan of a few hundred dollars. It is interesting to note that payday loan operators are common near military bases. This gives the lenders an overflowing pool of potential customers who don’t make large salaries, who have debts, and also have incentive to pay their debts, to protect their careers and take care of their families in many cases.

XX. HEALTHCARE ISSUES

JUDGE APPROVES CIGNA SETTLEMENT

The Cigna Healthcare litigation, one of several lawsuits that were consolidated in 2000, has been settled. The lawsuits, which were brought against nearly every large managed care organization, charged that the companies systematically underpaid doctors for their services. Even with this settlement, most of the suits remain unre-

solved. Cigna HealthCare and representatives of more than 700,000 doctors, state and other medical societies received final judicial approval of the one billion dollar settlement agreement the two sides reached in a national class action RICO lawsuit pending in federal court in Miami. Under the agreement, Cigna will pay \$540 million to settle claims that it systematically underpaid approximately 700,000 doctors around the country. The total settlement includes a guaranteed cash payment of \$85 million. Some business practice changes will save doctors hundreds of millions of dollars. The one billion dollar figure, which represents the gross value of the settlement package, includes savings in doctors’ overhead. Cigna agreed to spend \$400 million on internal changes, and to pay at least \$70 million to doctors on claims up to 12 years old. The settlement also called for \$15 million to create a health care foundation.

The agreement is in response to a lawsuit doctors and others filed to combat widespread and chronic abuses by health maintenance organizations. The doctors’ primary complaint was that the company’s computers routinely “down coded” their claims by treating services or procedures as less intensive, thereby paying less. Cigna agreed to stop such automatic processing. Under the settlement, doctors will decide questions of medical necessity for services provided, which is a major part of the settlement. Cigna and the doctors also agreed to jointly decide how to handle experimental and investigational treatments. The suit identified Cigna, as well as United Healthcare, Aetna, Coventry, Wellpoint, Humana Health Plan, Pacificare Health Systems and Anthem Blue Cross Blue Shield, as co-conspirators who dishonored contracts and defrauded doctors in violation of the federal Racketeer Influenced and Corrupt Organization Act. Preliminary approval of the September settlement agreement had been given in October when the settlement was announced. Philadelphia-based Cigna is the second major managed care company to offer reforms in its dealings with doctors. Dr. Bohn Allen, president-elect of the Texas Medical

Association, made this statement concerning the settlement: "Like the agreement Judge Moreno approved with Aetna, this settlement again puts doctors in the position to care for their patients and know that they're to get properly timely paid for their care. That will improve access for all patients to the care they deserve." This is another prime example of how persons and corporations sometimes like and use the courts when they are victims of wrongdoing, and on other occasions "cuss" the system and try to avoid it when others are the "victims."

CONSUMERS NEED TO KNOW WHERE THEIR FOOD COMES FROM

Consumers need to know where their food comes from. Now they will remain without a piece of vital information about the food they and their families eat - its country of origin. The omnibus appropriations budget package contains a provision that will delay the implementation of mandatory country-of-origin labeling until 2006. This delay will effectively kill the program. The 2002 Farm Bill required mandatory country-of-origin labeling to be implemented by September of this year. Obviously, the Senate vote on the budget package was not good for U.S. consumers. Neither was it beneficial for family farmers and ranchers who would benefit from the labeling program because they could distinguish their products in the marketplace.

We have seen some classic examples recently of why consumers need to know where their food comes from. The discovery of mad cow disease in two animals of Canadian origin, as well as the hepatitis-A outbreak in Pennsylvania, which was caused by green onions from Mexico and sickened more than 600 people, were high-profile reminders of the distance food travels and the varying circumstances under which it is produced. Today, when consumers go to the grocery store, they have no way to tell which products are foreign and which are domestic. Where food is shipped from can indicate the conditions under which it was grown. Clearly, that is a

basic bit of information needed by consumers so they can make informed choices. Congress should take up this matter by way of separate legislation and instruct the U.S. Department of Agriculture to act swiftly to implement country-of-origin labeling on schedule.

THE LINK BETWEEN THIMEROSAL AND AUTISM

Medical experts have testified before a federal panel debating whether a mercury-based preservative (thimerosal), once common in routine childhood vaccines, was behind the rapidly rising rates of autism in the United States. Several epidemiologists testified that they were doubtful that thimerosal was responsible. Other toxicologists, however, testified that they have become more and more convinced of a potential link. Since 1999, thimerosal has been gradually removed from vaccines given to infants and toddlers in the United States. While autism is increasing sharply, both in the United States and abroad, scientists have not been able to uniformly pinpoint a cause. As noted, some toxicologists told the panel that mercury levels were higher in children with autism. They said these children might have biochemical defects that prevented them from processing the metal as sufficiently as do normal children.

The Federal Centers for Disease Control and Prevention in Atlanta and the American Academy of Pediatrics have stated that there is no credible scientific evidence connecting thimerosal with autism or other childhood neurological disorders at this point. Many parents of autistic children, however, attended the Congressional hearing and said that their children's symptoms, including developmental delays, social inhibition and immune system defects, were in fact caused by a toxic accumulation of mercury from vaccines. Representative Dave Weldon, a Republican from Florida, accused the Centers for Disease Control of ignoring potential links and said it was blocking access by outside researchers to a vaccine database it maintained with a group of managed-care organizations. I fully expect this debate to continue and intensify.

XXI. THE CONSUMER CORNER

ECONOMIC CRIME ALLIANCE OF ALABAMA

Ten Alabama state agencies announced last month the establishment and implementation of a new alliance to fight the ongoing war against white-collar crime throughout the state of Alabama. This was a badly needed alliance and one that should be good for all Alabama citizens. The alliance will be known as the Economic Crime Alliance of Alabama. Its members include:

- Alabama Securities Commission
- Alabama Department of Revenue - Investigations Division
- Office of the Attorney General
- Department of Examiners of Public Accounts
- Office of Prosecution Services (District Attorneys)
- Alabama Department of Public Safety - Alabama Bureau of Investigations
- Alabama Insurance Department
- Alabama Criminal Justice Information Center
- Alabama Department of Industrial Relations
- Alabama Department of Forensic Sciences

The mission of the Economic Crime Alliance of Alabama (ECAA) is to provide a statewide support system for the prevention, investigation, and prosecution of financial, economic and high technology crime, and to support and partner with other appropriate entities in initiatives addressing the protection of public funds and the financial resources of the citizens we represent. ECAA is a non-funded partnership of law enforcement agencies, audit agencies and state regulatory bodies with investigative authority, and state and local prosecution offices with jurisdiction within the State of Alabama. The Alliance will combine law enforcement agencies and prosecutors' knowledge and resources to better combat economic and high-tech crime and effectively prosecute offenders.

Joseph P. Borg, Director of the Alaba-

ma Securities Commission, told us that, although the Economic Crime Alliance of Alabama agencies have historically cooperated to investigate, solve, and prosecute white collar crime, the new alliance will greatly improve our abilities to transfer and share information between agencies. One area of importance will be the review of rules and regulations for the release and transfer of sensitive information among members to ensure appropriate handling and privacy - basically looking for ways to streamline the process and cut the red tape. The Economic Crime Alliance of Alabama members first met in June 2003 to begin the process of formation. Presently the Alliance is meeting as necessary, at least once per month, to discuss and review matters and look at methods to foster more efficient cooperation and exchange of information.

GM SETTLES BIAS SUIT

General Motors has agreed to pay as much as \$11.2 million to settle a class action suit that claimed its finance unit's lending practices discriminated against blacks. General Motors Acceptance Corp. will also pay \$1.6 million to educate consumers about credit financing. Interestingly, the settlement doesn't include payments to consumers, if I understand the terms of the settlement. The finance unit will cap how much General Motors dealers can mark up interest rates on vehicle loans and start a marketing effort aimed at generating 1.25 million loan offers over a five-year period to black and Hispanic customers. Some believe the settlement isn't going to mend the fences because it misses the point that dealers mistreat consumers in urban neighborhoods. The lawsuit, filed in 1998 in a Tennessee federal court, claimed General Motors dealers charge black customers higher interest on car loans than white customers, adding an average of \$350 to the cost of a vehicle. With the accord, General Motors resolves allegations of racial bias in lending that have been leveled against several major automakers.

Nissan Motor's U.S. unit settled a similar claim in February 2003, agreeing to

alter lending practices and pay \$1 million over five years to a non-profit consumer group and about \$6 million in attorney fees and court costs. The lending arms of Ford Motor, Daimler-Chrysler, Honda Motor and Toyota Motor also have been sued. General Motors dealers had been able to add as many as 3 percentage points to loan rates on the vehicles they sold. The settlement reduces the maximum markup to 2.5 percentage points on loans with terms of 60 months or less, and 2% on loans longer than 60 months, according to a statement from General Motors. When the lawsuit against General Motors was filed six years ago, it sought class action status on behalf of all black consumers who financed the purchase of General Motors vehicles through GMAC from May 1989 through the date of any judgment. The complaint was certified as a class action in January, and had been scheduled for trial on February 17th.

In the past, after GMAC agreed to make a loan at a certain interest rate, the dealer who had applied on behalf of the buyer could increase the rate by several percentage points and keep the difference. The practice of dealer markups on loans has been criticized by consumer groups because many consumers do not understand that dealers have had wide discretion to add percentage points to the interest rates on loans offered by GMAC and other lending giants. Not all loans involve markups, and for the last couple of years the major domestic automakers have been heralding zero interest loans as a selling point to buyers with good credit. Dealer groups have said the markup is simply a retail fee the dealer is due for shopping among lenders.

Class action lawsuits filed in recent years allege that the markup practice turned into illegal discrimination, as dealers set higher interest rates on loans to minorities. Studies have shown that minority consumers are more likely to be marked up than white consumers. Studies show that African-American consumers are twice as likely to be marked up as white consumers, and when a white consumer and an African-American in the same

credit tier are marked up, then the African-American consumer is paying twice as much markup. One study looked at \$421.6 million in dealer markups paid by 1.5 million GMAC borrowers. African-Americans accounted for 8.5% of the customers but paid \$83.9 million, or 19.9% of the total markup. The lawsuits do not allege that GMAC or the other big lenders companies "discriminate" when they set their own rates. Rather, the allegations are that the industry's standard practices have given dealers "the discretion to discriminate."

CPSC WARNS OF HEATER AND FIREPLACE HAZARDS

During this very cold winter season, the U.S. Consumer Product Safety Commission (CPSC) is aware of at least 51 deaths from fires started by heaters and fireplaces. Since this winter began, a 13-year-old girl in Fairmount Heights, Maryland, and a 33-year-old woman in Kansas City, Kan., died in fires ignited by electric space heaters. Three children, ages 4, 5, and 9, from Rome, New York, died in a fire in which bedding was pushed up against a heater. Two girls, ages 7 and 4, from Walden, New York, died in a fire associated with a "wood pellet" stove, and a mother and son from Long Island died when their fireplace sparked a fire in the basement. Four adults and five children in Seattle, Wash., all suffered carbon monoxide poisoning when they brought a charcoal-burning hibachi inside.

The CPSC wants consumers to follow safety precautions when purchasing and using electric or fuel-fired heaters and fireplaces. Every home in America needs working smoke alarms and a carbon monoxide alarm. In a recent year, there were about 10,900 residential fires and about 190 deaths associated with portable or fixed local heaters. There were 15,500 fires and 40 deaths associated with fireplaces and chimneys. In addition, there were about 100 deaths from carbon monoxide from heating systems, ranges/ovens, and water heaters. Heaters can cause fires if they are placed too close to flammable materi-

als such as drapes, furniture, or bedding. Fireplaces can cause fires if the chimney is cracked, blocked, or coated with creosote, or if sparks and embers can reach flammable materials. Fuel-burning appliances can cause carbon monoxide poisoning if there is improper venting or incomplete combustion. Additional space heater safety tips from CPSC include:

Choose a heater that has been tested to the latest safety standards and certified by a nationally recognized testing laboratory. These heaters will have the most up-to-date safety features, while older space heaters may not meet the newer safety standards. CPSC worked to upgrade industry standards for electric, kerosene, and vented and unvented gas space heaters. An automatic cut-off device is now required to turn off electric or kerosene heaters if they tip over. More guarding around the heating coils of electric heaters and the burner of kerosene heaters also is required to prevent fires.

Place the heater on a level, hard and nonflammable surface, not on rugs or carpets or near bedding or drapes. Keep the heater at least three feet from bedding, drapes, furniture, or other flammable materials.

Keep doors open to the rest of the house if you are using an unvented fuel-burning space heater. This helps prevent pollutant build-up and promotes proper combustion. Follow the manufacturer's instructions to provide sufficient combustion air to prevent carbon monoxide production.

Never leave a space heater on when you go to sleep. Never place a space heater close to any sleeping person.

Turn the space heater off if you leave the area.

Keep children and pets away from space heaters.

Do not use a kitchen range or oven to heat your house because it could overheat or generate carbon monoxide.

Have a smoke alarm with fresh batteries on each level of the house and inside every bedroom.

Have a carbon monoxide alarm outside the bedrooms in each separate sleeping area.

Be aware that mobile homes require specially designed heating equipment.

Only electric or vented fuel-fired equipment should be used.

Have gas and kerosene space heaters inspected annually to ensure proper operation.

The following are some fireplace safety tips from CPSC:

Have flues and chimneys inspected before each heating season for leakage and blockage by creosote or debris.

Open the fireplace damper before lighting the fire and keep it open until the ashes are cool. This will avert the building up of poisonous gases, especially while the family is sleeping.

Never use gasoline, charcoal lighter or other fuel to light or relight a fire because the vapors can explode. Never keep flammable fuels or materials near a fire.

Keep a screen or glass enclosure around a fireplace to prevent sparks or embers from igniting flammable materials.

THE PROTECTION OF CHILDREN

We constantly hear of incidents around the country where children are being molested by adults. On all too many occasions, the incidents result in a brutal murder. It is high time that politicians - both in Washington and in the several states - do everything within their power to pass legislation that will really protect our children. The courts must also get involved to the fullest extent possible. Adults who prey on children should be dealt with harshly. The most severe punishment possible must be doled out by the courts to persons who molest and hurt children. Predators must be made to fear the judicial system, and I don't believe they do at present. In this regard, I believe the death penalty is a necessary tool that must be utilized with greater frequency. Sex offenders who victimize children have no place in our society. I believe we need to go back to public executions for child molesters. If we did, it would let other predators know what would be in store for them.

PORNOGRAPHER TO SELL WHITE HOUSE WEBSITE

There is a Website using the name "Whitehouse," which is one of the best

examples that the Internet isn't always what it seems. This site is nothing but a raw pornography site that lures school-age children, and is frequently confused with the official government site, www.whitehouse.gov. Now the owner is getting out of the pornography business, claiming to be worried what his preschool-age son might think. Daniel Parisi, who started the Web site in 1997, has a kindergarten student at home. Parisi, 44, said he worried that his son's classmates might taunt him about the family's business. However, I suspect Parisi's decision to sell the porn site name is probably more for the money involved than to protect his son. The reason is that there has been a rebound in the market for reselling Web addresses. For example, a Florida man sold one porn site in December for \$1.3 million.

One company expressed early interest in buying this site. Bob Roberts, a vice president at National Fruit Product Co. of Winchester, Virginia, which makes White House applesauce and apple juice, wants to buy the porn site. This company previously fought Parisi in federal court over trademark claims to force him to surrender the disputed Web address. Now it appears that the company wants to get in the pornography site and shut it down. The confusion over the names has caused great difficulty. Mr. Roberts said: "We just feel bad when our customers type in the address and they get hit with these pictures." His company's G-rated Website is www.whitehousefoods.com. Parisi said his site, operated by a European company that leases the Web address from him, attracts more than 2 million visitors each month. It has been a rallying point for critics who worry about children stumbling onto pornography online. Children doing homework about the White House or the presidency type in "dot-com" and get a porn site. The WiredSafety organization says the site has "always been the poster child for where our kids can get into trouble with porn by accident." The General Services Administration assigns federal Web addresses; the National Telecommunications and Information Agency regulates U.S. policies on Internet addresses. Nine

months ago, President Bush signed a law that bans the use of misleading Web addresses to lure children to view material harmful to minors. Somebody needs to stand up and be counted in this fight. Thus far, nobody in a position of authority, to my knowledge, has lifted a finger to shut down a Website that is very dangerous to children.

THE INTERNET AND CHILDREN

With all of the troubling reports relating to the safety and welfare of children, it is important to know what parents can do to protect their children. For example, there is a "911" number (CyberTipLine: 800-843-5678) for parents to report possible criminal activity on the Internet. To report a possible child predator or child pornography, a parent or a teacher, or for that matter any person, can call this number. This hot line is run by the National Center for Missing and Exploited Children, with funding from the Justice Department and the computer industry. The U.S. Department of Education has a booklet, "The Parents Guide to the Internet." Parents can get a copy by calling 800-872-5327. You can read the full text online at www.ed.gov. There are several obvious risks for children who use the Internet:

Exposure to Age-Inappropriate Material - It is painfully easy to find hard-core pornography and pornographic violence on the Internet. A child can log-on to a pornographic site within a few minutes after turning on the computer. Also, Internet users can send pornographic pictures to children via e-mail.

Physical Molestation - A child may give out personal information that could endanger the child or a member of his or her family. Pedophiles have used chat rooms, message boards and other Internet and online services to make contact with a child. Once the adult has gained the child's confidence, a face-to-face meeting can be arranged.

The following are some of the safety ideas compiled by an advocacy group in Birmingham:

Make computing a family activity.

Put the "Internet" computer in a den or busy area.

Don't allow Internet access in a child's bedroom.

Make chat rooms and similar messaging areas off-limits to children.

Discourage chat rooms. But, if your child must use a chat room, have the child use it while you can monitor their activity.

Never give out personal information.

Never give out your name, phone number, home address, school name, e-mail address, or name of your URL site where your picture and other personal information can be seen by Internet users.

Unfortunately, many parents know very little about the Internet. For example, most folks probably don't have a clue what a "chat room" is. For the uninformed, this is an area on the Internet where individuals can send anonymous messages to other users. Pedophiles know all about chat rooms and quite often seek out young children by either participating in or monitoring activities in chat rooms. If you worry about your children exploring the Internet without supervision, there is a great deal of help available. The National Center for Missing and Exploited Children is a very good resource for parents. You can mail them at 2101 Wilson Boulevard, Suite 550, Arlington, Virginia 22201-3052; call them at 1-800-843-5678, or visit their Website, www.ncmec.org. The following are some rules for online safety for your children or grandchildren from the National Center for Missing and Exploited Children:

I will not give out personal information such as my address, telephone number, parents' work number, or the name and location of my school without my parents' permission.

I will tell my parents right away if I come across any information that makes me feel uncomfortable.

I will never agree to get together with someone I "meet" online without first checking with my parents. If my parents agree to the meeting, I will be sure that it is in a public place and I will bring my mother or father along.

I will never send a person my picture or anything else without first checking with my parents.

I will not respond to any messages

that are mean or in any way make me feel uncomfortable. It is not my fault if I get a message like that. If I do, I will tell my parents right away so that they can contact the online service.

I will talk with my parents so that we can set up rules for going online. We will decide upon the time of day that I can be online, the length of time I can be online, and appropriate areas for me to visit. I will not access other areas or break these rules without their permission.

We should encourage parents to organize in cities and towns around the country and get involved in the fight to protect our children and grandchildren. The churches in this country have a moral obligation to get much more involved than has been the case in years past. I strongly believe that churches should be the leaders in this important battle.

FINES FOR INDECENCY ISN'T ENOUGH

Federal regulators are proposing a record \$755,000 fine against the nation's largest radio chain for airing a sexually explicit radio show. The Federal Communications Commission says that four Clear Channel stations - all in Florida - aired various episodes of "Bubba the Love Sponge" a total of 26 times. The proposed fine would be the single largest ever for indecency. Clear Channel also was fined \$40,000 because of record-keeping violations at the stations. That isn't enough and really isn't the answer. Lawmakers on the House Energy and Commerce telecommunications subcommittee are holding hearings on "indecency standards." They took notice of the issue after the FCC's enforcement bureau declined to fine NBC for airing an expletive uttered by rock star Bono during the Golden Globe Awards show last year. The FCC is apparently agonizing over whether to overrule the bureau. It seems like that should be an easy decision for them to make.

The U.S. Supreme Court has upheld the FCC's right to regulate indecent programming. The FCC has the legal authority to fine broadcasters for indecent programming. While fining

sounds good, all the companies fined will do is pay the fines, add the amounts to the cost of their ads, and continue to operate as usual. The FCC needs to shut down repeat offenders by revoking their licenses. That is clearly the only thing that will get the attention of the stations. Anything less is not enough and simply won't get the job done.

FUNERAL HOME SCAMS ARE MIGHTY LOWDOWN

Recently, CBS News and other news outlets have been telling of horror stories in the \$14 billion a year funeral industry. The world's largest funeral home company recently settled a class action lawsuit for \$100 million for negligence and misconduct in Florida. One story mentioned on CBS' nightly news dealt with an expensive "sealed" casket. The funeral director told the family a sealed casket would preserve the decedent's body for 75 years. The family member said: "I felt hurt, vulnerable, looking for comfort and peace. He (the funeral director) mentioned that some people like to drive Volkswagens and some like to drive Mercedes, and he knew dad drove a Mercedes." As the CBS news correspondent reported, "the Mercedes turned out to be a lemon." The casket hadn't even been placed in the family mausoleum, when the family sensed something was wrong. When the casket was opened, a body that had already decayed was discovered by the family. A casket that was supposed to last longer than 75 years, did not even last 75 days, according to the CBS report.

Funeral directors, often working on commission, are marketing a product to people at a time when they are most vulnerable. The industry makes the bulk of its profit on the sale of caskets. A casket alone can be up to half the total bill, costing as much as \$70,000, according to reports. Folks having to bury a loved one - a time in their lives that makes them extremely weak and vulnerable - are easy prey for the unscrupulous in the industry.

After all the media attention, the National Funeral Directors Association (NFDA) issued a news release, saying

their 20,000 funeral director members "take protecting consumers very seriously." The association says it implemented a new Code of Professional Conduct, which became enforceable as of January 1, 2004. For more information on funeral planning or choosing a reputable funeral home - and there are some good ones - the group's Website is www.nfda.org.

INSURER-OWNED REPAIR SHOPS

Last month, CBS Evening News featured a story that raised legitimate questions about auto body shops owned by insurance companies. The story has caused quite a stir in the insurance industry. The CBS story indicated that shops owned by insurance companies create a "colossal conflict of interest." This brought a prompt retort by The Property Casualty Insurers Association of America. The question is whether an insurance company's ownership of a repair shop where vehicles insured by the owner of the shop are being repaired creates a conflict of interest. If consumers are being required to have their vehicle repaired at a body shop owned by the very company that insures the vehicle, it certainly would raise a red flag.

The PCI claims the CBS story contained unfair allegations from the auto body industry. The story contained allegations that insurers are trying to cut corners on these repairs in an effort to increase profits or underserve consumers. I would hope that the insurance companies really want consumers to receive quality repairs. Of course, the consumers should have the right to pick the repair shop and not be required to use a shop owned by the insurance company insuring the vehicle. The highest quality repairs at the best possible price should be the goal of both the insurer and the policyholder.

RULING MAY EXPAND CONSUMER'S CREDIT PROTECTION

A federal appeals court has addressed the issue of how rigorously a credit card company must investigate a consumer complaint about inaccurate credit files. I hope consumers will now

have an easier time disputing information on their credit reports as a result. The decision from the U.S. Court of Appeals for the Fourth Circuit, clarifies a part of the Fair Credit Reporting Act that says credit issuers must investigate complaints. Until this case was decided, "investigate" could mean just a cursory records check. I believe that was the position that the industry was taking. The court's decision demands more in-depth investigations when consumers ask for them. Time will tell if this court decision is as important as I believe it may be.

XXII. ARBITRATION UPDATE

A CANCER ON CONSUMERS

Mandatory binding arbitration agreements forced on consumers by Corporate America are growing like an uncontrolled cancer. These agreements - when consumer contracts are involved - do not involve competing parties with equal bargaining power. Normally, the consumer has no choice in most transactions and in many cases is totally unaware of the existence of arbitration in a contract or invoice. There can be no justification for a pre-dispute requirement for arbitration unless both parties voluntarily and on somewhat of an equal footing agree to such an arrangement. Unless this cancer is controlled, it will virtually destroy all consumer rights in this country. The U.S. Constitution guarantees a trial by jury, and in my opinion that is a cherished and valuable right. There is only one room in America, when it comes to dealing with large corporations, where consumers are on an equal footing with the bosses who run Corporate America - and that's the courtroom. Needless to say, Corporate America wants to shut the door to that room so that they can keep mistreating ordinary folks with no fear of reprisal. Arbitration is nothing but a tool for those corporate bosses and their political lackeys who want to destroy the judicial system in this country.

A SIGNIFICANT MOVE ON ARBITRATION CLAUSES

A major development in the fight against arbitration was announced last month. Fannie Mae has announced that it will no longer invest in mortgages with clauses forcing borrowers to give up their right to sue. The announcement came on February 4th, two months after Freddie Mac issued a similar decision, saying it would not invest in mortgages that contain mandatory arbitration clauses, which require borrowers to refer all disputes to a third-party arbitrator. Consumer advocates have long been pressing Fannie and Freddie - the nation's largest funders of home loans - to ban mandatory arbitration provisions in all mortgages. We have seen mandatory, binding arbitration clauses in all sorts of consumer contracts in recent years. Consumer advocates have contended that such provisions protect firms that take advantage of folks. Arbitration, by its very nature, favors the large companies that require consumers to sign them. In the past, Fannie and Freddie have not accepted mandatory arbitration provisions on the majority of home loans, but instead only on those for subprime borrowers, or those considered higher credit risks - a distinction that particularly disturbed consumer advocates.

The recent announcement is part of Fannie's campaign to increase homeownership and the stock of affordable rental housing. Fannie also announced major new initiatives to preserve affordable rental housing, including a \$15 billion increase in debt and equity to buy, rehabilitate and replenish more than 300,000 affordable rental homes, especially multifamily units in older urban neighborhoods, by 2010. It will also offer \$100 million in acquisition lines of credit to qualified preservation groups, and \$1.5 billion to public housing authorities to preserve and revitalize public housing communities. Fannie Mae has joined a campaign with AARP to focus on affordable housing for the elderly. This campaign is important to keeping affordable housing in this country. Consumer groups were involved in discussing a ban on manda-

tory arbitration provisions with the industry when Freddie made the surprise announcement in early December that it would no longer invest in any subprime mortgages that contained such a provision.

Industry officials estimate that about 10% of mortgages are subprime. Although Fannie and Freddie don't issue the loans, they buy about half of the subprime mortgage asset-backed securities issued by major lenders, according to consumer advocates. The positions of Freddie and Fannie will impact the marketplace because two of the biggest financial institutions in America are now saying that mandatory arbitration is abusive. I hope this will encourage other companies to eliminate similar provisions. In any event, we should all let the folks who run Fannie and Freddie know that their efforts are appreciated.

XXIII. RECALLS UPDATE

VOLVO RECALLS

Volvo Cars of N.A., LLC has recalled the 2004 Volvo S60, S80, and V70, involving approximately 29,986 vehicles. On certain passenger vehicles, the front control arms may not have been manufactured correctly and, as a result, the stud and nut that secure the arm to the spindle may lose their initial axial tension. Under certain driving conditions, the steering may become less responsive and the driver may experience steering wheel play. This driving condition could eventually lead to separation between the front control arm and the spindle, which could result in a crash. Dealers will install a new type of nut. At press time, the manufacturer had not yet provided an owner notification schedule for this campaign. Owners should contact Volvo cars at 1-800-458-1552.

GM RECALLS 1.8 MILLION CARS FOR IGNITIONS

General Motors Corp., the world's largest automaker, is recalling 1.8 mil-

lion cars to repair potential problems with the ignition switch that may cause a fire. The models involved are certain 1998-2001 Chevrolet Cavaliers and Pontiac Sunfires built between March 1997 and April 2001. In addition, some 1998 Pontiac Grand Am, Oldsmobile Achieva, and Buick Skylark cars built between March 1997 and January 1998 are being recalled. Of the total, 1.4 million of the vehicles are in the United States and 337,000 are in Canada. The remaining vehicles are outside these countries. The vehicles are to be serviced to prevent high electrical current flow through the ignition switch that may cause a fire in the steering column. According to GM, there have been reports of 80 incidents of heat build up, melted components smoldering parts, or fires in the ignition system and steering column. No injuries or fatalities have been reported to date.

GM RECALLS 636,000 SUVs

In another major recall, General Motors Corp. will recall about 636,000 mid-size sport utility vehicles. According to GM, there have been two reports of crashes related to electronics that could short-circuit when water leaks into a wiper module. GM says no injuries or fatalities were reported from those two crashes. The recall includes certain model year 2002 and 2003 Chevrolet TrailBlazer and TrailBlazer EXT, GMC Envoy and Envoy XL, and Oldsmobile Bravada SUV models, as well as some Isuzu Motors Ltd. Ascenders, which GM builds. Of the total, about 580,000 are in the United States and some 31,000 are in Canada.

Apparently GM dealers will patch a vent hole in the windshield wiper module and inspect a circuit board and electrical connector in the area for water intrusion and corrosion. GM will notify owners beginning in the third quarter of this year. Dealers will fix the vehicles at no charge. The reason for the delay, according to GM, is the automaker has to test the materials and adhesives used to fix the problem. Owners should have their vehicles checked and serviced sooner if they are experiencing wiper problems.

CHRYSLER RECALL

The Chrysler arm of DaimlerChrysler AG had two recalls last month. Chrysler said it will recall about 3,200 of its 2005 model year Chrysler Town & Country, Dodge Caravan and Dodge Grand Caravan minivans because the front right seat belt may not have been assembled properly, posing an increased risk of injury in a crash. Chrysler apparently discovered the faulty seat belts during a routine investigation and reported it had not received any complaints of a problem. The affected minivans do not have the new "Stow and Go" fold-flat seats in the second and third rows.

VOLVO RECALLS SUVs

Volvo recalled about 3,200-model year 2002 Volvo XC70 sport utility vehicle because the rear brake lights may not illuminate, or could stay on continuously, according to the National Highway Traffic Safety Administration.

DAIMLERCHRYSLER RECALL

DaimlerChrysler has recalled the following Jeep models: 2004 Grand Cherokee, 2004 Liberty, and 2004 Wrangler. On certain sport utility vehicles, because of a recent software programming error, the tire, wheel, and inflation pressure information was inadvertently omitted from the vehicle certification label. The vehicle owner would not be aware of the tire, wheel, and inflation pressure information for their vehicle. Owners will be provided with a corrected tire certification label. Owner notification began last month. Owners should contact DaimlerChrysler at 1-800-853-1403.

GM RECALLS

General Motors has recalled model years 1997 through 2004 Chevrolet Corvettes. Approximately 126,624 vehicles are affected by this recall. On certain passenger vehicles equipped

with electronic column lock systems (ECL), when the ignition switch is turned to lock, the ECL prevents turning of the steering system. When the vehicle is started, the ECL unlocks the steering system. The vehicle is designed so that if the column fails to unlock when the vehicle is started and the customer tries to drive, the fuel supply will be shut off so that the vehicle cannot move when the vehicle cannot be steered. If voltage at the powertrain control module is low or interrupted, however, the fuel shut off may not occur and the vehicle can be accelerated while the steering system is locked. If this occurs, a crash could occur without warning. On vehicles equipped with an automatic transmission, the dealer will disable the steering column lock by removing the column lock plate. When the ignition key is removed, the transmission shifter will lock but the steering column will not lock. On vehicles equipped with a manual transmission, the dealer will reprogram the powertrain control module. The steering column on these vehicles will continue to lock when the key is removed. Owner notification is expected to begin during the second quarter of 2004. Owners should contact Chevrolet at 1-800-630-2438.

COOPER TIRE RECALL

Cooper Weathermaster ST-2 tires, size 235/75R15 with dot serial numbers (4403 or 4503) have been recalled. These tires may have inner liner tears caused by the process of ejecting the tire from the mold after curing. When this condition exists, it could result in accelerated air loss. The loss of air could cause the tire to run under-inflated and result in early failure. Sudden loss of air could result in loss of steering control, which could result in a vehicle crash. Cooper will notify its customers and replace the affected tires free of charge. Notification began in January of this year. Owners who take their vehicles to an authorized dealer on an agreed-upon service date

and do not receive the free remedy within a reasonable time should contact Cooper at 800-854-6288.

BOWFLEX MACHINES RECALLED

Hundreds of thousands of Bowflex fitness machines are being recalled because of safety problems that have resulted in more than 70 injuries. The voluntary recall affects about 420,000 Bowflex Power Pro XL, XTL, and XTLU systems distributed by Nautilus Direct of Vancouver, Washington. The Consumer Product Safety Commission says the machine's backboard bench can unexpectedly collapse when being used in the incline position. There also are problems with the "Lat Tower," which attaches to the back of the bench and has a metal bar that the user can pull down to strengthen the upper body.

Nautilus Direct says the frame of the tower can weaken over time, twist forward and fall - hitting the user in the back, head or shoulder. Of the reports received, 59 people suffered injuries when the backboard collapsed. Another 14 were injured by the "Lat Tower." The machines in question were sold nationwide from 1995 to 2003 for about \$1,200 to \$1,600, depending on the model. Consumers are advised to stop using the backboard bench in the incline position, and immediately cease use of the "Lat Tower." Any person who has purchased a Bowflex should check to see whether it has been recalled. Free repair kits will be sent to consumers with the recalled home gyms. The kits consist of a steel bar that will reinforce the bench and a steel bracket that will give more support to the "Lat Tower." Consumers can call Nautilus Direct at 1-888-424-3020 to receive the repair kit. Nautilus is also contacting owners of the machines by mail.

DOLLAR STORE CANDLES RECALLED FOR FIRE HAZARD

The U.S. Consumer Product Safety Commission is recalling 68,400 Lumi-

nessence T-Lite candles with glass holder sold at dollar stores because of a fire hazard. The CPSC says paint on the exterior surface of the candles can sustain a flame, posing a potential fire hazard. Dollar Tree received six reports of candles producing excessive flame and/or igniting. Three of these reports involved minor injuries and three involved minor property damage. The recalled candles were sold in packages containing eight tea light candles and one glass holder in the shape of a flower. The 1-inch tall candles were available in either gold or silver. A label affixed to the top of the package containing the recalled candles reads "Luminessence candles, 8 T-Lite Candles with Glass Holder, NET WT 3.2 oz (EACH 10G)." The label affixed to the bottom of the package reads, "DOLLAR TREE DIST., CHESAPEAKE, VA 23320, MADE IN CHINA." The candles were sold at Dollar Tree, Only One Dollar, Only \$1, Dollar Express, and Dollar Bills retail stores nationwide from September 2003 through October 2003 for \$1. Dollar Tree is offering a refund for each returned candle set. For more information, call Dollar Tree Stores Inc. at (800) 876-8077.

GE SECURITY, INC. ANNOUNCES RECALL OF CARBON MONOXIDE ALARMS

About 74,000 carbon monoxide alarms have been recalled by GE Security, Inc., of Tualatin, Oregon. The recalled units fail to detect carbon monoxide after 1 year of operation because of an internal software error. These alarms do not provide an "end of life" signal or other indication of inoperability, even if the test button is depressed. GE Security has received one report that the detector did not operate properly in the presence of carbon monoxide. No injuries have been reported so far. These ESL SafeAir 240-COE Carbon Monoxide alarms are hard-wired and require professional installation. The white, rectangular units are about 6-inches long and 2.75-inches high. "CARBON MONOXIDE

ALARM" and "DO NOT PAINT" are written on the front of the units. "240-Coe," "SENTROL," (a former name of the company) and the date code are written on the back. The date code is a four-digit number ending with a "T." The four digits denote the week and year of manufacture. For example, the date code "4500T" refers to a unit that was manufactured in the 45th week of 2000. Only units with date codes 4500T (November 2000) through 3502T (August 2002) are included in the recall. These alarms, which were manufactured in China, were sold at distributors, dealers and installers of security systems nationwide from November 2000 through October 2003 for about \$49. Consumers should contact their system installer or service provider to arrange for the free installation of a replacement alarm. Consumers can call GE Security, Inc. at 800-648-7422 or go to their Website at www.geinterlogix.com.

XXIV. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

Rhon Jones

Rhon Jones joined the firm in 1994. He began his practice with the firm in consumer fraud litigation, but soon moved to manage the Business and Environmental Litigation (now known as Toxic Torts) Section of the firm. This section handles claims all over the country with the main emphasis being in the Southeast. Rhon, who graduated from Auburn University in 1986, attended law school at the University of Alabama, graduating in 1990. After graduation, Rhon worked as a law clerk for U.S. District Court Judge Robert Varner. Rhon is a member of the Board of Directors for the Janice Capilouto Center for the Deaf, which fills special needs for the hearing impaired. He is also a board member of the Family Sun-

shine Center, whose mission is to prevent domestic abuse. Rhon, his wife Deanne, and their three children are members of First Baptist Church in Montgomery. Rhon, who is widely respected by judges and lawyers throughout the state, does an excellent job of heading up his Section.

Lance Gould

Lance Gould began working at Beasley Allen in 1997. Working in our Consumer Fraud Section, Lance handles actions brought by individuals who have been victimized by finance and insurance companies. The Phenix City native was a member of the trial team in a landmark case involving a door-to-door sales and finance scam, which resulted in a then-record verdict of \$581 million. The finance company in that case quit its bad activities in the State of Alabama as a result of this litigation. Lance has also assisted clients in obtaining multi-million dollar settlements and has influenced a number of corporations to correct their predatory lending practices. Lance has been a guest speaker on consumer fraud litigation at both the state and national levels, including a lecture before the National Consumer Law Center. Lance serves on the Board of Governors for the Alabama Trial Lawyers Association. We are fortunate to have a person such as Lance Gould in our firm. He does an excellent job for his clients.

Tracie Harrison

Tracie Harrison, who has been with our firm for four-and-a-half years, works in the Toxic Torts Section as Rhon Jones' legal assistant. She started as a legal secretary before moving to become Rhon's legal assistant. Her primary responsibilities are investigating new cases as they are received and maintaining logistics for several multi-plaintiff cases. Tracie also assists with trial preparation and attends trials when needed. She researches and assists Rhon with the design and maintenance of the Websites designed

specifically for the Section. Tracie has been married to Nick Harrison for 9 years, and they are the proud parents of a 2-year-old son, Hayden. Tracie has been a very dedicated employee. In fact, Tracie lived in Perry County until about eight months ago and drove 160 miles round-trip each day to work. Tracie did this for almost four years. Fortunately for all concerned, she is now a resident of Elmore County.

Laura Reaves

Laura Reaves has worked at the firm for almost three years now. She currently serves as J.P. Sawyer's legal assistant in the Nursing Home Section. Laura had previously worked in the Consumer Fraud Section. She is responsible for preparing and answering discovery, scheduling depositions, helping to draft pleadings, corresponding with expert witnesses and assisting with trial and mediation preparation. In addition, Laura also prepares Trial Director and Power Point presentations for use in trial and mediation. Laura was married in May 2002 and lives with her husband, Jamie, in Prattville, along with their 2 dogs. Laura graduated from Huntingdon College in 2000 with a BA in International Business. She also received her degree in Legal Studies from Faulkner University in 2003. Laura recently passed the two-day Certified Legal Assistant examination administered by the National Association of Legal Assistants. We are most pleased to have Laura Reaves, who is doing excellent work, on our team.

James Weiser

James Weiser has been with the Beasley Allen for three years. He currently works as a legal assistant to Roman Shaul. In this capacity, James usually works on the wage-and-hour and finance company lawsuits. He assists with clients during their depositions and works on discovery and research for his cases. James is a 2000 graduate of Troy State University with a

Bachelor of Science in Criminal Justice/Political Science. He enjoys golf, fishing, and playing with his dog. James is proving to be a valuable employee of the firm.

Charles Duffee

Charles Duffee has been with the firm for over two years as an investigator. Our investigators are responsible for investigating motor vehicle accidents. Many of the cases Charles works on are what we refer to as "crashworthiness" cases involving product defects. The work of the investigators includes photographing the scene and vehicles involved; locating and interviewing witnesses, emergency personnel and law enforcement personnel; attending vehicle inspections conducted by our experts; and obtaining specific information requested by attorneys handling various cases. Charles, who has been married to his wife, Linda, for 21 years, has 2 children. Brian is a senior at Wetumpka High School and Morgan is a sixth grader at Wetumpka Intermediate School. Charles has a Bachelor degree in Criminal Justice from AUM and retired as a Major from the Montgomery Police Department. Charles Duffee is a valuable employee, does exceptionally good work, and is an asset to the firm.

BASEBALL RETURNS TO THE CAPITOL CITY

While this part of the report doesn't relate directly to a Beasley Allen activity, I hope our readers will allow me to talk a little "hard-ball" in this section. Having been a real baseball fan all of my life, I am really looking forward to this season. I played high school ball, one year in college, and two years of semi-pro and enjoyed every minute of it. I just wish I had worked harder to get better. If I could relive my early years, I would never have touched a football and would have devoted my sports time to my real love - baseball.

After a long absence, professional baseball has finally returned to the City of Montgomery. The Montgomery Bis-

cuits - a Double-A farm club of the Tampa Bay Devil Rays - are coming to the Capitol City. The owners have announced an exciting promotional schedule for the inaugural season. Their debut this year in Montgomery has caused a great deal of interest. The Biscuits will provide some badly needed family-style entertainment for area citizens. Their games will be played at the brand new Montgomery Riverwalk Stadium, which will be a state-of-the-art facility. The promotional calendar will feature theme nights, giveaways, fireworks displays, and nationally recognized acts. The Biscuits' home opener will take place on Friday, April 16th. Double-A baseball will finally return to Montgomery after 23 long years. The regular season will end on September 6th with a fan appreciation night, featuring a fireworks spectacular. I hope by that time the season will have been a roaring success.

I have met the owners of the Biscuits, Tom Dickson and Sherrie Myers - who happen to be happily married, and have been impressed with their vision for the team. Tom says that "Biscuits games are going to be full of family-friendly experiences that are new to people in Montgomery." Interestingly, the Biscuits have enjoyed tremendous pre-season sales of caps, t-shirts, and other promotional items. Sales have been made via the Internet in most every state and in foreign countries. Picking the name "Biscuits," which I first thought was a dumb move, has turned out to be a stroke of marketing genius. I hope people throughout central Alabama will support the Biscuits. There appears to be a great deal of interest in supporting a Double-A team in the Capitol City. That level of baseball is very good. There is a marked difference between Double-A and Single-A baseball. Natural in-state rivalries will include games against the Birmingham Barons, the Huntsville Stars, and the Mobile Bay Bears. The fact that Lou Piniella, manager of the parent major league club, is part owner

of our “town team” should be good for the Biscuits and for baseball fans in the area. Surely, Lou will want a winner here. In any event, this should be an eventful summer at the ballpark. I am looking forward to it.

XXV. CLOSING REMARKS

If you take the time to read the master plan of action formulated by the extreme right wing of the national Republican Party, you will find that making trial lawyers the villain in American jurisprudence is a key part of their plan. I have read about how Karl Rove, Ken Mehlman and Grover Norquist came up with their master plan to take over the federal government and the judicial system. Norquist, who some say is even smarter than Rove, holds weekly strategy sessions of self-described right-wing conservatives and has been doing so for a good while. During the past 5 years, Norquist has built a network of what he refers to as “mini-Grover-franchises.” He has hand-picked leaders and organized meetings of right-wing advocates in 37 known states.

Interestingly, Norquist also is president of an anti-tax group in Washington. At one of his meetings, Norquist made an interesting observation concerning Governor Riley, who tried in vain to pass the badly needed tax package in our state last year. About the Governor, Norquist said: “We’re going to keep him on life support. We’ll put him in a freezer, as an example.” I am not real sure what the leader of the extreme right meant by these remarks, but as you may recall, he sent the State GOP Chairman a sword as his award for defeating the Riley plan.

On the national stage, Norquist was quoted in a capitol newspaper as saying that George W. Bush can do no wrong. He stated: “I have worked with

Administrations going back to Nixon. These people are more responsive than any other White House.” That is pretty scary when you consider the source. If you are interested in reading more on the workings of this group, you can go to www.WashingtonPost.com and look for information on Norquist and his people.

We all know that the legal profession is being assailed today like never before. The special interests, with the able direction of folks such as those mentioned above, are doing all within their power to destroy the judicial system. A casual reading of history will reveal that lawyers have been targeted for years by persons acting for powerful groups or organizations. Hitler set out to get rid of all the lawyers and destroy the judicial system in Germany. That was part of his master plan for taking over the government and ultimately the will of the people of Germany. Even one of Shakespeare’s characters had a few choice words for lawyers in his day. Doubtless, if Shakespeare could put quill to parchment to script analogous phrases for modern corporate tyrants, he could couch their refrain thusly:

If America’s democratic institutions of right to trial by jury and election of judges are to be abolished, first let’s discredit all the lawyers;

If American citizens’ common law rights to full recovery of legal damages are to be abrogated for the benefit of profit-motivated corporations, first let’s defame all the lawyers; and

If America’s judicial system of tort reparations is to be remolded into a profit mechanism for the insurance industry, first let’s degrade all the lawyers.

When President Bush stated in his State of the Union Address that “we must eliminate wasteful and frivolous lawsuits,” he really meant denying access to the courts and taking away from ordinary citizens the right to trial

by jury. Today, the courts are the only thing available to ordinary folks that will protect them from those who would trample on their rights. I am an advocate not only for the victims that our law firm represents, but also for protecting access to the courts for all people and business entities and for preserving the right to trial by jury. I will never apologize for my stand – and I will keep fighting – even if I wind up being the only advocate left standing!

Finally, I feel very fortunate to be working with folks at our firm who have their priorities in order. I am personally blessed as I go to work each day and return home at night. I actually look forward to coming to work and I definitely look forward to going home to my beautiful wife. Neither my position nor my job description at work determines my worth, and that is something it took a while for me to fully comprehend. My real worth is determined on another level. I have found a number of Bible verses to be helpful in planning our work at Beasley, Allen. I hope this one will help you in your daily lives and especially in the workplace for those of you who work.

I will give you the keys of the kingdom of heaven, whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.

Matthew 16: 19

If you would like to obtain a real good prayer book for your workplace, *Prayers For My Workplace*, you can obtain a copy by writing Prayer Point Press, 2100 North Carrollton Drive, Munsey, Indiana 47304. There is a small charge – but they are well worth the cost.

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