



THE
JERE BEASLEY REPORT

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A NATIONAL LAW FIRM LOCATED IN MONTGOMERY, ALABAMA

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I. CAPITOL OBSERVATIONS

TEXAS SETTLES DRUG PRICING LAWSUIT

The State of Texas has settled its Medicaid fraud battle against the pharmaceutical industry. Under the settlement, \$27 million will be paid by a New Jersey-based pharmaceutical company and its subsidiaries. Parent company Kenilworth-based Schering-Plough Corp., Schering Corp. and the company's generic prescription drug maker Warrick Pharmaceuticals Corp. were sued by the State in a state court. The pharmaceutical companies were accused of falsifying the wholesale price of generic drugs for Medicaid patients to increase company profits. Texas Attorney General Greg Abbott said: "Texas has taken the lead nationwide in pursuing this relatively new, but effective, enforcement of our laws. Along with the Texas Health and Human Services Commission, we conducted an extensive investigation with little or no cooperation from the companies."

The settlement requires the Schering companies to pay \$27 million to Texas and the U.S. government to settle claims that the drug makers reported artificially inflated prices for prescription albuterol drugs to the Texas Medicaid program. Albuterol is a class of drugs for people with breathing difficulties. The Texas Medicaid program overpaid millions of dollars to pharmacies that dispensed the albuterol drugs to Medicaid patients. It should be noted that an \$18.5 million settlement had been reached with Dey Inc., a subsidiary of German pharmaceutical company Merck KGaA, another defendant in the case. With these settlements, the State of Texas will recover about two times the damages suffered by the Texas Medicaid program. The whistleblower that brought these practices to the government's attention was Florida-based Ven-a-Care of the Florida Keys Inc., a specialized pharmacy participating in Florida's Medicaid program. The state's case against the remaining defendant, Columbus, Ohio-based Roxane Laboratories Inc., was moved to federal court in Boston and remains

pending as a part of the multi-district litigation. The Texas Attorney General also reports ongoing investigations into the practices of numerous other drug manufacturers. I am reasonably sure there will be other lawsuits filed. Alabama is no different than Texas and that's because our state was cheated too and by more companies.

WEST VIRGINIA SETTLES ONE OF ITS DRUG PRICING LAWSUITS

A drug maker has agreed to an \$850,000 settlement in a West Virginia pricing lawsuit. The lawsuit alleged Dey Inc., of Napa, California, submitted inflated average wholesale price data for an inhalant used to treat asthma and other breathing problems. The settlement won't affect similar litigation against several other drug makers that is pending. About \$100,000 of the settlement will go to the Attorney General's consumer protection and education fund, with the remainder to be split among the State's Medicaid program, the Public Employees Insurance Agency and the Workers' Compensation program. No state can continue to pay inflated prices for drugs that their citizens need. Obviously, West Virginia will benefit from the settlement. The money received will relieve that state's budgetary burden with more yet to come. As has been reported, a number of states have filed similar lawsuits.

AG'S OFFICE OFFERS HELP TO TROOPS' FAMILIES

Regardless of political persuasion, the people of Alabama strongly support our troops. As I have mentioned before, we also have an obligation to support the families left behind. That is why I was glad to see our new Attorney General doing his part. Attorney General Troy King has designated a staff member and provided a toll-free hot line to help solve problems for family members of Alabamians sent to war. Assistant Attorney General Patrick Roberts, a master sergeant in the Alabama National Guard, will help families with problems. He can be reached at 1-800-626-7676 or 334-242-7558. The Attorney General's con-

sumer affairs office has been helping troops' families with problems. Having a designated person with a dedicated phone number should make it easier for families to find help.

State Adjutant General Mark Bowen, who heads up the Alabama National Guard, says the Guard has family readiness groups that try to solve problems. At present, 2,800 members of the Alabama National Guard are deployed. There are all sorts of problems that face families left behind when a "part-time soldier" is deployed for active duty and especially when the duty station is overseas. We must support our troops and their families. The Attorney General and his staff are to be commended for recognizing the need for help and doing something about it.

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MORE ON COMMON GOOD

In the coming weeks, you will be reading and hearing much more from the group “Common Good.” This group has been assigned a primary role in the well-financed and highly organized attack on the nation’s jury system. I am concerned that the group effectively mixes truthful information, half-truths, and outright false statements in its news releases and public statements. This makes it relatively easy for a group such as Common Good to sell its bill of goods to the public. I hope folks will take time to check out the validity of information put out by this “tort reform” group. The funding sources for groups such as Common Good should be made public. When that happens, I suspect it will show the funding comes from the same corporations now supplying money for other “tort reform” groups. A prime example is the U.S. Chamber of Commerce, which has become a “lap dog” for the National Tort Reform Association.

II. LEGISLATIVE HAPPENINGS

THE SESSION IS OVER

The Alabama Legislature wound up the regular session on May 17th. Both budgets were passed and signed by the Governor. While the budgets are far from perfect, at least budgets were passed. The Governor, Lieutenant Governor, Speaker of the House, and most members of the Legislature should be commended for getting the budgets during a very tough session of the Legislature. The heads of the budget committees in both the House and Senate should also be thanked. Even though this major feat was accomplished, it is just another case of putting a weak series of patches on the State’s fiscal operations. In fact, the State’s “old tire” won’t stand another round of patching.

GOVERNOR SIGNS EDUCATION BUDGET

The education budget was approved by the Legislature on May 6th and

Governor Riley signed the \$4.5 billion budget on May 14th. One of the highlights of this budget was funding to expand the Alabama Reading Initiative statewide within two years. The \$40 million for the Reading Initiative will allow education officials to place it in every public school classroom from kindergarten through the third grade. The Reading Initiative provides specialized training to teachers to help them improve students’ performance. In addition, a school gets a reading specialist to work with teachers and with students who are having problems. Some schools also can qualify for after-school and summer programs to improve reading scores. Schools with the program report higher reading scores, more books checked out from their libraries, and fewer discipline problems. Interim State Superintendent of Education Joe Morton said 370 of Alabama’s 923 schools with K-3 classes have the program now. The State will add 271 schools in the summer of 2005 and the remainder in the summer of 2006, if funding remains steady.

In addition to the Reading Initiative funding, the budget includes extra money for textbooks, school libraries and computers, as well as \$11.7 million for legislators to hand out to projects of their choice in their districts. The grants allow legislators to help small programs that get overlooked in a budget that has to address education needs statewide. The Governor and Alabama Legislature must make public education the top priority for our State. To really do this and mean it includes addressing tax reform and accountability. I hope that will happen soon.

THE GENERAL FUND WAS A LARGER PROBLEM

On the last day of the session, the legislators accepted the conference committee report, which reconciled the differences between the House and Senate versions of the general fund budget. Over \$1.4 billion will be appropriated to the non-education agencies of the state. This is an increase of \$196 million over last year’s funding levels. Medicaid received an increase of \$140 million in the budget, making next year’s appropri-

ation \$36 million. No other agency received any significant increases. In fact, some agencies were cut. A good number of projects were cut from the budget, meaning they get no funding. The general fund will receive additional funds – some taxes and some borrowing from one-time sources – to simply get by for the next fiscal year. This “rob-Peter-to-pay-Paul” approach has to be stopped for the good of our citizens. I hope once the truth of our State’s fiscal crisis sinks in with the public, the Governor and Legislature can sit down and work out a plan to totally reform state government. Unless that is done in advance, however, a special session will be a big mistake.

THE BABY DOUGLAS BILL PASSES

House Bill 253, known as the “Baby Douglas Bill,” passed the Legislature on the last day and has become law. The bill was pushed hard by Alabama Watch from the first day of the session. The bill centers on medication policies in daycare centers, and will save young lives. It creates criminal penalties for day care workers who intentionally drug children to change their behavior or recklessly administer medication.

Alabama Watch really got the ball rolling on this issue and worked hard to get the bill through the Legislature. However, the people who should get full credit for making this happen are the parents of Douglas Hernandez, a 10-week-old child who died after being given cold medication in a day care center. Robert and Mary Hernandez made this a crusade and should be thanked by all of us for their dedication. They turned their personal loss into something good! Mr. and Mrs. Hernandez told the Associated Press they were grateful to everyone who helped them navigate through the legislative process, and put it this way: “The parents won today, and the children won today.”

The Alabama Department of Human Resources already mandates that licensed providers require a parent or guardian to sign weekly permission forms detailing what medicines may be given to their children. Violations, however, carry no criminal penalties. The bill applies to licensed day care facilities

and those that are exempt from state licensure. Passage of this bill was one of the real highlights of the session.

SOME OF THE LEGISLATION THAT DIED

A number of bills died on the final day of the legislative session. None of the bills set out below ever came to a vote:

- The high-stakes electronic bingo games for all of Alabama's dog tracks.
- The credit-scoring bill pushed by Alabama Watch.
- Restricting the transfer of campaign money between political action committees.
- Rewriting the state constitution to ban same-sex marriages.
- Allowing the Ten Commandments to be posted in state buildings.
- Permitting public schools to post the national motto "In God We Trust."
- Requiring state agencies who sign contracts without competitive bids to report the action to the secretary of state.

There were a number of "good" bills that never really got moving and as a result never got to the last day. One of them was the bill by Senator Myron Penn to require the Alabama Supreme Court to be elected in districts. Of course, lots of "bad" bills died too and one of the worst was Alfa's hog bill.

III. COURT WATCH

THE COURTS WILL STAY OPEN

The House and Senate concurred in final passage of House Bill 308, commonly known as the "court fee bill," and that will keep Alabama courthouses open. In short, House Bill 308 raises roughly \$20 million to help restore lost jury weeks and assist the court system to retain current staff. Without passage of this emergency legislation, the courthouses would have been shut down insofar as the justice system –

both civil and criminal – is concerned. For example, the bill raises the filing fee for civil cases in which the matter of controversy exceeds \$50,000 in circuit court to \$299. District court civil cases, between \$3,000 and \$10,000, are increased to \$200. In the final version of the bill, there are no increases of filing fees in small claims matters of any sort, contested or non-contested divorces, child support enforcement matters, civil cases where the matter of controversy is \$50,000 or less, and workers' compensation cases. This was not a popular measure, but it was necessary to make sure our system of justice remains open to the people of our state. When the courthouses close, the people are the losers!

LAWSUIT FILED AGAINST BRISTOL-MYERS SQUIBB IN DEATH OF TEENAGER

Last month we reported on the tragic death of a teenager who died from liver failure as a result of taking Serzone (nefazodone hydrochloride), a controversial antidepressant. A lawsuit was filed on May 17th against Bristol-Myers Squibb on behalf of the family in the Supreme Court of the State of New York. Cassie Jo Geisenhof, aged 19, was prescribed Serzone by her doctors in March 2000. She subsequently developed Serzone-induced liver failure and was ultimately required to undergo a liver transplant at Fairview University Medical Center in Minneapolis, MN in August 2000. Ms. Geisenhof died in April 2004. Serzone has been taken off the market in Canada and Europe, and will be banned in Australia and New Zealand in the coming months. But Serzone still remains a threat to U.S. consumers. In fact, we learned a few days after filing the suit in New York that the company had taken steps that will help some. It halted delivery of any new products. However, we don't consider their action to be enough. So, we requested a total recall on May 19th. I am hopeful we will get some action. If so, lives will be saved. You can see our letter to the company, which is posted on our website.

Instead of removing the drug here, the FDA in 2001 issued a "Black-Box warning," the most serious warning the

government agency can make. The FDA also is studying a possible link between children taking antidepressant drugs like Serzone and suicide attempts. Clearly, that is not enough. The only way to protect the public in the U.S. is to pull Serzone from the shelves. There is too much money being made from sales of this dangerous drug and therein lies the problem. The manufacturer won't voluntarily pull Serzone. I hope the public reaction to the recent events will force the FDA to force a recall.

Our firm currently has about 35 cases for clients involving Serzone. We believe these cases make up perhaps the largest group of seriously injured clients affected by the drug around the United States. It is apparent that Bristol-Myers Squibb will only take action when forced to do so. Why else would Serzone be withdrawn in other parts of the world for safety reasons but continue to be sold to Americans? There have been 21 Serzone-linked deaths in the United States so far, and that is 21 too many. How many more have to die before this drug is banned?

Serzone was approved for use in the U.S. by the FDA for the treatment of depression in December 1994. Before approval of the drug by the FDA, Bristol-Myers Squibb completed multiple pre-clinical studies to test the safety and efficacy of Serzone. As stated in the product label, only two of the eight pre-clinical trials demonstrated that Serzone was effective in the treatment of depression. In the pre-clinical studies of Serzone, 16% of the 3,496 patients who used Serzone had to discontinue the use of Serzone because of an adverse experience. In these same pre-clinical studies, abnormal liver function tests, which are indicative of liver damage, occurred frequently – in at least one out of every 100 patients. Despite the frequency of abnormal liver function tests, Bristol-Myers Squibb failed to include any warning of liver toxicity in the initial warnings. Once Serzone was introduced into the market, Bristol-Myers Squibb began to receive reports of liver necrosis and liver failure, sometimes leading to liver transplantation and/or death. On or about June 1, 2000, the company was required to change the safety label of

Serzone to include the statement that the post-introduction clinical experience with Serzone showed “rare reports of liver necrosis and liver failure, in some cases leading to liver transplantation and/or death.”

On or about January 23, 2001, the FDA again required Bristol-Myers Squibb to change the product safety label of Serzone to exclude the word “rare” from the statement in the product safety label to explain there had been “reports of liver necrosis and liver failure, in some cases leading to liver transplantation and/or death.” As of June 2001, 109 cases of serious adverse hepatic events with a temporal relationship to Serzone therapy were reported to either Bristol-Myers Squibb or the FDA. Of these 109 cases, there were 23 cases of liver failure - 16 of which led to transplantation and/or death. On or about June 21, 2001, as a result of the high incidence of serious adverse liver events, Health Canada, the Canadian equivalent of the FDA, required a letter to be sent to Canadian health care providers to inform them of the serious adverse hepatic events associated with the drug. The Canadian Medical Association followed this letter, on or about June 27, 2001, with a bulletin warning of “severe hepatic injury,” “liver failure” and death associated with the use of Serzone.

On or about December 4, 2001, the FDA required Bristol-Myers Squibb to include a “Black Box” warning on the safety label of Serzone because of the drug’s liver toxicity. This change was not made available to prescribing physicians and patients who were currently on, or had been on, Serzone until on or about January 8, 2002. The Black Box warning informed the public that at least one in 250,000 to 300,000 people who took Serzone for at least a year for the treatment of depression would either die or require liver transplantation. The warning added the fact that the actual number of serious adverse liver events was likely much greater than the reported number because of “underreporting.” The rate of underreporting in the U.S. has been estimated as high as 99%. Despite the possibility of adverse hepatic events, liver toxicity, liver dam-

age and/or death associated with the use of Serzone, Bristol-Myers Squibb has not, at any time during the marketing of the drug Serzone, recommended that patients using this drug be monitored for liver injury.

Andy Birchfield, Roger Smith, and I will handle this case in New York for the family. We will be working with Roberta Ashkin, a very good lawyer from New York, who has had a great deal of experience with Serzone cases. Our goals are to see that the family is fully compensated and that Serzone be taken off the market.

THE ALABAMA SUPREME COURT RACES

This part of the current issue is being written prior to the June 1st primary vote, so the outcome of the vote was not known at this time. However, it appears that big bucks were spent in the primary races for the three Supreme Court seats by some of the Republican candidates. Heavy television and radio buys, as well as costly mail-outs by these candidates, were quite evident. The interesting thing about this primary was that Roy Moore was pretty much the **sole issue** in each of the races. Reading the brochures of two opposing candidates made it difficult to determine which of them was the stronger Moore supporter. The former Chief Justice may have cleared that up before June 1st – if so, it will be interesting to see how that particular race turns out. There was one thing for certain, and that is **all** of the Republican candidates were **conservative**.

One thing that disturbed me in the Republican primary was seeing a sitting justice seeking reelection to the high court telling voters that she had the most “conservative” voting record on the court. Frankly, I can’t see how being “conservative” – or “liberal” for that matter – qualifies a person to be a judge at any level. I suspect that statement was actually coined by a paid political consultant who knows that Alabama is basically a most conservative state, going back to the day of Governor George Wallace and U.S. Senator Jim Allen. That conservatism had nothing to do with “judicial politics.” Interestingly, claiming to be a

“conservative” on the Supreme Court could mean different things to different people: to African-American citizens, it could have racial overtones; to consumers and victims of corporate abuse, it could mean that a justice consistently voted against their interest in cases before the court; to the so-called “religious right,” “conservative” could mean that a justice making such a statement was aligned with former Chief Justice Roy Moore; or to most Alabama citizens it could simply mean that a person was against increasing taxes and was for accountability in government. In any event, I don’t believe that being a conservative – and especially being the “best conservative” around – makes one a fair and impartial judge.

I guess the bottom line is that we need to devise a better system of electing judges that would take away the need for any appeal to partisanship in a judicial race. Non-partisan elections, combined with strong reform of campaign finance laws, would appear to be the way to go. In any event, I am reasonably sure that a “conservative” candidate won the Republican nomination for each of the three Supreme Court seats. I will actually make that prediction!

HUNT PETROLEUM VERDICT OVERTURNED

The Alabama Supreme Court has overturned the \$24.6 million verdict the State of Alabama won against Hunt Petroleum in a natural gas royalty dispute. In 2001, a Mobile County jury returned a verdict for the state of \$4.6 million in royalties and interest and \$20 million in punitive damages. The Supreme Court reversed the fraud aspect of the case, saying the State failed to present evidence that it “relied to its detriment” on the oil company’s monthly royalty reports for production along the Alabama coast. Hunt had paid the state \$4 million on a breach of contract claim that was not involved in the appeal. The majority opinion – taking the verdict away from the State – was written by Justice Harold See.

Several media outlets reported that this ruling could adversely impact the \$3.6 billion verdict that Alabama won against ExxonMobil. Fortunately for the State, that assessment is totally incorrect.

The facts in the two cases are quite different, and that is clear from the transcripts of evidence. Clearly, the *Hunt* decision will not control the outcome in the ExxonMobil case. The evidence in the *Exxon* case contained clear and convincing proof of both fraudulent acts as well as reliance by the State. This is evident from the transcript of evidence. At the end of each day during the trial, we received a copy of the actual testimony taken that day from the court reporter. This helped us make sure nothing that had to be proved was left out of the trial. The composition of the present court would have to affirm the *Exxon* case if the justices follow established Alabama law relating to fraud. I am confident that a majority of the court would do so. However, there will be a few new faces on the court when this appeal is heard, including a new Chief Justice. Justice Champ Lyons, who had to recuse himself in *Hunt*, will be available to hear the *Exxon* appeal. Acting Chief Justice Gorman Houston, who sided with the oil company in the *Hunt* appeal, will have to recuse in *Exxon* since his brother-in-law's firm represents Exxon. Of course, the *Exxon* appeal will most likely be heard at a time after Houston leaves the court.

A RESULT IN THE CAMPBELL CASE ON REMAND

The reversal by the U.S. Supreme Court in the case of *Campbell v. State Farm Mutual Automobile Insurance Company* a few months back has been widely debated in legal circles. The issue in that case dealt with punitive damages. The case has now gone back to the Utah Supreme Court on remand with an opinion from that court having been issued on April 23rd. You will recall that the U.S. Supreme Court held that the imposition of the \$145 million punitive damages award against State Farm was excessive and violated the 14th Amendment. The state supreme court performed the task assigned to them by the High Court, and on remand reduced the jury's award to \$9,018,780.75 in punitive damages. This new number is 9 times the amount of compensatory damages awarded to the Campbells.

The Utah Supreme Court did not accept State Farm's contentions that the U.S. Supreme Court had been overly restrictive and had tied the state court's hands. The state court said that the Supreme Court had entrusted to its judgment "the calculation of a punitive award which both achieves the legitimate objectives of punitive damages and meets the demands of due process." The state court then went through each aspect of the Supreme Court opinion, discussing each in detail. All lawyers who represent victims of corporate abuse should read this opinion carefully.

THE LAWSUIT EXPLOSION MYTH IS JUST THAT

Much has been written about a so-called "litigation explosion" in the U.S. However, statistics released recently tell an entirely different story. It appears that fewer civil cases are going to trial than a decade ago, and juries are awarding less in damages. This is according to a new Justice Department study of state courts in the nation's 75 largest counties. About 97% of all civil cases are settled or dismissed without a trial. The number actually tried in court fell from 22,451 in 1992 to 11,908 in 2001, according to the study. Plaintiffs won 55% of the cases and received \$4.4 billion in damages. The overall median award in jury trials fell from \$65,000 in 1992 to \$37,000 in 2001. This appears to result primarily from smaller awards in automobile accident cases.

Product liability and medical malpractice cases, however, did have increases in damage awards by juries. The median award in product liability cases was \$543,000 in 2001. This is not surprising because the injuries in product liability cases are always severe, usually accompanied with permanent disability and impairments. Of course, many of these cases involve wrongful death. There are no product liability cases filed with minor injuries as the basis for damages. Median medical malpractice damages rose from \$253,000 in 1992 to \$431,000 in 2001. It is significant, however, that plaintiffs won less than one-third of all medical malpractice trials in 2001. I suspect that the trend continued in 2002 and 2003. The myth of a litigation

explosion is knocked down by the Justice Department.

DOCTOR HAD SOUGHT CAP ON AWARDS

One never knows when he or she will become a victim of wrongdoing and need access to the courts. A recent case in point involved a Connecticut medical doctor who won a \$6 million jury award after a sledding accident on town property left him severely injured and impaired. Interestingly, this doctor had lobbied for a cap on damages, including those for "pain and suffering" that juries can award to victims of medical malpractice. In 2000, the doctor was sledding in a city park with his sons when he hit a drainage ditch, fracturing his back and breaking his right leg. The doctor, who has now returned to work, incurred medical bills, suffered lost wages and had his ability to work diminished. He now fears he may have permanent disability. It should be noted that of the \$6.2 million in damages the doctor received in his case, \$1.5 million was for "pain and suffering." The doctor had claimed that the city was negligent in its maintenance of the drainage catch basin. Interestingly, the \$6 million verdict was one of the largest negligence awards ever granted by a jury in Connecticut against a municipality.

Local papers reported the doctor had attended a rally last year in support of a \$250,000 cap on the noneconomic damages – including pain and suffering – that patients can collect in malpractice cases. The award in the doctor's case would have probably slipped by virtually unnoticed in Connecticut, except it came at a crucial time in the medical malpractice reform debate. Caps on damages are being considered by Connecticut legislators. Because of the timing, the case has become a favorite topic of conversation at the State Capitol in Connecticut. The moral of this story is simply that some folks don't like the court system until they need it themselves.

TYSON VERDICT THROWN OUT

The \$1.28 billion jury verdict returned in a Montgomery federal court

against Tyson Fresh Meats for allegedly fixing cattle markets, was thrown out by the visiting federal judge who heard the case. The Organization for Competitive Markets said it was extremely disappointed with the judge's decision to overturn the verdict, and said the order "was based on technicalities, not the finding that captive supplies harm price." Lawyers for the 30,000 cattlemen involved in the case will appeal the ruling. Apparently, the judge left intact the finding that captive supplies harmed all cash sellers of fed-cattle to Tyson in the amount of nearly \$1.3 billion. The court also left intact the finding by the jury that the market for fed-cattle is national in scope. But, the judge found that there were "legitimate business reasons for captive supply." It is difficult to understand how the judge could have let the trial go on for weeks if he believed that Tyson's actions were "legitimate." In any event, the bottom line is that it was a bad day for the cattlemen. I hope the verdict will be reinstated on appeal.

STUDY FINDS SEALED SETTLEMENTS ARE RARE IN FEDERAL COURTS

There has been a great deal of discussion around the country concerning confidential settlements and sealed court records. The Federal Judicial Center, after an exhaustive study, has now concluded that sealed civil settlements are rare in federal court. When they do occur, it is usually in cases involving a death or serious disability. The study also says the documents that remain open to public scrutiny "almost never" included reasons for filing the settlement under seal. There is a good reason why secret settlements have received increased attention in the past few years. Most safety advocates contend that the public is entitled to know about such things as defective cars that present hazards to people. Open-court advocates hold the secret agreements responsible for hiding safety hazards from the public. A prime example of how confidential settlements and sealed records kept defects with Firestone tires and the Ford Explorer from being known earlier.

While the Center's report takes no position on filing settlements under seal,

researchers discovered that judges approve such measures for less than 0.5% of civil cases. And of those cases, 97% of the initial complaints are open to the public. The report has yet to be considered by the U.S. Judicial Conference, which sets policy for the federal courts and commissioned the study through its Advisory Committee on Civil Rules. The report was presented to the committee at its meeting in April. The report was given to a subcommittee, which will review the findings. Recommendations will be made at the full committee's meeting in October.

In addition to the federal district court in South Carolina, only the Eastern District of Michigan limits how long sealed settlement agreements may be sealed. The judicial center study reviewed court rules in every district and applicable case law. The study involved 288,846 cases completed in 2001 and 2002 in a selected sample 52 districts. Researchers found 1,272 cases with sealed settlement agreements, about 0.44% or one in every 227 cases. Three districts sealed settlements at a rate of more than twice the national average, with Puerto Rico topping the list at 3.3%, Hawaii coming in at 2.2%, and the eastern district of Pennsylvania at 0.94%. Personally, I believe that confidential settlements and sealed records should be prohibited in both federal and state courts. The public is entitled to have access to knowledge of hazards relating to products. In addition, consumer fraud that is widespread and not just an isolated incident should also be made public. Many of the cases hidden from the public are precisely the ones the public should know about.

There have been efforts in Congress to pass a bill to prohibit hiding bad conduct. At present, the Sunshine in Litigation Act, which would keep civil cases affecting health and safety open to public scrutiny, is pending in Congress. The bill, last introduced on April 8, 2003, was in the Senate Judiciary Committee when this issue went to the printer. Joanne Doroshov, executive director of the Center for Justice & Democracy, tells us that efforts to limit the use of secret settlements and protective orders in state and federal courts have stalled. In product liability cases,

the car companies never want the public to know how much was paid. In fact, most offers are made with a condition of being kept confidential. I have come to the conclusion that keeping the amount of the settlement confidential, in some circumstances, isn't all that bad. The amount of the settlement isn't the issue. Instead, it's whether sealing the file along with all of the documents hides a public health or safety threat. If it does, there can be no justification for sealing the file and putting documents under a protective order.

LAW DAY OBSERVATIONS

Since Law Day was celebrated around the country last month, it might be good for all of us to reflect on the importance of the rule of law. In 1961, Congress issued a joint resolution setting aside May 1st as Law Day. The resolution said, in part: "It is set aside as a special day of celebration by the American people in appreciation of their liberties and the reaffirmation of their loyalty to the United States of America; of their rededication to the ideals of equality and justice under law in their relations with each other as well as with other nations; and for the cultivation of that respect for law that is so vital to the democratic way of life." Unfortunately, we have allowed the celebration of what should be a most important day to become almost lost in the shuffle of our day-to-day activities. Our state bar association has done a good job of keeping the spirit of Law Day alive and well in Alabama. Local bar associations have also done their job. Without the rule of law – alive and well – our country couldn't survive. It is what makes us different from most other countries in the world.

JURY SERVICE IS A PRIVILEGE

I have always believed that serving on a jury was one of the basic and necessary obligations of citizenship in this country. For most Americans, a chance to serve on a jury will be the closest they get to taking part in the justice system. Because of constant attacks over the past several years on one of the cornerstones of American justice – the jury system, the

privilege of serving a jury may soon become a thing of the past. Having disputes decided by a jury of your peers is a right guaranteed by the U.S. Constitution. Now, we see the use of the system at risk of becoming a rarity.

Jury trials have been on the decline in many states in the decades since Congress designated the first day of May as a day to celebrate the rule of law. In a 2003 report, the National Center for State Courts pointed to decreasing numbers of jury trials being used to decide both civil and criminal cases. Examining 10 states between 1993 and 2002, the report found the number of civil jury trial numbers had declined and 2002 saw drops as large as 78%.

IV. THE NATIONAL SCENE

THE HIGH PRICE OF GASOLINE

The American motoring public is paying excessive prices at the pump for gasoline and it appears that the giant oil companies could care less. While their customers suffer, those companies are simply rushing to their banks. These corporations have manipulated the markets for years, and the government has allowed the practice to go virtually unchallenged. Now we have an Administration in Washington that is more than “friendly” with the oil giants, and that is bad news. I don’t believe the public will tolerate this sort of thing much longer. Working men and women, retirees, small business owners, and people on fixed incomes generally can’t afford to pay excessive prices for gas.

PROJECT FOR THE NEW AMERICAN CENTURY

Until just a few weeks ago, I had never heard of a Washington-based network called The Project for the New American Century (PNAC). After doing a little research, I now understand that this group has been the biggest booster of war with Iraq at least as far back as 1998,

when it started a strong push for war. In fact, PNAC wrote a letter to President Clinton in 1998 insisting that he remove the regime of Sadaam Hussein from power. This letter, which was signed by a group with few if any military backgrounds in their ranks, was very strong on the use of force in Iraq. Because of its timing and content, the letter is quite significant. The letter can be viewed at: www.NewAmericanCentury.org. I encourage you to read it carefully and draw your own conclusions. The following persons signed the Clinton letter:

*Elliott Abrams, Richard L. Armitage
William J. Bennett, Jeffrey Bergner,
John Bolton, Paula Dobriansky,
Francis Fukuyama, Robert Kagan,
Zalmay Khalilzad, William Kristol,
Richard Perle, Peter W. Rodman,
Donald Rumsfeld,
William Schneider, Jr., Vin Weber,
Paul Wolfowitz, R. James Woolsey,
Robert B. Zoellick*

Interestingly, Vice-President Cheney was a founder of PNAC, along with Donald Rumsfeld. It is significant that many of those signing the letter in 1998 are now highly placed in the Bush Administration, including Mr. Rumsfeld who is the current Secretary of Defense. It is not surprising that Rumsfeld (who has never met a camera he didn’t like) has been one of the strong pushers for war in Iraq for years. Unfortunately, none of his reasons for war proved to be accurate. After winning a relatively easy war, we now find ourselves bogged down in Iraq in what appears to be a costly, but no-win situation. The rebuilding of a destroyed country is now costing U.S. taxpayers about \$5 billion each month. The cost in lives, however, is the hardest thing to take. It is clearly the toughest part of the occupation. However, we can’t let the false or misleading reasons for the invasion, or the real motivations for destroying and rebuilding the country, keep us from supporting our troops. We must do that! But, it is more than interesting to see who all actually pushed the President into the war. The question is why?

GOP STILL SETTING FUND-RAISING RECORDS

The Republican National Committee is raising more money than it can spend. The RNC raised at least \$38.5 million last month at an annual gala in Washington, D.C. featuring President Bush. This beat a Party record set when big corporate donations were still allowed. The President delivered the keynote address at the fund-raiser, attended by about 1,500 people. The money total tops the \$30 million that the President helped raise at a Republican congressional dinner and the RNC gala in 2002. That was the last year national party committees could collect “soft money.” Now the national parties can raise only limited contributions from individuals and political action committees, which are funded by people. They can accept up to \$25,000 per year from those donors. The President, Vice-President Cheney, First Lady Laura Bush, the President’s mother, and other face cards are traveling across the country raising money for the RNC and other Republican causes. Since February, the group has raised over \$55 million. A trip into Atlanta last month by the President saw about \$3.4 million raised in a few hours. The Bush campaign will have over \$200 million to spend, and that’s another record.

TAKING CARE OF POLITICAL BUDDIES

If nothing else, the Bush Administration takes extremely good care of its friends and supporters. A prime example can be found in relation to the Medicare Act passed by Congress and pushed by the Bush White House. A few weeks after the Bush Administration named Medco to be one of the first Medicare drug card providers, a company executive helped throw a \$100,000 fund-raiser for the President. Interestingly, the event was headlined by Health and Human Services Secretary Tommy Thompson. Medco Specialty Pharmacy Services president Alan Lotvin was a co-chairman of the mid-April event in New Jersey. The prescription drug card providers have been extremely active with Washington politicians over the last two years, and

apparently it has paid off handsomely.

Companies that won approval from Thompson's department to be the first Medicare drug discount card providers spent at least \$35 million lobbying in 2003. Their executives and lobbyists donated or raised hundreds of thousands of dollars more for Bush's reelection, an Associated Press review found. Companies that will benefit in dealing with government agencies shouldn't be allowed to participate in fund-raising activities when "business" is pending before the government. Wright Andrews, a former president of the American League of Lobbyists, told the Associated Press, "I think it is generally recognized in Washington that involvement in the campaign finance process certainly often can be very helpful to your legislative agenda. It does tend to provide you better access in that people logically are likely to at least ensure that they hear you out." It was no coincidence that Lotvin's parent company, pharmaceutical-benefit manager Medco Health Solutions, and its then-owner, pharmaceutical giant Merck, together spent about \$9 million on lobbying in the capital last year. Merck spun off Medco as a separate company late last summer.

Dozens of companies have won HHS approval since mid-March to offer Medicare drug discount cards. Consumers can begin using the cards this month. Some companies can offer the cards nationwide, others only to their own plan members. Even the ability to provide them on a limited basis is potentially lucrative, attracting a client base the companies hope to keep when Medicare prescription drug coverage begins in 2006. A handful of the winning companies make up the lion's share of the political spending. In addition to Merck and Medco, others with seven-figure lobbying expenses in 2003 included: Blue Cross & Blue Shield Association (\$9.5 million), Aetna (\$3.7 million), United Healthcare (\$2 million), PacifiCare (\$2.1 million) and Wellpoint Health Networks (\$1.7 million). Some lobbyists who helped the companies make their case in Washington last year have strong ties to the Bush campaign or administration. For instance, PacifiCare's lobbyists last year included Tom Loeffler,

who raised at least \$200,000 for Bush's 2004 campaign, and Jack Howard, a former White House employee who worked as deputy assistant to the president for legislative affairs.

Company executives also have played a role in the Bush campaign. United Health Group's chairman and chief executive, William McGuire, earned the label Bush "Pioneer" by raising at least \$100,000 for Bush's campaign, as did Todd Farha, chairman and CEO of Wellcare Health Plans, and Samuel Skinner, a member of card provider Express Scripts' board of directors. Michael Hightower, who collected at least \$200,000 for the Bush campaign to become a Bush fund-raising "Ranger," is vice-president of government relations for Blue Cross & Blue Shield of Florida. The political donations of company employees of companies that won the prescription cards overwhelmingly favored Bush, with at least \$280,000 of their contributions going to the President's campaign. All of the above information comes from the Federal Election Commission.

Some of the companies whose employees gave to Bush's campaign include United Healthcare, the Kaiser Foundation Health Plan or its parent, Kaiser Permanente; WellCare, Aetna, and Medco or Merck. Under the Bush Administration, the cost of health insurance and prescription drugs has gone sky-high. It has to be difficult to take so much money and then say "no" when the donors ask for favors. I suspect the buying of favors is the root cause of many of our problems in the healthcare system.

HELPING POLITICAL FRIENDS IN HIGH PLACES PAYS OFF

Six weeks after Cintas Corp. Chairman Richard T. Farmer co-hosted a \$1.7 million fundraiser for the President in Cincinnati, Bush's Environmental Protection Agency proposed exempting industrial laundries like Cintas from rules that protect workers from handling poisonous materials. On November 20, 2003, the U.S. Environmental Protection Agency released new draft regulations that, if adopted, will weaken federal safe-

guards for employees who handle poison-soaked shop towels. The new rule would exempt industrial laundries like Cintas from federal hazardous and solid waste requirements for shop towels contaminated with toxic chemicals. We are not talking about a small exemption. Each year, 3.8 billion industrial shop towels, which are used to clean up toxic materials or spills in the work place, or to wipe-down machinery, are sent to be cleaned.

According to reports, Cintas has been found to have repeatedly violated worker safety and environmental protection standards. I understand that workers were never told about all the chemicals they were forced to handle. Clearly, they were never really warned about the toxic dangers from these chemicals. Towels handled by Cintas employees were often in plastic bags dripping with solvent.

The EPA predicts this proposal would save affected facilities over \$30 million per year. Cintas and Farmer are already doing quite well. Cintas made \$249.3 million in profits in fiscal year 2003 and Farmer is ranked by Forbes as the 140th wealthiest man in America with a net worth of \$1.5 billion. You shouldn't be surprised to learn that Farmer is a Bush Ranger, meaning that he has personally raised more than \$200,000 for the President's re-election campaign. In addition, Farmer was quite instrumental in Bush's 2000 campaign and has been a major contributor and fundraiser for the President and the RNC. Since the 2000 election cycle, Cintas and its employees have given almost \$2.2 million to federal candidates and parties, with 100% of that money going to Republicans. So far this election cycle, in addition to Farmer, 15 Cintas executives have contributed to Bush, with eight of them giving the maximum \$2,000 contribution.

U.S. QUESTIONS MORE IRAQ MEAL BILLS FROM HALLIBURTON

The U.S. military has suspended an additional \$159.5 million in meal charges submitted by a unit of Halliburton as the military continued to audit bills for feeding soldiers in Iraq and Kuwait. The Defense Contract

Audit Agency said it was suspending the amount after incomplete files and bills were found to have been submitted by subcontractors to Halliburton's Kellogg Brown and Root unit. It is now well known that the U.S. military's biggest contractor in Iraq is Halliburton and its subsidiaries. The government had already suspended \$35.8 million in contested charges, and auditors said Halliburton had voluntarily deleted \$141 million from dining room billings in which costs exceeded the number of meals served.

Auditors are continuing to evaluate all 64 dining facilities run by KBR in Iraq and Kuwait. This work was expected to be completed by the end of this month. So far, KBR has billed the government for more than \$1 billion for feeding our troops. About 20% of these costs now have been withheld. KBR's work in Iraq could mean up to \$18 billion in business for the Texas-based company, according to government estimates. I am sure it is just a coincidence that the company was once run by Vice-President Dick Cheney, who was one of the men who apparently pushed the President into this war.

THE SPECIAL INTEREST SPOTLIGHT

It is extremely important to be able to know where candidates and political parties get their money. The Special Interest Spotlight is a regular report on the flow of money in politics. It is published by Campaign Money Watch, a nonprofit campaign finance reform group that holds candidates accountable for the special favors they do for their contributors and for opposing comprehensive reform. This is a good source of information and it tracks candidates from both parties.

V. CONGRESSIONAL UPDATE

A BAD ASBESTOS BILL HANGS AROUND

The "Asbestos Bailout bill," S.2290, which we discussed last month, was properly stopped in the U.S. Senate.

Backers of the bill, such as President Bush and Senate Majority Leader, Bill Frist, claimed that the bill would unclog federal courts of asbestos suits and make the claim process for asbestos victims "fair." In reality, the bill is an attempt to take away the right to a trial by jury for many injured people and to cap liability for decades of deadly misconduct by asbestos manufacturers and distributors. The members of the Senate were right in refusing to bring the bill up for a vote. Many times, the politicians discuss bills of this sort without really considering the impact the legislation will have on individuals. If the Senate had passed S.2290, as proposed, it would have let off the hook companies that were responsible for literally poisoning workers with asbestos. The right to file suit would have been taken from these workers and their families, and that's just plain wrong.

It is important to note that payments for the proposed trust fund would only be made over the next 27 years under the bill. Many have rightly pointed out that the trust fund would be severely underfunded, would deny individuals the right to seek compensation in courts and would be a blatant bailout for thousands of companies rightfully targeted by injured persons. The Environmental Working Group released data that show at least 43,000 Americans died from asbestos-related cases from 1979 to 2001. Further estimates show that 10,000 persons annually will die from asbestos-related cancer. The number of persons being diagnosed with cancers related to asbestos is increasing steadily, and a 27-year payout is not sufficient for those who have not yet been diagnosed.

One part of the bill that went virtually unnoticed dealt with people with second-hand asbestos exposure. The bill would have taken away the right of those victims to file claims with the proposed trust fund. The claim of any person who could lawfully prove that his or her asbestos-related cancer came from second-hand exposure would have wiped out immediately upon the bill becoming law. It is difficult to comprehend how Corporate America could be so indifferent as to those who are dying. Instead of protecting asbestos

workers, this bill as proposed protects the corporations who poisoned innocent victims. As we went to the printer, another bad asbestos bill was being circulated by the Republican leadership in the U.S. Senate. Considering the source, you can rest assured victims and their families will be short-changed if the new bill passes.

ASBESTOS FUND NEEDS

As stated above, the debate in Congress over asbestos appears to be far from over. Unfortunately, much of the discussion has centered around the welfare of Corporate America – including the insurance industry – and not enough on the victims of asbestos diseases. The needs of victims and their families should be the top priority for the Bush White House and to the Republican leadership in Congress. Unfortunately, that hasn't been the case. Clearly, the needs of the proposed national asbestos victims fund will be very high. An analysis by the AFL-CIO says that approximately one-half of the \$124 billion proposed would actually be needed within 5 years. The report from the labor group, which represents workers and their families, revealed that at least \$60 billion would be needed in the first 5 years of operating an asbestos fund. Approximately \$54 billion of that will be needed in the first 3 years to deal with the big number of claims that may be filed.

VI. CAMPAIGN FINANCE REFORM

THE FEC FAILS TO DO ITS JOB

A proposed regulation that would have banned so-called "Section 527" groups from using "soft money" in federal campaigns, while not interfering with the activities of non-profit organizations, should have been approved. The resolution, drafted by two Federal Election Commission commissioners, was a step in the right direction. Unfortunately, the FEC failed to do its job. The proposal would have subject-

ed Section 527 groups, named after a provision of the Internal Revenue Code, and whose primary purpose is to promote the election or defeat of candidates, to a ban on raising and spending money from corporations, unions and wealthy individuals. Appropriately, 501(c) non-profit groups would have been explicitly excluded from the reach of the regulation.

After the McCain-Feingold Campaign Finance Reform Law took effect, numerous Section 527 groups pledged to reopen the soft money spigot in the place of the national parties. Encouraged by party leadership, these groups planned to bring back \$200 million to \$300 million in special interest soft money to influence the 2004 elections. Joan Claybrook, President of Public Citizen, aptly stated: "Section 527 groups have always been little more than a loophole in the federal campaign finance law. Hiding in the tax code, Section 527s have claimed immunity from the contribution limits of federal election law, all the while raising and spending unlimited special interest money expressly for the purpose of affecting federal elections." The FEC in the 1980s revised the campaign finance rules to allow money from corporations, unions and wealthy individuals in excess of the contribution limits to flow to the parties for so-called party building activities. Prior to McCain-Feingold, this soft money amounted to \$500 million in the 2002 election cycle, buying all kinds of favors for special interest groups, from simple Lincoln bedroom sleepovers for members to more serious corruption of public policies.

As a result of the rejection by the FEC commissioners, new limits for political groups pouring millions into ads and voter drives in the presidential election went down the drain. Republicans quickly predicted the decision would prompt a surge in big donations for their side. The FEC's decision literally tells major GOP contributors to "come on in, the water's fine." Republican candidates have always had access to big bucks from Corporate America. The result of this action will allow "no-holds-barred spending" this election year. Pro-Republican groups, which have held back on spending awaiting the FEC

decision, will quickly jump in and surpass the Democrats. Much of the soft money that used to go to parties before the law went into effect in 2002 will flow to new tax-exempt groups that don't have to disclose their fund raising and spending. This is a practice that must be stopped.

SPENDING IN THE RACE FOR THE WHITE HOUSE

The wild spending in the presidential race this year, which is unprecedented, should convince the American people that completing the campaign finance reform efforts in Congress is an absolute necessity. With the Election Day still months away, money is being spent at a record pace by both candidates, who haven't even gone through the nominating process. The recent FEC action, referred to above, will do nothing but encourage special interests to keep the "big bucks" flowing. The public deserves better. If the wild spending we are experiencing isn't a good enough reason to "fix" a "broken" and "corrupt" system, I don't know what more it will take.

VII. THE CORPORATE WORLD

STATUS OF HIGH-PROFILE CORPORATE SCANDALS

We are so used to hearing of new corporate scandals on the nightly news that they no longer make a big splash. In fact, the exception would be a night when there was no such report. There used to be a book-of-the-month club that many families utilized in their homes. That club was generally a good thing and actually benefited the families joining up. Now there is a club that is made up of a good many large corporations operating in this country, and I have seen it labeled as the "scandal-of-the-week club." Clearly, the conduct of some in Corporate America has been a major shock. Most Americans trusted the bosses who ran these companies and believed that their trust was justi-

fied. It took the Enron scandal and all of the resulting media coverage to wake up persons who had invested their money and never knew what was going on. When the Enron debacle happened, even the government finally began to take an interest. The massive scandals that were uncovered shocked the public for a time. A look at some of the most high-profile recent corporate scandals, and the status of pending legal action, follows.

- **Enron Corp.**

Former chief executive Jeffrey Skilling pleaded innocent in February to fraud, conspiracy, insider trading and other federal counts related to the once-mighty energy giant's collapse. Former chief financial officer Andrew Fastow has pleaded guilty to two counts of conspiracy and agreed to cooperate with prosecutors.

- **Adelphia Communications Corp.**

Founder John Rigas and his two sons, as well as former assistant treasurer Michael Mulcahey, are on trial in federal court, accused of stealing tens of millions of dollars from the cable television giant's investors to support a lavish lifestyle.

- **Credit Suisse First Boston**

The company's former investment banking star Frank Quattrone was convicted May 3 on federal charges of obstruction of justice. His first trial last year ended in a hung jury. Quattrone made a fortune taking Internet companies public during the dot-com stock craze.

- **HealthSouth Corp.**

Fired CEO Richard Scrushy is scheduled for trial in August on federal charges of leading a multibillion-dollar scheme to overstate HealthSouth earnings to make it appear the company was meeting Wall Street forecasts.

- **Martha Stewart Living Omnimedia**

On March 5, a federal jury convicted company founder Martha Stewart of conspiracy, obstruction of justice and making false statements related

to a personal sale of ImClone Systems stock. Her request for a new trial, based on evidence that one juror lied about his background, was denied.

- **Qwest Communications International Inc.**

Federal prosecutors failed to win a conviction against any of four former mid-level executives accused of plotting to help the company improperly book \$34 million in revenue. Each man faced 11 charges including conspiracy and securities fraud. On April 16, a jury acquitted John Walker and Bryan Treadway of all charges. The jury acquitted Grant Graham of three wire fraud charges, but deadlocked on the remaining charges against him and on all charges against Thomas Hall.

- **Tyco International Ltd.**

A state court judge declared a mistrial in the case involving former CEO L. Dennis Kozlowski and former CFO Mark Swartz, who were accused of stealing \$600 million from the company. The judge said there had been undue pressure on one juror. A retrial is probable.

- **WorldCom Inc.**

Former CEO Bernard Ebbers has pleaded innocent to federal fraud and conspiracy charges for allegedly directing a massive accounting fraud now estimated at \$11 billion. Former CFO Scott Sullivan has pleaded guilty to conspiracy and securities fraud charges and agreed to testify against Ebbers.

This list could be much longer, but since my wife, Sara, tells me the reports are getting too long, I will stop – for now.

A CORRUPT CORPORATE MENTALITY

Doing business with the government has always been lucrative, but the public was largely unaware of how things really worked. Many large U.S. corporations depended on large contracts with the U.S. government as a major revenue source. American citizens have every right to expect these com-

panies to obey the law and be above-board in all of their dealings with the government. Northrop Grumman Corp. is one of these corporations. Internal documents obtained by the *Wall Street Journal* have revealed that Northrop Grumman covered up major accounting irregularities during the late 1980s. This was done in an obvious effort to stay in the good graces of the Pentagon. According to the *Journal*, the documents were the basis for a U.S. government lawsuit against Northrop Grumman that could result in penalties of hundreds of millions of dollars. The documents reveal questionable behavior going all the way back to the end of the Cold War and involve the company's B-2 Stealth bomber and electronic systems it built for military aircraft.

The Justice Department's False Claims Act case against Northrop Grumman has been pending for several years. It accuses the company of defrauding the government by overcharging for advanced radar-jamming devices and other protective equipment installed on some of the advanced jets, including the F-15 fighters and B-1 bombers. Managers working for the corporation's Defense Systems Division in Rolling Meadows, Illinois, recognized the pervasive cost-accounting and material-tracking problems and sought to conceal them from Pentagon auditors, according to the documents. One particular memo, dated February 21, 1986, was distributed to 37 managers. This memo pretty well tells how this corporation did business when it stated: "we can't tell the truth." It is pretty easy to see how corporations can justify cheating the government when a philosophy of this sort prevails, and that's a sad commentary on our times.

PUNISHED GOVERNMENT CONTRACTORS LIST

We have repeatedly reported on how some in Corporate America, including the defense contractor mentioned above, think it's no big deal to cheat when the victim is the U.S. government. With all of the billions of dollars being spent to "rebuild" Iraq, it might be interesting to see who all is getting the contracts. Ten companies with U.S. contracts or subcontracts in Iraq have paid more than \$300 million in penalties dur-

ing the past four years. Most folks I talk with have a hard time understanding why the government continues to do business with corporations that cheat the government and are caught. The ten companies and their questionable activities are set out below:

- **Northrop Grumman Corp.**

Northrop Grumman Corp., whose Vinnell Corp. subsidiary was awarded a \$48 million contract to train the new Iraqi Army last year. Northrop Grumman has been penalized \$191.7 million in the past four years, including:

- \$60 million last year to settle allegations of improper charges on shipbuilding contracts.
- \$20 million last year to settle allegations of selling defective equipment to the Navy.
- \$111 million last year paid to the Pentagon and NASA to settle alleged overcharges by its TRW subsidiary.
- \$750,000 to the Pentagon in 2000 in a case involving allegations of providing faulty replacement parts for the JSTARS airborne surveillance system.

- **Lockheed Martin Corp.**

Lockheed Martin Corp., awarded a subcontract by Bechtel Corp. to provide airport telecommunications in Iraq. Lockheed Martin has been fined \$85.5 million in the past four years, including:

- \$37.9 million last year in a case alleging inflated prices on four Air Force contracts.
- \$7.1 million last year to settle charges of defrauding the Pentagon and NASA.
- \$1.4 million last year to settle allegations of overcharging the Air Force.
- \$3.1 million in 2002 to settle allegations of selling defective sensors for the F/A-18 Hornet jet.
- \$2.1 million in 2002 to settle alleged fraud on Trident missile programs.
- \$1.3 million to the Environmental Protection Agency in 2002 to settle alleged environmental violations.
- \$530,000 to the Pentagon in 2002

to settle charges it used employees who lacked the proper qualifications.

- \$10.5 million to the Federal Aviation Administration in 2001 to settle allegations of overcharging rent on four buildings.
- \$450,000 to the Pentagon in 2000 to settle charges of using government equipment on commercial projects.
- \$1 million to the Energy Department in 2000 to settle charges of violating safety requirements.
- \$13 million in 2000 to settle charges of transferring technology to China that could have been used for missiles.
- \$4.2 million to the Pentagon in 2000 to settle charges of misusing foreign military sales money.
- \$3.5 million to the EPA in 2000 for cleanup costs of a Superfund site in Colorado.

- **Great Lakes Dredge & Dock Co.**

Great Lakes Dredge & Dock Co., awarded a subcontract by Bechtel to dredge the Iraqi port of Umm Qasr. A federal court ordered Great Lakes Dredge & Dock Co. to pay the government \$969,000 in 2002 for environmental damage caused by tugboats in the Florida Keys National Marine Sanctuary.

- **Panalpina**

Panalpina, a Swiss freight-forwarding company that has a Bechtel subcontract in Iraq, paid a \$150,000 fine in 2001 for alleged misuse of its U.S. freight-forwarding license.

- **American International Contractors, Inc.**

American International Contractors, Inc. (AICI) is fifth on our list. This corporation has a \$325 million contract to rebuild Iraqi transportation systems in partnership with its parent company, Swiss-based Archirodon LLC, and two other firms. AICI, Archirodon and Syska Hennessy Group, Inc., also have a \$500 million emergency military construction contract in the Central Command region, which includes Iraq and Afghanistan. AICI paid

\$4.7 million in fines after pleading guilty in 2000 to bid rigging on a water project in Egypt funded by the U.S. Agency for International Development.

- **Bechtel Corp.**

Bechtel Corp., awarded \$1.03 billion for a prime reconstruction contract last year by USAID, followed by a \$1.8 billion prime reconstruction contract from USAID awarded in January, is another culprit. Bechtel's penalties include:

- \$30,000 in 2001 to the EPA to settle charges of violating emissions rules.
- \$82,000 in 2000 to the Energy Department to settle charges of exposing workers to unsafe levels of radiation.

- **Computer Sciences Corp.**

Computer Sciences Corp., whose DynCorp subsidiary has a \$50 million State Department contract to train Iraqi police and a \$7.8 million Pentagon contract to make identification cards for all Americans in Iraq, is next on the list. CSC's penalties include:

- \$6.4 million in 2000 to settle charges a subsidiary made false claims involving defaulted student loans.
- \$9,000 to the Pentagon 2001 to settle charges of billing the Defense Department for time CSC workers spent taking classes.

- **Fluor Corp.**

We also find Fluor Corp., which, in partnership with AMEC Ltd., has three contracts worth a total of \$1.7 billion to rebuild Iraq's electricity, water, sewer and waste systems, on the list of prior offenders. Fluor's penalties include:

- \$100,000 to the Energy Department in 2000 to settle charges of providing defective pipes.
- \$8.5 million in 2001 to settle charges of improperly billing the Pentagon for commercial costs.

- **AMEC Ltd.**

AMEC Ltd., which, in partnership with Fluor, has three contracts worth

a total of \$1.7 billion to rebuild Iraq's electricity, water, sewer and waste systems, is number 9 on the list. AMEC's penalties include:

- \$500,000 fine in 2000 in Missouri after pleading guilty to fraud involving a federal building construction contract.
- \$700,000 fine in 2002 in California after pleading guilty to fraud on two federal building contracts.
- A ban on receiving federal contracts from February 2002 to February 2003.

- **Halliburton Co.**

You shouldn't be surprised to find Halliburton Co., which received \$3.6 billion under contracts to provide meals, laundry, housing and other services to troops in Iraq and to rebuild Iraq's oil industry, as a prior offender. The Vice-President's former company also was awarded a \$1.2 billion contract in January to rebuild the oil industry in southern Iraq. Halliburton paid \$2 million in 2002 to settle charges it inflated charges on a maintenance contract at now-closed Fort Ord, California.

It is shocking to read of all of the bad things done to the American taxpayers by corporations doing "big business" with the U.S. government. How can these companies continue to get these lucrative contracts? It would appear that at the very least, companies that cheat should be banned by the government after being caught cheating on more than one occasion. Could it be that having friends in high places makes a difference?

JANUS SETTLES FOR \$226.2 MILLION

Janus Capital Group Inc. has agreed to pay \$226.2 million to settle state and federal charges that the Denver-based mutual fund manager helped favored clients profit at the expense of average investors. Janus will pay \$50 million in restitution, \$50 million in civil penalties and will reduce fees by \$125 million over five years as part of the settlement. It will also turn over \$1.2 million to Colorado authorities to be used for investor education initiatives. The settle-

ment with New York Attorney General Eliot Spitzer, Colorado Attorney General Ken Salazar and Colorado Securities Commissioner Fred Joseph is the latest in a series of setbacks for Janus, the nation's ninth-biggest fund company, which controls about \$145 billion in assets. Janus, which cultivated a reputation in the 1990s as "a go-to, technology-savvy investment adviser," suffered declines during the economic downturn and has lost investors as a result of the mutual fund scandal.

As we have mentioned in previous issues, "market timing" involves quick trading of mutual fund shares to exploit price discrepancies. The practice is not illegal in itself, but it can hurt long-term investors by driving up costs and diluting returns. Regulators said Janus failed to disclose to other investors that it allowed selected clients to benefit from the practice, despite prospectuses for some Janus funds that said they were "not intended for market timing or excessive trading." The settlement continues the efforts to level the playing field for mutual fund investors. Market timers should not be given special access and permitted to profit at the expense of long-term investors. The Securities and Exchange Commission is taking part in the settlement. However, the settlement is still subject to the approval of the agency's five commissioners. I have to wonder whether we would be witnessing all of the reform were it not for an extremely tough and aggressive prosecutor who happens to be Attorney General in New York.

COCA-COLA MAY HAVE COOKED ITS BOOKS

A published report in *The Wall Street Journal* last month said the federal government is moving ahead with investigations involving Coca-Cola. The issue is whether the company cooked its books. *The Journal* said a grand jury was scheduled to hear from company employees. In this regard, securities regulators have issued subpoenas seeking relevant information. *The Journal* said both the U.S. Attorney's office in Atlanta and the Securities and Exchange Commission are zeroing in on allegations that Coke sent excessive amounts of beverage concentrate to bottlers and

other distributors in Japan and North America to inflate its financial results in recent years. The report said former Coke finance officials told investigators the company did engage in so-called "channel stuffing" to match or top quarterly sales and profits goals.

PEPSI-COLA AND FRITO-LAY GET SEC NOTIFICATION

Coca-Cola is not the only soft drink giant to find itself under the gun. The Pepsi-Cola and Frito-Lay divisions of PepsiCo Inc. have been notified by the staff of the Securities and Exchange Commission that the agency will recommend bringing a civil action against the units. The SEC is alleging that a non-executive employee at Pepsi-Cola and another at Frito-Lay signed documents in early 2001 prepared by what is now called Kmart Holding Corp. acknowledging payments of \$3 million from Pepsi-Cola and \$2.8 million from Frito-Lay. Kmart allegedly used the documents to improperly record the timing of revenue from these businesses. Associated Press reports that Pepsi-Cola and Frito-Lay are cooperating with the investigation. Apparently, the inquiry doesn't involve any allegations regarding PepsiCo's own accounting for its transactions with Kmart or PepsiCo's financial statements.

SEC CHARGES PIMCO'S CHAIRMAN OF BOARDS WITH FRAUD

The Securities and Exchange Commission has accused several units of PIMCO Funds, as well as the Chairman of the Boards of more than two dozen of PIMCO's mutual funds, of defrauding investors by allowing a favored client to engage in trading in stock funds that violated the firm's own rules and hurt long-term investors. Significant in these charges is that this is the first time the SEC has taken action against the chairman of a fund's board. These charges also include the first time a portfolio manager has been accused in playing a role in setting up improper agreements to allow short-term trading. When the misconduct starts at the top, and not with some low-level employee, the

"big boys" need to answer for their wrongdoing. For many years, critics have complained that chairmen of fund boards shouldn't have direct ties to fund-management companies, as is the case at PIMCO Funds. The SEC has now proposed a rule that would require an independent chairman.

NORTEL NOW FACES INVESTIGATIONS

The Securities and Exchange Commission has opened a formal investigation into Nortel Corporation's accounting problems. The Canadian telecommunications-equipment maker has been under SEC inquiry about its fall 2003 restatement of its results and its recent plans to restate past results for the second time. In April, Nortel suspended its chief financial officer and its controller, while admitting that an ongoing examination would lead to a restatement of results for 2003 and one or more earlier periods.

Now, a federal grand jury in Texas has subpoenaed the company's records as part of a criminal investigation. Once again, it appears that the real losers in scandals like this one are the hardworking employees of the company and its shareholders who believed accurate financial information was being supplied.

SHELL EXECUTIVES HID THE TRUTH

We covered briefly the problems at Royal Dutch/Shell Group in the April issue. An internal investigation by the company had revealed disputes at the executive level over how the company handled evidence that Shell had greatly exaggerated its oil and natural gas reserves. The former Chief of Exploration for Shell, Walter van de Vijver, had asked that the truth be made public. His boss, Sir Phillip Watts, Shell's then Chairman, however, refused to do so. Excerpts of e-mails have now been released revealing the subordinate's anger over the situation he found himself in. Van de Vijver told his boss: "I am becoming sick and tired about lying about the extent of our reserves, issues and the downward revisions that need to be done because of far too aggressive/optimistic bookings".

Reserves are a very important indicator of an energy company's financial health and are reported in financial filings. As a result of these exaggerated reserves, probes of Shell were started, as reported, by the Justice Department and the Securities and Exchange Commission. A summary of the documents released indicates that Mr. van de Vijver wanted to reveal the truth to investors as he repeatedly complained about the problems internally to his boss. He ultimately failed, however, by going along with Sir Phillip Watts and refusing to take his complaints outside the executive inner circle. The scandal involving Shell and the reserve downgrade has raised serious questions about how other oil companies account for their assets, notably the reserves of oil and gas they claim to own in the ground.

The documents released are significant for several reasons. The documents indicate that the company's top management team and other top executives were completely aware of serious reserve-accounting problems for years, but did not tell the truth to regulators, the public or their own boards. Interestingly, the documents reveal that the Shell executives failed to disclose their serious problems when they were lagging behind their closest competitors, ExxonMobil Corp. and BP. Many of the documents show Mr. van de Vijver pointing out the rapidly growing difference between what the company executives knew internally and what Shell was disclosing to the investing public. In fact, Mr. van de Vijver warned other executives in the company of the consequences that could occur if they kept trying to keep the market "fooled."

Unfortunately, many large companies have shown repeatedly that they have no conscience when it comes to lying to their investors, to the public that buys their product, and to the governmental regulators. With the recent deception at HealthSouth, WorldCom, Enron, Tyco, and others, it is becoming more difficult for investors to know how well a company is really doing. Also, it is being made most clear that corporate fraud does go on at the very highest levels of many large corporations – certainly much more often than people think.

INVESTMENT BANKER CONVICTED

It should never pay to obstruct justice, regardless of the means used to obtain that end, or the setting in which it occurs. Frank Quattrone, a star investment banker during the Internet stock bubble, was convicted last month of obstructing justice by sending an e-mail message encouraging colleagues to destroy files while a criminal probe of the bank was under way. Quattrone had been told by a high-ranking Credit Suisse First Boston lawyer that the bank was the subject of a criminal investigation. A federal jury in New York returned guilty verdicts on all three counts against Quattrone — obstructing a grand jury, obstructing federal regulators and witness tampering. It now appears Quattrone will go to prison.

You may recall that Quattrone rose to stardom in the banking industry in the late 1990s, while dot-com stocks boomed. He took technology companies like Amazon.com and Netscape Communications Corp. public and made \$120 million at CSFB in 2000. By late 2000, the government was looking into whether some CSFB clients had paid excessive commissions — essentially kickbacks — in exchange for getting a piece of hot initial public offerings of stock. Quattrone claimed that the investigation was not on his mind when he sent the document-destruction e-mail to his investment bankers because IPO allocations were handled by a different part of the bank. But, based on reports from his trial, it is highly unlikely that he was innocent of the changes. It appears that destroying "bad documents" with no fear of getting caught had become the accepted practice in the industry.

VIII. PRODUCT LIABILITY UPDATE

FORD OVERRULED SAFETY ADVICE ON RECALL REQUEST

Nothing that Ford Motor Co. does concerning safety really surprises me

any more. The carmaker has consistently placed profits over safety for the past several years. We now learn that Ford actually overruled its own safety engineers' recommendations to recall up to 4.1 million pickups and sport utility vehicles after they had found sub-standard door latches. A Ford safety engineering team determined in March 2000 that door latches on certain 1997-2000 light trucks did not meet federal safety standards. The trucks include the popular F-150, F-250, Expedition, and Lincoln Navigator models, according to internal Ford memos made public as part of civil lawsuits pending in courts. After the recommendations, Ford ordered immediate design changes for future vehicles. But the automaker decided against a recall, which could have cost up to \$527 million. Instead, the company determined that the latches could pass a rarely-used alternative compliance test. There have been a good number of lawsuits filed against the automaker contending that latch failures led to fatal accidents involving doors that flew open. Many of these cases have been settled by Ford, but others are still pending.

Federal safety officials are reviewing allegations that Ford by-passed federal laws by failing to recall the 4.1 million vehicles and alert the National Highway Traffic Safety Administration of the latch issue. As expected, Ford maintains the door latches are safe and in compliance with federal laws. It will be interesting to see what action – if any – NHTSA takes. Failure to meet safety standards that are not only the bare minimum required, but oftentimes weak – should demand a recall take place.

Internal company records produced in response to the lawsuits showed that Ford had ordered and installed substandard door handle springs on up to 4.1 million F-Series trucks and Expedition and Lincoln Navigator SUVs from the model years 1997 to 2000, but decided against ordering a recall or reporting it to the federal government. The springs have been cited in at least six liability lawsuits involving deaths and serious injuries. The National Highway Traffic Safety Administration reported that the issue had been brought to its attention. It certainly appears that this is a safety

defect that Ford was required to report to NHTSA. According to Ford documents that emerged in various lawsuits, the issue goes back to 1997 when Transport Canada, the Canadian vehicle safety agency, informed Ford that a 20-mile-an-hour impact test on a Ford F-150 pickup produced an unexpected result. Their report to Ford was: "During the impact, the passenger's door was flung open."

The memorandum recommended a recall, noting that the problem was "100%" attributable to the single component. But instead, it said, "inventories of springs at Donnelly were bent before installing them in the handles to increase installed handle torque above 360Nmm," or newtons per millimeter. Permanent corrective action, it said, would involve "a redesign of the outside door handle spring." Yet two years later, on March 25, 2002, another Ford memorandum said shockingly no defects had been found and that "it is Body Engineering's recommendation that this issue be closed." Ford has denied any violation of federal standards that require doors to withstand a force of 30 times gravity. Ford says their latches complied with an alternative method for measuring vehicle compliance: a brief impact test called "approved crash pulse." NHTSA declined to recognize that test as far back as 1975.

As I stated at the outset, I am no longer surprised that Ford places a very low priority on safety as opposed to profits. I wish I could say that Ford is the only carmaker that has this philosophy; unfortunately, that is not the case. I also wish I could say that ignoring the advice of design engineers by these companies was the exception, rather than the rule. However, running into that sort of thing in our cases makes me realize it happens all too often.

NHTSA REPORT DOCUMENTS NEED FOR ACTION ON AUTO SAFETY BILL

The report released last month by the National Highway Traffic Safety Administration on "non-traffic motor vehicle-related deaths" further reinforces the need for Congress to enact the strong safety provisions contained

in the Senate version of the pending federal highway bill (S. 1072). The report- *Data Collection Study: Deaths and Injuries Resulting from Certain Non-Traffic and Non-Crash Events* - documents about 350 deaths per year, many of them children, from carbon monoxide poisoning, vehicle backovers, exposure to excessive heat caused by entrapment in a passenger compartment or trunk, and strangulation from power windows. These are all events occurring in non-crash happenings. Although under the law NHTSA has responsibility for protecting the public from such events, the agency does not routinely collect these data. This special report came about because of requests being made by consumer advocates and members of Congress. Many of these deaths are preventable with available and cost-effective design or technology changes. Two of the four major causes of fatalities documented in the report - backovers and power window strangulation - are addressed by safety provisions in S.1072, which is labeled as the Safe, Accountable, Flexible and Efficient Transportation Equity Act. The Senate version is now being reconciled with the House version, which has no auto safety provisions. This legislation is expected to be completed before July 1st and I hope it will include the safety measures.

NHTSA should continue to collect and analyze these data, which come primarily from death certificates, news reports and literature reviews. Congress should move swiftly to pass the pending legislation to prevent the deaths of more children and adults in these traumatic accidents. Public Citizen and Kids and Cars are to be commended for bringing public attention to these tragic, preventable deaths.

NHTSA PROPOSES TOUGHER CRASH-SAFETY TESTS

Federal regulators have proposed a major overhaul of side-impact crash tests on cars and trucks. The new test procedures announced last month would require the industry, by the end of the decade, to equip almost all new vehicles with inflatable curtains and other side airbags that protect people's

heads. The proposals include using crash-test dummies that, for the first time in government tests, would be equipped to measure injuries to the head, the most vulnerable part of the body in side-impact collisions. In another first, they also include using dummies to represent women and children of small size, who are at disproportionate risk in side-impact accidents. Additionally, a new test design would better reflect the risks that people in cars face from the growing number of sport utility vehicles and large pickup trucks on the road.

NHTSA estimates that adding side airbags would save 700 to 1,000 lives a year and cost the auto industry \$1.6 billion to \$3.6 billion. In the test now used, a 3,000-pound barrier meant to simulate a passenger car is rammed at 33.5 miles an hour into the sides of cars and trucks weighing up to 6,000 pounds. NHTSA proposed adding a test that would ram vehicles sideways into a fixed pole at 18 to 20 miles an hour. The test would reflect the effects of crashes with taller vehicles, trees or utility poles, and be conducted on vehicles up to 10,000 pounds. The plans will not be made final until late next year after a comment period from the industry and the public. They have already passed through a review by the Office of Management and Budget. If adopted, they will force automakers to do something they should have done long ago, and that is to install side airbags that offer head protection in most vehicles. The industry will have to reevaluate whether the airbags now in use can meet the proposed standards. Research by the traffic safety agency showed that some vehicles offer poor levels of protection to shorter drivers and passengers, even with airbags.

The current test uses an impact at a right angle to the vehicle, representing what would happen when, say, someone runs a red light and hits another car broadside. In the proposed pole test, the collision occurs at a 75-degree angle instead, more like a skidding side impact. One problem with side impacts is that there is far less room in the side of a vehicle to engineer protection than there is up front. The proliferation of SUVs and large pickup trucks has made

the problem worse because these vehicles ride higher than most cars and would tend to strike a car in the weaker upper portions of its body rather than hit the bumper or frame first.

Recently, the Insurance Institute for Highway Safety, a research group financed by auto insurers, released the first crash test results for specific car models struck in the side by a truck-size metal barrier. Ten of the 13 midsize cars tested received the worst rating on a four-level scale representing likelihood of death or injury to occupants. Last year, 43,320 people died in traffic accidents, the most since 1990. SUVs and large pickup trucks are an important factor in this, both because these vehicles pose a greater peril to cars they hit and because they tend to roll over more than cars do, making them more dangerous to their own occupants. NHTSA's action is helpful, but there's a lot more to do. Consumer advocates still favor legislation sponsored by Senator John McCain (R-Az.) that would direct NHTSA to act on a number of safety issues. Dr. Jeffrey Runge, Administrator of NHTSA, says, however, that he preferred to set his own agenda. Unfortunately, that may not be enough.

THERE IS MUCH MORE TO BE DONE

NHTSA's announcement, discussed above, is obviously a much-needed step in the right direction, but it clearly isn't enough. We have seen repeatedly that voluntary standards don't work. Instead, the requirements contained in pending highway safety legislation are the best way to reduce deaths and should be enacted. NHTSA's plan is positive because it will likely result in the installation of side head airbags, which are highly effective in saving lives. This protection is critical in crashes involving high-riding SUVs or pickup trucks and in rollover crashes, because side airbags help prevent people from being ejected. They also help protect against vehicle mismatch – that is, when an SUV or pickup truck crashes into a car.

This announced standard by NHTSA is long overdue. In 1999, NHTSA's administrator asked automakers to develop voluntary standards for side

airbags. But what happened next illustrates why voluntary standards were then – and are now – inadequate. Consumers and the public were shut out of the process, and few automakers installed side airbags. Others charged large mark-ups or made side airbags available only in luxury models or as an expensive extra. Voluntary standards won't work. They are created without public involvement and can't be enforced. There is no way for consumers to know whether a company has complied. Clearly, the solution is passage of S.1072, the auto safety legislation that is part of the pending highway bill. This bill requires NHTSA to upgrade the side-impact protection standard and issue a final rule by the end of 2007, which incidentally is the same deadline proposed by NHTSA.

S.1072 also takes a comprehensive, multi-pronged approach to reducing harm from ejection, rollovers and vehicle mismatch. Passage would ensure that standards are upgraded on a public – and certain – timetable, regardless of possible changes in the leadership of the agency. Consumers demand safety because they know that it is feasible. They shouldn't have to buy a luxury vehicle to obtain safety features that protect them in side crashes and rollovers. Nor should they have to rely on the whims of the auto industry, which under a voluntary program may or may not install side crash protections in all vehicles. The public needs mandatory side impact crash protections, and they need them now.

2004 SPORT UTILITY VEHICLES CRASH TEST RESULTS

Test results for model year 2004 sport utility vehicles are now posted on the website of The National Highway Traffic Safety Administration. To get this information, go to: www.safercar.gov. The Infiniti FX35, Saturn VUE and Toyota Highlander received the government's top rating in both the frontal and side-impact crash tests. New 2004 frontal impact ratings for SUVs are provided for the Cadillac SRX 4x4 sport utility, Dodge Durango 4x4 sport utility, GMC Envoy XUV 4x4 sport utility, Infiniti FX35/45 4x4 sport utility, Saturn VUE 4x4 sport

utility, Toyota Highlander 4x4 sport utility, and the Toyota Rav4 4x4 sport utility. New 2004 side impact ratings for SUVs are provided for the Buick Rainier 4x4 sport utility, Cadillac SRX 4x4 sport utility, Chevrolet Trailblazer 4x4 sport utility, GMC Envoy 4x4 sport utility, Infiniti FX35 4x4 sport utility, Isuzu Ascender 4x4 sport utility, Oldsmobile Bravada 4x4 sport utility, Toyota Highlander 4x4 sport utility, and the Volkswagen Touareg 4x4 sport utility.

A fact sheet containing explanatory information and tables showing New Car Assessment Program (NCAP) crash test results for recently released model year 2004 vehicles can be obtained by calling the NHTSA Auto Safety Hotline, 1-888-327-4236. You can also write to NHTSA Consumer Information, Room 5320, 400 Seventh St., S.W., Washington, DC 20590. Crash test information is available at NHTSA's website by clicking on "Crash Tests" under "Popular Information" in the index on the left side of the screen. If you want more information on cars and safety, you can go to our website: www.BeasleyAllen.com.

REPORT OF A CARBON MONOXIDE POISONING DEATH

The widow and son of a Florida man, who died of carbon monoxide poisoning while he slept in his semi-trailer, have been awarded about \$4.4 million by a federal jury. The widow sued three companies in U.S. District Court in Orlando. The truck driver died back in 2000, as he slept in his semi-trailer while in Kentucky on a trip. The truck with the sleeper cab had been in service for only one month. It was advertised that this model of the truck was supposed to allow for drivers to sleep in the cab while the truck was running. A medical examiner in Kentucky said the victim died as a result of carbon monoxide poisoning. The jury award to the family was for loss of support and services, loss of companionship, loss of parental companionship, and mental pain and suffering. Incidentally, under Alabama law, none of this could have been recovered, because only punitive damages are allowed in wrongful death cases filed in our state. Freightliner

LLC, Interstate Equipment Leasing Inc. and Swift Transportation were the three defendants in the suit.

ELECTRONIC STABILITY CONTROLS

For the first time ever, Consumer Reports Magazine, premier publisher of car rankings and automotive authority since 1936, added a "Stability Control" check box next to every car it ranked in this year's annual automotive issue. Electronic Stability Control (ESC) is an active safety technology that incorporates antilock brake system (ABS) and traction control system (TCS) technologies – two other auto safety features listed in Consumer Reports. ESC also improves a vehicle's lateral stability, classifying it as the most advanced driving safety system of its kind. The April Consumer Reports issue highlighted ESC as one of the "10 Safety Checks to Make Before You Buy," and cited it as a feature that "improved handling in our tests." The spotlight by Consumer Reports on ESC is unprecedented. It represents the most solid public affirmation to date that cars containing ESC make American highways safer.

If ESC works as intended, it will definitely help prevent car crashes. I hope ESC will prove to be a lifesaving technology that will significantly improve highway safety for all of us. Presently, ESC comes as a standard feature in all vehicles from Audi, BMW and Mercedes, and select models from Acura, Chrysler, Ford Motor Company (including Volvo), General Motors Corporation (including Saab), Infiniti, Lexus, Nissan, Porsche, Subaru, Toyota and Volkswagen. It is also available as an option in other models. I believe that consumers should ask for ESC when purchasing a new vehicle. ESC works by comparing a driver's intended course with the vehicle's actual movement. When instability is detected, it applies brakes to individual wheels and can also reduce engine torque. ESC is a revolutionary active safety technology that uses advances in microelectronics to help drivers maintain control of their vehicle and prevent crashes before they occur. The system detects when a driver is about to lose control of a vehicle and automatically intervenes to provide stability and help the driver stay on

course. ESC is marketed under various trade names.

THE ESC COALITION PROMOTES THE SYSTEM

The Electronic Stability Control Coalition was established in 2003 to inform consumers and other key audiences about the benefits of ESC systems. It is a joint effort of two of the largest automotive technology suppliers, Robert Bosch Corporation and Continental Teves. Touted as leaders in the development and manufacture of ESC systems, these companies are working together to increase the general awareness of this lifesaving technology, which appears to have great potential. The Coalition's stated mission is to educate consumers about the revolutionary active safety technology. Members of the Coalition believe that the widespread installation of ESC systems can play a significant role in helping to prevent crashes on America's roads. The Coalition seeks to increase the public's general awareness of this milestone in automotive safety. Through a national education campaign, it aims to provide consumers with comprehensive information on ESC, including educational materials, technical data, video demonstrations, industry studies, and news about ESC. For additional information on the ESC Coalition, please visit www.esceducation.org. You can also get the trade names referred to above from this website.

LAWSUITS INVOLVING POLICE ARMOR

A law enforcement coalition has sued the manufacturers of bulletproof vests that many police agencies believe lose effectiveness over time, and as a result, fail to protect the user as promised. The National Association of Police Organizations seeks as much as \$310 million and class action status in two separate lawsuits filed in April in Florida and Michigan. The lawsuits came 5 months after the Justice Department announced an investigation into the vests, which were sold to as many as 100,000 law enforcement officers. Named as defendants are Jacksonville-based Armor Holdings, Second Chance

Body Armor Inc., based in Central Lake, Michigan; Toyobo America Inc. and Toyobo Co. Ltd (the Japanese manufacturer of Zylon). One lawsuit blames Second Chance armor in the June 2003 death of a California police officer. According to the suit, 3 bullets penetrated the officer's Zylon vest. Zylon was marketed as a lighter-weight alternative to other materials used to make bullet-proof vests. Police agencies have said they suspect the material degrades and weakens with wear.

Men and women who risk their lives everyday in an effort to make our lives safer, shouldn't have been misled and given a false sense of security by depending on a vest that is ineffective. Toyobo has acknowledged that Zylon loses 10% to 20% of its durability within two years of manufacture, but contends the material works well in properly constructed body armor. It has blamed some of the vests' failure on some of the other defendants. The Washington-based National Association of Police Organizations represents almost half of the sworn law enforcement officers in the country, in addition to 11,000 retired officers.

AIRBAG INJURIES ARE ON THE RISE

The National Highway Traffic Safety Administration reports that since 1990, airbag deployment has killed 227 people in low-severity crashes, including 76 drivers, 10 adult passengers, 119 children between the ages of 1 and 11, and 22 infants. Of the 76 adult drivers killed, 28 were women under 5 feet 2 inches tall, and 4 of the 10 adult passengers killed were females smaller than that height. Airbag systems were originally developed for the 5 foot, 8 inch, 180 lb. male, and only tested to be sure the systems met their specific needs. Unfortunately, this original design criterion did not help shorter people who have to sit closer than 10 or 12 inches from the steering wheel. Nor did the requirements consider children or those who have medical reasons why they are in danger from the explosive force of a detonating airbag.

For years, experts have stated that airbags have been too "aggressive," meaning that they deploy too forcefully.

ly, resulting in injuries. Additionally, most airbags are not selective and deploy at the same potentially devastating level of force regardless of the severity of the crash. For that reason, Joan Claybrook of Public Citizen testified before the Airbag Transportation Subcommittee in the U.S. House of Representatives in 1996 and stated:

One of the most important elements in airbag design that determines the level of protection as well as the likelihood of inadvertent injury is the inflation flow rate. Most current vehicles on the highway have a single inflation level. This means that whether the crash is at 15 mph or 35 mph, the airbag inflates with the same force. But as far back as the mid-1970s, General Motors installed dual stage inflation airbags in 10,000 1973-1976 vehicles sold to the public.

We currently represent the husband of a young woman who was killed when her airbag deployed in a relatively low speed crash. Although everyone in the vehicle survived the crash, our client's wife died later from brain injuries caused by the airbag. Clearly, a less violent airbag or an airbag with dual stage deployment would more likely than not have saved her life. But, manufacturers have refused to use such injury-reducing technology, citing excessive costs involved. We are working to develop this important case and will keep you updated as we move forward.

MORE STRINGENT STANDARDS ARE NEEDED CONCERNING DOOR LATCH STRENGTH

The Federal Motor Vehicle Safety Standard for door latch strength (FMVSS 206) was established in 1968. It was extended to back door latches in 1995. The 1968 standard was based on SAE requirements with increased loads on the door latches. A 1989 evaluation concluded that FMVSS 206 had only a 15% effectiveness in reducing ejection fatality risk. While automobile technology has taken a giant leap forward in the last 20 years in many areas, requirements for door latch strength have not improved. Door latch strength is important because the door is the main

component that keeps occupants in vehicles involved in crashes.

Common sense tells us that an occupant has a much greater chance of being seriously injured or killed if they are ejected, fully or partially, from a vehicle. Statistics from real world crashes and industry crash tests back up that assessment. Even a belted occupant can be partially ejected if the door opens. In a rollover, for example, the result of even a partial ejection can be death or a very serious injury. More than 2,500 people are killed each year after being thrown out through door openings. About half result from the door's structure failing and the other half involve the latch failing. We have handled a number of these cases, and I wonder why NHTSA doesn't come up with a stronger standard. Well, on second thought, I do know why – the powerful automobile industry is satisfied with a weak standard.

ARMORED-TRUCK WORKER CRUSHED BY COINS

We have handled a number of cases where shifting loads on trucks hauling cargo resulted in deaths or serious injuries to occupants. Recently, a Florida jury awarded nearly \$34 million to the plaintiff, a passenger in an armored truck whose spinal cord was fractured when boxes of coins crushed him during a 1998 traffic crash. The jury ordered the truck's manufacturer, Griffin Inc., to pay \$33,890,000 in damages to the 56-year-old, who was left paralyzed from the chest down. The manufacturer has agreed to pay a "substantial amount," much of it through insurance, in settlement, and will not be required to pay the entire award.

There are ways in which injuries of this sort can be prevented. In the Florida case, a protective shield, costing only \$300, could have been installed that could have prevented the coins in the cargo hold from surging forward onto the plaintiff when the truck crashed. Unfortunately, all too often, these safety measures are ignored by the manufacturers. The plaintiff was working as an armed messenger for Wells Fargo when the accident occurred on October 31, 1998. The truck came

over a bridge in heavy fog and collided with a tractor-trailer. The plaintiff's seat belt broke away and boxes of coins came down on top of him. This case is a classic example of how the manufacturers of trucks could – by using available safety devices – avoid injury to persons riding in their trucks.

IX. MASS TORTS UPDATE

TENTATIVE SETTLEMENT AGREEMENT REACHED IN PROPULSID MDL

A tentative agreement has been reached in the Propulsid Multi-District Litigation to settle numerous cases pending against Janssen Pharmaceutica, the manufacturer of Propulsid. The tentative agreement provides for the creation of a global resolution and mediation program through which individuals who suffered Propulsid-related injuries are compensated. Claims of all individuals electing to participate in the Program will be submitted to a medical review panel appointed by the MDL court. Claims deemed compensable by the medical review panel will be forwarded to a court-appointed special master for evaluation. Only individuals suffering serious heart injury or death will be compensated. The findings of the medical review panel and special master will be final and cannot be appealed. The settlement program is in lieu of any further litigation by those who agree to participate regarding their acquisition and use of Propulsid. The tentative agreement will be finalized only after a predetermined percentage of claimants agree to its terms.

COURT THROWS OUT PROPULSID DAMAGE AWARD

On another front, the makers of Propulsid had a major victory. The Mississippi Supreme Court on May 13th threw out a \$48.5 million damage award against the makers of the heart-burn drug. The justices, in the 6-1 decision, said it was improper to group the 10 plaintiffs together when their claims did not arise out of the same incident,

and ordered that new separate trials be held for each of 10 plaintiffs. The court wrote: "Because each plaintiff has his or her own very unique set of facts and circumstances to be presented at trial ... this case is remanded for severance, transfer to appropriate venue and new trial of the claims of all 10 plaintiffs." Janssen Pharmaceutica Inc., and its parent company Johnson & Johnson, had asked the state's high court to dismiss the case or to order separate trials for each of the plaintiffs. The plaintiffs said taking the heartburn drug caused their heart problems, anxiety attacks and other conditions. The U.S. Food and Drug Administration has linked the heartburn drug to 80 deaths nationally. In 2000, the FDA issued a warning that Propulsid could cause irregular heartbeats and sudden death and should only be used as a last resort for patients after being given heart tests to ensure they are at a low risk for the side effects.

X. BUSINESS LITIGATION

CITIGROUP TO PAY \$2.65 BILLION IN WORLD.COM CASE

Financial services giant Citigroup has agreed to pay \$2.65 billion to settle class action suits brought by investors who bought WorldCom Inc. securities before the telecommunications company's bankruptcy filing in 2002. As you may recall, Citigroup's brokerage division was a key backer of WorldCom securities before it filed for the biggest bankruptcy in history in July 2002. This came about as accounting irregularities came to light. The settlement came about as the world's biggest financial services company set aside another \$6.7 billion for potential claims against it related to the collapse of Enron Corp. and its April 2003 settlement of federal inquiries into its investment research activities and its involvement in initial public stock offerings.

In the WorldCom settlement, Citigroup agreed to settle federal class action suits brought on behalf of those

who had purchased WorldCom stock and other securities during the period from April 29, 1999 through and including June 25, 2002. The company's CEO told the Associated Press that the settlement was part of an effort "to put an unfortunate chapter behind us so we can focus on our continuing prospects for growth."

BOND RESEARCH CONFLICTS GETTING ATTENTION

Federal regulators have launched investigations into whether Wall Street firms are cheating and misleading bond investors with research that either is slanted or has been leaked ahead of time to the firms' own traders. Certain Wall Street firms are now physically separating their bond analysts from the bond traders. Also, the Bond Market Association, a trade group, is about to make final a new set of guidelines aimed at preventing conflicts. The Securities and Exchange Commission informed the Bond Market Association during a meeting in February that the SEC had started reviewing potential conflicts of interest between bond-research analysts and Wall Street brokers and traders. Potential conflicts involving bond-research are similar to the earlier regulatory focus on stock-research conflicts.

One question being asked is whether bond traders or bankers get advance looks at research before it is published (giving them a chance to trade ahead of the public or clients who pay for the reports). Another is whether bankers or traders have influence over what analysts say in their research reports. While bond underwriting and trading has always been a major profit source for Wall Street firms, it has become more so since the stock-market peak in 2000.

Documents released as a part of Enron Corporation's chapter 11 bankruptcy clearly show the sort of conflicts that can arise in bond research. Shortly before Enron fell apart in late 2001, an analyst at one of the energy company's leading investment banks, Credit Suisse First Boston, had planned to downgrade Enron's bonds to a "hold" from a "buy." Credit Suisse First Boston officials, how-

ever, pressured the analyst to continue recommending that investors buy Enron bonds, suggesting that the bank officials were motivated by the revenue Enron's business generated. The analyst did not change her public "buy" recommendations, but privately relayed her negative assessment of Enron's bonds to Credit Suisse First Boston traders in London and New York, prompting them to sell some of their Enron-related debt. Unfortunately, it appears that regulators are going to have to clean up the bond market because Wall Street clearly isn't prepared to deal with the problem.

MUTUAL FUND INDICTMENTS AGAINST BROKER

A few weeks ago, the New York Attorney General unsealed a criminal indictment against a former Bank of America Corporation broker, which included some recordings of phone conversations that are shocking. The recordings clearly show the broker and a New Jersey hedge fund scheming to make illegal mutual fund trades. Evidence in this and other cases in the works will show that market-timers and late-traders were fully aware that what they were doing was wrong, if not illegal. The phone conversations reveal that the broker and a representative of a hedge fund, Canary Capital Partners, LLC, negotiated the timing of the hedge funds trading for after the close of trading, but then submitted as if it were made before trading closed. The conversations also indicate that tentative trades were to be made before the market closed with the plan that they would not be processed until after the market closed, if Canary (the hedge fund) approved the trades. If the hedge fund did not approve the trades, then the broker was to "put them in the garbage." The phone conversations are extremely damaging to the participants.

A software system allowed Canary to trade funds until 5:30 – well after the normal 4:00 p.m. close for mutual fund trades. This unsealed indictment and tape recordings show a new level of intentional fraud taking place between Bank of America and the Canary hedge funds that is shocking. We have

allowed a corporate culture to develop that made “lying, cheating, and stealing” a way of life on Wall Street, and that is shameful.

UPS To SETTLE CLASS ACTION OVER PACKAGE INSURANCE

United Parcel Service, Inc., has settled a class action lawsuit alleging that the company overcharged for package insurance over the past two decades. UPS, based in Atlanta, is offering customers vouchers for UPS service (some with a value of \$8,000.00) if they can prove they bought “excess value” package insurance from UPS. Several million customers from forty-nine states are eligible for vouchers under the nationwide settlement, which was filed in U.S. District Court in New York. UPS settled a similar lawsuit in Illinois 3 years ago after the company agreed to give a maximum of \$38.5 million dollars worth of UPS vouchers to as many as 90,000 consumers who had bought the package insurance.

The dispute over the package insurance arose in the late 1990s when the Internal Revenue Service sued UPS in tax court. The IRS wanted UPS to pay taxes on billions of dollars in insurance income that the company had routed through an offshore entity dating back to 1984. UPS collected at least \$2 billion dollars in insurance premiums from 1984 to 1999, according to tax court records. During those years, UPS on average kept 60 to 70% of the insurance money as profit, according to documents UPS produced for the tax court.

After certain insurance rules were deregulated in the 1980s, UPS spun off its entire package insurance business to a Bermuda based company, allowing UPS to avoid more consumer-friendly insurance licensing procedures in the United States. In the summer of 1999, the tax court found in favor of the IRS and determined that UPS owed back taxes and penalties on its insurance business in the amount of \$1.8 billion dollars. The tax court found that the UPS offshore restructuring of the package insurance business was “a sham transaction lacking in economic substance.” However, the U.S. Court of Appeals for the Eleventh Circuit

reversed the decision and found in favor of UPS.

While the case was pending, numerous consumer lawsuits were filed against UPS related to the package insurance. As a result of the lawsuit, UPS has now been licensed in all fifty states to be an insurance broker. The company is now required to submit to state regulations and oversight. UPS does not break out revenue figures for its insurance business, but UPS has been quoted as saying it is profitable. UPS earned over \$2.9 billion in 2003. This is another example of consumers standing up and making a difference in the business world. As a result of the lawsuits, UPS has changed the way that it handles its package insurance business for the better.

L.L. BEAN DOESN'T LIKE POP-UP ADS

L.L. Bean has filed a lawsuit over a practice that most of us would like to abolish. People all over the country are fed up with pop-up ads on the Internet. For Bean, however, the ads created more than just an annoyance. These nuisance ads are costing the Freeport retailer business, and that led to the lawsuit. Bean sued Gator.com Corp., a California company that manufactures adware - programs that are designed to provide Internet users with pop-up advertising about products and services that might interest them, based on the websites they visit. In Bean's case, Gator.com's adware caused some customers who called up llbean.com to be greeted by a pop-up ad offering a discount at eddiebauer.com, a direct competitor. That sounds like a “dirty trick,” to say the least. Bean calls it poaching and considers it to be parasitic behavior.

Two years ago, Bean sent a letter asking the company, a subsidiary of Claria Corp., to stop using the pop-up ads when computer users went to the Bean site. Gator.com responded by asking a federal court to rule that the company is within its rights to provide the ads to customers who use its Ewallet software, which automatically fills out Web order forms and saves password and credit card information for consumers in return for generating

pop-up ads from time to time. The court fight is tied up in a jurisdictional dispute which, by itself, raises thorny questions for Bean. A three-judge panel of the U.S. Court of Appeals for the Ninth Circuit said Bean can be sued in a California federal court, even though the company has no physical facilities in the state.

That ruling could open up Bean and other Internet retailers to suits in courts around the country for the first time. The ruling, which will be reviewed by the full appeals court, said Bean does substantial business in California through its website, a decision that expands jurisdiction to include Internet activity in deciding whether a company is actively engaging in commerce in a particular geographic area. Bean is fighting the jurisdiction ruling, but appears to be more interested in curtailing Claria's and Gator.com's activities. A company spokesperson says Bean was alerted to the pop-up ads three years ago when a customer told the company it found the offers offensive. Bean mailed the letter asking Claria and Gator.com to stop the pop-up ads, saying they “appropriated the goodwill associated with L.L. Bean's famous trademark,” created confusion for consumers, and suggested that there was a connection between Bean, Bauer and Gator.com. Bean also contacted Bauer, which told Gator.com to remove the ads. Gator.com, however, went to court seeking a ruling that none of Bean's allegations were true.

Bean believes in principle there is a trademark infringement, which if left unchecked, poses a considerable threat to the value of the company's brand and how people feel about the brand. Bean is concerned about the damage to the image of L.L. Bean as well as lost sales. It takes a number of years for customers to feel that there are retailers out there that respect their privacy and build a secure website. The pop-ups that aren't authorized by the site are not only a bother, but can be hurtful to companies. For example, the adware pop-up ads could erase years of work by Bean to assure consumers that its websites are secure and safe.

**JUSTICE DEPARTMENT INVESTIGATION FINDS
RACIAL DISCRIMINATION IN CRACKER
BARREL RESTAURANTS**

In a lawsuit filed and settled in the United States District Court for the Northern District of Georgia, the Justice Department accused Cracker Barrel Old Country Store, Inc., of violating the 1964 Civil Rights Act by engaging in a pattern of discrimination against African-American customers. The lawsuit followed a Justice Department investigation that revealed evidence of racial discrimination against African-American customers in approximately 50 Cracker Barrel restaurants in seven states: Alabama, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, and Virginia. During the investigation, Justice Department officials interviewed approximately 50 persons, mostly former Cracker Barrel employees, of whom 80% stated that they experienced or witnessed discriminatory treatment of customers at a Cracker Barrel restaurant. The investigation also revealed that managers often directed, participated in, or condoned the discriminatory behavior.

Specifically, the Justice Department's complaint alleged that Cracker Barrel allowed white servers to refuse to wait on African-American customers; segregated customer seating by race; seated white customers before African-American customers who arrived earlier; provided inferior service to African-American customers after they were seated; and treated African-Americans who complained about the quality of Cracker Barrel's food or service less favorably than white customers who lodged similar complaints. Cracker Barrel settled the lawsuit, admitting no wrongdoing, but agreeing to a number of operational changes. Under the settlement agreement Cracker Barrel must adopt and implement effective nondiscrimination policies and procedures; implement new and enhanced training programs to ensure compliance with Title II of the Act and the consent order; develop and implement an improved system for investigating, tracking, and resolving discrimination complaints; retain an outside contractor to test the compliance of Cracker Barrel restau-

rants with Title II and the order; and publicize the company's nondiscrimination policies. The agreement will last for five years.

XI. INSURANCE AND FINANCE UPDATE

RECENT ALABAMA SUPREME COURT DECISION

The Alabama Supreme Court issued an opinion last month in an insurance fraud case that is worth mentioning. The case involved a fraud and contract action arising from purchase of a "paid-up" insurance policy, which is very similar to a vanishing premium product. At trial, the jury had returned a verdict for the policyholders and against Alfa Life Insurance Company. The trial court had reduced a larger jury verdict on post-trial motions to \$500,000 compensatory and \$1.5 million punitive damages. Interestingly, a portion of the punitive damages was allocated to be paid to the Alabama Civil Justice Foundation. The Supreme Court reversed the case on the "allocation" issue, but affirmed the fraud verdict on condition that plaintiffs accept a remittitur of \$100,000 compensatory and \$300,000 punitive damages.

The high court held that the claim was ripe for adjudication, even though the 15-year period of time in which premiums were expected to be paid had not passed. The Court said this was because the case was not a "vanishing premium case" (under which it would be theoretically possible, given certain changes in interest rates, to have premiums vanish in the contractual time). Instead, the Court found this to be a claim based on a representation that the policy would be "paid up" so that no further premiums would contractually be required by that date. Frankly, I have difficulty with that distinction, but the court doesn't and that is what counts.

The court did note that the plaintiffs were not sophisticated and had come to trust the company's agent because of 11 years of prior dealings. The Supreme Court held that the mental anguish dam-

ages of almost \$500,000 were excessive in light of actual economic damages of \$2,350, particularly since one plaintiff testified that her mental distress was caused in part by her loss of employment and other factors. The court accordingly reduced the compensatory damages award to \$100,000. On a review of the punitive damages award, the court concluded that punitive damages of \$300,000 was proper, which in that case was a 3 to 1 ratio.

ACT OF WAR EXCLUSIONS IN INSURANCE POLICIES

It will be interesting to see how the insurance industry handles the losses suffered by our troops in both Iraq and Afghanistan as it relates to "act of war" exclusions typically found in accidental death and dismemberment insurance policies, as well as disability insurance policies. Many of the troops presently deployed are National Guard members – many from Alabama – who were also employed by civilian employers. Many have insurance policies that are unrelated to their military service in the National Guard. The typical "act of war" exclusion (which means no coverage) is as follows:

- **War and Military Action**

- War, including undeclared or civil war;
- Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

The first subpart merely excludes coverage for damage caused by war. "War" is defined in *Pan American World Airways v. Aetna Casualty and Surety Co.*, 505 F.2d 989 (2d Cir.1974), the leading case on this issue, as "hostilities carried on by entities that constitute governments at least de facto in character." A spokesman for the American Council

of Life Insurers, a trade association with approximately 400 member companies, has also been quoted as stating that “an act of war . . . has normally been held to be an act that occurs in a conflict between two sovereign states.” The combat in Iraq and Afghanistan does not fit within the definition of “war” in the traditional sense because it is not being waged against armed “military personnel” directed by a particular governmental authority. Instead, the combat is being waged against small groups of extremists that have declared “jihad” or “holy war” on the entire Western world. Many of these extremists have even made pilgrimages from their respective nations of citizenship to join in the “jihad.” Their method of fighting is to commit random acts of terrorism that are intended to frighten or discourage the Western world, and perhaps to influence public opinion, rather than to gain control of a particular government. Therefore, the first subpart should be inapplicable to damage resulting from the fighting in Iraq and Afghanistan.

The second subpart simply excludes damage caused by “warlike action by a military force . . . by any government, sovereign or other authority using military personnel or other agents.” As mentioned above, the attacks on our troops are isolated attacks taken carried out by a few individuals, rather than a military attack by an army or military force. As a result, this subpart is also inapplicable.

The last subpart is an exclusion of damage in connection with rebellion, revolution or civil war. Rebellion, revolution and civil war are actions taken by armed groups of citizens in order to take control of the government away from those currently in power. While terrorist acts can certainly be committed by a nation’s own citizens, they are committed by a few individuals, rather than by a large armed force. Consequently, this last exclusion should also not apply.

I hope the insurance industry will take a similar position to the one it took after the World Trade Center attack of September 11, 2001. Immediately after learning of the World Trade Center tragedy, President Bush called the events “apparent acts of terrorism.” Shortly thereafter, he stated that “the deliberate and

deadly attacks which were carried out . . . against our country were more than acts of terror. They were acts of war.” Secretary of State Colin Powell repeated these words during subsequent interviews. But, both the National Association of Independent Insurers (NAII) and the National Association of Mutual Insurance Companies (NAMIC) confirmed that the insurance industry did not intend to invoke the “act of war” exclusion, and the insurance industry paid the claims of its insureds. We’ll have to wait and see whether the insurance industry will take a similar position in regards to Iraq and Afghanistan. I hope they will do the right thing and pay all valid claims and not rely on the exclusions mentioned above.

WAL-MART SUED FOR PROFITING FROM “DEAD PEASANTS”

The nation’s leading retail corporation, Wal-Mart, has been sued in Texas for purchasing life insurance policies insuring the lives of their low-level employees. While it is common practice for many companies to buy life insurance insuring their key officers, so-called “dead peasant” policies are different because the deaths of low-level employees do not directly affect the company’s financial health. To make matters worse, it appears that Wal-Mart did not apprise the employees of the fact that the company had purchased life insurance policies on their employees’ lives. Additionally, Wal-Mart did not provide their deceased employees’ families with the death benefits from the insurance policies. Instead, the company profited directly from the deaths, and that shouldn’t be tolerated.

The Hartford Life Insurance Company estimates that at least one-fourth of the Fortune 500 companies use this type of what is referred to as “peasant insurance.” It appears both Proctor & Gamble and AT&T used the practice. Even Camelot Music Company has also been sued for this sort of thing, which is really shameful.

Apparently, this type of profiteering initially occurred when major corporations found a way to avail themselves of a tax loophole that would allow them to borrow money from the insurance companies to pay the premiums

and then take a “write off” as a business expense on the company’s federal taxes. In determining whether each state allows for such a practice, the key issue is whether or not the insuring party (in this case, the corporations) had an “insurable interest” on their low-level employee. Many states expressly disallow such a practice and many states are silent on the issue. An insurable interest has been defined as “one having a reasonable expectation of pecuniary benefit or advantage from the continued life of another.” It is hard to believe that a death of a greeter at a local Wal-Mart would have a pecuniary impact on a global corporation such as Wal-Mart. This appears to be another shining example of how major corporations profit from their employees “even at the time of their death” and how they are able to avoid tax liabilities by finding elaborate ways to dodge their fair share of taxes.

AMERICAN MEDICAL SECURITY GROUP SETTLES CLASS ACTION LAWSUIT

American Medical Security Group, Inc., a health benefits provider based in Green Bay, Wisconsin, has reached an agreement to certify and settle an Alabama class action lawsuit. American Medical, through its operating subsidiaries, markets health-care benefits and insurance products to small businesses, families and individuals. The company serves customers nationwide through partnerships with professional, independent agents and quality health care providers.

The lawsuit, filed in 2001, is presently pending in a Montgomery Circuit Court, and involves issues relating to the rating methodology formerly used by the company on group health benefit plans marketed to individuals in Alabama and Georgia. The company has been under fire in recent years for some of its rating and business practices. Reportedly, under the company’s tier rating system, people in poor health pay more for health insurance, and premiums could rise once a serious medical condition is established. American Medical says it has not used the disputed rating methodology in Alabama since 1999 and in Georgia since 2002. In 2001, the Florida

Department of Insurance challenged some of the company's rating practices in a case that ultimately led to a ruling that would have suspended the company's license to sell new business in the state for one year. That penalty was reversed on appeal in April of last year.

Under the terms of the settlement agreement, which is valued at approximately \$9 million, all claims will be dismissed and the litigation terminated. The settlement between American Medical and the class plaintiffs, which would preclude future lawsuits related to this issue by participating class members in both Alabama and Georgia, will be presented to the court for preliminary approval in the near future.

INSURANCE INVESTIGATIONS UNDER WAY OVER FEES

Two new investigations have been opened into the insurance industry, focusing on incentives and other fees paid by insurance companies to commercial insurance brokers. In New York, the office of the Attorney General has issued subpoenas to the country's three biggest insurance brokers: Marsh Inc., the world's largest broker and a unit of the Marsh & McLennan Companies, which is based in New York; Willis Group Holdings, also in New York; and Aon, a Chicago company that ranks immediately behind Marsh in size. The three companies account for most of the commercial insurance brokerage business. The California Insurance Commissioner is looking into potential conflicts of interest in several insurance brokerage companies across the country.

At issue in the investigations are payments made by insurance companies to brokers for exceeding targets on the sale of policies and for providing consulting services. The payments have been a routine practice for many years in the industry. Regulators and industry analysts say the costs of the bonuses are passed on to customers. In addition, customers may not be getting appropriate insurance. The Washington Legal Foundation, a non-profit research organization, brought the situation to the attention of investigators. The group says that the actions

raise questions about whether a broker's recommendations are honest and unbiased. In a letter, the foundation noted a statement by the New York State Department of Insurance to brokers and insurance companies in 1998 saying that a failure of a broker to disclose the payments from insurance companies may be a violation of New York state insurance law "as a dishonest or untrustworthy practice." Over the years, the risk managers who buy insurance for major corporations have expressed concerns about the insurance company payments. But neither regulators nor investigators have taken action until now. Brokers are presumed to work on behalf of the customer, and the bonuses or commissions for volume sales can be a conflict in that they may cause the broker to divert business to an insurance company that may not provide the best deal for the insurance customer. Brokers acting as their customer's representatives operate in contrast to insurance agents who work for insurance companies and are legally obligated to the insurance companies. In another contrast, brokers deal in commercial insurance, and agents sell policies to individuals for things like cars and homes. Agents also sell life insurance and other personal coverage.

Earlier this year, Attorney General Spitzer's office began investigating life insurance companies and securities brokerage firms for abusive trading of stocks in variable annuities, a type of investment that combines insurance and mutual funds and is intended for retirement savings. The Attorney General then turned to the insurance industry after several months of uncovering activities by investment banks, mutual funds and brokerage houses that were harmful to investors and illegal in many cases. Thus far, those investigations have resulted in settlement payments of \$1.4 billion from companies such as Citigroup, Merrill Lynch, and others. The investigation of 44 mutual funds has resulted in 80 mutual fund executives losing their jobs and settlement payments by the funds of \$1.8 billion. Many aspects of the investigations have been widely reported in the national media and has gotten

the attention of Corporate America like nothing has in years – if ever.

SPITZER PROBE INCLUDES INSURANCE- BROKERAGE INDUSTRY

The New York Attorney General's investigation of the insurance brokerage industry may well be much bigger than was previously reported. A memo recently uncovered by the media, which was sent by the General Counsel of AON Corp. (one of the nation's three biggest insurance brokerages) to Chicago employees is most revealing. According to the *Wall Street Journal*, the memo makes clear that the Attorney General's office is looking into various kinds of payments that insurance carriers make to brokers. One of the simple forms involves payments for directing volume business to a carrier. These payments range from corporate property casualty insurance policies to employee benefit programs. Many have contended that these payments can give brokers incentives to place business for reasons other than their clients' benefit. As agents of the insurance buyer, brokers and consultants are supposed to represent the clients' best interest. It will be interesting to see how this investigation develops, and we plan on watching it very closely.

ALLSTATE WINS CLASS ACTION SUIT ON DIMINISHED VALUE

After a three-week trial, a jury in Illinois returned a defense verdict in favor of Allstate Insurance Company in a 30-state class action involving diminished value claims in auto insurance. The plaintiffs in the case had charged that Allstate should have paid for the diminished value of automobiles involved in accidents. They alleged that the insurer should be responsible for paying the amount a vehicle loses in value after full repairs have been made. The plaintiffs sought nearly \$400 million in damages. The case was unusual in that it is one of the few multi-state class actions that has ever gone to trial. It covered some 387,000 Allstate policyholders from 29 states and the District of Columbia. The

insurance industry considers this to be a major victory.

THE INSURANCE INDUSTRY EXPRESSES CONCERNS ON STATES' CREDIT SCORING STUDY

The Property Casualty Insurers Association of America (PCI) has issued a bulletin expressing serious legal and public policy concerns about a multi-state study being conducted by insurance regulators on the "impact of credit-based insurance scoring on certain groups of consumers." The PCI noted that a data call, the first step in the process of conducting the study, was sent to major personal lines insurers by several insurance departments recently. The insurance industry considers the use of insurance scores to be an important and valid underwriting and rating tool.

Consumer groups – such as Alabama Watch – have strongly opposed using credit scoring by the insurance industry in setting premium rates. States including Alabama, Indiana, Kansas, Louisiana, Maryland, Michigan, Missouri, Montana, Nevada, Oregon, Washington, and West Virginia have issued data calls. The Missouri Insurance Department is coordinating the study. Insurers collect information on race, ethnicity, and income and plug that information into their risk factors. PCI says that individual consumers in any given geographic area will have a wide range of credit-based insurance scores. The use of credit histories, according to PCI, allows companies to charge lower premiums to consumers within a rating territory who manage their assets responsibly. PCI contends insurance scores distribute the cost of coverage more equitably within a community where losses are incurred.

A study on the impact of credit scores on consumers will be conducted by the Federal Trade Commission over the next 17 months. The FTC study is required by the Fair and Accurate Credit Transactions Act, the law passed by Congress earlier this year that reauthorizes the federal Fair Credit Reporting Act. The FCRA has allowed insurers to use credit history to under-

write and rate automobile and homeowners policies since 1970. All consumer groups should get involved in this study. The FTC study is supposed to look into the impact – both positive and negative – of credit reports on consumers, not just in insurance pricing, but also in financial services, housing and employment. But, the insurance industry will have its own special interest and will attempt to influence the outcome of this study and conclusions reached. Consumers have a much broader interest, but it should certainly include insurance.

INSURER'S INCOME UP 150%

It was reported last month in the *Birmingham News* that ProAssurance Corp., a medical malpractice insurer located in Alabama, had first quarter net income of \$16 million. Interestingly, this is an increase of 150% from the same period of time in 2003. This company insures most doctors in Alabama along with a good number of other medical providers, including hospitals. Because our firm does not handle medical malpractice cases against doctors in Alabama, I was not aware that their liability insurance carrier was making so much money. I wonder how the rank-and-file doctor in our state feels about the company doing so well while at the same time it tells them how tort reform measures are still badly needed. Anybody who follows the court system will tell you it is extremely difficult to sue a doctor in Alabama and even tougher to get a jury verdict.

ALABAMA'S INSURANCE COMMISSIONER SPEAKS OUT

Last month, Walter Bell, the Commissioner of the Alabama State Insurance Department, took a strong stand against passage of the federal legislation proposed last month that would take the regulation of insurance away from the states and place it under federal authority. It is good to see Alabama getting involved in this battle.

XII. PREDATORY LENDING UPDATE

GEORGIA PAYDAY LENDING ISSUE GOES TO FEDERAL COURT

The legal battle over payday loans in Georgia found its way into federal court in Atlanta. U.S. District Judge Marvin Shoob considered four lawsuits claiming the State of Georgia's latest effort to stop payday lending was unconstitutional. The judge said Georgia's new payday lending law was constitutional and refused to enjoin enforcement of the statute. While payday lending has been illegal in Georgia, the Legislature passed what is believed to be the nation's toughest law prohibiting payday lending. The law makes the otherwise unenforced misdemeanor a felony. Among other things, the law also prevents banks from hiding their partnerships with banks based in states such as North Dakota and Delaware that have no interest rate caps. The lending companies didn't want to be restricted by Georgia's interest cap, claiming they were doing the business of out-of-state banks governed by the Federal Deposit Insurance Act. The lenders wanted to be immune from state usury laws.

Similar lawsuits have been filed in other states, but those cases are in the state courts. Since the Georgia lawsuits were in federal court, the outcome will be expanded beyond the state's borders. The Consumer Federation of America is one of the groups that has filed arguments in the lawsuits upholding the Georgia law. A spokesperson for CFA stated: "There's been a lot of discussion about whether state banks, because they are federally insured, have the right to export their interest rates." Clearly, the judge felt that the Georgia law was a good one and legal and upheld it in spite of harsh attacks by the industry and their political friends.

During the legislative session in Georgia, advocates for the working poor and the elderly appeared before legislative committees with stories of how a loan of just a few hundred dollars to cover an unexpected car repair

or medical expense quickly became a debt of thousands, and, sometimes, tens of thousands, of dollars. The Consumer Finance Services Association of America, which represents some of the larger payday lenders, was leading the fight to hold Georgia's new law unconstitutional. They claimed the law deprives the working poor, including those in the lower ranks of the military, of a needed service. While they are correct on one hand – there is a need for “credit” for the “working poor” in our country, there can be no justification for many of the practices employed by the payday lenders, including charging interest rates as high as 1200% APR in some instances. The ruling in the Georgia case is extremely important and comes at a very good time.

ALABAMA'S PROBLEM CONTINUES

I hope there will be a push to follow Georgia's lead and pass a tough law in Alabama regulating the payday loan industry. Unfortunately, most low-income citizens have little voice in what happens in Montgomery. That's why it is critical that consumer advocacy groups take this project on and make it a top priority.

XIII. PREMISES LIABILITY UPDATE

JUDGMENT UPHELD IN CHILD'S DROWNING

Recently, the Michigan Court of Appeals upheld an \$8.3 million judgment against the Fraternal Order of Eagles in a Michigan lawsuit involving the death of a 2-year-old boy who drowned in a septic tank at a picnic. The child fell into a 3-foot septic tank opening while he and his mother were at a fund-raiser picnic at the lodge. The 7-foot-deep tank was uncovered and unguarded when the child fell in. The appeals court affirmed the lower court's judgment for the child's parents. The national organization took the position that it shouldn't be held liable for the actions of the local chapter. Obviously, the appeals court disagreed.

PORTABLE GENERATORS CAN CREATE HAZARDS

Most of us don't recognize a common hazard that exists relating to the use of portable generators. There have been a number of deaths caused by carbon monoxide poisoning. The Consumer Product Safety Commission has conducted follow-up in-depth investigations of 70 generator incidents that resulted in 97 fatalities. Between 1990 and 2002, CPSC received reports of 179 carbon monoxide (CO) poisoning deaths associated with portable generators. These products use fuel-burning engines that emit poisonous CO gas in their exhaust. Adults 25 years and older accounted for 78% of the deaths. Most of the victims were male. The main reasons reported for using a portable generator were to provide electricity to a location because of a temporary power outage or to provide power to a temporary location.

It is important to note that 67 of the investigated deaths took place at home. Twenty-five of these deaths occurred when the generator was in the home's basement or crawl space. In another 22 deaths, the generator was reported as being inside the home. Seventeen deaths occurred when the generator was placed in a garage or enclosed carport of the home.

The CPSC staff planned a forum to address the CO poisoning hazard posed by portable generators. The meeting was scheduled for May 20th, but we don't have any news from the meeting. The following are some safety tips from the CPSC:

- Never use a generator indoors, including in homes, garages, basements, crawl spaces, and other enclosed or partially-enclosed areas.
- Follow the instructions that come with your generator.
- Locate the generator outdoors and away from doors, windows, and vents that could allow CO to come indoors.
- Plug appliances directly into the generator or use a heavy duty, outdoor-rated extension cord. The cord should be rated at least

equal to the sum of the connected appliance loads.

- Install battery-operated CO alarms in your home.

For more information about portable generators, you can visit the CPSC website: www.CPSC.gov.

FIRE LOSSES AT HOME TAKE A TOLL

Residential fires take a tremendous toll each year in this country. The CPSC has compiled a great deal of information relating to residential fires. An estimated 337,300 unintentional residential structure fires occurred in 1999, according to a CPSC staff report. There are no data available for any of the years after 1999. According to the report, the residential fires resulted in an estimated 2,390 civilian deaths, 14,550 civilian injuries, and \$4.24 billion in property losses. A major revision to the National Fire Incident Reporting System (NFIRS) data coding system took effect with 1999 data. For that reason, CPSC staff discourages comparisons of 1999 estimates with estimates from earlier years. A further explanation is included in the Methodology section of the full report. I would encourage our readers to read the report. There doesn't appear to have been a downward turn in the number of deaths or property loss damages in the years 2000 through 2003. Homeowners should take every feasible step possible to eliminate the cause of residential fires and to have safety plans in place for those that can't be prevented. For a complete copy of the CPSC report, you can go to: www.CPSC.gov.

MORE ON CCA-TREATED WOOD

We have received a number of inquiries concerning an earlier issue in which we wrote about problems with CCA-treated wood. You will recall that this is wood treated with CCA, which is a chemical preservative. It is used to protect the wood from rotting by insects and microbial agents. CCA stands for chromated copper arsenate. Exposure to the arsenate in CCA-treated wood may increase a person's risk of developing lung or bladder cancer over a lifetime. The CPSC believes there is a risk to

young children who play on CCA-treated playground equipment and pick up arsenate residue on their hands. For an excellent report on CCA-treated wood and the hazards associated with it, go to the CPSC website: www.CPSC.gov. You can also contact the EPA (www.EPA.gov) or your state or local solid waste management office to receive instructions on how to dispose of CCA-treated wood. In Alabama, you should contact the Alabama Department of Environmental Management and the State Health Department for more information on this matter.

XIV. WORKPLACE HAZARDS

OSHA FINALLY ACTS ON BERYLLIUM

Several months ago, we reported on the health problems relating to beryllium. The Occupational Safety and Health Administration (OSHA) has reversed a long-standing policy concerning beryllium. OSHA is now offering blood tests to hundreds of its inspectors who have been exposed to beryllium, according to documents released by Public Employees for Environmental Responsibility. This hazard has been well known to OSHA for years. Beryllium is an extremely toxic metal that can carry a high risk of disease following even very low exposure. Hundreds have already died of chronic beryllium disease (CBD), a fast-progressing and potentially fatal lung disease. Interestingly, the only known cause of CBD is exposure to beryllium dust. For some reasons, OSHA failed to take needed action in this area.

Dr. Adam Finkel was removed from a high position with OSHA for going public on beryllium, discussing the hazard and its health-related consequences. In fact, OSHA had put out what appears to be false information concerning the danger to its own employees. Finally, OSHA is admitting that Dr. Finkel was correct with his concerns and has taken action that should have been taken a long time ago. Unfortunately, even with this decision to test, OSHA's program

does not target those with the highest risk. Instead, it offers testing to nearly all of the people who likely had the lowest exposure without providing key information about the severity of exposure. I understand that CBD can be a fast-moving disease. I hope inexcusable delays by OSHA have not put people who have been exposed at a greater risk than absolutely necessary. It appears that the delays could have been avoided.

WORKPLACE INJURIES

In this country, if you kill, cripple or dismember someone, you should expect to go to jail. That is, unless that person works for you. Unlike the laws that govern ordinary people, the laws regarding workplace safety offer unfair protections to businesses that expose employees to unnecessary and preventable dangers. The International Labor Office (ILO) estimates that about 2 million people are killed by their work each year - a staggering figure that prompted the ILO SafeWork Program Director to comment, "if terrorism took such a toll, just imagine what would be said and done." But, workers compensation laws (originally enacted to provide financial protection for injured workers) often act to restrict the types of lawsuits that can be brought for workplace injury, and in many cases prevent the injured employee or his family from being able to sue at all. In addition to the risks associated with mismanaged and poorly supervised worksites, all too often a defective product also plays a role in a workplace injury or death.

Unfortunately, workplace injuries and deaths are not uncommon in Alabama. Laws which were originally enacted to provide protection for injured workers have been perverted into shields for negligent employers. Manufacturers who are aware of hazards created by their products point fingers at others when workers are maimed, crippled or killed. Third parties who undertake to oversee and control jobsites are the first to take credit for a job well done but the last to accept proper responsibility for plain negligence. In short, it's the same old story - pass the buck.

Mike Andrews and Cole Portis of our firm recently settled another products

case arising out of a workplace injury. Their client was severely and permanently injured when an unstable boring machine overturned during operation and repeatedly crushed him. During the course of the lawsuit, the manufacturer admitted that incidents of this type have occurred before. They also admitted to having been sued for similar incidents involving injury or death. More importantly, the manufacturer admitted that the machine can produce sufficient force to cause it to overturn while in operation. Clearly they failed to design that known hazard out of the machine. I hope the manufacturer will now take steps to correct this hazard and prevent other needless injuries.

Additionally, we currently represent another construction worker who was crushed in a worksite trench when an excavator bucket released from a large excavator and fell on him. He was trapped and then suffered through a lengthy extrication and extended hospital stay. Because of his crushing injuries, his leg was amputated at the knee and he continues to suffer with other internal injuries. Although this case is in its very early stages, we have already learned that these incidents are far from uncommon. In fact, one OSHA inspector stated that nationwide there have been 15 such tragedies in the past 5 years - 13 involving deaths. We expect that the manufacturer will claim operator error, as they have in each case before. But, simple design changes could completely prevent this type failure from occurring. In fact, we have learned that several competitors have already recognized the hazard and implemented such changes in their products. We expect a tough fight from this manufacturer, but we are committed to our work to help those who need it most.

XV. TRANSPORTATION

HIGHWAY DEATHS HIT 13-YEAR HIGH IN 2003

The number of U.S. traffic deaths rose nearly 1% in 2003 and reached a 13-year high at 43,220, according to the

National Highway Traffic Safety Administration. It was the fifth straight year road deaths were on the increase, although passenger car fatalities went down. It is significant that sport utility vehicle deaths went up roughly 10% over 2002, with more than half of the victims in those crashes killed in rollovers. Motorcycle deaths also jumped. Preliminary figures from NHTSA showed 405 more highway deaths overall in 2003 than the previous year and the most since 1990 when 44,509 people were killed. Despite the increase in the annual death count, the fatality rate per 100 million vehicle miles traveled remained constant at 1.5 deaths. Clearly, this was because more people were on the road.

Reportedly, Jeffrey Runge, Administrator of NHTSA, wants the death rate to drop measurably and soon. I hope Dr. Runge will help make it happen. If the current trend continues, it is predicted that the country could return to 50,000 deaths a year by the end of the decade. Forty percent of all fatalities, or 17,401 deaths, were alcohol-related. This was essentially unchanged from 2002. All states need to adopt standard safety-belt enforcement laws and to get tougher on drunken drivers. It will also help solve this problem if Congress would pass the measures needed to give NHTSA the tools and mandate necessary to properly regulate the automobile industry. Runge, an emergency room physician, has also raised the potential dangers of light trucks sharing the road with smaller passenger cars and has addressed the propensity of SUVs to roll. Since sport utility deaths went up by 456, the rollover propensity of SUVs is finally being addressed. Even though some manufacturers appear to be working on the problem, Runge wants more safety changes. For instance, NHTSA is proposing a standard to improve the strength of vehicle roofs to reduce rollover deaths.

Cars have a slight edge in sales over light trucks, which include SUVs, pickups and minivans. But, SUV sales rose more than 10% last year. Consumer and safety groups have long targeted SUVs as unsafe, and are pressuring the government to mandate tougher design changes. SUV safety and other provi-

sions are included in highway legislation awaiting final consideration in Congress. Joan Claybrook, president of Public Citizen, says that "affordable, feasible safety improvements could help prevent the rising death toll in SUVs." I totally agree with her assessment. NHTSA's Fatality Analysis Reporting System (FARS) showed some more disturbing trends in 2003. Fatalities from large truck crashes increased from 4,897 in 2002 to 4,942 in 2003, a 0.9% rise. Deaths of children 7 or younger remained near historic low levels, with 972 children seven and under killed, compared with 968 in 2002. NHTSA said the relatively low level of child deaths is the result of an increase in the use of safety seats. The number of fatal crashes involving young drivers, who fall in the 16 to 20 age group, declined by 3.7% (from 7,738 in 2002 to 7,452). In 2003, vehicle miles traveled increased slightly to 2.88 trillion, up from 2.86 trillion in 2002, according to the DOT's Federal Highway Administration. There were larger than normal increases in vehicle miles traveled in the last half of the year, consistent with improvements in the economy. The number of registered vehicles increased from 225.7 million in 2002 to 230.2 million in 2003. NHTSA annually collects crash statistics from 50 states and the District of Columbia to produce the annual report on traffic fatality trends.

The number of fatal crashes involving drivers 16 to 20 declined by 3.7%, to 7,452. The figures released last month are preliminary. NHTSA plans to release final 2003 fatality figures in August. NHTSA collects its data from police reports in all 50 states. NHTSA has estimated that highway crashes cost society \$230.6 billion a year, about \$820 per person. Traffic crashes are the leading cause of death in American children and young adults. Pedestrian deaths declined 2.8% from 4,808 in 2002 to 4,672 in 2003.

The final 2003 report, pending completion of data collection and quality control verification, will be available in August. Summaries of the preliminary report are available on the NHTSA website at: www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/PPT/2003EARRelease.pdf.

2001 TRACTOR-TRAILER ACCIDENT STATISTICS

The mission of the Federal Motor Carrier Safety Administration (FMCSA) is to promote the safe operation of commercial vehicles on our nation's highways. Of all the people killed in motor vehicle crashes in 2001, 5,082, or 12% of the total number killed, died in crashes that involved a large truck. Another 131,000 people were injured in crashes involving large trucks. Only about 14% of those killed and 23% of those injured were occupants of large trucks. From 1991 to 2001, the number of large trucks involved in fatal crashes increased from 4,347 to 4,793. This was up by 10%. The number of large trucks in fatal crashes per 100 million vehicle miles traveled declined in these years from 2.9 to 2.3. This was down 21%. The same rate for passenger vehicles fell from 2.3 to 1.9 or down 17%. From 1991 to 2001, the number of large trucks involved in injury crashes per 100 million vehicle miles traveled declined by 17%, while the rate for passenger vehicles dropped by 19%. The following are some pertinent facts:

- In 2001, large trucks drove 7% of all vehicle miles traveled and made up 3% of all registered vehicles in the United States. In motor vehicle crashes, large trucks represented 8% of vehicles in fatal crashes, 2% of vehicles in injury crashes, and 4% of vehicles in property-damage-only crashes.
- Truck tractors pulling semi-trailers accounted for 62% of the trucks involved in fatal crashes and more than 50% of the trucks involved in nonfatal crashes.
- Doubles (truck tractors pulling a semi-trailer and a full trailer) were only 3% of trucks involved in both fatal and nonfatal crashes, and triples (tractors pulling three trailers) accounted for less than 0.5% of all trucks involved.
- Only 4% of trucks involved in fatal crashes and 2% of trucks involved in nonfatal crashes were carrying hazardous materials (HM). HM was released from the cargo compartment in about one-sixth of these crashes (16%).

- Only 1% of the drivers of large trucks involved in fatal crashes in 2001 were legally intoxicated (blood alcohol content of 0.08 grams per deciliter or higher), as compared with 23% of passenger car and light truck drivers in fatal crashes. Only 2% of the drivers of large trucks involved in fatal crashes had any alcohol.
- 74% of the drivers of large trucks involved in fatal crashes were reported by police as wearing their safety belts, compared with 57% of passenger vehicle drivers involved in fatal crashes.
- In fatal crashes involving large trucks, crash-related factors were cited for 37% of the truck drivers. In comparison, crash-related factors were noted for 65% of passenger vehicle drivers involved in fatal crashes. Some of the most common factors cited for drivers of large trucks and drivers of passenger vehicles were the same: driving too fast, running off the road or out of the traffic lane, and failure to yield the right of way.
- Speeding (exceeding the speed limit or driving too fast for conditions) was a factor in 21% of the fatal crashes involving a large truck, compared with 30% of all fatal crashes.
- 21% of injury crashes involving a large truck and 19% of all injury crashes were speed related.
- No adverse weather conditions were reported for 86% of the fatal crashes and for 88% of the nonfatal crashes involving large trucks in 2001. Rain was the most common adverse weather condition.
- Two-thirds (68%) of the fatal crashes involving large trucks and four-fifths (80%) of the nonfatal crashes occurred during the day.
- The vast majority of the fatal crashes (85%) and of the nonfatal crashes (88%) involving large trucks occurred on Monday through Friday.
- For 77% of the fatal crashes and for 71% of the nonfatal crashes involving large trucks, the first harmful event was a collision with another vehicle in transport.

- Rollover was the first harmful event for only 4% of the fatal crashes and only 3% of the non-fatal crashes involving large trucks.
- More than one-fifth (22%) of fatal crashes that took place in work zones areas of construction, maintenance, or utility activity involved a large truck.

REGULATIONS FOR 18-WHEELERS

Our firm has handled a number of cases involving deaths and serious injuries arising out of motor vehicle accidents on interstate highways. Many of the cases were the result of driver fatigue on the part of the over-the-road-truckers. Driver fatigue is an important and frequently identified risk factor in motor vehicle accidents involving large trucks. Unfortunately, when an accident does involve a large truck, the consequences are most often catastrophic, involving death or serious injury. The trucking industry and the federal government understand full well the risk associated with driver fatigue. As a result, by way of the Federal Motor Carrier Safety Regulations, the government has promulgated mandatory regulations that limit driving time, require mandatory off-duty time, and set other limits to help protect the traveling public. During the past year, we have seen a tremendous increase in the number of serious interstate accidents involving 18-wheelers and driver fatigue. We have several cases pending now where drivers went to sleep and rear-ended unsuspecting drivers on a busy interstate highway.

Beginning January of 2004, the Department of Transportation (DOT) began enforcing the new regulation dealing with hours of service for truck drivers. The new regulation changes the required rest and duty time for commercial truck drivers and how they calculate their time "on duty." The purpose of this revision is to improve highway safety and help reduce the number of truck crashes, deaths and injuries caused by fatigue on the part of drivers of commercial trucks.

The new rules increase the time that truck drivers must set aside to rest in a

24-hour duty period from 8 to 10 hours. The total time a driver can be "on duty" is reduced from 15 hours to 14 hours. The new regulation allows the driver to spend 11 hours "on duty," which is an additional hour more than currently allowed. Drivers may not drive after being on duty for 60 hours in a 7 consecutive day period or 70 hours in an 8 consecutive day period. This "on duty" cycle may be restarted whenever a driver is off duty for at least 34 consecutive hours. The new regulation requires drivers to include as time "on duty" any time spent waiting at loading docks or refueling. This means the clock is running even if the truck is not. This appears to be the provision most widely opposed by the trucking industry today.

Many private carriers, including Wal-Mart Stores, are requesting the Federal Motor Carrier Safety Administration to delete the requirement that a driver stop driving 14 hours after coming "on duty." According to reports, Wal-Mart and a coalition of more than 20 trade groups argues this restriction creates an unreasonable burden – they claim it's a "safety hazard." Wal-Mart argues the new rule will reduce driver productivity by 6% and projects each driver will lose 48 minutes a day of productive time, which is approximately 296,000 fewer miles per day for the company. According to the Federal Motor Carrier Safety Administration, all states except California and Alaska are currently citing those truck drivers who violate the new hours of service regulation. I understand that Alaska currently relies on FMCSA to cite and will begin citing in June of 2004, and California plans to cite drivers under the old regulations. It has been reported that California plans on adopting the new regulations.

ATV DEATHS AND INJURIES ON THE RISE

Children are being hurt in all-terrain vehicle (ATV) crashes in increasing numbers. Across the state and nation, the number of people killed and injured on ATVs continues to rise. There were 123 injuries in 2002 in all-terrain vehicle crashes on state public roads, according to the Alabama Department of Public Safety. Alabama

ranks 21st in the nation for the number of deaths and wrecks involving all-terrain vehicles. From 1982 through 2002, there were 110 people killed on all-terrain vehicles in Alabama, according to the U.S. Consumer Product Safety Commission. Alabama is one of five states that does not regulate the use of ATVs or set a minimum age for their drivers. Alabama also does not require safety equipment such as helmets for ATV drivers or riders. The CPSC estimates that while children under age 16 comprise 17% of ATV drivers, they account for one-third of all injuries and deaths involving the vehicles. The American Academy of Pediatrics has recommended that children younger than 16 be banned from the vehicles, which can exceed 70 mph. That certainly makes sense and the state legislative bodies should listen and take action. CBS News had an excellent series on ATV use by young children last month, and I hope that segment will help alert the public – and especially parents – to the dangers. My advice for parents and other adults: keep children off ATVs and don't wait for legislative bodies to act.

XVI. ARBITRATION UPDATE

ARBITRATION HURTS PEOPLE

The United States Constitution is perhaps the second most sacrosanct document in the American culture. Only the Bible surpasses the Constitution in terms of the passion that we Americans exercise in its defense. Our soldiers and our citizens have died on countless battlefields around the world in defense of the beliefs and principles outlined in this document. Scholars have written innumerable treatises about the importance and uniqueness of our Constitution. Political pundits have extolled the virtues of the democratic ideals so eloquently condensed into this document. More importantly, the citizens of this country have made the Constitution the very foundation upon which they exer-

cise their rights and operate their government. I would encourage our appellate courts around the country – including the U.S. Supreme Court – to take a few minutes and read exactly what the U.S. Constitution says about the right to trial by jury.

In suits at common law, where the value and controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . .” Amendment VII to the United States Constitution. [Emphasis supplied.]

I wonder how much clearer this language could be. It sure looks like the writers intended to “preserve” the right to trial by jury. We have allowed the courts to do away with the rights that Americans have so fervently defended and fought for over the last 230 years. I hope that everyone who reads this commentary will recognize that the rights guaranteed the citizens of this country are being eroded on a daily basis. It is time for our citizens to both take notice and, more importantly, to take a stand. If the people don't stand up and defend their rights against the daily barrage of arbitration and “tort reform,” we will soon wake up to find out that the sacrifices of those before us have been for naught. The preamble to our now Constitution reads “We the people. . . .” If we don't quickly do something to defend the rights guaranteed us by our Constitution, the preamble will soon read: “We the rich and powerful. . . .” In fact, many of our appellate judges already read the constitution in that manner, and that's bad!

XVII. NURSING HOME UPDATE

PUBLIC CONCERN IS WIDESPREAD

It is significant that on our weekly radio programs, segments dealing with the nursing home industry always seem to attract a great deal of comment from our listeners. The overwhelming majority of our callers are upset over conditions in our nursing homes. The

bottom line is that people are pretty well fed up with the poor record of the nursing home industry in Alabama. Callers are generally irate and expect something to be done about how residents are treated. One thing is certain and that is people don't want arbitration in nursing home admission contracts. I have talked with consumer groups in other states, and they are all shocked that any state would allow mandatory, binding arbitration in a nursing home admission form. My response to them was – get ready, they are coming to your state and soon.

AWAITING ALABAMA SUPREME COURT ACTION

As of this writing, we had not heard from the Alabama Supreme Court on our rehearing applications in the two cases dealing with arbitration and nursing homes in Alabama. I hope the court will rethink its position on this most important issue. Groups such as the AARP and Alabama Watch and numerous consumer advocacy groups have joined in the appeal.

XVIII. HEALTHCARE ISSUES

MORE MEDICARE TROUBLES FOR THE BUSH WHITE HOUSE

The Congressional Research Service (CRS) has issued a report that says Bush Administration officials appear to have violated federal law by preventing Medicare's Chief Actuary from sharing the cost estimates with lawmakers debating prescription drug legislation last year. The CRS report is especially troubling for the Bush Administration, which had previously cited legal opinions by CRS to justify the Administration's stand on another matter related to Congress. The report states that Congress' right to receive truthful information from federal agencies to assist in its legislative functions is clear and unassailable. Further, CRS noted that political gamesmanship must yield to the clear public interest of pro-

viding elected representatives in Congress with accurate and truthful information upon which to effectively fashion the laws for the nation.

Many politicians – both Democrats and Republicans – appear to be upset over the new report. You may recall that when the Medicare Prescription Drug law cleared Congress last year by the narrowest of margins, much arm-twisting by the Republican leadership in the House was necessary. Many conservatives were awfully upset and felt betrayed when it was finally revealed that Medicare's Chief Actuary had predicted months before that the cost of the new benefit could far exceed the \$400 billion, ten-year estimate. The Administration waited until early this year before releasing the actual \$535 billion dollar figure. Several Senators, including those drafting the final bill, have said they were frustrated about getting false Medicare information from the Administration. Medicare's Chief Actuary has said publicly that he endured a pattern of pressure from his politically appointed superiors to discourage him from sharing his costs analysis with Congress. In one face-to-face meeting, the Chief Actuary states he actually gave the Medicare Administrator the updated cost estimates well above the \$400 billion dollar figure and was told, "We can't let that get out." That sort of conduct has become commonplace in the Bush White House, and that is a sad commentary.

REPORT ANALYZES LONG-TERM CARE COVERAGE, COSTS

The benefits of expanding Medicare and Medicaid benefits for long-term care recipients – covering more people – may not outweigh the heightened financial burdens on the programs, according to a new Congressional Budget Office report. The report, "Financing Long-Term Care for the Elderly," was prepared for the House Budget Committee to address the growing fiscal pressure on long-term care spending and the aging demographics. The CBO estimated that \$135 billion will be spent on long-term care services in 2004 from a variety of sources, including Medicare, Medicaid, personal savings and private insurance.

Medicare will spend \$16 billion in 2004 for skilled nursing care and \$17 billion on home health care, while the private market will account for \$6 billion.

The CBO looked at possibly offering individual tax credits and increasing eligibility requirements for Medicaid and Medicare. While a tax credit might be more attractive to potential long-term care users than expanding Medicare or Medicaid benefits, it would also increase costs to the federal budget, said the report, which was released Monday. A way to increase Medicaid eligibility would be to raise the program's limits on income and assets. Applying stricter standards on individuals' transferring of assets to qualify may offset the costs of this. But, more Medicaid beneficiaries may depress sales of private coverage by strengthening Medicaid's "distortive" impact. Medicare coverage could be expanded by dropping the three-day prior hospitalization rule for nursing home care, the CBO said.

ANOTHER MISFILLED PRESCRIPTION CASE

A federal jury in Colorado has awarded more than \$1.1 million to a 63-year-old man whose lower right leg was amputated after Walgreen Co. mistakenly doubled his dosage of thyroid replacement hormone. Walgreen Co. admitted the mistake, but contended that the customer lost his leg because of peripheral vascular disease (a circulatory problem caused by hardening of the arteries). The company contended that its customer, the plaintiff in the lawsuit, failed to follow doctors' advice about proper diet, exercise and medication for the condition, which had affected him for several years. The wife of the victim was awarded \$50,000 for damages she suffered as a result of her husband's health problems.

Before losing his leg, the plaintiff in the Colorado case played racquetball several times a week, hiked and biked with his wife and rappelled down mountains as training for his Larimer County Search and Rescue work. The plaintiff's right leg was removed below the knee in 1997 when he was 56, after Walgreen Co. filled his prescription with the wrong pills in November 1996. Although the label on the bottle showed the correct

amount of medication prescribed, the pills actually were double the dose of thyroid replacement medication that the plaintiff was supposed to take. We have previously reported on the large number of incidents that occur each year around the country where prescriptions are mis-filled. Most of the problems involve the large chain drug stores.

XIX. ENVIRONMENTAL CONCERNS

TOP U.S. AIR POLLUTERS ARE CLOSELY TIED TO BUSH FUNDRAISING

The results of a new study from two nonprofit and nonpartisan groups, the Environmental Integrity Project (EIP) and Public Citizen, have now been released. According to the report, the nations' top polluters, as measured in terms of mercury, sulfur dioxide (SO₂) and carbon dioxide (CO₂) emissions, are power plants owned by corporations that are tightly allied with the Bush Administration in terms of both campaign contributions and pollution policymaking. The report finds that sulfur dioxide and carbon dioxide pollution both rose from 2002 to 2003. These increases posed higher risks to Americans in terms of asthma attacks, lung ailments, premature death and, in the case of mercury, heightened risk of neurological damage to children. The report, America's Dirtiest Power Plants: Plugged into the Bush Administration, ranks the top 50 polluting power plants for three pollutants. While the power plants represent only about 5% of the more than 1,000 such facilities in the United States, the worst offenders dominate the industry's problem emissions: 43% of sulfur dioxide pollution, 31% of CO₂ pollution and 43% of mercury pollution.

Since 1999, the 30 biggest utility companies owning the majority of the 89 dirtiest power plants examined in the study have poured \$6.6 million into the coffers of the Bush presidential campaigns and the Republican National Committee. The companies and one of their trade associations, the Edison

Electric Institute, have produced 10 “Rangers” and “Pioneers,” the Bush campaign super-fundraisers who collect at least \$200,000 or \$100,000, respectively, in earmarked contributions. The 30 companies hired at least 16 lobbying or law firms with 23 Rangers or Pioneers between them who have raised at least \$3.4 million for the Bush campaigns. These firms, together with the private utility industry’s trade association, met with Vice-President Cheney’s energy task force at least 17 times to help formulate the country’s energy and pollution policies. Environmental Integrity Project Director Eric Schaeffer stated in a news release:

It is no coincidence that a wholesale assault on the Clean Air Act is taking place today. This attack is part of a campaign by a White House that understands what the industry wants and is willing to do whatever it takes to make that happen. No one should have any illusions about what is happening: This is a well-connected industry that is absolutely intent on preserving its ‘right’ to foul the air regardless of the consequences for the American public.

My friend Frank Clemente, who is Public Citizen’s Congress Watch Director and a tireless worker in the consumer advocacy vineyards, added:

This is a classic Washington ‘follow the money’ story. When the electric utility industry faced strong government attempts to clean up many of its aging coal-fired power plants, an action that could cost the utilities billions, a few dozen corporations and their trade association began an intensive campaign to derail the effort. Their strategy: help elect an industry-friendly president, fill federal regulatory posts with former utility executives and lobbyists, and hire a small army of lobbyists and lawyers connected to the new president to engineer regulatory changes that would undermine the Environmental Protection Agency’s (EPA) Clean Air Act enforcement cases and weaken rules that already were in the pipeline.

Other highlights of the new report include the following:

- **Top polluters identified.** The study ranks the top 50 power plants for each of three pollutant categories – mercury, sulfur dioxide and carbon dioxide. According to the report, the three worst polluters in terms of SO₂ are: Bowen (Georgia); W.H. Sammis (Ohio); and Keystone (Pennsylvania). The three worst polluters in terms of CO₂ are: Martin Lake (Texas); Scherer (Georgia); and Bowen (Georgia). The three worst polluters for mercury are: Keystone (Pennsylvania); Mount Storm (West Virginia); and Monticello (Texas). Of this group, only one – Mount Storm, operated by Dominion Electric – has agreed to a comprehensive clean-up of its pollution, particularly sulfur dioxide.
- **Key pollution indicators are up.** The EPA’s recently released 2003 emissions data show that power plant SO₂ emissions increased by more than 400,000 tons between 2002 and 2003, rising from 10.19 million tons to 10.59 million tons, or 3.9%. Carbon dioxide emissions increased by roughly 47 million tons during the same period, from 2.425 billion tons in 2002 to 2.472 billion tons in 2003, a 2% increase. Nitrogen oxide emissions from power plants declined 5.6%, dropping from 4.36 million to 4.12 million tons.
- **Over half of major polluters have been in hot water.** Of the 89 plants that made it onto one or more of the dirtiest plant lists, 47 – well over half – either have been sued or placed under investigation by the EPA for violating the Clean Air Act’s New Source Review requirement. Of the top 50 SO₂ emitters, 18 plants have been brought to court and another 11 were placed under investigation by the government. In August 2003, the EPA relaxed the rules for New Source Review – exempting many facilities from the law’s per-

mit and pollution control requirements – only to have a court stay the rules. Nonetheless, the result of the administration’s policy, coupled with the program’s current legal limbo, is that many of these companies have either had the cases against them undermined or simply dropped by the Bush Administration.

- **Major harm inflicted by pollution.** In addition to causing major environmental and property damage from acid rain, sulfur dioxide inflicts a serious health toll in terms of asthma attacks and lung ailments. According to EPA studies, pollution from power plants is linked to heart and lung diseases, which contribute to more than 20,000 premature deaths a year. Mercury is a highly toxic metal that, once released into the atmosphere, settles in lakes and rivers, where it moves up the food chain to humans. In 2003, the Centers for Disease Control and Prevention (CDC) found that roughly 10% of American women carry mercury concentrations at levels considered to put a fetus at risk to neurological damage.
- **Influence inside the administration.** After raising millions of dollars for his election in 2000, many of Bush’s biggest utility contributors were invited to join various transition teams, the committees that nominated officials to serve in the new Administration. The 30 big utilities on the three dirtiest plants lists had four officials appointed to the Energy Department transition team. The new Administration contained five of the industry’s former executives or lobbyists, who were given senior positions where they were responsible for formulating or enforcing clean air policies. And once a controversial rewrite of air policy was finalized in late 2003, two officials left the EPA and were immediately hired by electric utilities or lobbying firms that represented them.

The complete report is available at: www.environmentalintegrity.org and www.WhiteHouseForSale.org. I encourage all of our readers to take the time to read this report. It will open your eyes!

XX. TOBACCO LITIGATION UPDATE

JUDGE REFUSES TO DISMISS TOBACCO LAWSUIT

A federal judge has denied the tobacco industry's bid to toss out the Justice Department's \$280 billion lawsuit against the nation's top cigarette makers. The tobacco industry argued in a motion that the case should not be brought to trial this fall, claiming the Justice Department has so far failed to show that the companies were likely to commit fraud in the future. "To answer that question, the court must hear and weigh the evidence, which is properly done at trial," U.S. District Court Judge Gladys Kessler said in a written ruling. This means the case will go to trial. Anti-smoking groups applauded that decision. The Justice Department filed the civil racketeering case against the industry for allegedly conspiring to deceive the public about the dangers of tobacco and the addictive nature of nicotine. The government also claims the companies targeted children through advertising and then lied about it. The suit was filed under the Clinton Administration. The Justice Department, under the Bush Administration, initially sought to settle the case, but has pursued it since those talks failed. I must confess that the Bush action has come as a pleasant surprise.

In her ruling, Judge Kessler rejected an argument by the tobacco companies that the case should be tossed out because a 1998 legal settlement with 46 states restricted the industry's ability to commit future wrongdoing. The companies cited the numerous restrictions the settlement imposes on them, such as a ban on cartoon characters and ads on public transportation or billboards. The judge said the companies were asking

her to assume that the industry has complied with the settlement and will continue to comply with it, assumptions she said she would not make at this stage in the case. Judge Kessler also noted that the government is seeking remedies not provided under the settlement with the states. That includes new marketing restrictions, funding of nicotine replacement therapy for smokers, and recovery of the \$280 billion allegedly earned through fraud. The defendants in the government case are Philip Morris USA Inc. and its parent, Altria Group Inc.; R.J. Reynolds Tobacco Co.; Brown & Williamson Tobacco Co.; British American Tobacco Ltd.; Lorillard Tobacco Co.; Liggett Group Inc.; Counsel for Tobacco Research-USA; and The Tobacco Institute.

CRUCIAL MEMO IN A TOBACCO SUIT

A document that appears to be extremely damaging to the tobacco industry is being sought in the tobacco litigation mentioned above brought by the United States. A special master appointed by a federal court has ordered an Australian company to turn over the memo written by a lawyer that allegedly serves as a blueprint for destroying discoverable documents under the guise of document preservation. The Australian company, British American Tobacco Ltd. (BAT) —a defendant in the litigation brought by the U.S. Department of Justice—claims that the document is protected by attorney-client privilege and the work-product doctrine. The 1990 memo, known as the "Foyle Memorandum," had been central in Australia's own tobacco litigation.

In March 2002, in a products liability suit brought by a smoker and his family, commonly known as the "Eames case," an Australian trial judge struck the defenses of BAT, in part because of the Foyle memo. Subsequently, a jury awarded 700,000 Australian dollars (about U.S. \$500,000) in damages. That decision was overturned in December 2002 by the Supreme Appeal Court of Victoria, which said that the memo appeared fully and frankly to set out the difficulties facing tobacco companies in the wave of expected litigation. A unit of BAT, Brown and Williamson,

is one of five defendants named by the United States in the civil suit brought under the Racketeer Influenced and Corrupt Organizations Act. The suit alleges that the tobacco companies conspired to hide the dangers of smoking, and destroyed and concealed documents to further that common enterprise. The government seeks \$289 billion in damages. Judge Kessler has been ordering production of the Foyle memo for almost two years. According to court documents, BAT had once claimed that it did not know where the document was or if it ever existed. The company now asserts that its claim of privilege is covered by a more general privilege claim, and that comity ought to be accorded to Australia's appeals court decision.

BAT has twice appealed district court orders to produce the memo to the U.S. Court of Appeals for the District of Columbia Circuit. In its last opinion, the D.C. Circuit sent the matter back to the district court to determine, among other things, whether BAT's more general objections should cover the memo. Among its other arguments, the U.S. government asserted that the defendant should be estopped from asserting its privilege under the crime-fraud exception because the memo allegedly proposed the commission of fraudulent acts. The Special Master, in a finding issued month, dismissed each of defendant's objections. In dealing with the sanction issue, the Special Master said that BAT's conduct was "inexcusable."

MORE TOBACCO TROUBLES

A money-laundering suit has also been filed against R. J. Reynolds Tobacco Holdings, Inc., (RJR) by European Union regulators. The lawsuit accused the maker of Camel and Winston cigarettes of working with organized crime and terrorist organizations in laundering the profits through New York banks. The smuggling case was dismissed originally, but the European Union has been given permission and has refilled its suit against RJR under money-laundering laws. It will be interesting to see how this claim progresses.

SECOND-HAND SMOKE POSES HEART ATTACK RISK

For the very first time, the Centers for Disease Control and Prevention is warning people at risk of heart disease to avoid all buildings and gathering places that allow indoor smoking. The CDC disclosed its new advisory in a commentary to a study published in the British Medical Journal in April, saying doctors need to warn people with heart problems that second-hand smoke can significantly increase their risk of a heart attack. The agency said that as little as 30 minutes' exposure can have a serious and even lethal effect. In his commentary, Terry Pechacek, associate director of science at CDC's Office on Smoking and Health, wrote that the research underscores evidence that second-hand smoke rapidly increases the tendency of blood to clot, which can restrict flow to the heart. The new study strengthens the growing body of research pointing to potentially fast and acute reactions to second-hand smoke, in addition to the long-term damage done to nonsmokers who live with smokers. The CDC has estimated that second-hand smoke causes 35,000 heart disease deaths a year in the United States, but that estimate is likely to be revised upward.

APPEALS COURT AFFIRMS DECISION IN FLORIDA CASE

A Florida appellate court last month affirmed a jury's 2003 decision that ordered Philip Morris USA and Brown & Williamson Tobacco Corp. to pay damages to a former smoker with lung disease. The jury awarded about \$6.54 million to John Eastman, but found Eastman, a former smoker with a respiratory illness, to be 50% at fault. It found Philip Morris USA, the largest U.S. cigarette maker, liable for 40% of the damages, or about \$2.6 million, and found Brown & Williamson liable for 10% of the damages, or approximately \$654,000. The jury did not award punitive damages. A three-judge panel of Florida's 2nd Circuit Court of Appeal rejected Philip Morris USA's argument that the jury was given improper legal instructions when it concluded that Eastman, now 75, was entitled to damages.

OTHER FLORIDA HIGH COURT ACTION COULD BE MAJOR BLOW FOR TOBACCO INDUSTRY

The bosses at the Altria Group Inc., R.J. Reynolds Tobacco Holdings Inc., British American Tobacco PLC's Brown & Williamson Tobacco Corp., and Loews Corp.'s Lorillard Tobacco Co. had to be concerned last month after the Florida Supreme Court agreed to review a lower court's voiding of a \$145 billion punitive damage award against U.S. cigarette makers. The court will review an appellate ruling last year that the lawsuit had been improperly filed as a class action and that the amount of punitive damages was excessive to the point of bankrupting the companies. The Florida case was the first tobacco lawsuit in the nation to be granted class action status and resulted in the largest punitive damage award in U.S. history. The Florida Supreme Court's decision came as a surprise since class action lawsuits by smokers generally have not been successful in the courts. This case will be watched with great interest.

XXI. THE CONSUMER CORNER

ATTORNEY GENERAL FIGHTS HOME BUILDING AND REPAIR FRAUD

Attorney General Troy King has taken an active role in the annual campaign to protect Alabama citizens against home repair fraud. The Attorney General joined the Alabama Licensure Board, the Home Builder's Association of Alabama and the Better Business Bureau in an effort to make consumers, especially senior citizens, more aware of repair scams during Remodeling Consumer Protection Month. I understand the Attorney General's office received about 195 complaints related to home repair fraud last year. Some 48 complaints have already been submitted this year. Many of the complaints involved workers who accepted money for unfinished repair jobs, improperly performed work or failure to honor warranties.

Alabama's new Attorney General told the Associated Press that, "Unscrupulous trade practices on the part of a few may have a negative impact on how the public views an entire industry. Honest builders and businesses take seriously their responsibility to serve you with integrity and to work with my office to stop fraudulent acts that prey upon elderly and other unsuspecting consumers." It is good to see public officials taking their responsibilities to protect consumers seriously. The Attorney General's office should take a lesson from New York's Attorney General and take its role in consumer protection seriously. I hope this is now being done.

REBUILT WRECKS CAUSE ROAD HAZARDS

A recent report on CBS News discussed a problem that has gone pretty much undetected throughout the country. Mark Strassmann, a CBS News Correspondent from Atlanta, who is an outstanding investigative reporter, did an excellent job in bringing the problem to the public's attention. Many people buy used cars rather than paying the price of a new vehicle by choice. Others go to the used car market for economic reasons. This year, it is estimated that 45 million used cars will be sold in the U.S. Selling "rebuilt wrecks" is a practice that has become all too prevalent in the used car industry. It is estimated that 400,000 of these cars are sold every year to consumers who are not given any disclosure as to the prior problems with the vehicle. Oftentimes, rebuilt vehicles are sold at a dealer's auction with full disclosure about prior damage. Quite often, the vehicles with prior damage are sold at a second auction with no mention of the earlier problems. The CBS News report indicated that cars that should go to a junkyard are instead being rebuilt and resold to unsuspecting consumers.

Buying any used car involves a certain element of risk. The vehicle could have hidden damage – especially if it has been in a prior accident – that could put a driver's life at risk and endanger others on the highways. It appears that an unknown number of frame-damaged cars with serious safety defects are

resold to consumers with no warning of the car's accident history.

ALABAMA WATCH NEEDS YOUR HELP

As most of you know, Alabama Watch is a nonprofit organization working for Alabama consumers on a broad range of issues. In my opinion, this "consumer watchdog" group does a great job. As you might expect, the group is dependent on contributions from individuals, because it doesn't get any big corporate money. Neither is foundation or grant money much of an option because of where this money originates. Alabama Watch takes on Corporate America, which means the group must depend on consumers, small businesses, and law firms who understand their mission for its funding. If you agree that Alabama Watch is performing a valuable service to our state and consumers specifically, consider making a monthly pledge for a regular donation to the group. You can also send a check now, which would be a big help to Barbara Evans and her small, but dedicated staff. You can send your checks, payable to Alabama Watch, to: 412 North Hull Street, Montgomery, Alabama 36104. If you want more information, call Alabama Watch at 334-263-3022 or 1-800-449-7515. The group also has a website at www.alabamawatch.org.

XXII. RECALLS UPDATE

ISUZU RECALLS TROOPERS TO FIX ACCELERATORS

Japan's Isuzu Motors Ltd. is recalling 72,905 Trooper sport utility vehicles because their accelerators can get stuck for several seconds after the gas pedal is released. An advisory on the website of the National Highway Traffic Safety Administration said Troopers from the 1992-1995 model years were affected by the recall. NHTSA reports: "The accelerator cable can stick so that the engine speed will not immediately decrease upon release of the accelerator pedal. This can cause the accelerator throttle

cable to delay RPM and vehicle speed reduction for several seconds after the accelerator pedal is released, which in turn, can lead to a crash." While NHTSA didn't say whether any actual accidents or injuries had been linked to the problem, it said dealers would fix it by replacing the throttle cable rubber boot on the SUVs. As you probably know, Isuzu is 12% owned by General Motors Corp.

VW RECALLS 870,000 CARS TO CHECK AXLES

Volkswagen is recalling 870,000 vehicles worldwide to check front axles for a potential problem. The vehicles affected under the German automaker's recall include VW Passats and Audi A4s, A6s and A8s, all built in the late 1990s. Volkswagen said the recall is to examine rubber boots, which can get damaged and in some cases cause failure of the bearing arm. The company expects that about 1% of the affected vehicles will need repairs. For more information, contact your VW dealer.

CHRYSLER RECALLS MORE THAN 320,000 PICKUPS, SUVs

DaimlerChrysler's Chrysler Group is recalling 320,188 Dodge Durango sport utility vehicles and Dakota pickups because of a potential safety hazard involving the windshield wipers. The National Highway Traffic Safety Administration reported that water could get into the windshield wiper motor on some vehicles, causing corrosion and malfunctions of the wipers. Vehicles involved are 2002-2003 Durangos and 2002-2004 Dakotas, NHTSA said. Dealers will replace the front windshield wiper module. Owners should contact DaimlerChrysler at 1-800-853-1403.

ANOTHER RECALL BY DAIMLERCHRYSLER

DaimlerChrysler's Mercedes unit is recalling around 680,000 passenger cars worldwide due to suspected problems with the braking systems in some cars. Daimler said it is offering free inspections to customers of its E-class saloon (sedan) built after March 2002,

SL-class sports cars built after October 2001 and T-models built after March 2003. A company spokesman said that prior inspections showed that of all the models of these classes and years, roughly two out of every thousand proved to have problems with the Sensotronic Brake Control system. If the same percentage applied, this would translate in this case to about 1,360 units affected out of the 680,000 vehicles. The carmaker said the defect in the system's braking hydraulics meant drivers need to brake earlier and with greater force to bring the car to a stop. According to the company, high-mileage vehicles where the brakes have been used more than average — such as taxis — have mainly been hit by the problem.

CPSC RECALLS WATER HEATER CONTROLS

The U.S. Consumer Product Safety Commission has announced the recall of 88,000 liquid propane and convertible gas water heater temperature controls. The CPSC said the gas water heater controls made by White-Rodgers, a division of Emerson Electric Co., can gradually open instead of snapping open to full flow, which can cause soot to build up on the water heater burner, presenting a fire hazard. White-Rodgers has received 12 reports involving soot build-up. Eight of these reports included minor fire damage. The temperature control is a small metal box located above the access panel door of the gas water heater. A white label with red lettering located on the right side of the control contains one of the following model numbers: 37C55U 658, 3757C72U 602, 37C72U 520, 37C72U 546, 37C72U 547, or 37C72U 548, and 37C72U 676. There should be a four-digit metal stamped date code located below the label on the right side of the control. Recalled controls will have date codes 0240 to 0329 (40th week of 2002 to 29th week of 2003). Potentially affected gas water heaters include: AO Smith, Apollo, Crosley, Energysense, Freedom, Interthrem, Kenmore, Maytag, Mission, Myers, Penfield, President, Reliance, Sentry, and State.

Beginning serial numbers on these gas water heaters can be checked at the company website: www.regcen.com. Retail distributors and independent servicers have sold and/or installed water heaters with the controls from October 2002 through March 2004. Contact White-Rodgers to arrange for a qualified service technician to replace the recalled control free of charge. Call White-Rodgers Special Project Office at (800) 426-3579.

RECALL TO REPAIR BUNK BEDS

Approximately 22,476 "Trails End," "Cottage Retreat," and "Stages" bunk beds manufactured by Ashley Furniture Industries, Inc., of Arcadia, Wisconsin, have been recalled. There are gaps between parts of the bunk bed that violate federal safety standards and can be entrapment or strangulation hazards to children. For model B383, the gap between the end rails on the upper bunk is too large. For models B213 and B233, the gap between the guardrails of the upper bunk can be widened with pressure, presenting an entrapment hazard. Federal standards for bunk beds are designed to protect children against entrapment and strangulation. These bunk bed models are recalled for repairs: B383-58T, B383-57T, B213-58, and B233-58. The B383 models are sold under the group name "Trails End." The B213 is sold under the group name "Cottage Retreat." The B233 is sold under the group name "Stages." The model numbers are on product stickers on each bunk bed. On the B383 model, the product sticker is on the inside of the lower rail on the top bunk end panel. On the B213 and B233 models, the product sticker is on the inside of the lower panel on the bottom bunk.

The bunk beds being recalled for repair were sold at furniture stores nationwide. Model B383 was sold beginning in December 2000. Model B213 was sold beginning in May 2003. Model B233 was sold beginning in June 2003. All sales of the recalled bunk beds ended in February 2004. Model B383-57T sold for around \$299, model B383-58T sold for around \$699, and Models B213 and B233 sold for

around \$599. Consumers should stop using the recalled bunk beds and get a free repair kit from the retailer to cover and close up the entrapment gaps. Consumers can install the repair kit easily at home. To get a free repair kit, contact the dealer who sold the bunk bed. Although repair kits are not available on-line, consumers can call Ashley Furniture Industries at (800) 999-2936. Additional information is available on Ashley's website at www.ashleyfurniture.com.

HAMILTON BEACH ESPRESSO MACHINES RECALLED

Hamilton Beach Proctor-Silex, Inc., of Glen Allen, Va., is recalling its Hamilton Beach Cappuccino Plus Espresso and Cappuccino Makers. The steam tube inside the espresso/cappuccino maker can burst under pressure, causing a risk of injury. This can occur if the frothing nozzle becomes clogged and the espresso button is pushed while attempting to froth milk. Ten incidents have been reported, one of which caused a minor burn. The recall is for model 40714, coming in both black plastic and stainless steel. The model number is printed on the bottom of the machine. Consumers are urged to contact Hamilton Beach toll-free at (800) 672-5872 for a free replacement.

XXIII. FIRM ACTIVITIES

NEW AND IMPROVED FIRM WEBPAGE

Over the past several months, our in-house web department, led by Jayme Yaroch, has been in the process of redesigning our firm web page. We have added a number of new features as well as streamlined the navigation of the site. I hope this will allow folks to find more of what interests them. There have been some exciting changes incorporated into the new site. We have added up-to-date legal news, the Jere Beasley Report in .PDF format, and a Consumer Resource Section. We believe these will prove to be beneficial

to our visitors. The Recent Additions section on the right side of the Home page will have things recently added to the site. If you have friends or family who want to receive the Report on a regular basis, they can sign up on-line from our website. Please visit us at www.BeasleyAllen.com to see all that is happening with our firm.

LAWYERS SPEAK TO JUNIOR HIGH SCHOOL STUDENTS

Kendall Dunson, who is one of our product liability lawyers, serves on the Board of Cornerstone Community Foundation (CCF), a community-based service organization. One of the group's projects this quarter included speaking to the students at Bellingrath Junior High School. Kendall wrote a skit involving a violation of the school's zero tolerance policy against weapons on school grounds. He, along with several other lawyers and staff members from the firm, played out parts in the skit. The skit involved a student who innocently picked up his brother's jacket on his way to school. His brother was a policeman and his jacket had his department-issued handgun in a pocket. While at school, the gun fell out and a teacher found it. The principal of the school and the school board's lawyer filed a suit to have the student expelled for a full year for violating the zero tolerance policy. The student's lawyer argued the student was innocent because he did not intend to bring the gun onto school property and further that the zero tolerance policy was too harsh under these circumstances.

The judge in this presentation ruled in favor of the school board and against the student. After the skit, the students were allowed to ask questions and act as a jury. Additionally, the Beasley Allen lawyers spoke to the students about being a lawyer and what is required of lawyers. Interestingly, 35 students signed up for a shadow program and will have the opportunity to follow a lawyer around for part of a day to see what we do on a day-to-day basis. We are proud of the community work our lawyers do.

FIRM EMPLOYEES SUPPORT AMERICAN HEART ASSOCIATION FUNDRAISER

On Saturday, May 1st, a small – but committed – team of Beasley Allen employees and family members gathered at Union Station to participate in the American Heart Association Heart Walk 2004. Together, our team raised over \$2800 to support the work of the Association in combating heart disease and stroke. Following opening ceremonies, a large and enthusiastic group of walkers, led by heart attack/heart surgery and stroke survivors (including Jill Cawley, our team captain), set off on the three-mile trek from Union Station to the State Capitol and back. After completing the walk, participants were treated to refreshments courtesy of Heart Walk 2004 sponsors. The event was a huge success, and we are pleased to have played a part.

OUR RADIO SHOWS ARE QUITE LIVELY

We are still doing our two radio shows each week. The live call-in shows are carried each Thursday at 5:00 p.m. on 1170 AM and 93.7 FM and each Friday at 7:00 a.m. on 1440 AM. The two shows cover most of central and south Alabama. While we attempt to keep the programs on specific topics relating to legal issues, callers always dictate the direction taken for the shows. To say that this firm activity is interesting, is perhaps a gross understatement. We get some tough calls on occasion. Nevertheless, we learn a great deal from our callers and hope we in turn put out some good information.

EMPLOYEE SPOTLIGHTS

• Roger Smith

Roger Smith is a lawyer in our Mass Torts section. He is responsible for overseeing all aspects of litigation involving Rezulin, Phenylpropranolamine (PPA), Ephedra, and Serzone. He currently has cases filed throughout the United States. Recently, the CBS Evening News and the Wall Street Journal featured one of Roger's Serzone clients while reporting the dangers of the prescription drug Serzone. Before he came to our firm,

Roger served as Legal Counsel and Director of Regulatory Compliance for a publicly-traded corporation. Roger was responsible for a 48-state corporate expansion project involving both corporate and insurance regulatory issues. Roger received his Bachelor of Arts degree, with honors, from the University of Tennessee and his Juris Doctor degree, cum laude, from the University of Alabama School of Law. Roger is admitted to the Alabama, Arizona, Tennessee, Minnesota, and Mississippi Bars. He is currently serving on the Alabama State Bar Task Force on multi-jurisdictional practice which is studying the rules governing the unauthorized practice of law, admission by motion, and bar admission reciprocity. Roger is married to the former Claudia C. Kennedy, of Vestavia Hills. The couple, who have two children, Sarah Kennedy and Caroline Cecilia, attend St. Peter's Catholic Church. Roger is a most valuable member of the firm and does outstanding work.

• Rosemary Mullin

Rosemary Mullin is one of our veterans, having been with our firm for twelve years. She is currently a legal secretary for Dana Taunton and Graham Esdale in our Personal Injury/Products Liability Section. Rosemary came to the firm as a word processor and database entry clerk before moving up to her current legal secretary position. She has two daughters, Jessica and Lindsay, and one son, Patrick. Rosemary is anxiously awaiting the birth of her first grandchildren – one in September and one in December of this year. She is a dedicated and hard-working employee who does excellent work and sets a good example for her co-workers.

• Serena Mitchell

Serena Mitchell, who has been with the firm for over four years, currently works as a legal assistant to Mike Andrews in our Personal Injury/Products Liability Section. She mainly works on product liability cases involving products such as machinery, motor vehicles, construction equipment and consumer products. Serena is respon-

sible for drafting pleadings, doing research, and trial preparation work, including preparing and helping with trial presentations. She received her paralegal degree from AUM in 1997. In her spare time, Serena enjoys billiards and spending time with her 12-year-old daughter, Shayla. Serena is a very good employee and is most valuable to the firm.

• Robyn Short

Robyn Short, who has been with our firm for over three years, works in our Consumer Fraud Section as a legal assistant to John Tomlinson. She works mainly on finance fraud cases. At present, her largest case involves clients suing City Finance. Robyn started out as a clerical assistant in Fraud before moving up to legal assistant. Her sister, Pam, also works in our Toxic Torts Section. Robyn received her Bachelor of Science Degree in History from Faulkner University. From there, she went on to AUM and completed her Master's Degree in History in May of 2003. Robyn is involved in several church activities and programs, currently serving as an education supervisor for the 2 and 3-year-old classes at University Church of Christ. She develops and writes Bible school curriculum and materials and works with a Christian youth training program called Lads to Leaders. Robyn has been involved in mission work in Panama and hopes to go on other mission campaigns in the future. We are fortunate to have Robyn with us. She does very good work and is an extremely loyal employee.

• Kristi Smith

Kristi Smith was hired in November of 1999 as a legal assistant working with Steve Drinkard and Scarlette Tuley. She now works solely with Scarlette in the Toxic Torts Section. In this position, Kristi assists with client work, including filing initial pleadings and discovery items, reviewing documents, and organizing and managing document databases. She received her bachelor's degree in Criminal Justice from Auburn University Montgomery in 1999. Kristi also holds a Legal Assistant Certificate. Kristi is married

to Patrick Smith, a Montgomery firefighter, and they reside in Montgomery.

• **Richard Iyobebe**

Richard Iyobebe, who works as a mail clerk and a runner, spends most of his time sorting and delivering the vast amounts of mail that our office receives daily. When not in the mailroom, Richard helps out our two runners by doing some of the outside work. He is married to Rita, one of the receptionists with the firm. They have two children. Micah is two years old and Mason is five months. The family attends Christian Life Church, where Richard serves as a Children's Pastor. He also participates in the Street Ministry Team and preaches at the prisons. In his spare time, Richard performs karate demonstrations for churches and other functions. Richard is one of our most popular employees, does very good work, and is most valuable to the firm.

• **Katrina Owens**

Katrina Owens came to the firm in April of 2001, after serving 11 years as a court specialist and bookkeeper for the State of Alabama. She worked in the Montgomery County Circuit Court and Butler County Circuit Court. Katrina is currently a legal assistant for Navan Ward in our Nursing Home Section. She had previously worked in our Mass Torts and Business Litigation Sections. Katrina was born and raised in Crenshaw County, lived in Greenville most of her life, and recently moved to Millbrook. She is currently pursuing a degree in Biology from AUM and plans on furthering her studies in forensic pathology. Katrina is an outstanding employee and we are happy to have her with us.

A SPECIAL APPEAL FOR CHILDREN

The end of the school year has come and that means our young people will be headed to the beaches and lakes. We must all take steps to make our highways safer for teenage drivers. Recently, I received a letter from Wendy J. Hamilton, National President of Mothers Against Drunk Driving, that reminded me that drunk drivers are still a problem in this country. Innocent victims are

being killed each day as the result of a motor vehicle accident involving a drunk driver. Many of these victims are teenagers and young children.

MADD is making a special effort at this time of year to step up their efforts in a good number of areas. One area is in the promoting of the designated driver program. MADD advocates:

- Mandatory penalties for bars and restaurants that serve alcohol to drivers who are already intoxicated.
- Calling for the increased use of sobriety checkpoints and saturation patrols that can stop drunk drivers before it is too late.
- Continuing education to alert every American citizen to what happens when a person drives after drinking alcohol.

Although it is too late to save innocent victims who have been lost, it is not too late to save other children and adults from suffering a similar tragic fate. It is important that persons in positions of leadership speak up and take action against drunk driving. Let your political leaders know how you feel. In the meanwhile, we can all do something to help by supporting MADD financially. Please send an end-of-the-school-year check to MADD and mail it to P.O. Box 10165, Des Moines, Iowa 50340-0165. Your contribution is tax-deductible to the extent allowed by law.

A MOST WORTHY CAUSE

My longtime friend Fred Gray came by the office recently for a social visit. We had the opportunity during his visit to discuss a special project that is under way in Fred's hometown of Tuskegee, Alabama. The project – The Tuskegee Human and Civil Rights Multicultural Center – is being developed and will be a welcome addition to our state. The Center will recognize the contributions over the years of Native Americans, European Americans, and African-Americans. These are the three major peoples who have figured into the fascinating and complex history of our state. It is quite appropriate for the center to be located in Tuskegee, a small Alabama town, which has played a huge role in our nation's rich history. The mission of

the Center is to show through exhibits and educational programs how Indians, Europeans, and Africans made their marks on the area and interacted with each other. The Center, a non-profit organization with a tax-exempt status, will have a primary emphasis on education and activities related to human rights, civil rights, historic preservation, and cultural preservation.

All of our Alabama readers will already be well aware of all the contributions and achievements connected to the Tuskegee area. For those who are out-of-state and may not be familiar with Tuskegee's rich history, I will give a few examples: Dr. Booker T. Washington developed Tuskegee Institute (now Tuskegee University); George Washington Carver performed his scientific and agricultural experiments at Tuskegee; the Tuskegee Airmen were organized and trained at Moten Field; a VA hospital to serve African-American veterans was established outside the city; and significant voting rights legal cases were litigated originating in Tuskegee beginning in the 1940s. This museum and exhibit will be a tremendous tool for teaching future generations powerful lessons of the evils and tragedies of history. At the same time, it will reveal the triumph of the human spirit, which – by way of God's grace – has overcome all of the bad.

The Center is in need of funding to complete its mission. Your financial support would be most helpful to complete the Center and make it a reality. With your monetary assistance and that of others, the Center would be able to build museum exhibits, record history while it is still fresh on the minds of the history-makers, create and present public programs, and incorporate technology to stimulate young people to learn more and have a greater appreciation for our state's history and specifically that portion directly or indirectly related to Tuskegee. Please make a tax-deductible contribution to *Tuskegee Human and Civil Rights Multicultural Center*, P.O. Box 830768, Tuskegee, Alabama 36083-0768. It will greatly be appreciated. If you want more information, contact Fred Gray at P.O. Box 830239, Tuskegee, Alabama 36083-0239. His telephone number is: 334-727-4830.

XXIV. CLOSING REMARKS

I want to thank all of the people from around the state who have contacted our firm concerning Ron Canty's death. I have talked to Ron's parents on several occasions since the funeral and I can report that they are doing extremely well. They wanted me to pass on to our readers that they are deeply appreciative of all of the prayers, words of encouragement and support they have received from people they don't even know. We are still trying to get accustomed around the firm to not seeing Ron's smiling face every day. That has been quite an adjustment for the folks who worked closely with him. His death left a real void in our ranks.

On another subject, most everybody I talk to is extremely happy that the Alabama Legislature has completed its regular session and returned home. However, that has always been the reaction at the close of a session. I doubt that many people in Alabama fully understand how difficult the job was for the legislators during this particular session. They were dealing with an impossible financial situation and, in spite of all of the problems, were able

to pass both budgets. Unfortunately, their toughest challenge lies ahead. Dealing with the real problem – a lack of money and direction – can't be put off any longer.

Clearly, nobody in state government can claim to have solved the fiscal problems facing state government during the just-completed session. Looking ahead, I sincerely hope that the Governor and the legislative leadership in both the House and Senate will come up with a workable plan not only to solve our current fiscal problems, but also to develop our state's vast talents and resources. A long-range plan for the running of state government is long overdue. We have too much to offer as a state to continuously lag behind our sister states in so many categories. Until we put politics aside (to the extent possible), shelve all of the partisan posturing and bickering, and work to limit the tremendous influence of the special interest lobby groups, we will never reach our full potential or even come close to doing so. My prayer is that our political leaders will take charge and move our state forward for the good of all Alabamians. While it can be done, it certainly won't be easy.

Finally, I have to remind myself daily that I have an obligation and actually a

duty to pray for those who have been placed in leadership roles in government at every level. I must confess, however, that I have a difficult time praying for our current President. I simply don't believe that he has done a very good job and don't believe he has full control of the White House. There are too many folks such as Karl Rove who are making policy decisions on a purely political basis, and that makes me real uneasy. In spite of my personal feelings, I do know that I have no choice in this matter. I must pray – not only for the President, but for all of our political leaders in Washington, Republicans and Democrats alike. In fact, we must all do this on a daily basis. It is our moral and spiritual obligation and it is critical for the survival of this country. So, I do pray daily for President Bush and ask God to give him the wisdom, courage, and discernment required to perform his duties and responsibilities. Clearly, he has a very tough job and that is not subject to debate. My prayer is also that God will bless our nation. In order for Him to do this, we must do our part and return to the moral values upon which our nation was founded. We have fallen short in so many ways that we all have lots of catching up to do.

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